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## PARTICULARITIES OF PROVIDING PSYCHIATRIC CARE UNDER THE LEGISLATION OF UKRAINE

**Abstract.** *The purpose* of the article is to analyze the particularities of psychiatric care and argue in favor of proposals to improve Ukrainian legislation on psychiatric care. **Research methods.** The article was written by applying general scientific and special cognitive methods, namely: hermeneutics, dialectical method, analysis and synthesis, systematization of legal research, generalization.

**Results.** The research analyses the concept of psychiatric care and provides a list of specific features of psychiatric care, which derive from theoretical sources and the current legislation of Ukraine. While justifying particularities, a great deal of attention is paid to individuals suffering from mental disorders caused by substance use as the statistics indicate that this group of patients is quite extensive but neglected. At the same time, it is worth mentioning that patients with a history of substance abuse do not often seek psychiatric care – the author has made some assumptions about the triggers of this process and possible solutions.

The contribution emphasizes that the concept of “psychiatric care” is a part of “medical care” and proposes dividing the provision of medical care into somatic and mental. This is driven by the fact that such practice is found in medical science and health care, and regulatory consolidation promotes systematization and law transparency for patients and doctors.

Attention is devoted to the object of psychiatric care, i. e., the mental state of a person. The study comments on the legislative lack of the concepts “a mentally healthy person” and “a person with a mental health problem” that negatively affects the understanding of the law. One of the peculiarities of providing psychiatric support covers the problem of autonomy of patients, who sometimes are unaware of their decisions about their preferences and interests. It is established that an intrinsic part of psychiatric care is compulsory medicine, the practice of which is widespread when providing the relevant psychiatric help.

**Conclusions.** Based on the research findings, the author argues that relevant particularities are not fully consolidated and regulated by Ukrainian legislation and need improving within medical reform.

**Key words:** medical care, provision of psychiatric care, compulsory medicine, human mental health, autonomy of patients, somatic medical care, psychiatric care for drug addicts.

### 1. Introduction

It is commonly believed that human life and health are the highest values – this is also mentioned in the basic law of Ukraine. Thus, according to article 3 of the Constitution of Ukraine, “An individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value” (Verkhovna Rada of Ukraine, 1996). However, the structure of the mechanism exercising values and rights depends directly on laws’ consistency, clarity, and accessibility.

The realm of medical care, including psychiatric, has recently been subjected to reforming, which slows down fighting against the COVID-19 pandemic. Although some steps towards improving the mechanism of providing

mental health services have been taken, most issues still require solving. Therefore, to comply with the principle of legislative consistency, it is critical to pay heed to the nature of particularities of psychiatric care and revise legislation by relying on them since psychiatric care is not inferior to somatic medicine and is also of importance. This emerges from the definition of “health” available in international acts, e. g. Mental Health Declaration for Europe (Mental Health Declaration for Europe: facing the challenges, building solutions, 2005), e. g. article 3 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” (Verkhovna Rada of Ukraine, 1993). Consequently, **the purpose of the research** is to analyze the particularities of providing psy-

chiatric care and argue in favor of proposals to improve Ukrainian legislation on psychiatric care. The achievement of the mentioned purpose relates to the following **scientific research tasks**: to single out the concept of psychiatric care as a part of medical care; to analyze the legislative definition of psychiatric care and its particularities; to identify particularities affecting the specifics of psychiatric care.

**Research methodology** is based on the general scientific methods of cognition that contributed to the study: the hermeneutic method was focused on the theoretical interpretation of the concept of psychiatric care; the dialectical method provided a blueprint while dealing with a psychiatric field to regard it along with somatic medicine; analysis and synthesis were used to specify the features of legal frameworks of providing psychiatric care; the systematization of the legal research assisted in shaping a clear vision of specifics of the law on psychiatric care; generalization promoted summarizing findings and justifying the proposals.

## 2. Psychiatric care as a part of medical care, its concept and features

The state as an organized social structure commits to protect human life and health and thus, statutorily supports it through health care, rights to medical care and health insurance that is directly and indirectly provided by Article 49 of the Constitution of Ukraine "Everyone shall have the right to health protection, medical care and medical insurance. Health protection shall be ensured through state funding of the relevant socio-economic, medical and sanitary, health improvement and prevention programmes. The State shall create conditions for effective medical service accessible to all citizens. State and communal health protection institutions shall render medical care free of charge; the existing network of such institutions shall not be reduced. The State shall promote the development of medical institutions under all forms of ownership" (Verkhovna Rada of Ukraine, 1996).

This process is implemented through delivering medical care by health care facilities which meet the popular demands for medical services in the relevant territory. The legislator ascertains that medical care should be understood as the activities of trained medical workers aimed at prevention, diagnosis, and treatment due to diseases, injuries, poisonings, and pathological conditions, as well as in the case of pregnancy and childbirth (Verkhovna Rada of Ukraine, 1993).

Psychiatric care can be identified as a special type of medical aid taking into account the rule of art. 284 of the Civil Code of Ukraine, which specifies the scope of the right to medi-

cal aid. Therefore, one can conclude that legal relations in psychiatric care are a component of legal relations associated with the right to medical aid. Medical aid is a generic concept, one of the types of which is psychiatric. However, the before mentioned fact is not consolidated statutorily (Seniuta, 2018, p. 522).

Under the Law of Ukraine "On Psychiatric Care", psychiatric care is a complex of special measures oriented to the examination of mental health of individuals on the grounds and in the manner prescribed by this Law and other laws of Ukraine, prevention, diagnosis of mental disorders, treatment, supervision, care, medical and psychological rehabilitation of persons suffering from mental disorders, including due to substance use (Verkhovna Rada of Ukraine, 2000).

In the term "psychiatric care", the legislator stresses that the complex of special measures is applied to persons suffering from mental disorders caused by substance use. In this context, doctors point out that the use and abuse of psychoactive substances, alcohol, drugs, and toxic substances have spread sharply in recent years worldwide. The number of patients with addiction to psychoactive substances increases annually. This addiction is accompanied by mental-somatic and neurological disorders, which lead to significant socio-economic and moral losses. The number of teenagers and even children consuming alcohol, drugs, and toxic substances is growing (Havenko et al., 2015, p. 250). Drugs affect nerve cells and the cerebral cortex by disrupting their activity. An external influence of artificial substances on the normal mental state through toxic substances degrades a healthy psyche that may result in the loss of logical thinking, concentration, assimilation of new information, and memory impairment. Under long-term consumption, the deformation of the human personality begins, and severe mental illnesses make progress. According to figures provided by the Center for Medical Statistics of the Ministry of Health of Ukraine dated 2020, 509 306 persons were registered in a clinical group and 140 904 persons – in a preventive group by the end of the reporting period. Over the year, 23 900 persons were subjected to supervision at the early treatment center and 51 749 persons were registered with the preventive group for the treatment of patients with mental disorders due to psychoactive substance use (Report on the treatment of patients through the use of psychoactive substances, 2021). This group of patients is very significant, but persons with that sort of problem don't often seek help due to a lack of feeling that they are addicted, an effect, and a negative image of psychiatric care, which was developed during the UkrSSR, and poor awareness of modern

methods and tendencies of its provision. In the author's opinion, it would be expedient to keep the public informed and make some amendments to legislation. One of the positive practices was put forward in the report published within the project of NGO M'ART "The monitoring of Ukrainian legislation related to persons with mental health issues", namely, to state that a voluntary hospitalization of a person and the process of his/her treatment provide for the right to refuse treatment and the right to leave the medical facility voluntarily (Hromadska orhanizatsiia MART "Molodizhna AlteRnaTyvna", 2006, p. 42). Since legislation, namely art. 18 of the Law of Ukraine "On Psychiatric Care", only prescribes the procedure of filling a discharge application (Verkhovna Rada of Ukraine, 2000), this may advance the loyalty of this category of persons to psychiatry and positively influence the understanding and systematization of laws on psychiatric care.

Proceeding from the term of psychiatric care, it is essential to establish an object it is oriented to – human mental health. The legislator neither introduces nor defines a mentally healthy person and a person with a mental illness. However, it defines the concept "health" in article 3 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" – according to the law, it is a state of complete physical, mental and well-being and not merely the absence of disease or infirmity (Verkhovna Rada of Ukraine, 1993). There is the same interpretation in the Preamble of the Constitution of the World Health Organization (World Health Organization, 1946). A more precise definition of the concept contributed to better adjustment of legislation to the concepts available in psychiatry.

### 3. Somatic and psychiatric treatment

Turning to the definition of psychiatric care, the author highlights the lack of a statutory fact that it derives from medical care, although legislative provisions on medical aid directly touch upon psychiatry as well. In the author's opinion, the absence of statutory and unspecified division into psychiatric and somatic treatment (care) seems illogical. Although the etymological concept "somatic" is derived from the Greek word "soma" – "body" (Popovych, Shavadyn, 2019, p. 265), it means diseases of the body and the current state of organs and systems (Mykhaliuk, Cherepok, Malakhova, 2013, p. 43). This division can be conditioned by the specifics of these two areas of medical care. For instance, psychiatry has a branch that helps determine a plan and strategy of psychiatric intervention, substantiates the use of any preventive and rehabilitation measures, and sets the choice of therapeutic

methods. Somatic medicine doesn't have that sort of criterion as there is no need to assess the meaningful activities of an individual. There is only an element of disease burden, the likelihood of death or illness perpetuation, and disability. Psychiatry can ambiguously interpret a burden of disorders. On the one hand, it can be assessed from the standpoint of the idea of mental health – a state of complete physical and mental comfort and well-being and thus, disorder burden is determined subjectively. On the other hand, it can be interpreted from the perspective of the concept of socially detrimental influence, which may be caused by mental illness (in extreme terms – danger to the lives of others and personal one) that drives an "unbiased" approach (Nykonenko, 2016, p. 71).

### 4. Patients' autonomy as one of the particularities of psychiatric care

The problems of patient autonomy are one of the particularities of psychiatric care and its difference from somatic care. According to I.Ya. Seniuta, psychiatry is the most vulnerable in terms of the violation of human rights in the field of medical aid, taking into account the features of the health condition of patients and profound ethical ground of the issue. This subsequently spawns ethical and legal dilemmas in the doctor-patient relationship – a patient with mental health issues is authorized to exercise his rights consciously and voluntarily – and changes the paradigm of confidentiality and the patient's autonomy.

Patients' autonomy, an ability to make reasonable decisions about one's preferences and interests, relies on the relevant ability and is a basis for partner relations in medicine. Since the actions of a patient with mental health issues are not consistent with that model of personality who is able to follow his interests, which is a ground of the autonomy idea, it is prohibited to treat him as an unhealthy person whose thoughts and feelings remain more or less undisturbed. The fact that any mental illness affects the character, desires, thoughts, and feelings of a patient calls into question whether the person's intentions in treatment can play the same crucial role as in other clinical cases. Thus, it seems that both compulsory and voluntary forms of psychiatric care have areas of concern (Seniuta, 2018, p. 517).

In such a case, the commission of inquiry and the chief physician must check whether the patient was able to make a rational decision about his treatment and whether it was urgent to take the necessary measures to prevent the death of the patient caused by mental illness.

By referring to the ECHR, I.Ya. Seniuta also draws attention to two problems which may arise: 1) the competence of a person with a men-

tal illness to make decisions on the delivery of psychiatric care; 2) the competence of a person with a mental illness to make decisions on the delivery of other types of medical care.

### 5. The practice of compulsory psychiatric care as one of the special types of medical aid

By delving into particularities, the author pays attention to compulsory medicine. International law, namely the Convention for the Protection of Human Rights and Fundamental Freedoms ascertains in art. 5 (1) that everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law. One of such cases is the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants (Council of Europe, 2010). This rule is also conveyed in art. 53 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care” that consolidates special measures of prevention and treatment of socially dangerous diseases, which include tuberculosis, mental, venereal diseases, AIDS, leprosy, chronic alcoholism, drug addiction and quarantine diseases, the procedure for hospitalization and treatment of such patients, compulsorily as well (Verkhovna Rada of Ukraine, 1993). In other words, the legislator states expressly that the treatment of the above diseases can be conducted compulsorily due to their social danger. The most widespread practice is the process of delivering compulsory aid to a person, but it shall be applied only in cases of failure to deliver care voluntarily that should be supported by collegial decisions of mental health specialists, involvement of independent psychiatrists, verification of the legitimacy of the decision by both the court and executive authorities (Gvozdyk, 2020, p. 194).

The Law of Ukraine “On Psychiatric Care” consolidates several types of psychiatric care, as follows: mental state examination, ambulatory psychiatric care, and institutional psychiatric care. Following a particular court decision, each of these types of psychiatric care can be used towards a person compulsorily. Thus, under the rules of art. 235 of the Civil Procedural Code, the court considers the following cases of compulsory delivery of psychiatric care in the manner of individual proceedings: 1) compulsory implementation of mental health examination; 2) compulsory provision of ambulatory psychiatric care to a person; 3) compulsory extension of ambulatory psychiatric care of a person; 4) compulsory termination of delivering ambulatory psychiatric care; 5) compulsory hospitalization of a person to a psychiatric facility; 6) keeping compulsory hospitalization of a person in a psychiatric facility; 7) compulsory termination of the hospitalization of a person in a psychiatric facility (Dubchak, 2010, p. 184).

### 6. Conclusions

Consequently, keeping in mind the above-mentioned, one can conclude the following. First, the concept of psychiatric care and legal relations in psychiatry comprise many particularities and subtle aspects, which concern a vulnerable category of persons who may have issues with psychoactive substances, realization and making decisions about their principles and values. Second, the analysis of legislative acts and theoretical framework allows emphasizing that the relevant particularities were not fully consolidated and regulated in the current legislation of Ukraine. Third, that kind of systematization of legislation adversely affects the clearness and transparency of statutory instruments because they primarily touch upon patients and health professionals in the field of psychiatric care who follow the general and specific principles of its delivery.

### References:

**Council of Europe** (2010). Konventsia pro zakhyst prav liudyny i osnovopolozhnykh svobod: z popravkamy, vnesenykh vidpovidno do polozhen Protokoliv № 11 ta 14 z Protokolamy №№ 1, 4, 6, 7, 12 ta 13 [Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols № 11 and № 14 with Protocols №№ 1, 4, 6, 7, 12 and 13]. *Pravo Ukrainy – Law of Ukraine*, no. 10, pp. 215–233 (in Ukrainian).

**Dubchak, L.S.** (2010). Pravove rehuliuвання nadання osobi psykhiatrychnoi dopomohy u prymusovomu poriadku [Legal regulation of the provision of psychiatric care in a person forcibly]. *Naukovyi chasopys NPU imeni M.P. Drahomanova. Serii 18: Ekonomika i parvo – Scientific journal of NPU named after M.P. Drahomanov. Series 18: Economics and Law*, no. 8, pp. 183–190. Retrieved from: [http://nbuv.gov.ua/UJRN/Nchnpu\\_018\\_2010\\_8\\_29](http://nbuv.gov.ua/UJRN/Nchnpu_018_2010_8_29) (in Ukrainian).

**Gvozdyk, S.** (2020). Praktich Praktychni problemy administratyvno-pravovoho rehuliuвання zabezpechennia prav patsienta psykhiatrychnoho zakladu ta shiakhyy yikh vyrishennia [Practical problems of administrative and legal regulation of ensuring the rights of the patient of the psychiatric institution and ways of their solution]. *KELM*, no. 5(33), vol. 1, pp. 193–197. DOI: <https://doi.org/10.51647/kelm.2020.5.1.34> (in Ukrainian).

Havenko, V.L., Bitenskyi, V.S., Abramov, V.A., Vlokh, I.I., Kozhyna, H.M., Korostii, V.I., et al. (2015). *Psykhiatriia i narkolohiia: pidruchnyk [Psychiatry and narcology: textbook]*. Kyiv: VSV "Medytsyna" (in Ukrainian).

**Hromadska orhanizatsiia MART "Molodizhna AlteRnaTyvna"** (2006). Prava i zakonni interesy liudei z problemamy psykhhichnoho zdorovia: mizhnarodni standarty ta ukrainske zakonodavstvo [Rights and legitimate interests of people with mental health problems: international standards and Ukrainian law]. *helsinki.org.ua*. Retrieved from: <https://helsinki.org.ua/files/docs/1169144638.pdf> (in Ukrainian).

Mykhaliuk, Ye.L., Cherepok, O.O., Malakhova, S.M. (2013). *Biolohichniy vik ta kilksna otsinka rivnia fizychnoho zdorovia liudyny [Biological age and assessment of the level of physical health of a person]*. Zaporizhzhia: ZDMU (in Ukrainian).

Nykonenko, Yu.P. (2016). *Klinichna psykholohiia [Clinical psychology]*. Kyiv: KNT (in Ukrainian).

Popovych, T., Shavadyn, A. (2019). Sutnist napovnennia chetvertoho pokolinnia prav liudyny [Content essence of the fourth generation of human rights]. *Pidprijemnytstvo, hospodarstvo i pravo – Entrepreneurship, economy and law*, no. 12, pp. 266–271. DOI: <https://doi.org/10.32849/2663-5313/2019.12.49> (in Ukrainian).

Seniuta, I.Ya. (2018). *Tsyvilno-pravove rehuliuвання vidnosyn u sferi nadannia medychnoi dopomohy: pytannia teorii i praktyky [Civil law regulation of health care relations: theoretical and practical issues]*. Lviv: LOBF "Medytsyna i pravo" (in Ukrainian).

**Verkhovna Rada of Ukraine** (1993). Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia: Zakon Ukrainy vid 19 lystopada 1992 № 2801-KhII [Fundamentals of the Legislation of Ukraine on Health Care: Law of Ukraine from November 19, 1992, № 2801-XII]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*, no. 4, art. 19 (in Ukrainian).

**Verkhovna Rada of Ukraine** (1996). Konstytutsiia Ukrainy: Zakon Ukrainy vid 28 chervnia 1996 roku [Constitution of Ukraine: Law of Ukraine from June 28, 1996]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*, no. 30, art. 141 (in Ukrainian).

**Verkhovna Rada of Ukraine** (2000). Pro psykhiatrychnu dopomohu: Zakon Ukrainy vid 22 liutoho 2000 roku № 489-III [On Psychiatric Care: Law of Ukraine from February 22, 2000, № 489-III]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*, no. 19, art. 143 (in Ukrainian).

**World Health Organization** (1946). Konstytutsiia Vsesvitnoi orhanizatsii okhorony zdorovia (VOOZ) vid 22.07.1946 roku [Constitution of the World Health Organization (WHO) of 22.07.1946]. *zakon.rada.gov.ua*. Retrieved from: [https://zakon.rada.gov.ua/laws/show/995\\_599#Text](https://zakon.rada.gov.ua/laws/show/995_599#Text) (in Ukrainian).

**Yevropeiska deklaratsiia z okhorony psykhhichnoho zdorovia: problemy ta shliakhy yikh vyrishennia** [Mental Health Declaration for Europe: facing the challenges, building solutions] (2005). Helsinki, Finland, pp. 11 (in Ukrainian).

**Zvit pro likuvannia khvorykh cherez vzhyvannia psykhoaktyvnykh rechovyn** [Report on the treatment of patients through the use of psychoactive substances]. *medstat.gov.ua*. Retrieved from: <http://medstat.gov.ua/im/upload/2020z.zip> (in Ukrainian).

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## ОСОБЛИВОСТІ НАДАННЯ ПСИХІАТРИЧНОЇ ДОПОМОГИ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ

**Анотація. Метою** роботи є аналіз особливостей надання психіатричної допомоги та аргументування пропозицій з удосконалення законодавства України з надання психіатричної допомоги. **Методи дослідження.** Дослідження виконано із застосуванням загальнонаукових та спеціальних методів пізнання, наприклад герменевтичного, діалектичного методів, аналізу й синтезу, систематизації правового дослідження, узагальнення.

**Результати.** У дослідженні здійснено аналіз поняття психіатричної допомоги та сформовано перелік особливостей надання психіатричної допомоги, які постають із теоретичних матеріалів і чинного законодавства України. У процесі обґрунтування зазначених особливостей велика ува-

га приділяється особам, які страждають на психічні розлади внаслідок вживання психоактивних речовин, оскільки статистичні дані свідчать про те, що ця категорія пацієнтів є досить численною, проте їй не приділяється достатньої уваги. Водночас варто підкреслити, що пацієнти з наркотичною залежністю майже не звертаються за психіатричною допомогою. Наведено декілька припущень, що саме може слугувати причиною цього, та шляхи можливого вирішення зазначеної проблеми.

У статті наголошується на тому, що поняття «психіатрична допомога» є частиною терміна «медична допомога», та пропонується поділити надання медичної допомоги на соматичне і психічне. Це зумовлено тим, що такий розподіл існує в медичній науці та сфері надання медичного обслуговування, а нормативно-правове закріплення допомоги в питанні систематизації та передбачуваності законодавства для пацієнтів і лікарів.

У дослідженні приділяється увага об'єкту психіатричної допомоги, а саме стану психічного здоров'я людини. Робиться зауваження щодо відсутності в законодавстві понять психічно здорової та психічно хворої особи, що чинить негативний вплив на розуміння законодавства. Однією з особливостей надання психіатричної допомоги визначено проблему з автономією пацієнтів, які в деяких випадках не усвідомлюють власні рішення щодо своїх переваг та інтересів. Встановлено, що важливою частиною сфери надання психіатричної допомоги є примусова медицина, практика якої поширена в разі надання психіатричної допомоги.

**Висновки.** За результатами проведеного дослідження аргументовано, що відповідні особливості неповною мірою закріплені й урегульовані в законодавстві України та потребують удосконалення в межах медичної реформи.

**Ключові слова:** медична допомога, надання психіатричної допомоги, примусова медицина, психічне здоров'я осіб, автономія пацієнтів, соматична медична допомога, психіатрична допомога наркотично залежним.

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DOI <https://doi.org/10.32849/2663-5313/2021.8.02>**Mariya Mykhayliv,***PhD in Law, Associate Professor, Associate Professor at the Department of Civil Law and Procedure, Ivan Franko National University of Lviv, 1, Universytetska street, Lviv, Ukraine, postal code 79000, mariy.mykhayliv@gmail.com***ORCID:** [orcid.org/0000-0002-5007-7810](https://orcid.org/0000-0002-5007-7810)Mykhayliv, Mariya (2021). Registration of the right to inheritance under private international law. *Entrepreneurship, Economy and Law*, 8, 11–17.

## REGISTRATION OF THE RIGHT TO INHERITANCE UNDER PRIVATE INTERNATIONAL LAW

**Abstract.** *The purpose* is to analyze the registration of the right to inheritance under the laws of Ukraine and foreign countries, determine the procedure for obtaining a certificate of inheritance by heirs; identify gaps in the legal regulation of registration of the inheritance right and put forward ways to address them. **Research methods.** The paper is executed by applying the general research and special methods of scientific cognition.

**Results.** The analysis of succession laws in different states revealed both common and different approaches to the legal regulation of the relevant issues. In particular, it is established that the basis for issuing a certificate of inheritance in the states is the heir's application submitted to a notary or other authorized body at the place of opening the inheritance. As a general rule, a certificate of inheritance is given the heirs at any time upon the expiration of six months from the date of opening the inheritance. However, the laws of individual states provide for the case of obtaining such a certificate before the expiration of six months from the date of opening the inheritance, in particular, if the notary has relevant information that there are no other heirs except for those who suggest the issuance of the certificate.

The article also analyzes and highlights the features of obtaining a European Certificate of Succession. Thus, it was established that the European Certificate of Succession was introduced to quickly and effectively resolve the issues of cross-border inheritance of property in the European Union. It also allows heirs, legatees, executors, guardians of inherited property to prove their status easily, as well as grants the rights and powers in the territory of a foreign EU member state where part of the inherited property is located. Obtaining such a certificate is not mandatory, but it is valid throughout the European Union.

**Conclusions.** Based on the analysis of doctrinal definitions of the term “certificate of succession”, the author states that a certificate of inheritance cannot certify the transfer of ownership of inherited property from the testator to the heirs as after accepting the inheritance by the heirs in the manner and terms prescribed by law, the right of ownership of the heirs arises from the date of opening of the inheritance. Consequently, the author notes that in the context of international succession, the certificate of inheritance is a title deed confirming functional role and is the legal fact that proves the heir's right to inheritance.

**Key words:** inheritance, certificate of inheritance, registration of right to inheritance, heirs, succession.

### 1. Introduction

The development of international private relations and adaptation of civil laws of foreign countries necessitate the improvement of the civil legislation of Ukraine that, in particular, concerns succession rules. Although succession law has undergone significant updates since the adoption of the Civil Code of Ukraine in 2003, there are many areas of concern which, based on the analysis of judicial and notarial practice in succession matters, need addressing, including in the part of the registration of inheritance rights.

**Analysis of recent researches and publications.** Many domestic and foreign scientists

paid attention to the registration of the right to inheritance, they are as follows: V.V. Valakh, I.A. Dikovska, M.M. Diakovych, I.V. Zhylinkova, Yu.O. Zaika, A.Ye. Kazantseva, O.O. Karmaza, V.I. Kysil, L.V. Kozlovska, O.Ye. Kukhariev, P.S. Nikitiuk, Z.V. Romovska, A.A. Rubanov, Ye.O. Riabokon, I.V. Spasybo-Fatieieva, S.Ya. Fursa, Ye.O. Kharytonov et al. However, science has many issues which need studying and are relevant today.

**The purpose of the article** is to analyze the provisions of civil laws in terms of the registration of the right to inheritance; determine the procedure for obtaining the certificate of inheritance by the heirs; identify gaps in

the legal regulation of registration of inheritance rights and put forward ways to address them.

**Research methodology** is based on the analytical and legal methods of analysis. General scientific and special methods have been used. Research tasks have been solved when studying, analyzing, and synthesizing relevant scientific literature. The fundamental principles of the domestic and foreign regulatory environment have been examined. As a result, the applied methods have contributed to generating reasonable conclusions. Thus, using the comparative method, the author has contrasted the national legal framework with a foreign one regulating the registration of inheritance rights in foreign states. The descriptive method has made it possible to convey research findings in a logical sequence. The analytical method has allowed the author to formulate recommendations on optimizing the national system of statutory support. Therefore, the conducted analysis of relevant sources based on the abovementioned methods has allowed the author to provide specific recommendations on terminology and statutory support.

**Basic material statement.** The final step of exercising the right to inheritance by the heirs, who have accepted the inheritance, is its registration. The registration of the inheritance right is one of the stages of the notarial process, which involves the heirs' appeal to a notary to receive the certificate of inheritance, issuing the certificate of inheritance by a notary, committing other actions related to the introduction of amendments to the certificate of inheritance, or declaring it invalid as provided for by the law.

According to Ye.O. Kharytonov, at first sight, the period between the acceptance of the inheritance and registering the right to inheritance through issuing the relevant certificate is an example of a gap between the juridical fact of inheritance acceptance, which exists in a non-formalized form, and its registration. The terminology of Chapter 89 of the Civil Code (hereinafter – CC) of Ukraine “Execution of the Right to Inheritance” directly confirms the above. Such an approach is relevant to the concept of organizational relations studied by the author, and some scientists believe that it should be applied towards inheritance legal relations (Kharytonov, Kharytonova, 2008, pp. 220–237).

## **2. Special aspects of the legal regulation of the registration of inheritance rights under the legal systems of Ukraine and foreign states**

Chapter 89 of the CC of Ukraine is devoted to the execution of the right to inheritance. Thus, according to art. 1296 of the CC

of Ukraine, an heir who has accepted the inheritance may receive a certificate of inheritance. If the inheritance has been accepted by several heirs, the inheritance certificates shall be issued to each of them with the names and other heirs' shares specified. Absence of the inheritance certificate shall not disinherit an heir (Verkhovna Rada of Ukraine, 2003).

As a general rule, the inheritance certificate is issued by a notary to heirs who have accepted the inheritance in the manner prescribed by law, after six months from the date of opening the inheritance, except as provided by law. The basis for issuing the inheritance certificate is the application of the heir submitted to a notary at the place of opening the inheritance.

That sort of approach to the legal regulation of the issues related to the registration of inheritance is observed in the laws of foreign states. Thus, according to the CC of Georgia “The persons invited as heirs may demand that a deed of title to the inheritance be issued by a notarial office located at the place of the opening of the estate. In the cases prescribed by law, the obtaining of a deed of title to the inheritance shall be obligatory. A deed of title to the inheritance shall be issued to the heirs at any time after the lapse of six months from the day of the opening of the estate” (art. 1499 of the CC of Georgia) (Bigvava, 2002).

However, compared to the CC of Ukraine and other foreign states, the CC of Georgia stipulates that the title deed may be issued before the lapse of the six-month period in those cases where a notarial office has a document evidencing that there are no other heirs to the estate but those who are applying for the title deed (art. 1500 of the CC of Georgia). The similar provision is found in the CC of the Republic of Belarus (para. 2, art. 1084), the CC of Turkmenistan (para. 2, art. 1257), the CC of the Republic of Kazakhstan (para. 2, art. 1073).

A title deed may be issued for both the entire estate and a part thereof. The title deed is issued either to all coheirs as a single deed or to each of them separately, as they wish. Issuance of a title deed on a part of the estate to one heir shall not deprive the other heirs of the right to obtain a title deed on the remaining part of the estate (art. 1503 of the CC of Georgia).

In Germany, receipt of the inheritance certificate is regulated by Division 8, Book 5, namely §§ 2353–2370 of German Civil Code, BGB (Yakovlev, 2015). The probate court must issue to the heir on application a certificate concerning his right of succession, and, if he is entitled only to a share of the inheritance, concerning the size of his share (certificate of inheritance). Under § 2359 of German Civil Code, the certificate of inheritance may be issued

only if the probate court is of the opinion that the facts required to substantiate the application have been established.

A somewhat similar approach to the legal regulation of the procedure for receiving the certificate of inheritance is also found in the CC of the Republic of Moldova. However, compared to the German Civil Code, a notary, who carries out inheritance proceedings, is authorized to issue the certificate of inheritance.

Thus, according to art. 2542 of the Republic of Moldova, by relying on an application of the heir, a notary, who carries out the inheritance proceedings, shall issue the certificate of inheritance confirming the right of the heir to the inheritance. In case of several heirs, the certificate of inheritance shall specify the size of the inherited shares of all co-heirs. The certificate of inheritance doesn't list the property belonged to the mass of the succession (Parliament of the Republic of Moldova, 2002).

According to art. 2548 of the CC of the Republic of Moldova, the certificate of inheritance shall be issued after the notary, who carries out inheritance proceedings, recognizes the reliability of facts which substantiate the application for issuance of the certificate. The notary shall include in the certificate of inheritance all recognized co-heirs who accepted the inheritance, even if they were not specified in the application for issuance of the certificate.

In addition to the certificate of inheritance, the notary may issue an heir certificate to the heir, who accepted the inheritance, to legalize his position in relations with third parties. The heir certificate doesn't supersede the certificate of inheritance. When issuing the certificate of inheritance, the heir certificate is revoked by a notary and shall be returned to him by the heir. These provisions shall be mentioned in the heir certificate.

If the elements which are subjected to proving are confirmed, a notary immediately, in accordance with the procedure stipulated by law, issues the certificate of inheritance. If the elements which are subjected to proving are a triable issue, the notary doesn't issue the certificate which the heirs demand. The notary also takes all reasonable measures to inform an applicant and relevant persons about the issuance of the certificate (Parliament of the Republic of Moldova, 2002).

### 3. Legal nature of the European Certificate of Succession

It is worth mentioning that Regulation (EU) № 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Suc-

cession as of 4 July, 2012 (hereinafter – Regulation (EU) № 650/2012) (European Union, 2012) introduced a European Certificate of Succession to resolve the issues of cross-border inheritance of property in the European Union quickly and effectively and allow heirs, legatees, executors, guardians of hereditary property to easily prove their status as well as the rights and powers in the territory of a foreign EU member state where part of the inherited property is located.

A European Certificate of Succession is issued by the court or other body empowered under national law to deal with the matters of succession. It should be for each Member State to determine in its internal legislation which authorities have competence to issue the Certificate. The Member States should communicate to the Commission the relevant information concerning their issuing authorities in order for that information to be made publicly available.

Although a certificate is not obligatory, it should produce the same effects in all Member States without following any procedure. A European Certificate of Succession is a title deed which gives grounds for registering hereditary property by a relevant authority of a Member State of the European Union.

However, art. 1 (2) k of Regulation (EU) № 650/2012 states the following shall be excluded from the scope of this Regulation: the nature of rights in rem, i. e. “any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register” (European Union, 2012), therefore, the authorities of a state the legislation of which doesn't know such rights in rem, or the commission of such actions will violate the public order of the state, may not be obliged to record rights in rem specified in the European Certificate of Succession in their registers.

In such a case, art. 31 of Regulation allows adapting the closest equivalent of right in rem under the law of that State which conducts recording (Stamatiadis, 2017, p. 644).

A European Certificate of Succession doesn't supersede documents which may be used with the same purpose in the Member States of the European Union but, after its issuance, with a view to using it on a territory of a particular Member State of the European Union, it has the same legal effect as a document issued by an authority of a Member State of the European Union pursuing the same purpose in the territory of its state.

Regulation (EU) № 650/2012 (art. 63 (2)) enshrines that the Certificate may be used,

in particular, to demonstrate one or more of the following:

a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;

b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

c) the powers of the person mentioned in the Certificate to execute the will or administer the estate (European Union, 2012).

To receive the European Certificate of Succession, an heir (applicant) shall submit a standard application to the issuing authority and mention all the necessary information enshrined in art. 65 (3) of Regulation (EU) № 650/2012 (European Union, 2012). In addition, the application shall be accompanied by all relevant documents which prove the information outlined in the application. Upon receipt of the application and documents attached, the issuing authority shall verify the information. It shall carry out the enquiries necessary for that verification of its own motion. After verification, the issuing authority shall issue the European Certificate of succession to a person who submitted an application.

The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies. The issuing authority shall keep a list of persons to whom certified copies have been issued. The Regulation states that the certified copies issued shall be valid for a period of six months, to be indicated in the certified copy by way of an expiry date. Once this period has elapsed, an heir must apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority. The Regulation also provides for the cases of modifying, suspending the European Certificate of Succession and appealing against decisions of the issuing authorities.

The European Certificate of Succession shall meet the rules provided by art. 68 of the Regulation (EU) № 650/2012 (European Union, 2012). The contents of the certificate are usually consistent with the legislative requirements for the contents of the certificate of succession of most European countries.

Heirs are entitled to receive such a certificate. Thus, in terms of such relations, they are free to use other documents they received (national certificates of succession or certificate of inheritance, etc.) under the law of the state where the inheritance was opened. However, Regulation (EU) № 650/2012 envisages the prohibition of claiming such documents from the heirs if they have received

and show a European Certificate of Succession (European Union, 2012).

According to research staff of the Institute for Comparative and International Private Law of Max Planck, legal rules of individual Member States preventing the issuance of more than one national inheritance certificate may be used to hinder issuing a national certificate and a European Certificate of Succession for the same succession property. At the same time, if national laws of a Member State don't have similar rules, the issuance of both certificates is open because Regulation doesn't cover that sort of case (Reinhartz, 2015, pp. 247–249).

Analyzing Regulation (EU) № 650/2012, foreign scientists concluded that a European Certificate of Succession generates three effects:

- presumption of the accuracy of information specified in a European Certificate of Succession;
- public confidence in a European Certificate of Succession;
- legitimacy of grounds for entering records on succession property in the relevant registers of the EU Member States (Kresse, 2016, p. 679).

A European Certificate of Succession can be issued only by a specific Member State of the European Union for the use in another Member State. Thus, in I. A. Dikovska's opinion, the introduction of the rules regulating the issuance or circulation of a European Certificate of Succession into the legislation of Ukraine is out of the question now. At the same time, the scientist finds it expedient to study the experience of legal regulation and application of the European Certificate of Succession to understand the way succession takes place when mass of the succession is located in different Member States and facilitate the introduction of the rules of Succession Regulation into Ukraine when it becomes an EU member (Dikovska, 2020, p. 293).

#### **4. Legal nature and significance of a certificate of inheritance**

The doctrine still has controversies about the legal nature and significance of a certificate of inheritance. Most scientists believe that the certificate of inheritance doesn't have constitutive nature but is a title deed (Pecheny, 2012, pp. 304, 305; Abova et al., 2007, p. 113). According to some scientists, who have opposite opinions, the right of ownership, and, accordingly, the powers of possession, use, and disposal of property are generated by the acceptance of the inheritance, not a certificate of inheritance; it originates not from the moment of the certificate's receipt but since opening the inheritance. Therefore, it takes a lot to recognize a certificate of inheritance as a title

deed. A certificate of inheritance legitimizes an heir who accepted the inheritance, i. e. it confirms realized succession (Kazantseva, 2012, pp. 302–303).

In P.S. Nikitiuk's opinion, a certificate of inheritance is an authoritative assessment of the legality of inheritance – an act of unquestionable jurisdiction. A certificate of inheritance is a juridical fact. In any case, it changes both the legal status of the inheritance and the persons who have received it or to whom it applies (Nikityuk, 1973, pp. 166, 202). The issuance of a certificate of inheritance is the statement of the fact of acceptance of the inheritance by the heir, authentication of legal succession, which took place through accepting the inheritance, with retroactive effect until the moment of its opening (Argunov, 1994, pp. 188–190, 203).

According to L.V. Kozlovska, a certificate of inheritance proclaims or confirms the origin of inheritance rights as a necessary condition for the origin of ownership of immovable property and other rights in rem. In such a case, a certificate of inheritance exercises a constitutive function. It is essential to differentiate between inheritance as the acquisition of inheritance right and the acquisition of property right by inheritance. As a result, it is differentiated cases when rights in rem cannot be exercised without receiving a certificate and when rights in rem don't originate before receiving a certificate of inheritance (Kozlovska, 2015, p. 297).

O.Ye. Kukhariev states a certificate of inheritance is a document confirming the transfer of ownership of succession property from the testator to the heirs (Kukhariev, 2013, p. 292).

In the opinion of the article's author, a certificate of inheritance cannot confirm the transfer of ownership of succession property from the testator to the heirs: when heirs have accepted inheritance in the manner and terms prescribed by law, inheritance rights originate since opening inheritance. This fact is confirmed by the provisions of para. 3, art. 1296 of the CC of Ukraine, absence of the certificate of inheritance shall not deprive an heir of the right to inheritance. An heir's lack of the certificate of inheritance cannot be a reason for initiating proceedings. In this context, receipt of a certificate of inheritance by the heir, who has accepted the inheritance, is his right, not an obligation.

However, in case of the origin of a dispute about inheritance or re-registration of succession property by the heir in his name, a certifi-

cate of inheritance serves as a document which indicates that the person named in the certificate is a legitimate heir and the right to the property specified in the certificate belongs to him as the heir who has accepted the inheritance in the manner prescribed by law.

Taking into account the above, the author holds that a certificate of inheritance is a standard document confirming both the heir status and his ownership of inherited property transferred from the testator to the heir, who has accepted the inheritance in the place of its opening and the manner prescribed by law, by succession. Thus, in international succession, a certificate of inheritance is a title deed document and the juridical fact proving the heir's rights to succession property.

### 5. Conclusions

Having analyzed the civil succession laws of Ukraine and foreign states, the author has found both similar and distinctive approaches to the legal regulation of relevant matters.

It has been established that states consider the heir's application submitted to a notary or another authorized agency at the place of opening of inheritance as a ground for issuing a certificate of inheritance. In most states, such a certificate is issued when the period for accepting inheritance has elapsed. However, in some countries, the certificate can be obtained before the expiration of the term for acceptance of the inheritance if there is sufficient information evidencing that there are no other heirs to the estate but those who are applying for the title.

Attention is paid to the legal nature of a European Certificate of Succession. In particular, that kind of certificate was introduced to quickly and effectively resolve the issues of cross-border inheritance of property in the European Union and allow heirs, legatees, executors, guardians of hereditary property to easily prove their status as well as the rights and powers in the territory of a foreign EU Member State where part of the inherited property is located. It is highlighted that receipt of a certificate is not obligatory but has the same effect across the European Union.

Therefore, the author suggests interpreting a certificate of inheritance as a standard document confirming both the heir's status and ownership of succession property transferred from the testator to the heir, who has accepted the inheritance in the place of its opening and the manner prescribed by law, by succession.

## References:

- Abova, T.Ye., Boguslavskiy, M.M., Svetlanova, A.G.** (2007). *Kommentariy k Grazhdanskomu kodeksu Rossiyskoy Federatsii* [Commentary on the Civil Code of the Russian Federation]. Moscow: Yurayt-Izdat (in Russian).
- Argunov, V.** (ed.). (1994). *Pravovyye osnovy notarial'noy deyatel'nosti* [Legal foundations of notarial activity]. Moscow: BEK (in Russian).
- Bigvava, Z.K.** (ed.). (2002). *Grazhdanskiy kodeks Gruzii* [Civil Code of Georgia], transl. I. Meridzhanashvili, I. Chikovani. St. Peterburg: Yuridicheskiy tsentr Press (in Russian).
- Dikovska, I.A.** (2020). *Mizhnarodne spadkuvannya u YeS ta Ukrayini: napryamy adaptatsiyi prava Ukrayiny do prava YeS* [International inheritance in the EU and Ukraine: directions of adaptation of Ukrainian law to EU law]. Kyiv: Alerta (in Ukrainian).
- European Union** (2012). Regulation (EU) № 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession of July 12, 2012. Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0107:0134:EN:PDF> (in English).
- Kazantseva, A.Ye.** (2012). *Nasledstvennoye pravo* [Inheritance law]. Moscow: Norma (in Russian).
- Kharytonov, Ye.O., Kharytonova, O.I.** (2008). *Tsyvilni pravovidnosyny* [Civil relations]. Kyiv: Istyna (in Ukrainian).
- Kozlovskaya, L.V.** (2015). *Teoretychni zasady zdiysnennya i zakhystu spadkovykh prav* [Theoretical principles of implementation and protection of inheritance rights]. Kyiv: Yurinkom Inter (in Ukrainian).
- Kresse, B.** (2016). Article 62: Creation of a European Certificate of Succession. *Calvo Caravaca, A.L., Davi, A., Mansel, H.P. (eds.). The EU Succession Regulation Commentary*. Cambridge: Cambridge University Press (in English).
- Kukharyev, O.Ye.** (2013). *Spadkove pravo Ukrayiny* [Inheritance law of Ukraine]. Kyiv: Alerta (in Ukrainian).
- Nikityuk, P.S.** (1973). *Nasledstvennoye pravo i nasledstvennyy protsess (problemy teorii i praktiki)* [Inheritance law and hereditary process (problems of theory and practice)]. Kishinev: Shtiintsa (in Russian).
- Parliament of the Republic of Moldova** (2002). *Grazhdanskiy kodeks Respubliki Moldova ot 6 iyunya 2002 goda № 1107-XV* [Civil Code of the Republic of Moldova from June 6, 2002, № 1107-XV]. Retrieved from: [https://online.zakon.kz/Document/?doc\\_id=30397921#pos=425;46](https://online.zakon.kz/Document/?doc_id=30397921#pos=425;46) (in Russian).
- Pecheny, O.P.** (2012). *Spadkove pravo* [Inheritance law]. Kharkiv: Faktor (in Ukrainian).
- Reinhartz, B.** (2015). Article 62: Creation of a European Certificate of Succession. *Bergquist, U., Damascelli, D., Frimston, R., Lagarde, P., Odersky, F., Reinhartz, B. EU Regulation of Succession and Wills Commentary*. K ln: Verlag Dr. Otto Schmidt KG (in English).
- Stamatiadis, D.** (2017). Article 69: Effects of the Certificate. *Pamboukis H.P. (ed.) EU Succession Regulation № 650/2012: A Commentary*. Athens; M nchen; Oxford; Baden-Baden: Nomiki Bibliothiki; C.H. BECK; Hart Publishing; Nomos (in English).
- Verkhovna Rada of Ukraine** (2003). *Tsyvilnyi kodeks Ukrainy: Zakon Ukrainy vid 16 sichnia 2003 roky № 435-IV* [Civil Code of Ukraine: Law of Ukraine from January 16, 2003 № 435-IV]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/435-15> (in Ukrainian).
- Yakovlev, T.F.** (ed.). (2015). *Grazhanskoye ulozheniye Germanii: Vvodnyy zakon k Grazhdanskomu ulozheniyu = B rgerliches Gesetzbuch Deutschlands mit Einf hrungsgesetz* [Civil Code of Germany: Introductory Law to the Civil Code = B rgerliches Gesetzbuch Deutschlands mit Einf hrungsgesetz], transl. M. Korableva, M. Shvedchikova. Moscow: Infotropik Media (in Russian).

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## ОФОРМЛЕННЯ ПРАВА НА СПАДЩИНУ В МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ

**Анотація. Мета** – дослідити питання оформлення права на спадщину за законодавством України та іноземних держав, визначити процедуру одержання спадкоємцями свідоцтва про право на спадщину, виокремити проблеми у сфері правового регулювання оформлення права на спадщину та запропонувати шляхи їх вирішення. **Методи дослідження.** Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання.

**Результати.** За підсумками аналізу законодавства щодо оформлення права на спадщину в різних державах виявлено як спільні, так і відмінні підходи до правового регулювання зазначених

питань. Зокрема, встановлено, що підставою для видачі свідоцтва про право на спадщину є заява спадкоємця, яку він подає нотаріусу або іншому уповноваженому органу за місцем відкриття спадщини. Зазвичай свідоцтво про спадщину видається спадкоємцям після спливу 6 місяців із дня відкриття спадщини в будь-який час. Проте законодавство окремих держав передбачає можливість отримання такого свідоцтва й до спливу 6-місячного строку з дня відкриття спадщини, зокрема у випадку, якщо нотаріальний орган має достатні відомості про те, що, крім осіб, які ставлять питання про видачу їм свідоцтва, інших спадкоємців немає.

Також у статті проведено аналіз процесу отримання Європейського свідоцтва про спадкування та виділено його особливості. Встановлено, що Європейське свідоцтво про спадкування було запроваджене з метою швидкого й ефективного врегулювання питань, пов'язаних із транскордонним спадкуванням майна на території Європейського Союзу, та для створення можливості для спадкоємців, відказоодержувачів, виконавців заповіту, опікунів над спадковим майном легко доказати свій статус, а також права й повноваження на території іноземної держави – члена Європейського Союзу, де перебуває частина спадкового майна. Отримання такого свідоцтва не є обов'язковим, проте документ чинний на всій території Європейського Союзу.

**Висновки.** На підставі аналізу доктринальних визначень поняття «свідоцтво про спадкування» зазначено, що свідоцтво про право на спадщину не може посвідчувати сам перехід права власності на спадкове майно від спадкодавця до спадкоємців, оскільки після прийняття спадщини спадкоємцями у спосіб і строки, передбачені законодавством, презюмується, що право власності у спадкоємців виникає з моменту відкриття спадщини. Також констатовано, що у відносинах міжнародного спадкування свідоцтво про право на спадщину є документом, який має правопідтверджувальне функціональне значення, та тим юридичним фактом, що підтверджує наявність прав на спадкове майно у спадкоємця.

**Ключові слова:** спадкування, свідоцтво про право на спадщину, оформлення права на спадщину, спадкоємці, спадщина.

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## WOMEN'S REPRODUCTIVE RIGHTS AND THEIR SCOPE UNDER INTERNATIONAL LEGAL FRAMEWORKS

**Abstract.** The article is devoted to the problem of nature and role of individual's reproductive rights in the system of private moral right. **The purpose** of the contribution is to study the legal regulation of reproductive rights of women in India and Ukraine and analyse the features of some reproductive rights, which are carried out with the help of assisted reproductive technologies with an emphasis on issues related to surrogacy, case law on this issue. **Research methods.** The paper is executed by applying the general research and special methods of scientific cognition.

**Results.** Reproductive rights generally mean the right of an individual to control the process of reproduction. It includes the right to decide whether to have or not to have a child, the number and spacing of children; access to reproductive services etc. Considering the importance of human reproduction, the reproductive rights are declared as fundamental human rights. However, at the international and national levels, there is no a single document which explains the scope of reproductive rights. In the absence of such a document, the reproductive rights raise several questions. For example, the scope of this right to an aged or disabled person or a transgender or a prisoner etc. is a million-dollar question which does not have a specific answer. Since the women's empowerment includes women's reproductive empowerment, a clear and reasonable answer is required for achieving the aim of reproductive empowerment. A detailed examination of legal frameworks both at international and national levels is necessary to answer these questions.

**Conclusions.** Scientific positions on reproductive rights are substantiated. It is emphasized that reproductive rights are the rights of the latest, fourth generation of human rights, and are derived from personal rights. It is noted that human reproductive rights are both natural and those that are carried out with the use of assistive technologies. The article deals with the basic types of reproductive rights, including the right to artificial insemination, surrogacy, sterilization, prevention and treatment of infertility, abortion, organ donation and reproductive cells, the use of contraception, the right to reproductive choice, the right to reproductive health, right to information about reproductive rights, the right to privacy to implement reproductive rights and others. The necessity of adopting the special legislative act in the sphere of reproductive rights and reproductive health is grounded.

**Key words:** reproductive rights, personal rights, personality, medical law, human rights, right to privacy, abortion, sterilization, assisted reproductive technologies, surrogacy, artificial insemination, medical tourism.

### 1. Introduction

The need and importance of a child is recognized by almost all religions all over the world. Begetting a child is one of the most joyful moments in the life of a person. In fact, begetting

a child is considered a sacred duty of an individual to his/her family and society and this duty is usually fulfilled through the institution of marriage. The act of reproduction is usually a natural process of sexual union between cou-

ples which requires no external interference from a third party. Hence, reproductive rights are declared as fundamental human rights both at international and regional frameworks of human rights. Although it is an accepted fact that every individual has the right to claim reproductive rights, the exercise of this right in certain situations may raise serious legal and human rights concerns.

The past few decades have seen increasing recognition of the process of women empowerment. The international community has taken several measures for ensuring empowerment of women. It can be seen that most of these measures concentrate on the economic and political empowerment of women. The problems of consolidating and protecting the reproductive rights of citizens have recently become especially important for Ukrainian, as well as for Indian, society given the demographic crisis situation in our country. The empowerment of women is not only limited to mainstreaming the women or equipping them to be part of economic and political process but also includes equipping women to control each and every aspect affecting their life. One of such important aspects of women's life which requires immediate attention is their reproductive rights or, in other words, the process of women's reproductive empowerment. Women's reproductive empowerment in its true spirit is possible only if there is a sufficient understanding about and access to the reproductive rights. Therefore, it is necessary to understand the scope and ambit of reproductive rights of women. This chapter seeks to examine both international and national legal frameworks on reproductive rights to identify the scope and limitations of this right.

## **2. Reproductive rights: concept and meaning**

Reproductive rights are considered to be the so-called newest personal non-property rights of the fourth generation, which are closely linked to the inalienable human right to life, respect for one's dignity, personal integrity, etc.

It is a natural instinct of every living creature to have an offspring and it's in high pedestal when it comes to human beings. It is not only because of natural desires but also because of psychological and social needs to have children (Erikson, 2000). The reproductive rights are those rights which enable an individual to procreate his or her offspring. There is no legal definition of "reproductive rights" in India, as well as in Ukraine. Legal regulation of this issue is carried out on the basis of the norms of the Civil Code, Family Code. Although there is no single accepted definition for the term of reproductive rights, the most cited defini-

tion is provided in the International Conference on Population and Development, 1994. It says that reproductive rights are recognized as a part of human rights by several national jurisdictions and also at international level. This right allows every couple to control their pregnancy, decide about when and how many etc. The right to access to reproductive services and right to sexual and reproductive health care services, etc. are also a part of this right (International Conference on Population and Development, 1994). The World Health Organization endorses the same definition as well. Thus, reproductive right is not a single unified right but is a bundle of rights which enable an individual to beget a child. The various human rights instruments have declared different elements of reproductive rights as human rights at international and regional levels. Most importantly, Article 23 (1) (b) of the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 2006, expressly confers the right to reproductive health and education. At the regional level, Article 14 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003, declares that women's reproductive rights are also human rights.

Analysing the consolidation of reproductive human rights in European countries, we can conclude that, at the moment, it is insufficient and contains many gaps that, in some cases, leads to violations of human and civil rights. Overcoming these gaps are a complex process, and the case law of the European Court of Human Rights, which sets the standards to be met by the laws of the Member States, plays an important role (Mikhalkiv, 2020).

At the scientific level, there is no consensus on the specified term. A.O. Dutko and R.M. Swampy propose to understand reproductive rights as the guaranteed, state-sponsored opportunities for individuals to protect their reproductive health, free acceptance and the implementation of the decision to conceive a child or to refuse to have children by married or unmarried, methods of conception and birth of children, including with the help of assisted reproductive technologies, the number of children, time and place of birth, intervals between their births necessary to maintain the health of mother and child, as well as medical, social, informational and advisory assistance in this area (Dutko, 2016).

The evolution of the concept of reproductive rights as human rights can be traced back to the 1968 International Human Rights Conference held at Teheran. This document states that every parent has a fundamental human right to

decide freely and responsibly about the number of children and the spacing in between such children. Subsequently, the Bucharest World Conference on Population, 1974, also declared in the similar manner and states that parents have a fundamental human right to decide about their children. Further, the international conferences, such as Women's Conference held in 1975; the Conference on Human Rights held in Vienna held in 1993; International Conference on Population and Development held in 1994; and the 1995 Beijing World Conference of Women etc., articulate reproductive rights as human rights. Among all these, the ICPD has been considered as the most important milestone in the history of development of reproductive rights.

The ICPD has identified three core elements of reproductive rights: the ability to control the timing of pregnancy, number, gap in between children's; access to information about reproductive services and a right against unwarranted interferences with such rights. In 1995, the Fourth World Conference on Women held in Beijing adopted a Declaration and Plan of Action thereby supporting the idea of reproductive rights. Though the Declaration and Plan of Action are non-binding in nature, they have highlighted that the human rights of women include the right to control and freely decide the matters relating to reproduction. The UN Millennium Development Goals, which were adopted in 2000, also emphasised the scope of right to procreation and urged the governments to focus on the issue of reproduction as it is one of the components of development. These commitments were further highlighted by different nations at the World Summit held in 2005; they agreed to take various measures for achieving the task of access to reproductive health care services by 2015 (Pillai, 2015). Among the various international instruments, the 2006 Convention on the Rights of Persons with Disabilities was the first binding international human right instrument which consolidated the right to reproduction as a human right. According to Article 23 of the Convention, it is the duty of every member-states to take adequate measures to eliminate barriers and discriminations against persons with disabilities in matters of parenthood. This also ascertains that such persons can decide the number and spacing of their children and are able to claim such rights equal to others. In process of time, in 2016, the General Comment № 22 related to Article 12 of the International Covenant on Social, Economic and Cultural Rights 1966, also has given emphasis to the right to sexual and reproductive health. The General Com-

ment provides a detailed list about the obligations on the part of State Parties for ensuring these rights.

Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa is one of the important regional human rights instruments which protects the reproductive rights of women. This guarantees such important facets of reproductive rights as access to family planning and reproductive health care services. This Protocol reaffirms the duty of member's states to protect the reproductive choice and related rights of women. Both at Inter-American Human Rights system and European Human Rights system guarantee several reproductive rights, as follows: right to marriage; right to family; right to access to reproductive services; etc. Thus, it can be seen that reproductive rights are recognised as basic human rights both at international and national human rights frameworks.

### 3. The scope of reproductive rights

The international and regional human rights frameworks declare that reproductive rights and its various facets are fundamental human rights. However, none of these documents have expressly declared the scope of this right. By relying on a literature review, it can be seen that there are two views on the scope of reproductive rights. The first view is a narrow stand under which scholars argue that reproductive rights include only a right to exercise reproductive choice. The foundation of this argument originates from the Convention on the Elimination of all forms of Discrimination against Women in 1979. The Article 16(1) (e) of the Convention states that every couple is entitled to have a right to procreation including access to sexual health and information and a right to decide the number and spacing of children. This view points out that the following rights are its core elements: the right to access to family planning information and education; the number and spacing of children; the right to access family planning methods and services; and the right to found a family; the right to decide, freely and responsibly.

The second view is much wider: it says that reproductive rights are an umbrella of human rights. This view finds its foundation in various national and international human rights instruments. Those scholars who support this view determines<sup>12</sup> human rights as the core elements of reproductive rights, namely: the right to marriage and free consent in marriage; right to education and information; right to privacy; right to health; right to security; right to employment; right against sexual harassment at workplace; right to maternity; right to reproductive choices; right against sexual violence;

right to found family and right to enjoy benefit of scientific advancements (Gebhard, Trimiño, 2012). At international level, the scope of reproductive rights is well established through different international human rights documents. Further, several national jurisdictions also incorporated the reproductive rights in their municipal legal framework. However, the scope of this right in these countries will depend on the socio-political and religious views of those countries (Kostruba, 2020).

#### 4. Reproductive rights in India

The Indian Constitution does not explicitly declare that reproductive rights are fundamental rights. Therefore, there is no legislation which declares an individual of reproductive rights. India is a party to most international human rights documents: UDHR, 1948; ICCPR, 1966; ICESCR, 1966; CDEDAW, 1979; and the Convention on Rights of Persons with Disabilities (2006). Consequently, all these documents expressly confer various facets of reproductive rights such as the right to privacy, the right to consent to marriage and equality in marriage, the right to access to family planning information and education; the right to found a family; the right to access to family planning methods and Services; the right to decide the number and spacing of one's children; and right to enjoy the benefits of scientific progress, etc. Hence, any individual in India can claim the abovementioned rights following the case *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011), in which the Supreme Court held that, in the absence of a law regarding a particular matter in India, the international law can be referred to fill the legislative vacuum.

In addition, the Indian judiciary through various decisions has established reproductive rights under Article 21 of Indian Constitution. Most importantly, the judiciary has expanded the scope of right to personal liberty and right to privacy under Article 21 to cover reproductive rights. In the case of *Suchita Srivastava v. Chandigarh Administration* (AIR 2010 SC 235), the Supreme Court held that the right to reproduction of women has its base at right to life under Article 21. It includes right to reproduce as well as not to reproduce. Recently, in *Devika Biswas v. Union of India* ((2016) 10 SCC 726), Supreme Court has pointed out that that right to reproduction includes the right to make free choice of sterilisation.

In *B.K. Parthasarthy v. State of Andhra Pradesh* (AIR 1973 SC 2701), the Supreme Court of Indian, by approving right to reproduction is a part of right to privacy, declared that "the right to make a decision about reproduction is essentially a very personal decision either on the part of the man or woman. Such a right

necessarily includes the right not to reproduce". Further, in the recent case of *Justice K.S. Puttaswamy (Retd) v. Union of India* (2017(10) SCC 1), the Apex Court held that "Privacy is based on the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also comprises a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life". Thus, an analysis of all these cases shows that the reproductive rights in India have attained the status of fundamental rights as a part of both right to personal liberty and right to privacy.

#### 5. Reproductive rights in Ukraine

In Ukrainian civil science, several areas of understanding the nature and place of reproductive rights in the system of personal non-property rights of the individual have been formed: they have an independent separate character; have a close connection with the right to life; are considered an integral part of the right to health. Reproductive rights, of course, are a complex set of capabilities of the individual, aimed at ensuring the reproductive function of man to reproduce their own kind.

The system of reproductive rights should include: the right to reproductive choice; right to reproductive health; a woman's right to an abortion; the right to artificial insemination and embryo transfer into a woman's body; the right to donate and preserve reproductive cells; right to application of the method of surrogacy; the right to sterilization; the right to use contraception; the right to prevention and treatment of infertility; the right to information on reproductive rights; the right to confidentiality of information on the exercise of reproductive rights; the right to protection of reproductive rights.

Reproductive rights also include the right to reproductive health services and the right to reproductive health, the right of minors to reproductive health, the right to paternity and maternity, the right to reproductive integrity and protection from cruelty (Mukhamiedova, 2012).

All the above rights are aimed at ensuring that every individual is free to own, use and dispose his or her reproductive health at his or her own will and discretion. As we can see, reproductive rights make up the whole system and their consolidation at the legislative level will contribute to their effective implementation and protection (Dluhopolska, 2016).

#### 6. Reproductive rights: legal dilemmas

Reproductive rights and its various facets are fairly recognised both under international, regional and national human rights frameworks. However, the aspects of reproductive rights

remain contentious, and the exercise of rights associated with reproductive rights poses a threat to Indian legal system. Here are some important issues.

### 6.1. Right to abortion

The termination of pregnancy or abortion is the expulsion or removal of a foetus from the uterus of a pregnant woman. In other words, abortion is the intended destruction of the life of an unborn child in the womb, otherwise than the principal purpose of producing a life birth or removal of a dead tissue (Ubajaka et al., 2014). Reproductive rights include right to legal and safe abortion. However, abortion in India is a punishable offence under Section 312 of Indian Penal Code, 1860. This Section describes abortion as intentional miscarriage and provides punishment both for pregnant women and the persons involved in such process. The punishment is simple or rigorous imprisonment for a term extending up to three years, or with fine, or both, and shall be punished with simple or rigorous imprisonment for a term extending up to seven years as well as shall also be liable to fine where the woman is quick with child. If the miscarriage is caused in good faith to save the life of the women, then this Section exempts them from liability. This means that, except in cases where the miscarriage is performed for saving life of the women, all other cases of abortion will be treated as an offence.

The Medical Termination of Pregnancy Act, 1971, has provided a restricted right to abortion. Under Section 3, it states that pregnancy may be terminated by a registered medical practitioner (a) where the length of the pregnancy does not exceed twelve weeks or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks. However, termination can be done only if not less than two registered medical practitioners must have formed a bona fide opinion that (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave physical or mental health injuries; (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanation 1 of the Section states that, "where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman".

Explanation 2 states that "where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed

to constitute a grave injury to the mental health of the pregnant woman". As per Section 5 of the Act, the length of the pregnancy and the opinion of not less than two registered medical practitioners mentioned under Section 3 shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he/she is of the opinion in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

Thus, it can be seen that right to the termination of pregnancy can be exercised only in the following conditions:

1) the termination should be performed by a registered medical practitioner;

2) the length of the pregnancy must not exceed twenty weeks;

3) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped;

4) if the length of the pregnancy exceeds twenty weeks, only in cases of immediate necessity of to saving the life of the pregnant woman.

Thus, it can be seen that, although there is a right to legal and safe abortion which is established as a part of reproductive rights, only a qualified right to abortion is protected in India. Since the right to abortion is not an absolute right, reasonable restrictions can be imposed through a procedure established by law. In the case of *Suchita Srivastava & Anr. v. Chandigarh Administration* (AIR 2010 SC 235), the Apex Court held that, right to reproduction includes a women's right to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling state interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices". Thus, though there is a conflict between reproductive rights and abortion laws in India, considering the fact that right to abortion is not an absolute right and the overriding public interests, right to abortion may remain only as a qualified right (Kosgi et al., 2011).

### 6.2. Single parent

Reproductive rights are individual rights based on right to life and personal liberty. In this regard, a question arises whether a single individual, a male or female can claim

reproductive rights, and if so, to what extent. In China, if any woman decides to exercise reproductive rights as single mother and gives birth to a child, she will be penalised and has to pay social up bringing cost to the government. In India, the laws are silent about the issue of procreation by single individual. Since reproductive rights are linked with right to marriage and found family, one inference can be made here is, only a person of marriageable age is entitled to claim reproductive rights. These types of restrictions are necessary considering the impact of pregnancy and child birth on the life of the adolescent. Various types of literature point out that, “adolescent pregnancy and child birth has severe impact on the has negative emotional, social and other aspects of the adolescent as well as the resulting child” (Mukhopadhyay, 2017). Thus, irrespective of the fact whether it is a single male or female, if the person completes his or her marriageable age, he or she should be given the core elements of reproductive rights.

### 6.3. Aged individuals

In most countries, the legislations are silent about the issue up to which age an individual can claim his right to procreation. However, considering the need to protect the interest of child, it is necessary to set a limit on the upper age up to which a person can claim his or her right to reproduction. It is to be noted that, in this context only the aspect of begetting a child is in dispute and not all other aspects of reproductive rights. This is because of reason that sometimes each and every aged person may not be able to protect the interests of child due to their physical and mental conditions. An analysis of various types of legal literature shows that it is impossible to fix a uniform upper age limit for begetting a child either sexually or through any other means. This is because there are cases in which a woman at the age of 74 years has given birth to a healthy baby. There are different similar incidents around the world (Oldest.org, 2020). However, in the interest of child, the use of reproductive rights for begetting a child should be limited. Such a limitation should follow the yardstick of physical condition of couple or individual and potential risks to the mother and child. If the couple or individual is capable enough to take care of child despite their age, or these persons have someone who can provide adequate care to the child, then they should be allowed to exercise the reproductive rights to beget a child (Brake, Millum, 2021).

### 6.4. Persons with disabilities

International human rights law gives robust recognition to both reproductive rights and rights of the disabled persons. In this con-

text a pertinent question arises with respect to scope of reproductive rights of disabled persons. According to UN Convention on the Rights of Persons with Disabilities, 2006, “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. Thus, a disabled person means a person with one or more physical, mental, and sensory impairments which limit one or more of the basic life activities such as seeing, hearing, talking, walking, using hands, understanding, learning, communicating and inadequacies of a similar nature.

The issue of reproductive rights of persons with disabilities are addressed in the UN Convention on the Rights of Persons with Disabilities, 2006. Article 23 of the Convention specifically guarantees right to reproduction to all disabled persons without any discrimination and imposes an obligation to the members States to take adequate measures to ensure this right to everyone. Therefore, it can be seen that disabled persons are also entitled to have all reproductive rights without any discrimination, and it is the obligation of state parties to provide the same.

In India, the Rights of Persons with Disabilities Act, 2016, expressly guarantees the reproductive rights to all disabled persons. The Section 10 of the Act imposes an obligation to the Governments to take appropriate and adequate measures for ensuring reproductive rights of disabled persons. “No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent”. In the landmark case of Suchita Srivastava v. Chandigarh Administration (AIR 2010 SC 235), the apex Court has declared that even a mentally challenged woman can also claim reproductive right and can decide about her pregnancy. Consequently, there cannot be any distinction or discrimination to a person with disability in exercising his/her right to reproduction. However, it is noted that, in the interest of child, some restrictions can be imposed on the ground of the impact of disability on the natural upbringing and care of the child. If the physical or mental disability is of such a nature which adversely affects the upbringing, care and safety of the child, the exercise of reproductive rights to the extent begetting a child should be limited. Provided if there is anybody who can assist the disabled persons for taking care of child, then such disabled persons may be allowed to exercise the reproductive rights to beget a child (Lemberg, 2020).

### 6.5. Access to artificial human reproductive technologies

Every individual has a natural instinct to have a child and found a family. Begetting a child is a natural outcome of sexual union of heterosexuals. This process is socially accepted through the institution of marriage. Thus, human procreation is a common process which happens through the act of sexual intercourse between men and women. Therefore, there is no need of any intervention by another person or a technology. It only requires minimum medical assistance (Pillai, 2018). However, there are a large number of couples who are unable to have a child through biological process of procreation. This situation is medically termed as infertility. Infertility is a situation in which a couple is unable to conceive naturally even after one year of unprotected sexual intercourse or unable to carry the pregnancy to a full term (Anwar, Anwar, 2016). Infertility poses a severe crisis to the life of couples as they face several psychological issues which affect their personality, as a family member and as a member in the society.

In Indian society, the incapacity to procreate a child is considered as a stigma and is even regarded as a curse from God. Hence, the infertile couples look for various measures to overcome this problem. Traditionally, the option available to infertile couples is to go for adoption. The advancements in technology and medical science have paved the way for developing certain medical technologies through which an infertile couple can have a child of their own. These medical technologies which enable couples to have a child, who are otherwise unable to have children are collectively termed as Artificial Reproductive technologies (ARTs). There are many ARTs among which Artificial Insemination, In vitro Fertilisation and Surrogacy are the most popular and widely practiced methods (Vasilieva et al., 2019).

All individuals including infertile couples have the fundamental human right to reproduction. As a result, a pertinent question arises: whether such right to reproduction includes procreation of child with the help of artificial human reproductive technologies or, in other words, whether reproductive rights include access to ARTs (Pillai, 2014). The use of ARTs for begetting children is very rampant in different countries. However, none of the international human rights documents have referred the issue of right to access to ARTs. Though access to ART has not been yet expressly declared as a part of reproductive rights, the access to ART is inherent in reproductive rights. This is because an infertile couple cannot enjoy their reproductive rights without the help

of ART. This view is supported by various scholars like Jackson and Harris, who opined that, "interference with access to reproductive technologies is a violation of procreative autonomy, and that the real or perceived dangers of possible harm are insufficient to justify constraints" (Harris, 2000).

Moreover, the right to access to ART can be considered as a facet of other well established human rights such as right to marriage; right to found a family; right to privacy; right to procreation, right to control the number and spacing of their children and right to enjoy benefits of scientific and technological advancements (Pillai, 2015). It is to be noted here, the right to access to ART is not an absolute right like many other rights and hence reasonable restrictions can be imposed by state. In India, there is no specific legislation dealing with ART, however, there are National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India (popularly known as ICMR Guidelines, 2005) which recognise the right to access to ART. However, it is essential to note that this is a non-binding instrument. Further in several cases relating to surrogacy such as *Baby M. Yamada v. Union of India* (AIR 2009 SC 84) and in the case of *Jan Balaz v. Anand Municipality and Ors* (AIR. 2010 Guj. 21), the Indian judiciary has approved that there is a fundamental right to access ART (i. e. to Surrogacy) (Pillai, 2018). Though the proposed Surrogacy Bill, 2019, has provided some eligibility conditions, the Bill has undergone severe revision by Rajyasabha Selection Committee and, as a result, the Bill has lost its shape and with all probability it will remain as a Bill only and not become a law.

### 6.6. Same sex couples

The same sex relationships are higher in the past few decades and as a result several countries have legally recognised such relationships. This has resulted in the practice of same sex marriage (Re Patrick, 2002). In such family one figure i. e. wife or husband is always absent and hence they won't be able to have a child through natural sexual union (Nigam et al., 2011). It is to be noted that, such couples also have a natural desire to have a child of their own, similar to the desire of hetero sexual couples (Pillai, 2015). It is to be noted that same sex couples cannot exercise their reproductive rights like other individuals and hence they have to use any of ARTs to enjoy the benefit of reproductive rights. Though access to ART can be considered as a part of reproductive rights in India, the exercise of such rights can be restricted on compelling public interest.

The use of ART by gay and lesbian couples where always a matter of debate. It is argued that, same sex couples are also human beings

so they are entitled to have all the rights like any other heterosexual couple. This includes procreation with the help of ART also. It is also argued that parenting is not always depends upon sex and even a same sex couple can also raise a child properly. However, these claims by same sex couples where criticised on the ground of absence of father figure or mother figure for the child. There may be cases where father or mother or both may die after the birth of child, however, in cases of same sex couples such a figure is completely absent. This can affect the character and mental wellbeing of the child. Moreover, the stigma of taking birth to a same sex couple will haunt the child life long (Dent, 2011). Whatever be the arguments, it is to be noted that various studies have shown that, the same sex parents can also be a good parents like heterosexual parents (Fraser et al., 1995). Thus, it is submitted that same sex couples should be allowed to use the reproductive rights (or in other words use ART). However, the State can impose reasonable restrictions for the protection and promotion of welfare of children and societal interest.

#### 6.7. Trans-gender persons

Another related issue which arises in this context is the claim of reproductive rights by trans-genders. Trans-genders are a group of people are not able to identify as a men or women and have traits and physical features of both men and women (Nixon, 2013). According to Indian law, "A transgender person means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta" (Section 2(k) of Transgender Persons (Protection of Rights) Act, 2019).

In the case of National Legal Services Authority v. Union of India (AIR 2014 SC 1863), the Supreme Court declared that transgender persons are entitled to claim fundamental rights like any other person without any distinction. Thus, as a natural corollary, the reproductive rights which are part of right to personal liberty and right to privacy under Article 21 also should be available to transgender persons. In 2019, the Parliament of India has enacted, Transgender Persons (Protection of Rights) Act, 2019 with the objective to provide for protection of rights of transgender persons, their welfare, and other related matters. However, this Act is silent about the reproductive rights of trans-genders. It can be argued that, trans-gender persons should

also be allowed to enjoy the reproductive rights, but the State can create reasonable restrictions on account of compelling public interest and for the interest of child.

#### 6.8. Prisoners

A prisoner is a person who is undergoing a sentence of imprisonment or undergoing imprisonment awaiting trial. It is a natural consequence that several aspects of fundamental and other rights of persons will be deprived while he/she is serving as a prisoner in a jail. In this context the question, arises whether right to reproduction survives incarceration and where such a right can be identified under Indian Constitution. In the case of Sumeet Bajwa v. State of Punjab & Ors ((2016), CWP № 2239 of 2015), the Punjab and Haryana High Court held that, right to procreation is available even when a person undergoing imprisonment. Because such right is a part of right to life under Article 21 of the Constitution when it is read together UDHR. Therefore, in India a female prisoner is also entitled to claim right to procreation. However, for the purpose of protecting public interest and interests of the child, reasonable restrictions can be imposed upon the exercise of these rights by prisoners.

#### 6.9. Posthumous reproduction

The development in medical science has paved the way for preservation of reproductive materials and use such materials after the death of the person. One such use of medical technology is procreation using reproductive materials which were stored prior to the death of any one or both parents. This type of procreation is generally called as posthumous reproduction. "Posthumous reproduction is commonly used to refer to the intentional application of advanced medical technologies to achieve conception, pregnancy and childbirth in a situation where one or both parents are declared dead" (Hashiloni-Dolev, Schickltanz, 2017). Therefore, posthumous reproduction occurs when a child is born after one or both genetic parents have died (Robertson, 1994).

Generally, there are various circumstances in which people seek to procreate posthumously a child using the gametes of a deceased person. For instance, a surviving spouse or intimate friend seeks to use the gametes which have been specifically cryo preserved for use prior to the death of the loved one. Examples include situations in which a soldier or other person engaged in high-risk activity cryopreserve his or her gametes. Another example is when a dying or seriously ill person cryopreserves gametes for use by specifically named potential survivors. In other instances, an untimely death may create a situation in which gametes become available even though the deceased person did not

anticipate death and therefore did not specifically consent before death (Kindregan, 2009).

In the context of reproductive rights, one may argue that right to use posthumous reproduction is also part of reproductive rights. It is to be noted that in case of a posthumous reproduction, there may be legal disputes regarding the legitimacy of the child; parentage; right to inheritance; right to custody; and right to maintenance. These issues are very complicated and challenging due to the fact one or both the parents have died before the birth of the child. Thus, any expansion of reproductive rights to the extent that to cover right to posthumous reproduction need to take into account the rights and welfare of the innocent child.

### 7. Conclusions

Nature has bestowed the beautiful capacity to procreate a life within every individual and every woman cherishes the experience of motherhood. As a result, every couple has the innate desire to have a child, and this is recognized through reproductive rights. However, none of the general international human rights instruments expressly declares reproductive rights as human rights. The only international instrument which makes an express declaration about reproductive rights is the Convention on Persons with Disabilities, 2006. This doesn't mean that international human rights law is silent about reproductive rights. These

documents guarantee several facets of reproductive rights in some ways. Therefore, it can be seen that, at the international level, the human rights law establishes a good framework for reproductive rights. This framework emphasises that reproductive right is not a single human right but a bundle of other related human rights. The most important rights which come under the umbrella of reproductive right are: right to privacy; right to equality; right against discrimination; right to marriage; right to found family; right against sexual violence; right to freely decide; right against coercion; right to decide number and spacing; right to marriage; right against fore full marriage; right to maternity; right to take advantages of scientific advancements, etc.

India and Ukraine are parties to all major international human rights treaties. Hence, the various facets of reproductive rights are also applicable in our country. Consequently, national judiciary has interpreted right to personal liberty and right to privacy in such way as to cover all the facets of reproductive rights. Thus, it can be observed that in our country has a well-established framework for reproductive rights as well. However, the various legal dilemmas identified in the above chapter need to be addressed legally to strike a balance between the reproductive rights of individuals with the interest and well-being of children and with the societal interest.

### References:

- Anwar, S., Anwar, A.** (2016). Infertility: A Review on Causes, Treatment and Management. *Women's Health & Gynecology*, no. 2(6), pp. 1–5 (in English).
- Brake, E., Millum, J.** (2021). Parenthood and Procreation. Retrieved from: <https://plato.stanford.edu/entries/parenthood/> (in English).
- Dent, G.W.** (2011). No Difference?: An Analysis of Same-Sex Parenting. Retrieved from: [https://scholarlycommons.law.case.edu/faculty\\_publications/570](https://scholarlycommons.law.case.edu/faculty_publications/570) (in English).
- Dluhopolska, T.** (2016). Pravova pryroda reproduktyvnykh prav fizychnykh osib [Legal nature of reproductive rights of individuals]. *Aktualni problemy pravoznavstva – Actual problems of jurisprudence*, no. 2, pp. 103–107. Retrieved from: [http://nbuv.gov.ua/UJRN/aprpr\\_2016\\_2\\_21](http://nbuv.gov.ua/UJRN/aprpr_2016_2_21) (in Ukrainian).
- Dutko, A.O.** (2016). Reproduktyvni prava fizychnoi osoby: sutnist, poniattia ta klasyfikatsiia [Reproductive rights of an individual: essence, concept and classification]. *Naukovyi visnyk Lvivskoho derzhavnogo universytetu vnutrishnikh sprav. Seriya "Yurydychna" – Scientific Bulletin of Lviv State University of Internal Affairs. Series "Legal Sciences"*, no. 3, pp. 82–90 (in Ukrainian).
- Erikson, M.K.** (2000). Reproductive Freedom. Hague: Martinus Nijhoff (in English).
- Fraser, I.H., Fish, T.A., MacKenzie, T.M.** (1995). Reactions to Child Custody Decisions involving Homosexual and Heterosexual Parents. *Canadian Journal of Behavioral Science*, no. 27(1), pp. 52–63 (in English).
- Gebhard, J., Trimi o, D.** (2012). Reproductive Rights, International Regulation. *Max Planck Encyclopaedia of Public International Law*. Retrieved from: <https://www.corteidh.or.cr/tablas/r16912.pdf> (in English).
- Harris, J.** (2000). Rights and reproductive choice. *Harris J., Holm S. (eds.) The Future of Human Reproduction*. Oxford: Clarendon Press, pp. 34–36 (in English).
- Hashiloni-Dolev, Y., Schick Tanz, S.** (2017). A Cross-Cultural Analysis of Posthumous Reproduction: The Significance of the Gender and Margins-of-Life Perspectives. *Reproductive Biomedicine & Society Online*, no. 4, pp. 21–32 (in English).
- High Court of Gujarat at Ahmedabad** (2010). Jan Balaz Vs. Anand Municipality and 6 Ors. (AIR 2010 Guj. 21) (in English).

- International Conference on Population and Development** (1994). Program of Action, UN Doc. A/CONF.171/13 1994, chap. 7.A (in English).
- Kindregan, C.P.** (2009). Dead Dads: Thawing an Heir from the Freezer. *William Mitchell Law Review*, vol. 35, no. 2, pp. 433–448. Retrieved from: <https://ssrn.com/abstract=1443447> (in English).
- Kosgi, S., Hegde, V.N., Rao, S., Undaru, S.B., Pai, N.B.** (2011). Women's Reproductive Rights in India: Prospective Future. *Online Journal of Health and Allied Sciences*, no. 10(1), pp. 1–5 (in English).
- Kostruba, A.** (2020). Right deprivation in the legal regulation mechanism of civil property relations: comparative analysis of international legislation. *Asia Life Sciences*, no. 22(2), pp. 143–156. Retrieved from: <https://zenodo.org/record/4034445#.YVxFZkhR2Uk> (in English).
- Lemberg, D.** (2020). Procreative Liberty – Are There Limits? Retrieved from: <https://www.amc.edu/BioethicsBlog/post.cfm/procreative-liberty-are-there-limits> (in English).
- Mikhalkiv, I.M.** (2020). Reproduktyvni prava liudyny v aspekti statti 8 YeKPL: ohliad praktyky YeSPL [Human reproductive rights in the aspect of article 8 of the ECHR: review of the ECHR practice]. *Yurydychnyi naukovyi elektronnyi zhurnal – Juridical scientific and electronic journal*, no. 3, pp. 466–469. Retrieved from: <https://doi.org/10.32782/2524-0374/2020-3/112> (in Ukrainian).
- Mukhamiedova, E.E.** (2012). Reproduktyvni prava fizychnoi osoby v systemi osobystykh nemainovykh prav [Reproductive rights of an individual in the system of personal non-property rights]. *Uchenye zapiski Tavricheskogo natsional'nogo universiteta imeni V.I. Vernadskogo. Seriya "Yuridicheskie nauki" – Scientific notes of Taurida National V.I. Vernadsky University. Series "Juridical Sciences"*, vol. 25(64), no. 2, pp. 136–141 (in Ukrainian).
- Mukhopadhyay, T.** (2017). Women's reproductive rights are human rights. Retrieved from: <http://hdr.undp.org/en/content/women%E2%80%99s-reproductive-rights-are-human-rights> (in English).
- Nigam, M., Nigam, R., Chaturvedi, R., Jain, A.** (2011). Ethical and Legal aspects of Artificial Reproductive Techniques including Surrogacy. *Anil Aggrawal's Internet Journal of Forensic Medicine and Toxicology*, no. 12(1) (in English).
- Nixon, L.** (2013). The Right to (Trans) Parent: A Reproductive Justice Approach to Reproductive Rights, Fertility, and Family-Building Issues Facing Transgender People. *William & Mary Journal of Women and the Law*, no. 20(1), pp. 73–103 (in English).
- Oldest.org** (2020). 8 Oldest Pregnant Women Ever in the World. Retrieved from: <https://www.oldest.org/people/pregnant-women/> (in English).
- Pillai, A.V.** (2014). Assisted Human Reproductive Technologies: Legal Issues and Challenges in India. Delhi: Scholars' Press (in English).
- Pillai, A.V.** (2018). Right to Access to Human Reproductive Technologies under Indian Legal Framework: A Bird's View. *GLS Law Journals*, no. 1(1), pp. 1–8 (in English).
- Pillai, A.V.** (2015). Surrogate Motherhood and the Law: International & National Perspectives. Delhi: Regal Publications (in English).
- Punjab-Haryana High Court** (2016). Sumeet Bajwa vs State of Punjab & Ors. CWP № 2239 of 2015 (in English).
- Re Patrick** (2002). 28 Family Law Reports, 579, 650 (US) (in English).
- Robertson, J.A.** (1994). Posthumous Reproduction. *Indiana Law Journal*, vol. 69, iss. 4. Retrieved from: <https://www.repository.law.indiana.edu/ilj/vol69/iss4/8> (in English).
- Supreme Court of India** (1973). B. K. Parthasarthy v. State of Andhra Pradesh. AIR 1973 SC 2701, 1974 SCR (1) 697, 1974 SCC (3)459 (in English).
- Supreme Court of India** (1997). Vishaka and others v. State of Rajasthan and others. 6 SCC 241, AIR 1997 SC 3011, (1998) BHRC 261, (1997) 3 LRC 361, (1997) 2 CHRLD 202 (in English).
- Supreme Court of India** (2008). Baby Manji Yamada vs. Union of India and Another. 13 SCC 518 and in the Matter of Baby M, 217 N.J. Super 313, (1987). AIR. 2010 Guj. 21 (in English).
- Supreme Court of India** (2010). Suchita Srivastava and Anr. V. Chandigarh Administration. AIR 2010 SC 235 in context with Medical Termination of Pregnancy Act, 1971 (in English).
- Supreme Court of India** (2014). National Legal Services Authority v. Union of India. AIR 2014 SC 1863 (in English).
- Supreme Court of India** (2016). Devika Biswas v. Union of India. AIR 2016 SC 4405, 2016 (4) RCR 461 (Civil), 2016 (8) SCALE 707, 2016 (10) SCC 726 (in English).
- Supreme Court of India** (2017). Justice K. S. Puttaswamy (Retd) v. Union of India. (10) SCC 1 (in English).
- Ubajaka, C.F., Adogu, P., Ilika, C., Ilika, A.L.** (2014). Perception of Abortion and Abortion Laws by Lawyers in Anambra State Nigeria. *International Journal of Clinical Medicine*, no. 5(12), pp. 695–703 (in English).
- Vasileva, V.A., Stefanyshyn, N.B., Skhab-Buchynska, T.Ya.** (2019). Surrogate Motherhood: Analysis of the Basis of the Legislation of Ukraine and Foreign Countries. *Journal of Advanced Research in Law and Economics*, no. 9(6), pp. 2176–2189. DOI: 10.14505//jarle.v9.6(36).33 (in English).

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**РЕПРОДУКТИВНІ ПРАВА ЖІНОК: МІЖНАРОДНІ ПРАВОВІ МЕЖИ**

**Анотація.** Статтю присвячено проблемі природи та ролі репродуктивних прав особи в системі особистих немайнових прав. **Метою** публікації є вивчення стану правового регулювання репродуктивних прав жінок в Індії та Україні, аналіз особливостей деяких репродуктивних прав, які здійснюються за допомогою допоміжних репродуктивних технологій, з акцентом на сурогатному материнстві, а також розгляд прецедентної практики із цього питання. **Методи дослідження.** Статтю виконано із застосуванням загальних досліджень та спеціальних методів наукового пізнання.

**Результати.** Репродуктивні права загалом означають право особи контролювати процес відтворення. Воно включає право вирішувати, чи мати дитину, яку кількість дітей народжувати та з якими часовими проміжками, а також доступ до репродуктивних послуг тощо. З огляду на важливість і значення відтворення людини репродуктивні права оголошуються основними правами людини. Однак на міжнародному й національних рівнях немає єдиного документа, який пояснював би обсяг репродуктивних прав. За відсутності такого акта репродуктивні права викликають декілька питань. Наприклад, питання обсягу зазначеного права для літньої людини, інваліда, трансгендера, в'язня тощо є актуальним, проте залишається без конкретної відповіді. З огляду на те, що розширення прав і можливостей жінок включає репродуктивні можливості жінок, необхідно надати чітку й розумну відповідь на зазначені питання для досягнення мети репродуктивних можливостей. Для цього необхідний детальний огляд правових основ на міжнародному та національному рівнях.

**Висновки.** Обґрунтовано наукові позиції щодо репродуктивних прав. Підкреслено, що репродуктивні права – це права останнього, четвертого, покоління прав людини, вони походять від особистих прав. Констатовано, що репродуктивні права людини є як природними, так і тими, що реалізуються з використанням допоміжних технологій. У статті досліджуються основні види репродуктивних прав, зокрема право на штучне запліднення, право на сурогатне материнство, право на стерилізацію, право на профілактику та лікування безпліддя, право на аборти, право на донорство органів і репродуктивні клітини, право на використання контрацепції, право на репродуктивний вибір, право на репродуктивне здоров'я, право на інформацію про репродуктивні права, право на конфіденційність для реалізації репродуктивних прав тощо. Обґрунтовано необхідність прийняття спеціального законодавчого акта у сфері репродуктивних прав і репродуктивного здоров'я.

**Ключові слова:** репродуктивні права, особисті права, особистість, медичне право, права людини, право на приватне життя, аборт, стерилізація, допоміжні репродуктивні технології, сурогатне материнство, штучне запліднення, медичний туризм.

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## PROSPECTS FOR LEGAL REGULATION OF BANKS' PARTICIPATION IN THE DEPOSIT GUARANTEE FUND FOR INDIVIDUALS

**Abstract.** *The purpose* of this publication is to consider the prospects of legal regulation of banks' participation in the Deposit guarantee fund for individuals taking into account the adaptation of Ukrainian legislation to the EU acquis. Therefore, it is considered the legal basis of deposit guarantee relations, the legal status of the Deposit guarantee fund for individuals, the impact of Directive 2014/49/EU on the regulation of banking activities and the possibility of changes in the regulation of relations in the Deposit guarantee fund for individuals. **Research methods.** The paper is executed by applying the general research and special methods of scientific cognition.

**Results.** The legal regulation consists of legislative acts which, in addition to special laws, should also include the relevant acts of the National Bank of Ukraine and the Deposit guarantee fund for individuals. This approach needs to be further explored for compliance with the EU acquis and national choices in adaptation. It is quite perspective to change the legal status of the Deposit guarantee fund for individuals to deprive the body of supervisory powers and the formation of rights solely from the administration of the guarantee system and supervision only in this part of the banking activities (in the sense of audit). The lack of participation in the deposit scheme limits only one type of bank activity – attracting and placing deposits. In this case, the powers of Deposit guarantee fund for individuals to liquidate banks are disproportionate.

**Conclusions.** The status of the Deposit guarantee fund for individuals has the characteristics of state regulation of the guarantee system, and does not only administer the system, so its “participation” in these relations is not equal to other participants. Within the framework of adaptation of Ukrainian legislation to EU legislation and deregulation, the idea of depriving the Deposit guarantee fund for individuals of powers, introducing alternative guarantee schemes, as well as building an intermediate link between the National Bank of Ukraine and banks in accordance with the experience of EU member states is promising. Participation in the deposit guarantee relationship of individuals should be not only a basis for the provision of deposit services, but also a system that allows you to accumulate funds, offer best practices and administer the system, rather than control it.

**Key words:** deposit guarantee, Deposit guarantee fund for individuals, deregulation, state regulation, proportionality, EU acquis, deposit guarantee system, bank.

### 1. Introduction

The study of the legal status of the Deposit guarantee fund for individuals, its powers, the relationship of participation of banks in deposit guarantee, the ratio of legislation and other regulations is quite relevant and attracts attention especially in times of eco-

nomical downturn. Any legal regulation of economic relations must be predictable for both the parties to the relationship and the regulator. It is not only a matter of upholding the rule of law, but also of responding in a timely and proportionate manner to contemporary challenges.

Currently, the provisions on the mandatory participation of banks in deposit guarantee relations are controversial that are caused not only by the need to contribute costs to the Deposit guarantee fund for individuals but also by the actual powers of regulators and their relationship for regulatory purposes. The novelty of scientific research in this area is the formation of a consolidated economic and legal view on the regulation of deposit guarantee relations of individuals based on deregulation and in terms of fulfilling Ukraine's international obligations. The analysis of dissertation researches allows us to conclude that the issues in this area reduce to the participation of the Deposit guarantee fund for individuals in private relations (Voitsekhovska, 2016), as well as administrative and legal regulation of its activities (Naumenko, 2021).

This publication aims to consider the prospects of legal regulation of banks' participation in the Deposit guarantee fund for individuals taking into account the adaptation of Ukrainian legislation to the EU acquis. Therefore, we aim to consider the legal basis of deposit guarantee relations, the legal status of the Deposit guarantee fund for individuals, the impact of Directive 2014/49/EU on the regulation of banking activities and the possibility of changes in the regulation of relations in the Deposit guarantee fund for individuals. The methodological basis of the study is economic and legal views on the proportional regulation of relations, guaranteeing the deposits of individuals.

## 2. Legal basis for deposit guarantee in Ukraine

The law establishes: 1) the legal, financial and organizational principles of the deposit guarantee system for individuals; 2) the powers of the Deposit guarantee fund for individuals (hereinafter – the Fund); 3) the procedure for payment of deposit compensation by the Fund, and regulates relations between the Fund, banks, the National Bank of Ukraine; 4) functions of the Fund on withdrawal of insolvent banks from the market and liquidation of banks (Part 1 of Article 1 of the Law).

The purpose of this Law is: 1) protection of the rights and legitimate interests of bank depositors; 2) strengthening confidence in the banking system of Ukraine; 3) stimulating the attraction of costs into the banking system of Ukraine; 4) ensuring an effective procedure for withdrawal of insolvent banks and liquidation of banks (Part 2 of Article 1 of the Law).

In general, the system of guaranteeing deposits of individuals is defined as a set of relations regulated by this Law, the subjects of which are the Fund, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine,

banks and depositors (paragraph 15, part 1 of Article 2 of the Law). At the same time, the true essence of the guarantee system is ambiguous, given the focus of the Law on the powers of the Fund and not on the private law principles of the system, which are the subject of separate legal research (Voitsekhovska, 2016, p. 78).

The analysis of the provisions of the Law gives grounds to conclude that the deposit guarantee system is not one-tier system, considering that the subject of regulation (parliament) empowers the Fund to regulate relations within this system. Thus, within the limits of its functions and powers, the Fund carries out normative regulation of the system of guaranteeing deposits of individuals and withdrawal of insolvent banks from the market (Part 1 of Article 6 of the Law). Thus, the Fund is granted a special status of a regulator in the relations that define it as a participant.

The Law of Ukraine "On Banks and Banking" should be singled out, the purpose of which is to ensure the legal protection of the legitimate interests of depositors and other bank customers, sustainable development and stability of the banking system (part 1 of article 1).

Such legal regulation of the Fund's position in the guarantee system should be critically analysed for compliance with Ukraine's international obligations, in particular – the Association Agreement between Ukraine and the EU (Uhoda pro asotsiatsiiu mizh Ukrainoiu, zodniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnyim derzhavamy-chlenamy, z inshoi storony, 2014). Article 133 of the Agreement provides for the approximation of legislation to the EU acquis; thus, Ukraine will ensure the gradual alignment of its existing laws and future legislation with the EU acquis starting from the date of signing this Agreement and gradually extending to all elements of the EU acquis listed in Annex XVII to this Agreement.

V.V. Kochyn draws attention to Directive № 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee scheme, the provisions of which must be implemented within 4 years from the date of entry into force of this Agreement (i. e. before 01.09.2021), in particular, to the fact that the this Directive expired almost immediately after the signing of the Agreement on the basis of Directive 2014/49/EU of 16.04.2014 (European Union, 2014).

Thus, the legal regulation consists of legislative acts which, in addition to these laws, should also include the relevant acts of the National Bank of Ukraine and the Fund. This approach

needs to be further explored for compliance with the EU *acquis* and national choices in adaptation.

### 3. Legal status of the Fund

The legal status of the Fund is determined by Article 3 of the Law, according to which it is an institution (*установа*) that performs special functions in the field of guaranteeing deposits of individuals and withdrawal of insolvent banks from the market and liquidation of banks in cases established by this Law; legal entity under public law; property management entity; economically independent institution (*установа*); non-profit institution (*установа*) (parts 1–3). Such a legislative approach does not fully address the issue of organizational and legal form, which is perceived by some researchers as a foundation (*установа*) (Voitsekhovska, 2016, p. 41), although it may be an institution (*інституція*) in its broadest sense (Kochyn, 2017, p. 29).

Understanding the organizational and legal form of the Fund is important for the subsequent regulation of relations both within internal relations in the organization, and interconnected – external, which in accordance with Article 4 of the Law can be outlined through an understanding of the Fund's functions. So, we consider it appropriate to pay attention to the following functions:

- it accumulates costs received from the sources specified in Article 19 of this Law, monitors the completeness and timeliness of the transfer of fees by each participant of the Fund;
- it regulates the participation of banks in the system of guaranteeing deposits of individuals;
- it applies financial sanctions to banks and their managers, respectively, and imposes administrative fines.

Please note that Directive 2014/49/EU separately delimits:

- a) competent authority – a national competent authority as defined in point (40) of Article 4(1) of Regulation (EU) № 575/2013 (a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned);
- b) designated authority – a body which administers a DGS pursuant to this Directive, or, where the operation of the DGS is administered by a private entity, a public authority designated by the Member State concerned for supervising that scheme pursuant to this Directive.

That means, there are a body of supervision and body of administration. In view of this, the question arises as to whether the Fund has the authority to regulate banking activities

and their relationship with the powers of the National Bank of Ukraine. So, in accordance with Article 30 of the Law, the Fund regulates the activities of banks by:

- 1) adoption, within the limits of its powers, of normative legal acts obligatory for execution by banks;
- 2) exercising control over the fulfilment of banks' obligations in connection with their participation in the deposit guarantee system for individuals;
- 3) withdrawal of insolvent banks from the market;
- 4) in other forms provided by this Law.

In accordance with Part 2, the regulatory powers of the Fund, defined by this Law, apply to all banks in Ukraine; banks are obliged to comply with the regulations of the Fund and comply with the requirements established by the Fund within its powers. Thus, the powers of the Fund have signs of regulatory influence within the meaning of Art. 12 of the Economic Code of Ukraine.

The legal literature states that deregulation of the economy involves reducing state control over economic activities by creating an appropriate market by: a) regulating the general principles of the market (stock, banking, insurance, etc.) through the formation of requirements for the status of their subjects and technical regulation of objects of relations; b) gradual empowerment of the regulator of self-regulatory organizations; c) providing a mechanism for the protection of economic entities regardless of their participation in self-regulatory organizations, as well as to form a mechanism of responsibility that will ensure the implementation of state policy on the way to a market economy and consumer protection (Kochyn, 2015, p. 117).

In this aspect, it should be added that Ukraine has a wide network of public audit bodies, so there are proposals to review the powers in the field of public administration of finance (Gurzhi et al., 2019, p. 293). The EU emphasizes the need to distinguish between so-called "mediation" and rule-making institutions (Nicolosi, Mustert, 2020, p. 300). Thus, it is quite perspective to change the legal status of the Fund to deprive the body of supervisory powers and the formation of rights solely from the administration of the guarantee system and supervision only in this part of the banking activities (in the sense of audit).

### 4. Directive 2014/49/EU and banking legislation

Directive 2014/49/EU in Article 1 provides that it applies to down rules and procedures relating to the establishment and the functioning of deposit guarantee schemes (DGSs): (a) statutory DGSs; (b) contractual DGSs that

are officially recognised as DGSs in accordance with Article 4(2); (c) institutional protection schemes (IPS) that are officially recognised as DGSs in accordance with Article 4(2); (d) credit institutions affiliated to the schemes referred to in points (a), (b) or (c) of this paragraph.

Participation in the guarantee scheme is not the same as participation in the Fund. That is, we are talking about models of voluntary participation in the Fund and understanding it as a self-regulatory organization rather than as a state regulator. This approach is somewhat traced in the draft law № 3942 of 28.07.2020 (Proekt Zakonu pro vnesennia zmin do Zakonu Ukrainy "Pro systemu harantuvannia vkladiv fizychnykh osib", 2020), but it seems that would be also state regulation, carried out by the Fund.

Article 4 of Directive 2014/49/EU regulates official recognition, membership and supervision. Firstly, each Member State shall ensure that within its territory one or more DGSs are introduced and officially recognised. Secondly, a contractual scheme as referred to in point (b) of Article 1(2) of this Directive may be officially recognised as a DGS if it complies with this Directive.

An IPS may be officially recognised as a DGS if it fulfils the criteria laid down in Article 113(7) of Regulation (EU) № 575/2013 and complies with this Directive. Thus, competent authorities are empowered to grant permission if the following conditions are fulfilled:

(a) the counterparty is an institution, a financial holding company or a mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements; the counterparty is established in the same Member State as the institution; there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the institution;

(b) the arrangements ensure that the institutional protection scheme is able to grant support necessary under its commitment from funds readily available to it;

(c) the institutional protection scheme disposes of suitable and uniformly stipulated systems for the monitoring and classification of risk, which gives a complete overview of the risk situations of all the individual members and the institutional protection scheme as a whole, with corresponding possibilities to take influence; those systems shall suitably monitor defaulted exposures in accordance with Article 178(1);

(d) the institutional protection scheme conducts its own risk review which is communicated to the individual members;

(e) the institutional protection scheme draws up and publishes on an annual basis, a consolidated report comprising the balance sheet, the profit-and-loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole, or a report comprising the aggregated balance sheet, the aggregated profit-and-loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole;

(f) members of the institutional protection scheme are obliged to give advance notice of at least 24 months if they wish to end the institutional protection scheme;

(g) the multiple use of elements eligible for the calculation of own funds (hereinafter referred to as multiple gearing) as well as any inappropriate creation of own funds between the members of the institutional protection scheme shall be eliminated;

(h) the institutional protection scheme shall be based on a broad membership of credit institutions of a predominantly homogeneous business profile;

(i) the adequacy of the systems referred to in points (c) and (d) is approved and monitored at regular intervals by the relevant competent authorities.

An important note about membership is the requirements that a credit institution authorised in a Member State pursuant to Article 8 of Directive 2013/36/EU shall not take deposits unless it is a member of a scheme officially recognised in its home Member State pursuant to paragraph 1 of this Article.

Please note that in accordance with Art. 47 of the Law of Ukraine "On Banks and Banking" the bank has the right to provide banking and other financial services (except for insurance services), as well as to carry out other activities specified in this article, both in national and foreign currency, in particular:

a) banking services include:

1) attraction of costs (deposits) and bank metals from an unlimited number of legal entities and individuals;

2) opening and maintaining current (settlement, correspondent) accounts of clients, including in bank metals, and conditional storage accounts (escrow) (shall be enforced from 01.08.2022);

3) placement of attracted costs (deposits), including on current accounts, costs and bank metals on their own behalf, on their own terms and at their own risk;

b) the bank has the right to provide its clients (except banks) with certain financial services by concluding agency agreements with legal entities (commercial agents). The Bank provides services to individuals and legal enti-

ties for trading in currency values in cash and non-cash form with simultaneous crediting of currency values to their accounts in accordance with the Law of Ukraine “On Currency and Currency Transactions”;

c) the bank, in addition to providing financial services, has the right to carry out activities related to: investments; issue of own securities; storage of valuables (including the accounting and storage of securities and other valuables confiscated (arrested) in favour of the state and/or declared ownerless) or the provision of property lease (rent) of an individual bank safe; collection of funds and transportation of currency values; provision of consulting and information services on banking and other financial services; provision of services of a bond issuer in accordance with the Law of Ukraine “On Capital Markets and Organized Commodity Markets”;

d) the bank has the right to provide payment services in accordance with the Law of Ukraine “On Payment Services” taking into account the requirements of this Law and regulations of the National Bank of Ukraine governing the activities of banks.

In addition, in the legal literature A.V. Kostruba has already proposed to form additional

(alternative) compensation systems (Kostruba, 2014, p. 189). Thus, the lack of participation in the deposit scheme limits only one type of bank activity – attracting and placing deposits. In this case, the Fund’s powers to liquidate banks are disproportionate.

### 5. Conclusions

Summing up certain results, we consider it expedient to pay attention to the following. The status of the Fund has the characteristics of state regulation of the guarantee system, rather than its administration, so its “participation” in these relations is not equal, and therefore, there are shortcomings regarding the dual purpose of legal regulation. Within the framework of the adaptation of Ukrainian legislation to the EU *acquis* and deregulation, the idea of depriving the Fund of power, introducing alternative guarantee schemes, as well as building an intermediate link between the National Bank of Ukraine and banks in accordance with the experience of EU member states, is promising. As a result, participation in the deposit guarantee relationship of individuals should be not only a basis for the provision of deposit services but also a system that allows ones to accumulate funds, offer best practices and monitor the system, not control it.

### References:

- European Union. (2014). Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (in English).
- Gurzhiu, T., Deshko, L., Gurzhiu, A., Berlach, A., Radyshevskaya, O. (2019). State audits in modern Ukraine: issues, challenges, perspectives. *Public Policy and Administration*, vol. 18, no. 2, pp. 281–298 (in English).
- Kochyn, V.V. (2015). Zasoby derzhavnoho rehuliuвання hospodarskoi diialnosti v umovakh derehuliuвання ekonomiky Ukrainy [Means of state regulation of economic activity in the conditions of deregulation of the economy of Ukraine]. *Legal Bulletin “Air and Space Law,”* vol. 35(2), pp. 114–117 (in Ukrainian).
- Kochyn, V.V. (2017). Private foundation as legal entity: national doctrine and European legislative experience. *Private Law and Business*, no. 17, pp. 26–30 (in English).
- Kostruba, A. (2014). Pytannia harmonizatsii natsionalnoho zakonodavstva u sferi bankivskoi diialnosti v konteksti vymoh dyrektyvy Yes “Pro systemu harantuvannia depozytiv” vid 16 kvitnia 2014 roku № 2014/49/EU [The issue of harmonization of national legislation in the field of banking in the context of the requirements of the EU Directive “On Deposit Guarantee Scheme” of 16 April 2014 № 2014/49/EU]. *Harmonizatsiia pryvato-pravovoho zakonodavstva Ukrainy iz zakonodavstvom krain Yes: materialy IX mizhnarodnoho tsyvilistychnoho forumu*, Kharkiv, 11–12 April 2019. Kyiv, pp. 185–189 (in Ukrainian).
- Naumenko, S.H. (2021). *Administratyvno-pravove rehuliuвання diialnosti Fondu harantuvannia vkladiv fizychnykh osib [Administrative and legal regulation of the Deposit Guarantee Fund of individuals]* (Doctor’s thesis). Kyiv: National Academy of Internal Affairs (in Ukrainian).
- Nicolosi, S.F., Mustert, L. (2020). The European Committee of the Regions as a watchdog of the principle of subsidiarity. *Maastricht Journal of European and Comparative Law*, vol. 27, no. 3, pp. 284–301 (in English).
- Proekt Zakonu pro vnesennia zmin do Zakonu Ukrainy “Pro systemu harantuvannia vkladiv fizychnykh osib” [Draft Law on Amendments to the Law of Ukraine “On the Deposit Guarantee System for Individuals”] of 28.07.2020 № 3942. (2020). Retrieved from: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?id=&pf3511=69616](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=69616) (in Ukrainian).
- Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony [Association Agreement between Ukraine, of the one part, and the European Union. (2014). *Official Gazette of Ukraine*, no. 75, art. 83 (in Ukrainian).
- Voitsekhovska, K.V. (2016). *Fond harantuvannia vkladiv fizychnykh osib yak uchastnyk tsyvilnykh vidnosyn [Deposit Guarantee Fund of Individuals as a Participant in Civil Relations]* (Candidate’s thesis). Ivano-Frankivsk: Vasyl Stefanyk Precarpathian National University (in Ukrainian).

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## ПЕРСПЕКТИВИ ПРАВОВОГО РЕГУЛЮВАННЯ УЧАСТІ БАНКІВ У ФОНДІ ГАРАНТУВАННЯ ВКЛАДІВ ФІЗИЧНИХ ОСІБ

**Анотація. Мета.** Публікація має на меті розглянути перспективи правового регулювання участі банків у Фонді гарантування вкладів фізичних осіб з огляду на адаптацію законодавства України до *acquis* Європейського Союзу. Тому розглядається правова основа відносин гарантування вкладів, правовий статус Фонду гарантування вкладів фізичних осіб, вплив Директиви 2014/49/ЄС на регулювання банківської діяльності та можливість змін у регулюванні відносин у Фонді гарантування вкладів фізичних осіб. **Методи дослідження.** Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання.

**Результати.** Правове регулювання складається із законодавчих актів, які, крім спеціальних законів, повинні включати також відповідні акти Національного банку України та Фонду гарантування вкладів фізичних осіб. Цей підхід потребує подальшого вивчення щодо відповідності зазначених актів законодавству Європейського Союзу та національним виборам у сфері адаптації. Цілком перспективно змінити правовий статус Фонду гарантування вкладів фізичних осіб, щоб позбавити цей орган наглядових повноважень та формування прав виключно від адміністрування гарантійної системи й наглядати лише в цій частині банківської діяльності (у сенсі аудиту). Відсутність участі в депозитній схемі обмежує лише один вид діяльності банку – залучення та розміщення депозитів. У цьому разі повноваження Фонду гарантування вкладів фізичних осіб щодо ліквідації банків є непропорційними.

**Висновки.** Статус Фонду гарантування вкладів фізичних осіб має ознаки державного регулювання системи гарантування, а не лише адміністрування системи, тому його «участь» у цих відносинах не є рівноправною щодо інших учасників. У межах адаптації українського законодавства до законодавства Європейського Союзу та дерегуляції вважається перспективною ідея позбавлення Фонду гарантування вкладів фізичних осіб повноважень, запровадження альтернативних схем гарантування, а також побудова проміжного зв'язку між Національним банком України та банками відповідно до досвіду держав – членів Європейського Союзу. Участь у відносинах гарантування вкладів фізичних осіб має бути не тільки підставою для надання депозитних послуг, а й системою, яка дає змогу акумулювати кошти, пропонувати найкращі практики та адмініструвати систему, а не контролювати її.

**Ключові слова:** гарантування вкладів, Фонд гарантування вкладів фізичних осіб, дерегулювання, державне регулювання, пропорційність, *acquis* Європейського Союзу, система гарантування вкладів, банк.

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## THE NECESSITY OF CHANGING THE LEGAL STATUS OF A CREDIT UNION

**Abstract. Purpose.** The article substantiates proposals for changes in the legal status of credit unions based on the analysis of the provisions of the Ukrainian legislation on credit unions and the practice of their activities. **Research methods.** The paper is prepared by applying the general research and special methods of scientific cognition. The authors used the methods of analysis and synthesis, comparative legal and historical legal, which allowed identifying inconsistencies in the legal status of the credit union with modern realities and proposing changes.

**Results.** Credit unions are specific economic entities. They have a non-commercial status and are financial institutions with exclusive competence and tasks to provide inexpensive credit resources to their members and other persons. Credit unions in a simplified form act as follows: members of the credit union give it money in the form of initiation, compulsory shares, and other fees in the amount, time, and the manner determined by the charter of the credit union; the union may acquire ownership of government securities and bonds of international financial organizations placed on the territory of Ukraine; members of the credit union or other persons can receive loans at the expense of its property; the credit union may receive payments for providing loans and other services to its members, as well as income from other types of statutory activities, may receive monetary and other property donations, charitable contributions, grants, free technical assistance, as well as other receipts not prohibited by law from Ukrainian and foreign citizens (subjects), business entities and the state.

**Conclusions.** It was determined that the main task of credit unions was to provide their members (potential or real entrepreneurs) with cheap credit resources, and additionally – other persons. As a result, credit resources from Ukrainian credit unions are provided in small volumes at higher interest rates than commercial banks. Credit unions compete with pawnshops in many cases, providing microcredits secured by household appliances, precious metal products, etc. The simplest way to remedy the situation was proposed - to deprive credit unions of non-commercial status with the possibility of obtaining benefits in taxation of profits by those credit unions that provide at least 50% of their loans to their members to create and develop their own business at interest not exceeding the average interest on loans of twenty largest commercial banks of Ukraine, determined as of January 1 of the corresponding calendar year.

**Key words:** credit unions, financial institutions, contributions (deposits), non-profit organizations, credit resources, income tax, commercial banks, pawnshops.

### 1. Introduction

The modern world market system is complex and ramified. To obtain competitive advantages within the framework of this system, business entities have to act proactively,

non-linearly, constantly changing directions, forms and methods. The advantages provided by the legislation of various states for business entities formed using various organizational and legal forms are important. At the same time,

in many states and sectors of the economy, it is quite common for business entities to permanently change their organizational and legal forms depending on economic feasibility. One of the specific organizational and legal forms with its own advantages and features is a credit union. According to the legislation of Ukraine, credit unions are specific entities that provide financial services – business entities with a special status. The activities of such entities are regulated by the Law of Ukraine “On Credit Unions” № 2908-III dated December 20, 2001, according to which a credit union is a non-profit organization founded by individuals, trade unions, their associations on a cooperative basis to meet the needs of its members in mutual lending and the provision of financial services through pooled monetary contributions from credit union members (Verkhovna Rada of Ukraine, 2002). Despite the existence in Ukraine of an official definition of a credit union and the regulation of the peculiarities of its activities in a special law, there are many issues related to various elements of the legal status of such entities.

**Analysis of recent research and publications.** Certain elements of the legal regime of credit unions’ activities were the subject of researches of many Ukrainian academic lawyers and economists. They are as follows: B. Dadashev, O. Hrytsenko (Dadashev, Hrytsenko, 2010; Hrytsenko, 2005, pp. 75–82), O. Dobrovolska (Dobrovolska, 2016, pp. 536–540), A. Dukhnevych (Dukhnevych, 2002, pp. 304–308; Dukhnevych, 2008), O. Honcharenko (Honcharenko, Dzemishkevych, 2014, pp. 46–56), V. Honcharenko (Honcharenko, 1997), V. Manziuk, V. Zaborovskiy (Manziuk, Zaborovskiy, 2014, pp. 129–135), K. Masliaieva (Masliaieva, 2009; Masliaieva, 2010), O. Mishchuk (Mishchuk, 2015), V. Pokhyliuk (Pokhyliuk, 2008, pp. 317–322), V. Poliukhovych (Poliukhovych, 2012), A. Pozhar (Pozhar, 2007, pp. 335–344), V. Roienko (Roienko, Bozhenko, Ivanova, 2016, pp. 874–876), N. Savchuk, O. Zolotarova (Savchuk, Zolotarova, 2019, pp. 204–208), A. Semenoh (Semenoh, 2011, pp. 139–148), N. Slavova (Slavova, 2007, pp. 147–150; Slavova, 2010; Slavova, 2011), H. Stoianov (Stoianov, 2016), O. Yelisieieva (Yelisieieva, Stoianov, 2013, pp. 40–43), O. Zubatenko (Zubatenko, 2009, pp. 30–34) and others. At the same time, the vast majority of research was conducted in the framework of economic sciences. In addition, the majority of researchers analyzed the elements of the current legal status of credit unions that are enshrined in law. Changes in the legal status of credit unions are rarely proposed by authors. Therefore, the study of the legal

status of credit unions and the legal status of their activities does not lose its relevance.

**Research methods.** The paper is prepared by applying the general research and special methods of scientific cognition. The authors used the methods of analysis and synthesis, comparative legal and historical legal, which allowed identifying inconsistencies in the legal status of the credit union with modern realities and proposing changes.

**The purpose** of the research is to substantiate proposals for changes in the legal status of credit unions based on the analysis of the provisions of the Ukrainian legislation on credit unions and the practice of their activities.

## 2. General provisions on the legal status of a credit union

The idea of the organizational and legal form of a credit union is to satisfy its members’ interests. In this regard, the first credit unions created about 100 years ago in different countries in a form similar to modern one had common features with mutual aid funds. They provided loans to some of their members at the expense of deposits of others. It was not about making a profit then. The idea meant that the person “stood in line” while those who had previously become a member of the credit union (including through its contribution) took out a loan and then one took out the loan at the expense of contributions from persons who became members of the credit union later. To implement such a scheme, a credit union had to have a large number of members. Because of these goals, most of the participants in the first credit unions had some similarities with “financial pyramids”. However, unlike the “financial pyramid”, a modern credit union, following the requirements of the current legislation, undergoes state registration, receives the status of a financial institution and a license from the National Bank of Ukraine, acting based on the charter; it is managed by the general meeting of the members of the credit union, the supervisory board of the credit union, the board of the credit union. One member of a credit union or a group of them cannot appropriate all the property or money of a credit union like in a “pyramid scheme”. The legal status of a credit union differs significantly from the legal status of other financial institutions and even more from the main business entities.

A credit union is a financial institution, which means that it has certain tasks and competencies that differ from those that may have subjects of the main (primary) business level. The exclusive activity of a credit union is the provision of financial services under the above-mentioned law. The activity of the credit union is associated with the receipt

of funds and, in a simplified form, can be represented as follows: at the conditional first stage, the members of the credit union give it money in the form of initial, compulsory shares, and other costs in the amount, terms and the manner determined by the charter of the credit union. This forms the property basis of the credit union's activities. At this stage, a credit union can acquire ownership of government securities and bonds of international financial organizations placed on the territory of Ukraine. At the conditional second stage, members of the credit union or other persons can receive loans at the credit union's property expense. For members of a credit union, preferential loan terms are applied compared to the general loan terms. At the conditional third stage of the credit union's activity, it may receive payment for providing its members with loans and other services, as well as income from other types of statutory activities, may receive monetary and other property donations, charitable contributions, grants, gratuitous technical assistance, as well as other income not prohibited by law from both Ukrainian and foreign citizens (subjects), business entities and states. These stages are conditional since the given sequence is not mandatory due to the permanence of the credit union's activity process. The obligation of such a sequence is of a private nature. It is kept in making contributions, obtaining a loan, paying for it by one individual member of the credit union, receiving a loan, and paying for it by one person who is not a credit union member.

In addition to the property of the credit union itself, it can also use contributions on the deposit accounts of its members, which belong to them based on the right of private property. These funds are used to provide loans to members of the credit union. If there are temporarily free funds from members of the credit union, they can be placed by the union on deposit accounts in banks licensed to work with citizens' deposits and in the united credit union, as well as in state securities (Derevianko, 2021, pp. 46–47).

### **3. Actual features of the credit union's activities**

In countries with a developed modern sphere of financial services, including those which are provided by credit unions, the latter attract money in the form of contributions from their members at low-interest rates and lend this money to other members at slightly higher interest rates. Usually, in such countries, union members do not manage to earn a lot on deposits. However, this is not their main goal when joining a credit union. People are more likely to join credit unions to obtain loans at low-interest rates in the future (Derevianko, 2021, p. 47). For these reasons, the success of credit unions

is directly dependent on the number of their members. In the early 1990s, the first credit unions on the territory of the former Soviet republics appeared in Moscow and St. Petersburg, and a few years later – in Kyiv. Part 1 of Article 6 “Creation of a credit union” of the Law of Ukraine “On Credit Unions” stipulates that the number of founders (members) of a credit union may not be less than 50 people (Verkhovna Rada of Ukraine, 2002). The first credit unions had thousands of members. Under such conditions, many people among the very members and other persons want to get the credit resources they need.

The activity of credit unions as full-fledged subjects of economic law has the goal of realizing public law interests – increasing the welfare of citizens of the state or foreigners permanently residing in this state, and, consequently, the welfare of the state itself. However, the credit union's activities are mainly aimed at achieving the private interests of credit union members and other persons. These interests are directly related to obtaining credit resources by them. It is also important to ensure the private interests of credit union members in receiving fraction of revenue from its activities.

As noted, the members of a credit union can be citizens, foreigners, and stateless persons permanently residing in the state's territory. The provision of part 1 of Article 6 “Creation of a credit union” determines that the members of the credit union must be united at least according to one of the above criteria: 1) to have a common place of work or study; 2) to be affiliated to one trade union, an association of trade unions, another public or religious organization; 3) to live in the same village, town, city, district, region (Verkhovna Rada of Ukraine, 2002). The above indicates the direction of implementation by the credit union of the public interests of the state of Ukraine, since foreigners who do not have a place of work or study in Ukraine, do not belong to a trade union or other organization, do not live in a village, town, city, district, region of Ukraine cannot become the members of the credit union.

The main task of a credit union is to meet the needs for credit resources, and generating income is a secondary or related task. The fee for the provided credit resources is not distributed among the members of the credit union, except for payments on deposits. Still, it is directed at fulfilling the main task of the credit union's activities – the provision of financial services, including, first, lending services.

Ukraine is a country with poor financial services market. Therefore, objective economic laws are in effect in this market, but there are often certain features. The first credit

unions were formed more than 100 years ago as an alternative to commercial banks. It was planned that members of credit unions would get credit resources on better terms than they would have done in commercial banks. However, the income from providing money to a credit union as a deposit was planned to be less than the same in commercial banks. However, the amount of profit, or more precisely, the “final financial result”, even if it was planned to be less than that of the bank, was not less by much. The reason is that, unlike a commercial bank, a credit union is a non-profit organization and does not pay income tax.

In fact, in countries with a low level of the financial system, including Ukraine, the situation has developed differently. Ukrainian credit unions often offer slightly higher interest rates on deposits and loans than banks. This is especially true for loans for individuals who are not members of a credit union. In general, Ukrainian credit unions have occupied their niche in microcredit, providing loans for no more than a few thousand hryvnias. Often such loans are provided on the security of household appliances, jewelry, etc. In such cases, credit unions are competitors of pawnshops (Derevianko, 2021, p. 47). In other words, credit unions do not pay income tax, and loan rates are often set higher than those of commercial banks.

#### **4. Hybridity and inconsistency of the non-profit status of a credit union**

The status of a non-profit organization in a credit union and many other non-profit business entities looks hybrid and contradictory. In Ukraine, two criteria are applied for recognition or non-recognition of a business entity as non-profitable. The first is the actual receipt of profit, i.e., monetary or material values that exceed expenses. In the first lines of subparagraph 134.1.1 of paragraph 134.1 of Article 134 “Object of taxation” of the Tax Code of Ukraine, the object of taxation with profit tax is defined as “profit with a source of origin from Ukraine and abroad, which is determined by adjusting (increasing or decreasing) the financial result before taxation (profit or loss), determined in the financial statements of the enterprise under national regulations (standards) of accounting or international financial reporting standards, for differences arising under the provisions of this Code” (Verkhovna Rada of Ukraine, 2011). As a follow-up to this provision, paragraph 3 of part one “General Provisions” of the national accounting regulation (Standard) 1 “General requirements for financial reporting” defines profit as the amount by which income exceeds related expenses (Natsionalne polozhennia (standart) bukhhalterskoho obliku 1 “Zahalni

vymohy do finansovoi zvitnosti”, 2013). Thus, any profitable activity of any business entity indicates that it has the first criterion for recognizing it as profitable. The same credit union receives money that usually exceeds its expenses. However, there is a second criterion in the legislation of Ukraine and the current theory. In the presence of this criterion, even generating income or profit allows the subject to be recognized as a non-profit organization. This criterion is the intended use of the money received by the subject exclusively to ensure the implementation of its main activities.

Confirmation of the existence of this criterion is the indication by subparagraph 133.4.2 of paragraph 133.4 of Article 133 “Taxpayers” of Section III “Corporate Income Tax” of the Tax Code of Ukraine that the income (profits) of a non-profit organization is used exclusively to finance the expenses for the maintenance of such a non-profit organization, the implementation of the goal (goals, objectives) and areas of activity defined by its constituent documents (Verkhovna Rada of Ukraine, 2011). The same is found in acts of special legislation that define the specifics of the legal status of certain types of non-profit business entities.

By applying this second criterion, credit unions and commodity exchanges, chambers of commerce, religious organizations, charitable foundations, political parties, and other entities receive money that is often referred to by law as income. Paragraph 1 of Article 1 of the Law of Ukraine “On Credit Unions” stipulates that a credit union is a non-profit organization. Paragraph 2 of the same article provides that a credit union is a financial institution which exclusive activity is the provision of financial services provided for by the 2001 Law of Ukraine “On Credit Unions” (the issue arises “Can financial services be provided free of charge without the purpose of making a profit?”) (Derevianko, 2013, p. 239). By their very nature, all types of financial activities involve achieving profitability, and therefore, at least generating income. The non-profit status of financial institutions, in general, is something superfluous and incomprehensible.

In many countries of the world, there is a division of business entities into undertakings and non-profit business entities. At the same time, a non-profit organization’s status is considered a benefit or state support, which should be earned and which should be met. It is unlikely that today Ukraine is such a rich state (especially considering more than seven years of aggression, hybrid warfare, loss of territory as a result of the annexation attempt, as well as the global coronavirus pandemic, corruption in various echelons of power, etc.) to leave bene-

fits for a significant number of types of business entities, especially in the field of financial activities. In the second group of countries, there is no division of business entities into commercial and non-commercial (non-profit) ones. All business entities have the same status (a set of rights and obligations) to the fiscal authorities. They pay income tax or its analogs in case of making a profit and do not pay it in case of non-receipt. In the latter case, they can apply to the state for help. Obviously, this option is more suitable for Ukraine. Earlier, we proposed applying the basic and unified criterion for determining income status to higher education institutions (Derevianko, 2012, p. 118). To a greater extent, such a proposal is relevant for financial institutions. It is incorrect that credit institutions have a non-profit status due to their fierce competition with commercial banks and pawnshops (the latter are also formed in organizational and legal forms that are inconvenient for the founders but convenient for their counterparties). Banks and pawnshops are payers of income tax and do not have any tax or other benefits.

### 5. Conclusions

The Ukrainian state requires significant financial resources. Therefore, new taxes are introduced, the cost of utilities increases, violations of the rules for exporting goods and other valuables abroad and importing them to Ukraine are criminalized, etc. We have previously raised the question that should be repeated: “why should the state provide financial benefits to credit unions, which in general failed to cope with the task for which they were introduced into the legal field of Ukraine?” (Derevianko, 2021, p. 48). Their main task was to provide their members (potential or real entrepreneurs) with cheap credit resources, and additionally – other persons. As a result, credit resources from Ukrainian credit unions

are provided in small amounts at higher interest rates than is done by commercial banks. Moreover, credit unions compete with pawnshops in many cases, providing micro-loans secured by household appliances, precious metal products, etc. At the same time, the activities of credit unions are often accompanied by violations, and there are cases of initiating criminal proceedings against the activities of individual credit unions and their members. On the other hand, the receipt by a credit union of income from activities inherent in pawnshops is positive both for the union itself and its members and for the state economy. The disadvantage is the absence, unlike a pawnshop, of income tax amounts received from a credit union to the state budget of Ukraine. At the same time, the pawnshop is also limited in choosing the organizational and legal form of the business entity. At the same time, credit unions provide loans at low-interest rates to their members and others. Therefore, it would be not feasible to deprive them of state support.

The simplest way to remedy the situation was proposed – to deprive credit unions of non-commercial status with the possibility of obtaining benefits in taxation of profits by those credit unions that provide at least 50% of their loans to their members to create and develop their own business at interest not exceeding the average interest on loans of twenty the largest commercial banks of Ukraine, determined as of January 1 of the corresponding calendar year (Derevianko, 2021, p. 48). It is clear that as a result of more thorough research, other organizational and legal forms of financial institutions can be invented that can ensure the implementation of private and public interests and other options for improving the components of the legal status of credit unions. The following scientific research should be aimed at this issue.

### References:

- Dadashev, B.A., Hrytsenko, O.I.** (2010). *Kredytni spilky v Ukraini: navchalnyi posibnyk [Credit unions in Ukraine: textbook]*. Kyiv: Tsentr uchbovoi literatury (in Ukrainian).
- Derevianko, B.V.** (2012). Komertsiiyni status subiektiv hospodariuvannia, shcho nadaiut posluhy u sferi osvity [Commercial status of economic entities providing educational services]. *Pidprijemnytstvo, hospodarstvo i pravo – Entrepreneurship, Economy and Law*, no. 8, pp. 114–118 (in Ukrainian).
- Derevianko, B.V.** (2021). Osoblyvosti nadannia finansovykh posluh kredytnymy spilkamy [Features of providing financial services by credit unions]. *Zakonodavstvo Ukrainy pro finansovi posluhy: pytannia adaptatsii do prava Yevropeiskoho Soiuzu: materialy Naukovo-praktychnoho kruhloho stolu*, Sumy, 15 January 2021 r. Sumy: Sums'kyi derzhavnyi universytet, pp. 46–49 (in Ukrainian).
- Derevianko, B.V.** (2013). *Posluhy u sferi osvity: pravove rehuliuвання: monohrafiia [Educational services: legal regulation: monograph]*. Donetsk: Kalmius (in Ukrainian).
- Dobrovolska, O.V.** (2016). Prohrama zakhystu vkladiv kredytnykh spilok [Credit Union Deposit Protection Program]. *Ekonomika ta suspilstvo – Economy and Society*, no. 2, pp. 536–540 (in Ukrainian).
- Dukhnevych, A.V.** (2008). *Pravove stanovyshe kredytnykh spilok v Ukraini: monohrafiia [Legal status of credit unions in Ukraine: monograph]*. Lutsk: Volynskiy natsionalnyi universytet im. L. Ukrainky (in Ukrainian).
- Dukhnevych, A.V.** (2002). Yurydychna pryroda kredytnoi spilky [The legal nature of the credit union]. *Visnyk Lvivskoho instytutu vnutrishnikh sprav*, no. 3, pp. 304–308 (in Ukrainian).

**Honcharenko, O.O., Dzemishkevych, I.O.** (2014). Finansovi zvity kredytnykh spilok ta osoblyvosti yikh analizu [Financial statements of credit unions and features of their analysis]. *Finansovyi prostir – Financial Space*, no. 1(13), pp. 46–56 (in Ukrainian).

**Honcharenko, V.V.** (1997). *Kredytni spilky yak finansovi kooperatyvy: mizhnarodnyi dosvid ta ukrainska praktyka: monohrafiia [Credit unions as financial cooperatives: international experience and Ukrainian practice: monograph]*. Kyiv: Naukova dumka (in Ukrainian).

**Hrytsenko, O.I.** (2005). Kryterialni pokaznyky diialnosti kredytnoi spilky [Criteria indicators of credit union activity]. *Derzhava ta rehiony. Seriya “Ekonomika ta pidpriemnytstvo” – State and regions. Series “Economics and Business”*, no. 1, pp. 75–82 (in Ukrainian).

**Manziuk, V.V., Zaborovskiy, V.V.** (2014). Hospodarsko-pravovi zasady diialnosti kredytnykh spilok [Economic and legal principles of credit unions activity]. *Visegrad Journal on Human Rights*, no. 2, pp. 129–135 (in Ukrainian).

**Masliaieva, K.V.** (2009). *Hospodarsko-pravove zabezpechennia funktsionuvannia rynku finansovykh posluh v Ukraini [Economic and legal support of function of financial services market in Ukraine]* (Extended abstract of candidate's thesis). Kharkiv (in Ukrainian).

**Masliaieva, K.V.** (2010). *Hospodarsko-pravove zabezpechennia funktsionuvannia rynku finansovykh posluh Ukrainy: monohrafiia [Economic and legal support of function of financial services market in Ukraine: monograph]*. Kharkiv: FINN (in Ukrainian).

**Mishchuk, O.V.** (2015). Osoblyvosti diialnosti kredytnykh spilok v Ukraini ta napriamy yii vdoskonalennia [Features of credit unions activity in Ukraine and areas of improvement]. *Ekonomichnyi visnyk: zbirnyk naukovykh prats – Economic bulletin: a collection of scientific papers*. Uman: FOP Zhovtyi O.O., iss. 9 (in Ukrainian).

**Natsionalne polozhennia (standart) bukhhalterskoho obliku 1 “Zahalni vymohy do finansovoi zvitnosti”**: zatverdzeni Nakazom Ministerstva finansiv Ukrainy vid 7 liutoho 2013 roku № 73 [National Regulation (Standard) of Accounting 1 “General requirements for financial reporting”: approved by the order of the Ministry of Finance of Ukraine on February 7, 2013 № 73]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0336-13#Text> (in Ukrainian).

**Pokhyliuk, V.V.** (2008). Kredytni spilky: yikh mistse i rol u transformatsii bankivskoi systemy v umovakh dotry-mannia ekonomichnoi bezpeky finansovykh struktur [Credit unions: their place and role in transformation of the banking system in the conditions of observance of economic security of financial structures]. *Problemy i perspektyvy rozvytku bankivskoi systemy Ukrainy – Problems and prospects of banking system development of Ukraine*, no. 23, pp. 317–322 (in Ukrainian).

**Poliukhovych, V.I.** (2012). *Derzhavne rehulivannia fondovoho rynku Ukrainy: hospodarsko-pravovi mekhanizm: monohrafiia [State regulation of the stock market of Ukraine: economic and legal mechanism: monograph]*. Kyiv: NDI pryvatnoho prava i pidpriemnytstva NAPrN Ukrainy (in Ukrainian).

**Pozhar, A.A.** (2007). Finansovi aspekty funktsionuvannia kredytnykh spilok [Financial aspects of functioning of credit unions]. *Problemy i perspektyvy rozvytku bankivskoi systemy Ukrainy – Problems and prospects of banking system development of Ukraine*. Sumy: UABS NBU, vol. 20, pp. 335–344 (in Ukrainian).

**Roienko, V.V., Bozhenko, A.S., Ivanova, A.S.** (2016). Suchasnyi stan ta problemy funktsionuvannia kredytnykh spilok v Ukraini [Current status and problems of credit unions activity in Ukraine]. *Hlobalni ta natsionalni problemy ekonomiky – Global and national economic problems*, no. 10, pp. 874–876 Retrieved from: <https://essuir.sumdu.edu.ua/handle/123456789/83090> (in Ukrainian).

**Savchuk, N.V., Zolotarova, O.V.** (2019). Rozvytok kredytnykh spilok yak chynnyk sotsialnoi ta diialnistnoi mobilnosti v ukrainskomu suspilstvi [Development of credit unions as a factor of social and industrial mobility in Ukrainian society]. *Naukovyi visnyk Khersonskoho derzhavnogo universytetu. Seriya “Ekonomichni nauky” – Scientific Bulletin of Kherson State University. Series “Economic Sciences”*, no. 33, pp. 204–208. DOI: 10.32999/ksu2307-8030/2019-33-40 (in Ukrainian).

**Semenoh, A.Yu.** (2011). Diialnist nebankivskykh finansovykh ustanov u konteksti ekonomichnoho zrostantia [Activity of unbank financial institutions in the context of economic increase]. *Visnyk Zaporizkoho natsionalnoho universytetu. Seriya “Ekonomichni nauky” – Bulletin of Zaporizhzhia National University. Series “Economic Sciences”*, no. 1(1), pp. 139–148 (in Ukrainian).

**Slavova, N.O.** (2010). *Hospodarsko-pravovi status kredytnykh spilok [The legal status of credit unions]* (Extended abstract of candidate's thesis). Donetsk: Instytut ekonomiko-pravovykh doslidzh of NAN Ukrainy (in Ukrainian).

**Slavova, N.O.** (2011). *Hospodarsko-pravovi status kredytnykh spilok: monohrafiia [The legal status of credit unions: monograph]*. Donetsk: Donetskyi natsionalnyi universytet (in Ukrainian).

**Slavova, N.O.** (2007). Kredytni spilky: poniattia, klasyfikatsiia, zahalna kharakterystyka [Credit unions: concept, classification, general characteristics]. *Visnyk hospodarskoho sudochynstva – Bulletin of Commercial Litigation*, no. 5, pp. 147–150 (in Ukrainian).

**Stoianov, H.S.** (2016). *Udoskonalennia mekhanizmu rozvytku kredytnykh spilok Ukrainy [An improvement of mechanism of development of credit unions of Ukraine]* (Extended abstract of candidate's thesis). Sumy: Sumskyi derzhavnyi universytet (in Ukrainian).

**Verkhovna Rada of Ukraine** (2011). Podatkovi kodeks Ukrainy: Zakon Ukrainy vid 2 hrudnia 2010 roku № 2755-VI [Tax Code of Ukraine: Law of Ukraine of December 2, 2010 № 2755-VI]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*, no. 13–17, art. 112 (in Ukrainian).

**Verkhovna Rada of Ukraine** (2002). Pro kredytni spilky: Zakon Ukrainy vid 20 hrudnia 2001 roku № 2908-III [On credit unions: Law of Ukraine of December 20, 2001 № 2908-III]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine*, no. 15, art. 101 (in Ukrainian).

**Yeliseieva, O.K., Stoianov, H.S.** (2013). Suchasnyi stan rozvytku kredytnykh spilok Ukrainy [The current state of development of credit unions in Ukraine]. *Ekonomist – Economist*, no. 4, pp. 40–43 (in Ukrainian).

**Zubatenko, O.M.** (2009). Kredytna spilka yak uchasnyk vidnosyn u sferi hospodariuvannya [Credit union as a participant of relations in the field of business]. *Ekonomika ta pravo – Economics and Law*, no. 1, pp. 30–34 (in Ukrainian).

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## ПРО НЕОБХІДНІСТЬ ЗМІН У ПРАВОВОМУ СТАТУСІ КРЕДИТНОЇ СПІЛКИ

**Анотація. Мета** – на основі аналізу положень законодавства України про кредитні спілки та практики їх діяльності обґрунтувати пропозиції щодо змін у правовому статусі кредитних спілок. **Методи дослідження.** Статтю підготовлено з використанням загальнонаукових і спеціальних методів наукового пізнання. Зокрема, застосовувалися методи аналізу й синтезу, порівняльно-правовий та історично-правовий методи, що дало змогу виявити у правовому статусі кредитної спілки невідповідності сучасним реаліям та запропонувати зміни для поліпшення цієї ситуації.

**Результати.** Кредитні спілки є специфічними суб'єктами господарювання, оскільки вони мають неприбутковий статус і водночас є фінансовими організаціями з виключною компетенцією та завданням – надавати недорогі кредитні ресурси своїм членам та іншим особам. Кредитні спілки у спрощеному вигляді діють так: члени кредитної спілки надають їй гроші у вигляді вступних, обов'язкових пайових та інших внесків у розмірах, строки й у порядку, що визначені статутом кредитної спілки; спілка може набувати у власність державні цінні папери та облігації міжнародних фінансових організацій, які розміщуються на території України; члени кредитної спілки або інші особи можуть отримувати кредити за рахунок її майна; кредитна спілка може отримувати плату за надання своїм членам кредитів та інших послуг, доходи від провадження інших видів статутної діяльності, грошові та інші майнові пожертви, благодійні внески, гранти, безоплатну технічну допомогу, а також інші надходження, не заборонені законодавством, як від українських, так і від іноземних громадян (підданих), суб'єктів господарювання та держав.

**Висновки.** Визначено, що основним завданням кредитних спілок є забезпечення в дешевих кредитних ресурсах своїх членів – потенційних або реальних підприємців, а також інших осіб (додатково). Так, кредитні ресурси від українських кредитних спілок надаються в невеликих обсягах під вищі відсотки, ніж це робиться комерційними банками, а в багатьох випадках кредитні спілки є конкурентами ломбардів, оскільки надають мікрокредити під заставу побутової техніки, виробів із дорогоцінних металів тощо. Запропоновано найпростіший варіант виправлення ситуації – позбавити кредитні спілки некомерційного статусу з можливістю отримання пільги в оподаткуванні прибутку тими кредитними спілками, які не менш ніж 50% своїх кредитів надають своїм членам для започаткування й розвитку власного бізнесу під відсотки, що не перевищують середній відсоток за кредитами у 20 найбільших комерційних банках України, що визначений на 1 січня відповідного календарного року.

**Ключові слова:** кредитні спілки, фінансові установи, внески (вклади), неприбуткові організації, кредитні ресурси, податок на прибуток, комерційні банки, ломбарди.

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## INFORMATION TECHNOLOGY IN ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE

**Abstract.** *The aim of the article* is to analyse information support of the National Police of Ukraine and proposals for its improvement. **Results.** The article analyses information support of the National Police. It reveals that, in current conditions, the tasks of the National Police cannot be performed without auxiliary activities which do not directly implement objectives prescribed by law but are necessary for their achievement. The article covers the content of such concepts as information uncertainty which means a discrepancy between the actual and required awareness of police officers of reality, which does not allow them to solve individual tasks of their service; information need, that is, a certain state of the service performer arising in connection with the need to obtain information for the accomplishment of the duties; information procedure, that is, a set of functionally homogeneous regular actions (operations) performed by officers of the National Police of Ukraine; information process, that is, a set of logically structured, interrelated and organized information procedures leading to the achievement of information support objective; the information system, that is, an organizational and technical system in which information processing technologies are implemented using software products and equipment. The environment of activity, which is composed of dominating and uncontrolled sectors, is described. One of the software products of the information-telecommunication system “Information Portal of the National Police of Ukraine” makes it possible to analyse the concepts of receiving and recording information, organising it for further transfer or processing (generation of new information). **Conclusions.** The article substantiates theoretically that police officers are linked not only by information but also by function: they perform individual tasks within the scope of their duties. It is noted that all information systems of the National Police of Ukraine, regardless of their architecture and scope of application, generally contain the same set of components: functional, organizational and data processing.

**Key words:** information technology, information and telecommunication systems, software product, information procedures, legislation.

### 1. Introduction

The active development of information processes and the introduction of new inventions, achievements and technologies into production and management processes have resulted not only in the progressive development of our State but become a trigger of increasing crimes and the advancement of the means and methods of committing them. Therefore, information support of the National Police of Ukraine becomes more relevant. It breaks new ground for crime prevention and promotes effective and accurate decision-making for the detection of crime.

The information system of the National Police of Ukraine is rapidly progressing in current circumstances, but pressing problems arise as information systems can't yet fully fulfil their purpose. In view of this, the improvement of information technology in the activities

of the National Police of Ukraine is particularly relevant.

**Analysis of recent research and publications.** The Ukrainian researchers have contributed to studying the issues of information support of the National Police of Ukraine' they are as follows: V. Antonenko, V. Vishnia, L. Hlinenko, O. Komisarov, I. Krasnobryzhyi, M. Kryshchanovych, S. Mamchenko, V. Miroshnychenko, N. Morze, V. Pavlysh, S. Prokopov, E. Ryzhkov, Yu. Rohushyn, I. Shevchuk and others. However, the dynamics of the modern development of information society in general, including the activities of the National Police of Ukraine, require delving into this problem, which has not been sufficiently analysed in the scientific community.

**The purpose of the article** is to analyse information support of the National Police of Ukraine and proposals for its improvement.

## 2. Information support of the National Police of Ukraine

In current conditions, the duties of the National Police of Ukraine (hereinafter – NPU) cannot be performed without auxiliary activities that do not directly implement objectives prescribed by law but are necessary for their achievement (Vyshnia et al., 2016). One of such activities performed by the NPU, in accordance with article 25 of the Law of Ukraine “On the National Police,” is information and analytical support (Pietkov, 2020). This term is referred to regular activities to obtain an information product or provide information services. The author considers the content and defines the main components of the concept.

The need for information and analysis is driven by the information uncertainty of individual operational tasks of the NPU. Information uncertainty is understood as a discrepancy between the actual and required reality awareness of police officers, which does not allow them to solve individual tasks of their service. For example, now the NPU doesn't have access to customs information resources required for police officers to verify the legality of foreigners or foreign-registered cars in Ukraine or the like.

Therefore, the information need is a certain state of the performer of the service activities arising in connection with the need to obtain information for the accomplishment of the duties. Moreover, the problem of identifying, describing and assessing the information needs of police officers is one of the main problems of information support of the NPU. The settlement of the mentioned problems makes it possible to formulate information and analytical requirements.

The information needs determine the objective of information support of the NPU, which is to provide police officers with information of the required quality within the appropriate time and the existing technical and organizational structures, the legal regulatory framework and funding.

The potential providers of information support of the NPU are the Department of Information and Analytical Support of the NPU (which is the administrator of the information and telecommunications system “Information Portal of the National Police of Ukraine” (hereinafter – IPNP)) or other units of the NPU that provide access to information resources; the NPU's staff who have obtained access to the use of the IPNP system information in the prescribed manner (Ministry of Internal Affairs of Ukraine, 2017; National Police of Ukraine, 2020). The object of information support is the psychophysiological state of personal or group knowledge of significant elements of reality (Antonenko et al., 2016).

Structuring the core components is a necessary but insufficient condition for understanding the essence of the activity, since it does not take into account a number of factors that are not directly part of the concept but create a certain environment of the activity. The environment of activity is composed of dominating and ungoverned sectors. The dominating sector refers to the funds at the disposal of the actor and the elements of the reality available to be affected. An uncontrolled sector consists of a group of elements which the actor cannot influence but which must be kept in mind as limitations.

In order to describe the environment, the author presents the most relevant components of the environment from the actor's perspective:  $D = (d1, d2, d3)$ , where  $D$  is the dominating sector;  $d1$  is the police officers (employees) who implement information procedures;  $d2$  is technical means of collecting, transferring, processing and storing information;  $d3$  is material resources.  $C = (c1, c2, c3, c4)$ , where  $C$  is information support conditions;  $c1$  is the legal basis (orders, guides, regulations, instructions);  $c2$  is an organized set of methods and rules for handling information;  $c3$  is the control command;  $c4$  is the obstacle.

One of the methods of delineating the environment is to define the system through the inputs and outputs by which the system communicates with the environment. Within the environment, a necessary and sufficient set of procedures for achieving the objectives of information support is defined.

The information procedure is considered as a set of functionally homogeneous regular actions (operations) performed by officers of the NPU. The objectives of information procedures are to move information in space (collection, distribution, transfer, etc.) or to transform it in time (input, output, storage, processing, etc.) invariantly to the method of the procedure and the means used. Information is considered as a subject matter of the activity that is being carried out, processed and used.

An information process is a set of logically structured, interrelated and organized information procedures leading to the achievement of information support objective. It is difficult to give an exhaustive list of information procedures, since different information process models, specific in terms of the source of theoretical constructions, exist but the process may generally include such procedures as reception, generation, transformation, use, storage, destruction and transfer of processing results to the consumer (person, machine, other information system) (Morze, 2015).

### 3. Analysis of the Law of Ukraine “On Information Protection in Information and Telecommunication Systems”

According to the definition of State Standard 2392-94, an information system is a communication system providing for the collection, search, processing and transfer of information. Under the Law of Ukraine “On Information Protection in Information and Telecommunication Systems”, information (automated) system is an organizational and technical system in which information processing technologies are implemented using software products and equipment (Verkhovna Rada of Ukraine, 1994).

In addition, Ukrainian legal regulations involve the following interpretations of this concept: an information system is an automated system; a computer network or communication system; an organizational and technical system for processing information by means of hardware and software; a system for receiving, processing, storing, displaying and recording data on the technical status of structures, systems, elements, their properties and/or operation; an interrelated set of tools, methods and personnel used to store, process and release information to achieve this objective (Krasnobryzhyi et al., 2018).

The analysis shows that currently several generally accepted definitions of an information system exist in a general and narrow sense. For example, in general, an information system is a system that carries out or includes information processes: search, collection, processing, storage and transfer. In an information system, one, two or more such processes may occur simultaneously. The processing of information depends on the content of the original information, but information is not interpreted while processing but only transformed following the previously developed algorithms. In a narrow sense, an information system is a set of information, technical, software and organizational tools needed for the automated processing of information.

However, in the course of the study of basic concepts and definitions from the perspective of systemic analysis, the elementary level of their structural perception is of interest. The concepts of “elementary information process” and “elementary information system” are basic under the formalised description of the information system irrespective of its definition.

The author briefly studies such concepts as the reception and recording of information, its organization for further transfer or processing (generation of new information). For example, the principle of operation of one of the software products of information and telecommunication system “Information Portal of the National Police of Ukraine” permits analysing them. For example, the operator “102” of the IPNP, using

the potentials of the automated workplace (AWP), performs 24-hour reception of information on the special line “102” about the commission of criminal, administrative offences or events and enters it in the electronic card “102” of the IPNP, where information is generated, that is, get structured form and properties (electronic messages, audio recordings, etc.). During the generation of information, it is transformed, namely the incompatibility of its properties caused by different nature and/or an organizational form are eliminated – the properties of the output information of one function are complied with the properties of the input information of another function. When the user made these operations, in our case, an operator of “102” using the IPNP system, information is transferred, that is, information is moved through communication channels from one place to another. Consequently, other users (dispatcher, duty officer and others) use it, i. e. they carry out semantic processing incl. for the generation of new information and transfer it to official police task tablets (Ministry of Internal Affairs of Ukraine, 2020).

Together, these types of information relationships are peculiar to the organizational structure of the NPU. It should be borne in mind that the police officers (employees) of the NPU units are linked not only in terms of information but also functionally: they perform certain tasks as part of their duties. In addition, information and functional relations are complemented by reporting relationships.

Therefore, an element of the organizational structure (police officer/employee) is identified as an element of the information system. Given that the police officers (employees) are organized into units, the latter can be considered as subsystems in terms of information, and the NPU unit can be considered as an information system. In this case, relationships with outside organizations and citizens are interrelations with the external environment. The presentation of the organizational structure of the NPU in the form of an information interoperable facilities system allows one to make an important conclusion: the consideration of its information support at the organizational level is the most common, specifically oriented on invariant technologies of information relationships. In other words, the information systems of the NPU are composed of individuals and teams who carry out targeted substantive activities. This makes it possible to describe the information systems of the NPU as organizational systems.

The physical implementation of information processes in the NPU is maintained by the availability and functioning not only of a large num-

ber of police officers (employees) (*d1*), but also of many technical means (*d2*). Given target homogeneity of *d1* and *d2* (performing information functions), they can be merged into one  $M = d1 \in d2$ . Therefore, *M* is composed of elements of the organizational and technical structure that support information processes.

By relying on the above, the information system of the NPU can be formally defined through an expression that describes its structural properties:  $S = (d1, d2, r)$ , where *d1*, *d2*, *r* are elements of the organizational and staffing structure, mechanisms and information relationships.

The most important characteristics of an information system are the boundaries and the element basis. Information systems are open, thus interacting with the external environment. However, the separation of the system from the environment is usually not trivial (Kryshtanovych, 2016). More recently, the definition of a system includes an observer, along with elements, relationships, their properties and objectives, since the relationship between the researcher and the system being studied is evident. Therefore, in view of the position of the observer (from the point of view of the police officer/employee of the NPU), the general purpose of the information system is to service semantically significant flows of information requests from police officers/employees in the context of the performance of duties. This means that the structure and characteristics of information are significant for the performance of the NPU activity.

Moreover, from the perspective of the “abstract” observer, the target function of an information system is the transformation of input information into output information. At the same time, the information system becomes invariant both to the semantics of information, the activities of the NPU and to the organizational and technical structure. This is a functional aspect of the information system.

Different approaches to the definition of an information system enable to analyse various aspects of information support for the NPU. However, improving information support for the NPU requires integration of the views considered.

Therefore, the concept of “information system” can be defined symbolically:  $S = (i, o, f, m, c)$ , where *i* is the input information; *o* is the output information (the purpose of information support); *f* is the information process, *m* is the mechanism of functioning; *c* is the conditions of functioning. This expression describes the purpose of the information systems of the NPU.

The improvement of information support comprise the characteristics of information system, as follows: closed information processes; continuous operation; shared use of information resources; discretionary, versatile, stochastic nature of information processes; high quality requirements of all information process procedures; the lack of a priori information on the characteristics of information processes; the large scope and heterogeneity of information processed; the organizational and legal regulatory mechanism for information processes; increased reliability (Pavlysh, Hlinenko, 2013).

#### 4. Conclusions

Therefore, all information systems of the National Police of Ukraine, regardless of their architecture and scope of application, generally contain the same set of components: functional, organizational and data processing. Information and analytical systems and technologies allow the National Police of Ukraine to optimize and rationalize management functions using the potentials of the latest means of receiving, generating, processing and transferring information. The improvement of the quality and timeliness of police duties requires a more effective exchange of information between the National Police of Ukraine and other bodies subordinate to the central executive authorities. This will be the topic of our further research.

#### References:

- Antonenko, V.M., Mamchenko, S.D., Rohushyna, Yu.V. (2016). *Suchasni informatsiini systemy i tekhnologii: upravlinnia znanniamy [Modern information systems and technologies: knowledge management]*. Irpin: Natsionalnyi universytet derzhavnoi podatkovoi sluzhby Ukrainy (in Ukrainian).
- Krasnobryzhyi, I.V., Prokopov, S.O., Ryzhkov, E.V. (2018). *Informatsiine zabezpechennia profesiinoi diialnosti: navchalnyi posibnyk [Information support of professional activity: tutorial]*. Dnipro: Dnipropetrovskiy derzhavnyi universytet vnutrishnikh sprav (in Ukrainian).
- Kryshtanovych, M.F. (2016). *Modernizatsiia mekhanizmiv derzhavnoho upravlinnia v systemi orhaniv vnutrishnikh sprav suchasnoi Ukrainy [Modernization of public administration mechanisms in the system of internal affairs bodies of modern Ukraine]*. Doctor's thesis. Mykolaiv: Chornomorskyi nats. un-t im. Petra Mohyly (in Ukrainian).
- Ministry of Internal Affairs of Ukraine (2017). *Polozhennia pro informatsiino-telekomunikatsiinu systemu "Informatsiinyi portal Natsionalnoi politsii Ukrainy": pryiniatie 3 serpnia 2017 roku № 676 [Regulations on the information and telecommunication system "Information Portal of the National Police of Ukraine" from August 3, 2017 № 676]*. rada.gov.ua. Retrieved from "https://zakon.rada.gov.ua/laws/show/z1059-17#Text (in Ukrainian).

**Ministry of Internal Affairs of Ukraine** (2020). Instruksiiia z orhanizatsii reahuvannia na zaiavy i povidomlennia pro kryminalni, administratyvni pravoporushennia abo podii ta operatyvnoho informuvannia v orhanakh (pidrozdilakh) Natsionalnoi politsii Ukrainy: zatverdzhena 27 kvitnia 2020 roku № 357 [Instruction on the organization of response to statements and notifications about criminal, administrative offenses or events and operative informing in bodies (divisions) of the National Police of Ukraine from April 27, 2020 № 357]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0443-20#Text> (in Ukrainian).

**Morze, N.V.** (2015). *Informatsiini systemy [Information systems]*. Ivano-Frankivsk: Lileia-NV (in Ukrainian).

**National Police of Ukraine** (2020). *Metodychni rekomendatsii shchodo poriadku otrymannia unikalnoho identyfikatora dostupu (lohinu) ta podachi zaiavky na reiestratsiiu korystuvacha v informatsiino-telekomunikatsiini systemi "Informatsiynyi portal Natsionalnoi politsii Ukrainy" [Methodical recommendations on the procedure for obtaining a unique access identifier (login) and submitting an application for user registration in the information and telecommunication system "Information Portal of the National Police of Ukraine"]*. Kyiv (in Ukrainian).

**Pavlysh, V.A., Hlinenko, L.K.** (2013). *Osnovy informatsiynykh tekhnolohii i system [Fundamentals of information technology and systems]*. Lviv: vydavnytstvo Lvivskoi politekhniki (in Ukrainian).

**Pietkov, S.V.** (ed.). (2020). *About the national police [About the national police]*. Kyiv: Profesional (in Ukrainian).

**Verkhovna Rada of Ukraine** (1994). Pro zakhyst informatsii v informatsiino-telekomunikatsiynykh systemakh: Zakon Ukrainy vsd 5 lypnia 1994 roku № 80/95-BP [On Information Protection in Information and Telecommunication Systems: Law of Ukraine from July 5, 1994 № 80/95-BP]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/80/94-vp#Text> (in Ukrainian).

**Vyshnia, V.B., Myroshnychenko, V.O., Komisarov, O.H., Prokopov, S.O.** (2016). *Informatsiine zabezpechennia diialnosti Natsionalnoi politsii Ukrainy [Information support of the National Police of Ukraine]*. Dnipro: DDUVS (in Ukrainian).

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## ІНФОРМАЦІЙНІ ТЕХНОЛОГІЇ В ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

**Анотація.** *Метою статті* є аналіз стану інформаційного забезпечення Національної поліції України, а також пропозиції щодо його покращення. **Результати.** У статті здійснено аналіз інформаційного забезпечення Національної поліції України. З'ясовано, що в умовах сьогодення розв'язання Національною поліцією України службових завдань неможливе без здійснення допоміжних видів діяльності, які безпосередньо не переслідують нормативно визначені цілі, проте необхідні для їх досягнення. Розкрито зміст понять «інформаційна невизначеність» (під яким розуміється невідповідність фактичного й бажаного станів інформованості поліцейських про навколишню дійсність, що не дає змогу вирішувати окремі завдання їх службової діяльності); «інформаційна потреба» (це певний стан суб'єкта службової діяльності, який виникає у зв'язку з необхідністю отримання відомостей, що забезпечують розв'язання службових завдань); «інформаційна процедура» (це набір однорідних у функціональному плані дій (операцій), які регулярно здійснюються працівниками Національної поліції України); «інформаційний процес» (це сукупність логічно впорядкованих, взаємопов'язаних та організованих інформаційних процедур, що веде до досягнення мети інформаційного забезпечення); «інформаційна система» (це організаційно-технічна система, у якій здійснюється реалізація технологій обробки інформації з використанням програмних продуктів та устаткування). Охарактеризовано середовище діяльності, яке становлять сфера домінування та некерована сфера. На прикладі роботи одного з програмних продуктів інформаційно-телекомунікаційної системи «Інформаційний портал Національної поліції України» проаналізовано процеси приймання та фіксації інформації, організації її для подальшої передачі або оброблення (генерація нової інформації). **Висновки.** Теоретично обґрунтовано, що поліцейські пов'язані між собою не лише інформаційно, а й функціонально, тобто вони виконують окремі види робіт у межах службових завдань. Констатовано, що всі інформаційні системи Національної поліції України незалежно від їх архітектури та сфери застосування, як правило, містять один і той самий набір компонентів: функціональні, організаційні та оброблення даних.

**Ключові слова:** інформаційні технології, інформаційно-телекомунікаційні системи, програмний продукт, інформаційні процедури, законодавство.

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## SOME ASPECTS OF THE ADMINISTRATIVE AND LEGAL REGULATORY FRAMEWORK FOR INTERACTION BETWEEN THE NATIONAL POLICE AND THE PUBLIC

**Abstract.** *The purpose* of the article is to analyse and define the areas of interaction between the National Police and the public to eliminate theoretical and practical gaps in the matter. The issues of improving the administrative and legal regulatory framework for police interaction with the population on the basis of partnership are analysed. **Results.** The study establishes that the National Police of Ukraine shall cooperate with other state bodies and local self-government authorities in order to resolve issues entrusted to the police. To ensure the most effective exercise of their powers, the police may apply the methods of coordination used to harmonise interim measures with other law enforcement bodies, as well as between the various units of the National Police. The National Police interacts with citizens in various spheres and realizes their tasks by creating appropriate public councils, which are formed under the Ministry of Internal Affairs. To achieve a common goal with the National Police in the field of ensuring public order, public associations are formed in accordance with the Law of Ukraine “On the participation of citizens in the protection of public order and the state border”. **Conclusions.** It is concluded that the interaction of the National Police with the public in terms of ensuring public safety and order requires more research. Police activities based on cooperation with the community and public associations and aimed at the prevention of offences are a pressing need of the day. Effective performance by the police of their professional tasks in the field of public order requires strengthening of interaction with citizens and public associations. By creating and implementing the latest forms of cooperation, it is necessary to aim at improving and strengthening police cooperation with the public. Initiative, desire for change and a clear understanding by the police that the established interaction of the police is the key to restoring public confidence in the police, reducing the level of offenses and crimes.

**Key words:** National Police, public associations, public, public order, interrelation, coordination, administrative and legal regulatory framework.

### 1. Introduction

In order to ensure the most effective exercise of their powers in the field of public security and order, the National Police of Ukraine comes into cooperation with other state authorities, local self-government bodies, ordinary citizens and public associations. In police activities, cooperation and coordination are of importance, including in the field of public safety and order, for coordination of interim measures with other

actors, as well as between the various structural units of the National Police.

Therefore, the complexity and importance of the tasks assigned to law enforcement agencies requires the latter to interact with state and non-state organizations, as well as with public organizations, to be effective.

**Analysis of recent research and publications.** The issues of law enforcement activities of the National Police, including the interaction

of its bodies with the public, have been considered by many scholars, such as O.M. Bandurka, V.M. Haraschuk, O.Yu. Drozd, V.K. Kolpakov, A.T. Komziuk, Yu.Yu. Kondratiev, O.M. Muzychuk, M.P. Pykhtin, V.I. Olefir, O.I. Ostaspenko, Kh.P. Yarmak et al. However, the topic requires further study.

Therefore, the **purpose of the article** is to analyse and define the areas of interaction between the National Police and the public to eliminate theoretical and practical gaps in the matter.

## 2. Relations between the National Police and other State bodies

The concepts of “interaction” and “coordination” are still debatable. The review of scientific approaches to the definition of these concepts enables V.V. Chumak to argue that scientists reveal the content of the concept of “interaction” as follows: 1) interaction is the coordination of actions by its actors according to objectives, time, location, implementers and programme; 2) interaction requires at least two actors; 3) each interacting actor (system) operates within the competence prescribed by law; 4) the actors of the interaction share a common objective to implement common missions (Chumak, 2011, p. 162).

With regard to the category “coordination,” A.N. Kliuiev argues that this is a set of actions aimed at orderly functioning of the subject and the object of control, in particular, the harmonised work of all the system links and individual workers. In contrast to the organization of interaction, coordination is carried out by an administrator vested with authority over the objects of coordinating interaction (Kliuiev, 2011, p. 78).

The legal relations between the National Police and other State bodies, natural and legal persons may be as follows:

1) legal relations in which the parties have equal status (no relations of “power – subordination”);

2) legal relations in which the National Police is in a leading position and the other party is subordinate;

3) legal relations in which the National Police is subordinate and the other party in a leading position (Batrachenko, 2017, p. 103).

Matters relating to the organization and direct implementation of police cooperation are defined in the legislation, namely, the tasks, forms and principles of interaction in this field are regulated.

In the Law of Ukraine “On National Police”, article 5 “Police Interaction with State Authorities and Local Self-Government Bodies” provides for that police officers, implementing their official tasks, cooperate with law enforcement

bodies, local self-government bodies in accordance with the law (Verkhovna Rada of Ukraine, 2015). D.V. Vlasenko argues that the article has no sense and is rather referential than informative. Part 2 of article 9 of the Law of Ukraine “On National Police” requires the police “to keep state authorities and local self-government bodies, as well as the public, constantly informed of their activities in the field of protection and defence of human rights and freedoms, combating crime, ensuring public safety and order”, while part 6 of the same article provides that “drafts of legal regulations concerning human rights and freedoms shall necessarily be subject to public discussion in the manner determined by the Minister of Internal Affairs of Ukraine” (Vlasenko, 2019).

The Law of Ukraine “On National Police” highlights the principles of police activities: continuity, rule of law, interaction with the population on the principles of partnership, observance of human rights and freedoms, political neutrality, legality, openness and transparency (Verkhovna Rada of Ukraine, 2015).

One of the principles of police activities is cooperation. The principle of interaction with the population on a partnership basis is police activities carried out in close cooperation and interaction with the population, territorial communities and public associations on the basis of partnership and aimed at meeting their needs; effectiveness of activities is considered according to the level of public confidence in the police; assessments of the level of public confidence in the police are made by independent sociological services in accordance with the procedure established by the Cabinet of Ministers of Ukraine (Verkhovna Rada of Ukraine, 2015).

The principle of interaction with the population on a partnership basis is the constant interaction of the police with the population and local authorities for the sake of a common safe space.

Article 89 of the Law of Ukraine “On the National Police” stipulates that:

1. The police shall cooperate with the public by developing and implementing joint projects, programmes and activities to meet the needs of the population and to improve the efficiency of the police in carrying out their tasks.

2. Cooperation between the police and the public is aimed at identifying and resolving problems related to policing and promoting the use of modern methods to improve the efficiency and effectiveness of policing.

3. The police support legal education programmes, promote legal knowledge in educational institutions, the media and publishing (Verkhovna Rada of Ukraine, 2015).

Therefore, two areas of police cooperation can be identified. The first area is cooperation with representatives of the public authorities. The second one is cooperation with the public.

The first area of interaction is:

- exercise of all functions within the competence, participation and advice in the preparation of projects in the field of public safety and order;

- information exchange with other state authorities on matters relating to public safety and order;

- use of databases (banks) of other State bodies, search and analysis of information and the processing of personal data in the area of public security and order;

- protection of state interests and the interests of representatives of state and local authorities;

- cooperation with public authorities in the field of social protection and pensions for police officers and their families (Batrachenko, 2017).

With regard to the interaction of the police with the population, the main actor of interaction is the district police officer.

The main tasks of the district police officer in this field are regulated by Order № 650 of the Ministry of Internal Affairs of Ukraine “On approval of Instruction on the organization of activities of district police officers”, namely:

- 1) activities according to the principle of cooperation with the population on a partnership basis and aimed at cooperation with citizens, voluntary organizations, institutions and enterprises of various forms of ownership;

- 2) cooperation with state authorities and local self-government bodies, the population and voluntary public organizations for the protection of public order established in accordance with the law;

- 3) respect of human rights and freedoms and the interests of society and the State;

- 4) measures to register persons subject to preventive work and to update the information subsystems of the unified information system of the Ministry of Internal Affairs;

- 5) cooperation with patrol police response teams in preventive measures with regard to persons predisposed to committing offences and/or who are on the preventive record of the police;

- 6) informing the duty station of the police (sub-unit) in case of receiving information from the population about persons who intend to commit criminal offences or have created, wanted criminals, missing persons;

- 7) organizing and supervising the activities of the assistant to district police officers, consisting of work planning, assignment and training in the methods and tactics of work

at the police station, checking the quality, completeness and objectivity of the materials composed by him;

- 8) maintenance of skills through training and self-training (Ministry of Internal Affairs of Ukraine, 2017).

The National Police interacts with citizens in various sectors and carries out their tasks through the establishment of public councils under the Ministry of the Internal Affairs. Public associations with the National Police are formed in accordance with the Law of Ukraine “On Participation of Citizens in Protection of Public Order and State Border” in order to achieve a common goal in the field of public order.

### 3. The “Community Police Officer” project

The effective protection of public order and the fight against crime are impossible without the participation and support of ordinary citizens.

The police can make significant progress against offenders only when cooperation is established.

For example, a form of interaction of the police with the public is the implementation of the project “Community Police Officer”. The project contributes to a safe living environment for people. It leads to a rapid response to emergencies that can damage people’s lives and health, their prevention and participation of citizens.

The “Community Police Officer” project is another big step in the reform of the National Police. Its main purpose is to provide each territorial community with a separate officer, and it will give impetus to the development of partnership and social interaction and to the establishment of joint tasks between the agencies of the MIA and the population. This officer will not only work on the territory of this community but live there. His main function is to be responsive to the needs of the local population, to maintain constant contact with the population, to monitor and maintain order in the territory assigned on a daily basis, immediately respond to the problems of ordinary citizens and prevent the commission of offences.

The project is aimed at providing professional police services in small localities, not only to respond to the commission of an offence, but also to ensure the protection and safety of society and to meet its needs. A total of 20 integrated territorial communities have been established in the region, 14 of which have already expressed the wish to engage district police officers to work and live in their territory. Let us hope that in the future the other six communities will join in this work (Official site of the National Police, [www.npu.gov.ua](http://www.npu.gov.ua)).

The project aims to address many challenges. Today the performance of district police officers is not fully effective due to lack of personnel, financing, transport and technical means, as well as the size of service areas, the number of population matter, obscuring the fight against crime.

As a result, operational effectiveness is not at the highest level, and the response to emergency events that threaten human life or health is not rapid. The community is ready to cooperate with the police to improve living conditions and peace, well-being and security. In turn, district police officers are convinced of the need to establish interaction and introduce new forms of cooperation with the public.

#### 4. Conclusions

In conclusion, police powers based on cooperation with the public and community aimed at the prevention of offences and crimes are a pressing need of the day. The effective performance of professional tasks by the police in the field of public order requires strengthening cooperation with citizens and public associations.

By creating and implementing innovative forms of interaction, police cooperation with the public must be improved and strengthened. The initiative, the desire for change and the clear understanding by the police officers that well organised interaction of the police contributes to restoration of public confidence in the police, reducing the level of offenses and crime.

#### References:

- Batrachenko, O.V.** (2017). Administratyvno-pravovi zasady diialnosti Natsionalnoi politcii Ukrainy shchodo zabezpechennia publichnoi bezpeky i poriadku [Administrative and legal principles of the National Police of Ukraine to ensure public safety and order]. *Candidate's thesis*. Sumy (in Ukrainian).
- Chumak, V.V.** (2011). Vzaiemodiia ta koordynatsiia mizh subiektamy okhorony derzhavnoho kordonu [Interaction and coordination between the subjects of state border protection]. *Pravo i bezpeka – Law and security*, vol. 2(39), pp. 161–165 (in Ukrainian).
- Kliuiev, O.M.** (2011). Problemy rozmezhuвання poniat “koordinatsiia” i “vzaiemodiia” v upravlinskii nauksi ta praktychnii diialnosti orhaniv vnutrishnikh sprav [Problems of distinguishing between the concepts of “coordination” and “interaction” in management science and practice of law enforcement agencies]. *Pravo i bezpeka – Law and security*, vol. 3(40), pp. 76–80 (in Ukrainian).
- Ministry of Internal Affairs of Ukraine** (2017). Pro zatverdzhennia Instruksii z orhanizatsii diialnosti dilnychnykh ofitseriv politcii: Nakaz Ministerstva Vnutrishnikh Sprav Ukrainy vid 28 lypnia 2017 roku № 650 [On approval of the Instruction on the organization of activities of district police officers: Order of the Ministry of Internal Affairs of Ukraine from July 28, 2017 № 650]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z1041-17#Text> (in Ukrainian).
- Ofitsiinyi sait Natsionalnoi politcii** [Official site of the National Police]. *npu.gov.ua*. Retrieved from: <https://www.npu.gov.ua> (in Ukrainian).
- Verkhovna Rada of Ukraine** (2015). Pro Natsionalnu politciiu: Zakon Ukrainy vid 4 lypnia 2015 roku № 580-VIII [On the National Police: Law of Ukraine from July 4, 2015 № 580-VIII]. *rada.gov.ua*. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/580-19/paran5#n5> (in Ukrainian).
- Vlasenko, D.V.** (2019). Natsionalna politciiia Ukrainy: administratyvno-pravovi aspekty formuvannia i rozvytku [National Police of Ukraine: administrative and legal aspects of formation and development]. *Candidate's thesis*. Kyiv (in Ukrainian).

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**ДЕЯКІ АСПЕКТИ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ  
ВЗАЄМОДІЇ ОРГАНІВ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ З ГРОМАДСЬКІСТЮ**

**Анотація.** *Метою статті* є аналіз та визначення напрямів взаємодії Національної поліції України з громадянським суспільством для усунення теоретичних і практичних прогалин у вказаному питанні. **Результати.** Аналізуються питання щодо вдосконалення адміністративно-правового регулювання взаємодії поліції з населенням на засадах партнерства. Визначено, що для вирішення питань, які покладені на поліцейських, Національна поліція України вступає у взаємодію з іншими державними органами та органами місцевого самоврядування. Для найбільш ефективного виконання повноважень поліція може вдаватися до застосування методів координації, що використовуються з метою узгодження забезпечувальних дій з іншими правоохоронними органами, а також між різними структурними підрозділами Національної поліції України. Зроблено висновок про недостатність наукових розробок, присвячених проблемам взаємодії Національної поліції України з громадськістю у сфері забезпечення публічної безпеки й порядку. Діяльність поліції, що заснована на співпраці з населенням і громадськими об'єднаннями та спрямована на запобігання правопорушенням, є нагальною потребою сьогодення. **Висновки.** Констатовано, що взаємодія Національної поліції України з громадськістю з позиції забезпечення громадської безпеки й порядку вимагає додаткових досліджень. Діяльність поліції, заснована на співпраці з громадою та громадськими об'єднаннями, а також спрямована на запобігання правопорушенням, є нагальною потребою сучасності. Ефективне виконання поліцією своїх професійних завдань у сфері громадського порядку вимагає посилення взаємодії з громадянами та громадськими об'єднаннями. Під час створення й впровадження новітніх форм співпраці необхідно прагнути до вдосконалення та зміцнення співробітництва поліції з громадськістю. Необхідні ініціатива, прагнення до змін та чітке розуміння поліцією того, що налагоджена її взаємодія є ключем до відновлення довіри населення до поліції, а також зниження рівня злочинності.

**Ключові слова:** Національна поліція, громадські об'єднання, громадськість, публічний порядок, взаємодія, координація, адміністративно-правове регулювання.

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## PROMISING WAYS TO INCREASE THE EFFECTIVENESS OF PUBLIC POLICY ON ECONOMIC SECURITY

**Abstract.** *The purpose* of the article is to identify promising ways to increase the effectiveness of public policy in the field of economic security. **Results.** The current political and economic processes in the State require systematic and well-balanced steps to improve legal, regulatory, organizational, logistical and other support for public policy on economic security. It is proved that the processes of making public policy on the economic security of Ukraine require substantial improvement and optimization regarding both the regulatory framework for the establishment and maintenance of the state economic security system and matters falling within the competence of the central executive authorities responsible for implementing economic security policy in individual sectors of social and political life. The main proposals in this area are: 1) improvement of the legal and regulatory framework for the implementation of public policy on economic security in terms of: a) improving the provisions of the Law of Ukraine “On National Security of Ukraine”; b) amending the 2020 National Security Strategy of Ukraine; c) optimizing the content of the Cybersecurity Strategy of Ukraine; 2) establishment of the Council on Economic Security under the President of Ukraine and the continuation of the Memorandum of Understanding between the Government of Ukraine and the Organisation for Economic Co-operation and Development, in particular in the areas of combating money-laundering; reforming the tax system and administration of customs duties and charges and ensuring a favourable investment climate; 3) introduction of strategic planning for economic security through the adoption of the Economic Security Strategy, Concepts and Strategies within the individual components of economic security (financial, industrial, macroeconomic, investment, foreign economy and human security); 4) development of the draft Law of Ukraine “On Economic Security of Ukraine”. **Conclusions.** The author makes proposals to establish the Council on Economic Security under the President of Ukraine. This body should include several specialized commissions in the areas of: financial, industrial, macroeconomic, investment and innovation, foreign economy and human security.

**Key words:** economic security, national security, public policy, administrative legislation, efficiency assessments, efficiency, optimization.

### 1. Introduction

The current political and economic processes in the State require systematic and well-balanced steps to improve the legal, regulatory, organizational, logistical and other support for public policy on economic security. This is due to the analysis of the current legal and regulatory framework and the specificities of the activities of state bodies with powers to ensure the economic security of the State and of international legal acts and practices to counter economic offences of varying hazard.

The purpose of the article is to identify promising ways to increase the effectiveness of public policy in the field of economic security.

### 2. Law of Ukraine “On National Security of Ukraine”

Therefore, first, the content of existing legal and regulatory instruments that form the legal basis for the making public policy on the economic security should be analysed.

On June 21, 2018, the Law of Ukraine “On National Security of Ukraine” was adopted, the main provisions of which defined the contents of key terms, such as, “military security”, “public security and order”, “state security”, “defence planning”, “national security planning”, “National Security Strategy of Ukraine”, “Military Security Strategy of Ukraine”, “Cybersecurity Strategy of Ukraine”, and others.

The Law stipulates that the President of Ukraine shall be in charge of national security and defence, in accordance with the Constitution, and the National Security and Defence Council shall be responsible for coordination in the fields of national security and defence.

The Law being analysed determines the powers of national security actors such as the Ministry of Defence, the Armed Forces of Ukraine, the State Special Transport Service, the Ministry of Internal Affairs and the Security Service, Intelligence agencies, the Office of State Protection, the State Special Communication and Information Protection Service, etc. (Verkhovna Rada of Ukraine, 2018).

The Law focuses on the planning in national security, its objective and principles, as well as defines the main types of state instruments on this issue, which should constitute the regulatory framework for Ukraine's national security: the National Security Strategy of Ukraine, the Comprehensive Review of the Security and Defence Sector, the Military Security Strategy of Ukraine, the Public Security and Civil Protection Strategy of Ukraine, the Defence and Industrial Development Strategy of Ukraine, the Cybersecurity Strategy of Ukraine, the National Intelligence Programme, state programmes in the fields of national security and defence, etc. (Verkhovna Rada of Ukraine, 2018).

Therefore, the relevant law of our country focuses on the security and defence sector, the organization of the activities of the Armed Forces, counter-intelligence activities, information and cyber-security of the State.

However, the above-mentioned law lacks a systematic view of economic security of the State as a fundamental element that, incidentally, forms the basis of other elements of national security, since the defence complex and the Armed Forces of Ukraine, the organization of counter-intelligence activities and the cybersecurity, etc. cannot develop without adequate material and financial support and sustainable economic indicators. Therefore, we make a proposal to improve the Law in the following areas.

First, it is necessary to clearly define the components of national security, requiring the introduction of a separate article "Sectors (Components) of National Security of Ukraine", which shall determine that these components, for example, are political security, economic security, military security, public safety, information security, environmental security, cybersecurity.

Secondly, para. 10 of article 1 and article 3 of this law define the terms "national interests of Ukraine" as the vital interests of the individual, society and the State, the implemen-

tation thereof ensures the State sovereignty of Ukraine, its progressive democratic development, as well as safe living conditions and the well-being of its citizens (Verkhovna Rada of Ukraine, 2018). In particular, state sovereignty, territorial integrity and the sustainable development of the national economy, civil society and the State are among such interests.

At the same time, we argue that part 3 of article 3 of this Law should be naturally extended by defining national interests in various fields of national security. Regarding the subject matter of our study, the law should be added with a separate article "National Interests of Ukraine in the economic sector". These economic interests include: ensuring economic growth and increasing the competitiveness of Ukraine's national economy; ensuring the innovative development of the economy by involving advanced technologies, investments and applying advanced methods and forms of the regulatory mechanism for the economic sector; ensuring stability of the financial system of Ukraine; conducting balanced monetary and credit policy; maintaining the country's energy independence by supporting domestic producers and ensuring a balanced energy price policy; developing high-technology and competitive sectors of the economy, which produce high value-added products; supporting entrepreneurship and ensuring minimal state intervention in economic relations; overcoming monopoly and promoting competition; carrying out balanced fiscal and customs policies; ensuring the quality and development of human capital in all sectors of the national economy; ensuring the economic rights and freedoms of natural and legal persons by countering systematically economic crime and corruption, etc.

Therefore, the list of actors that provide the economic security of the State should include, in addition to the Government of Ukraine, specialized ministries, the State Fiscal Service, the Antimonopoly Committee, the State Financial Monitoring Service, as well as their key competencies.

A separate article of the Law of Ukraine "On National Security of Ukraine" should provide for the concept and content of economic security of the State. In particular, in this article we propose to add our author's definition of economic security as a component of Ukraine's national security, which is the status of social relations in production, distribution, exchange and consumption of goods and services that characterizes their protection and resilience to external and internal threats, guarantees the protection of national economic interests and promotes the realization of the social and economic rights and freedoms of citizens, as well as creates con-

ditions for further development and growth of the national economy and the competitiveness of the State in the global economic environment.

This article should define the elements of economic security, such as: financial, macro-economic, industrial, energy, foreign economy, investment and innovation, human, which in turn consists of food, social and demographic security.

### 3. Tasks of public policy on economic security

Furthermore, we propose that the relevant article of the Law should define the tasks of public policy on economic security, namely:

1) to improve the provisions of current Ukrainian legislation in the economic sector by developing key laws and adopting strategic programmes in the field of economic security;

2) to establish an effective institutional system to ensure the implementation of the State's economic security strategy, the identification of its key actors, the limits of their powers and the basis for cooperation and coordination;

3) to involve representatives of the business environment, specialized trade unions, representatives of small businesses and the economic scientific community in the development and implementation of economic safety programmes and measures;

4) to increase the economy's resilience to the impact of external and internal challenges and threats, to improve the investment climate in the country, the budgetary planning processes and the socio-economic development of the regions, and to improve the financial security system, to optimise the regulatory and tax burden;

5) to develop an appropriate economic culture and financial literacy among the population;

6) to introduce modern information and communication technologies into the system of economic relations in order to improve the processes of economic transactions; to minimize the risks of the parties and make it easier for the public to obtain financial and other services;

7) to ensure the harmonious integration of Ukraine into the European and world economic security environment and the development of fair and mutually advantageous economic relations with other States; as well as State participation in countering global economic threats and transnational economic crime;

8) to create legal and organizational grounds for citizens to exercise their economic rights and freedoms (rights to property, to entrepreneurial activities, etc.), to ensure their protection and their restoration in the event of violations;

9) to establish a fundamentally new system of control and law enforcement bodies responsible for economic security; to exclude uncharacteristic powers from the competence of existing

actors of law enforcement, in particular with regard to interference in economic relations;

10) to protect adequately the information and communication infrastructure of the Ukrainian economy: payment systems, information banks, data registers, personal data of economic entities, etc.;

11) to create conditions and to adopt systematic measures against corruption, violations of anti-monopoly legislation, financial and economic crimes, especially those committed by organized criminal groups, and against money laundering.

Moreover, an appropriate step is to formulate a legislative provision regarding the responsibility of the State to control the use of economic facilities operated by foreign organizations or organizations with foreign capital, but certainly with respect for the rights and legitimate interests of such investors. In addition, it is necessary to envisage restrictions on the ownership or rights to use and manage strategic resources of Ukraine.

In addition, the focus should be on the improvement of economic security planning processes as part of national security. The Law of Ukraine "On National Security of Ukraine" indicates that the instruments of long-term planning are the National Security Strategy of Ukraine, the Military Security Strategy of Ukraine, the Public Security and Civil Protection Strategy of Ukraine, the Defence and Industrial Development Strategy of Ukraine, the Cybersecurity Strategy of Ukraine, the National Intelligence Programme. The medium-term planning instruments include other strategic instruments, security sector development programmes. Short-term planning includes the development of annual maintenance and development (activities) planning for the components of the security and defence sector (Verkhovna Rada of Ukraine, 2018). In this context, it is strange that, despite recognition of economic security as part of national security, the relevant law in no way contains provisions on strategic instruments in this field, while it stresses the importance of the Cybersecurity Strategy, the Public Order Strategy, etc. Therefore, we argue that Article 25 of the Law of Ukraine "On National Security of Ukraine" should be amended to define that Ukraine strategic planning in the field of economic security is carried out through the adoption of the National Economic Security Strategy, Concepts and Strategies within the individual components of economic security. For example, in 2012, Order № 569 of the Cabinet of Ministers of August 15, 2012 approved the Concept of ensuring national security in the financial

sphere (Cabinet of Ministers of Ukraine, 2012), however, many of its provisions need to be rethought and improved in the light of the current state of the global economy and the functioning of national financial sector, and hence the elaboration and approval of these instruments is of relevance. Therefore, sectoral concept instruments on financial, industrial, macroeconomic, investment and innovation, energy, foreign economy and human security should be developed on the basis of the proposed National Economic Security Strategy.

With regard to the Cybersecurity Strategy, we believe that some areas for improvement in its content in terms of ensuring cybersecurity in the economic sector of the State exist. Indeed, the Strategy states that the National Bank is the entity responsible for cybersecurity in the banking sector, as well as provisions relating to general issues, in particular the improvement of the system of storage, transfer and processing of data of public registers and databases using modern information and communication technologies (including online access technologies) (President of Ukraine, 2016).

The Strategy underlines the need of training security and defence sector actors to respond to cyberattacks and cybersecurity incidents, in particular, cyber-drills for the Armed Forces of Ukraine and other actors in the security and defence sector of Ukraine, participation in such trainings as part of collective defence activities. However, many state bodies responsible for sustainable economic development, databases of State property registers, etc. are not part of the security and defence sector. At the same time, they and their information resources are threatened by cybernetic attacks. Therefore, the above-mentioned provisions of the Cybersecurity Strategy of Ukraine should be amended to read as follows: “4.4. The development of cybersecurity and defence potentials in the security and defence sector should include activities, conducted in the manner prescribed, such as trainings for security and defence actors and other State bodies responsible for individual components of national security, that possess and maintain State registers and data banks to respond to cyberattacks and cybersecurity incidents, in particular, cyber-drills of the Armed Forces of Ukraine, other actors of the security and defence sector of Ukraine, participation in such trainings as part of collective defence activities”.

The adoption of the New National Security Strategy of Ukraine on 14 September 2020 was a positive step (President of Ukraine, 2020a). In accordance with the contents of this instrument, the Cabinet of Ministers of Ukraine should submit a draft Economic Security Strategy to

the National Security and Defence Council of Ukraine within six months, and the Energy Security Strategy and the Food Security Strategy should be developed and approved within six months of the adoption of the document (President of Ukraine, 2020a).

Thus, we argue that at present no conceptual instruments have been approved for the implementation of public policy on State economic security. In addition, we believe that the proposals outlined regarding the content of the Law of Ukraine “On National Security of Ukraine” can become the basis of the draft Law of Ukraine “On Economic Security of Ukraine”.

Next, the activities of the advisory bodies established in the State and operating within the framework of the President of Ukraine’s constitutional powers should be noted.

From our perspective, the establishment of the Council of Experts on Energy Security, an advisory body to the National Security and Defence Council of Ukraine headed by the Head of State, is a positive step. For example, in the exercise of the powers conferred, the National Security and Defence Council is entitled to prepare proposals on: counteracting and neutralizing threats to Ukraine’s energy security; defining conceptual approaches and areas for energy security; measures to increase the effectiveness of public policy in the fuel and energy sector; improving coordination of the activities of executive bodies in the field of energy security; identifying ways, mechanisms and means of resolving problem issues arising in the implementation of public policy in the fuel and energy sector; improving the legal and regulatory framework for the fuel and energy sector (President of Ukraine, 2020b).

Another body that should influence public policy in almost all fields of public life is the National Reform Council, a special advisory body under the President of Ukraine on strategic planning, harmonizing the introduction of a single public policy on reforms and their implementation in Ukraine.

The main tasks of the National Reform Council are as follows: 1) to define the areas and priorities of reforms aimed at the realization of national interests and the protection of constitutional human and civil rights and freedoms, and to make a unified, coordinated public policy, develop a strategy and mechanisms for introducing reforms; 2) to reach consensus on the introduction of reforms between the President of Ukraine, State authorities and civil society; 3) to promote coordinated implementation of reforms and to monitor their effective implementation; 4) to set priorities for regulatory support for the practical implementation of reforms (President of Ukraine, 2014).

However, we argue that making public policy on the economic security should be carried out in a more systematic manner and while the best experts should engage in the process of reforming economic relations. Therefore, we argue that establishment a Council on Economic Security under the President of Ukraine is a topical issue. This body should include several specialized commissions in the areas as follows: finance, macroeconomy, industry, energy, foreign economy, investment and innovation, and human security.

The Council composed in such manner will enable to comprehensively implement the necessary reforms and innovations in the field of State economic security and to organize interaction between experts in the field within the framework of single coordinating body, and to advise to the President systematic steps to prevent and overcome internal and external threats in the economic sector and to promote the realization of the economic rights and freedoms of individuals and legal entities.

The tasks of the Council are: an analysis of the economic security of the State, forecasting the development of economic relations and the study of internal and external threats to economic security; the study of the status of making public policy on economic security; an analysis of the legal and regulatory framework, regulatory instruments and draft laws on issues relating to economic security of the State; preparation of proposals to the President of Ukraine on: 1) neutralization or minimization of threats to the economic security of the country; 2) improving the legal and regulatory framework for ensuring economic security; 3) optimizing the performance of the State's law enforcement bodies against economic crime and corruption; 4) measures aimed at enhancing the effectiveness of public policy on economic security and its individual components; 5) improving cooperation and coordination of the activities of State authorities in matters relating to economic security of the State.

Therefore, the appropriate steps in the State activity being studied should be:

- amendments to the Law of Ukraine “On the Fundamentals of State Regional Policy” in terms of defining the priority of regional economic security as a component of public policy at the meso level;

- harmonization of the provisions of the laws of Ukraine “On Local State Administrations” and “On Local Self-Government” with the Laws “On Foreign Economic Activity” and “On Transborder Cooperation” in terms of performing foreign economic functions and functions of the body of transborder cooperation.

#### 4. Conclusions

By relying on research findings, the author can sum up the following:

1. The processes of making public policy on the economic security of Ukraine require substantial improvement and optimization regarding both the regulatory framework for the establishment and maintenance of the State economic security system and matters falling within the competence of the central executive authorities, responsible for implementing economic security policy in individual sectors of social and political life (Koshykov, 2020).

2. With regard to the legal and regulatory framework, it is advisable to:

- a) improve the provisions of the Law of Ukraine “On National Security of Ukraine” in terms of determining it as a separate component of national security, legislative consolidation of national interests in the field of economic security, actors that ensure them, etc.;

- b) amend the 2020 National Security Strategy of Ukraine, which, in our opinion, should focus on issues of comprehensive State economic security;

- c) improve the provisions of the Cybersecurity Strategy of Ukraine with regard to ensuring the information security of public administrators in the economic sector;

- d) introduce strategic planning for economic security through the adoption of the Economic Security Strategy, Concepts and Strategies within the individual components of economic security (financial, industrial, macroeconomic, investment, foreign economy and human security);

- e) draft the Law of Ukraine “On Economic Security of Ukraine”;

- f) adopt the New Strategy for Sustainable Development of Ukraine for 2021–2026, adjusting the indicators of achievement of key objectives (parameters). The Strategy should separately identify criteria and indicators for economic security as a component of national security, not limited to defence and military affairs, as well as include criteria and indicators as defined by the UN Resolution “Transforming our World: The 2030 Agenda for Sustainable Development”.

3. The Law of Ukraine “On Fundamentals of State Regional Policy” requires changes in terms of defining the priority of regional economic security as a component of public policy at the meso level. Moreover, the provisions of the laws of Ukraine “On Local State Administrations” and “On Local Self-Government” should be harmonized with the Laws “On Foreign Economic Activity” and “On Transborder Cooperation” in terms of performing foreign economic functions and functions of the body of transborder cooperation. These steps should be further harmonized with the concept of decentralization of the country.

## References:

- Cabinet of Ministers of Ukraine** (2012). Pro skhvalennia Kontseptsii zabezpechennia natsionalnoi bezpeky u finansovii sferi: Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 15 serpnia 2012 roku № 569-p [On approval of the Concept of ensuring national security in the financial sphere: Order of the Cabinet of Ministers of Ukraine from August 15, 2012, № 569-p]. *kmu.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/569-2012-%D1%80#Text> (in Ukrainian).
- Koshykov, D.O.** (2020). *Administratyvno-pravovi zasady realizatsii derzhavnoi polityky u sferi zabezpechennia ekonomichnoi bezpeky derzhavy [Administrative and legal bases of realization of the public policy in the field of maintenance of economic safety of the state]*. Kharkiv: Panov (in Ukrainian).
- President of Ukraine** (2014). Pytannia Natsionalnoi rady reform i Vykonavchoho komitetu reform: Ukaz Prezydenta Ukrainy vid 13 serpnia 2014 roku № 644/2014 [Issues of the National Council of Reforms and the Executive Committee of Reforms: Decree of the President of Ukraine from August 13, 2014, № 644/2014]. *president.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/644/2014#Text> (in Ukrainian).
- President of Ukraine** (2016). Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 27 sichnia 2016 roku "Pro Stratehiiu kiberbezpeky Ukrainy": Ukaz Prezydenta Ukrainy vid 15 bereznia 2016 roku № 96/2016 [On the decision of the National Security and Defense Council of Ukraine of January 27, 2016 "On the Cyber Security Strategy of Ukraine": Decree of the President of Ukraine from March 15, 2016, № 96/2016]. *president.gov.ua*. Retrieved from: <https://zakon5.rada.gov.ua/laws/show/96/2016#Text> (in Ukrainian).
- President of Ukraine** (2020a). Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 14 veresnia 2020 roku "Pro Stratehiiu natsionalnoi bezpeky Ukrainy": Ukaz Prezydenta Ukrainy vid 14 veresnia 2020 roku № 392/2020 [On the Decision of the National Security and Defense Council of Ukraine of September 14, 2020 "On the National Security Strategy of Ukraine": Decree of the President of Ukraine from September 14, 2020, № 392/2020]. *president.gov.ua*. Retrieved from: <https://www.president.gov.ua/documents/3922020-35037> (in Ukrainian).
- President of Ukraine** (2020b). Pro zatverdzhennia Polozhennia pro Radu ekspertiv z pytan enerhetychnoi bezpeky: Ukaz Prezydenta Ukrainy vid 29 travnia 2020 roku № 206/2020 [On approval of the Regulations on the Council of Experts on Energy Security: Decree of the President of Ukraine from May 29, 2020, № 206/2020]. *president.gov.ua*. Retrieved from: <https://www.rnbo.gov.ua/ua/Ukazy/4615.html> (in Ukrainian).
- Verkhovna Rada of Ukraine** (2018). Pro natsionalnu bezpeku Ukrainy: Zakon Ukrainy vid 21 lypnia 2018 roku № 2469-VIII [On National Security of Ukraine: Law of Ukraine from July 21, 2018, № 2469-VIII]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2469-19> (in Ukrainian).

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## ПЕРСПЕКТИВНІ ШЛЯХИ ПІДВИЩЕННЯ ЕФЕКТИВНОСТІ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ БЕЗПЕКИ

**Анотація.** Сучасні політичні та економічні процеси, які відбуваються в державі, потребують системних і виважених кроків щодо вдосконалення нормативно-правового, організаційного, матеріально-технічного та іншого забезпечення державної політики у сфері економічної безпеки. **Метою статті** є визначення перспективних шляхів підвищення ефективності державної політики у сфері економічної безпеки. **Результати.** Аргументовано, що процеси формування й реалізації державної політики у сфері забезпечення економічної безпеки України потребують суттєвого вдосконалення та оптимізації, що стосується як нормативної бази формування й забезпечення системи економічної безпеки держави, так і питань, які належать до компетенції центральних органів виконавчої влади, що мають повноваження з реалізації політики економічної безпеки в окремих сферах суспільно-політичного життя. Основними пропозиціями в цьому напрямі є такі: 1) трансформація нормативно-правового забезпечення реалізації державної політики у сфері економічної безпеки в частині: а) удосконалення положень Закону України «Про національну безпеку України»; б) внесення змін до Стратегії національної безпеки України (2020 року); в) оптимізації змісту Стратегії кібербезпеки України; 2) створення при Президентові України Ради з питань забезпечення економічної безпеки, продовження дії Меморандуму про взаєморозуміння між Урядом України та Організацією економічного співробітництва, зокрема, за напрямками протидії відмиванню коштів, реформування податкової системи та системи адміністрування митних зборів і платежів, забезпечення сприятливого інвестиційного клімату; 3) запровадження стратегічного планування у сфері економічної безпеки шляхом прийняття Стратегії економічної безпеки, концепцій і стратегій у межах окремих склад-

ників економічної безпеки (фінансової, виробничої, макроекономічної, інвестиційної, зовнішньо-економічної та гуманітарної безпеки); 4) розроблення проекту Закону України «Про економічну безпеку України». **Висновки.** Запропоновано створити при Президентові України Раду з питань забезпечення економічної безпеки. У складі такого органу варто сформувати декілька профільних комісій за напрямками (зокрема, з фінансової, макроекономічної, виробничої, енергетичної, зовнішньоекономічної, інвестиційно-інноваційної та гуманітарної безпеки).

**Ключові слова:** економічна безпека, національна безпека, державна політика, адміністративне законодавство, оцінювання ефективності, ефективність, оптимізація.

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## PROCEDURE FOR APPLYING INCENTIVES TO LOCAL SELF-GOVERNMENT EMPLOYEES

**Abstract.** *The purpose* of the article is to describe the procedure for applying incentives to the employees of local self-government bodies and identify the shortcomings of the procedure. **Results.** A managerial decision is defined as the professional performance of the authorized person aimed at ensuring the efficient functioning of the managed system. We argue that the procedure for applying incentives to local self-government employees is directly related to the consistency of making certain managerial decisions. It is underlined that the main indicators (conditions) for awarding bonuses to the employees of the Village Council apparatus are: 1) the implementation of the activities envisaged in the Office's work plans; 2) rational and efficient organization of the work of the team and conscientious performance of the job responsibilities; 3) effective managerial decisions, high performance; 4) timeliness and quality of preparation of background and analytical materials for draft legal regulations for consideration at sessions and meetings; 5) closer cooperation with the public, the relevant services of the district, the village, enterprises and entrepreneurs; 6) timely and effective execution of the orders, recommendations of the highest authorities, tasks and commissions assigned by the leadership of the village council; 7) creativity, initiative, professionalism and application of effective working methods; 8) quality and timely preparation of documents; 9) quality and effective processing of citizens' letters and appeals; 10) additional time worked; 11) performance of duties that are not part of the post in accordance with the job description; 12) constant self-improvement, professional development; 13) proper maintenance of the workplace, preservation of the property of the village council and its rational and careful use; 14) compliance with labour legislation, labour regulations, labour and financial discipline, occupational safety and health and fire safety. **Conclusions.** Therefore, the procedure for applying incentives to employees of local self-government bodies has been rather superficially regulated, and the corresponding regulatory provisions are scattered in numerous legal regulations of different legal force, that in turn leads to ambiguous interpretations. The shortcomings of this procedure include: a) the absence of clear criteria to be taken into account in determining who should be rewarded; b) the insufficiently regulated procedure for formation and issuance of the Incentive Order, its content and structure; c) the unregulated issue of supervising and control the implementation of managerial decisions related to applying incentives to local self-government employees.

**Key words:** management, control, function, implementation, documentation, indicators.

### 1. Introduction

A clear procedure for applying the incentives to local self-government employees is important in order to ensure that they are used in accordance with the principles of legality and fairness. Moreover, legal literature defines the concept of "procedure" as a certain sequence of actions. V.O. Navrotskyi argues that the procedure is a correct, well-arranged state, the location of something; the state at which everything goes as it should be; when nothing acts wrong, the regime of something. Further, the author reveals the social relations, which arise towards management, through naming their structural elements (Navrotskyi, 2011).

The aim of the article is to describe the procedure for applying incentives to employees of local self-government bodies and identify the shortcomings of the procedure.

### 2. Application of incentives to employees of local self-government bodies

Therefore, the review of the above-mentioned scientific positions establishes that the procedure is a clearly determined sequence of actions defined by law, which must be performed by authorized persons for the lawful and rational application of incentives to employees of local self-government bodies. Thus, it should be noted that the application of incentives is directly related to manage-

rial decision-making. A managerial decision is the initial and main point in the organization of the activities of each manager. Consequently, the managerial decision can be considered as the core of the managerial process and an important tool for a systematic approach to the managed object. Each enterprise is not only a manufacturer of products but also an integral part of society. Therefore, managerial decision-making must take into account not only the economic aspect of the activity but also the totality of social, ideological, moral and other relations (Ruliev, Hutkevych, 2011).

According to Ye.Yu. Petrunia, the concept of "managerial decision" must be distinguished from "decision" in general. A person makes a lot of decisions during the life: in production, in purchasing goods, in personal relationships, etc., but they are not all managerial. The author argues that the managerial decision is characterized by: objectives (the manager does not make decisions on the basis of own needs, but rather on the basis of the problems of the particular organization); impacts (decisions made by a high-ranking manager can have a significant impact on the state of the managed object); the division of labour (there is a division of labour within the organization: some workers are engaged in problem analysis and decision-making, and others implement decisions made); professionalism (to make decisions in an organization, the manager must have relevant knowledge, skills, work experience) (Petrunia et al., 2011).

According to the study by M.V. Dzhafarova, to date, the category of "managerial decision" have several meanings, such as: 1) the choice of the activities related to the development of an adequate response of the organization to the impact of any external environmental factor; 2) an option of the manager's impact on the executor of a decision (object managed); 3) an activity in the management subsystem that involves the preparation, finding, choice and adoption of certain options, according to existing circumstances, the interests and needs of the environment; 4) an optional impact of the management subsystem on the managed one; 5) an administrative and practical activity of the manager in the managed system (actions of the lower level manager to implement the decision (commission) of the higher level manager. In addition, the scientist formulates the following general specificities of managerial decisions: a) a managerial decision implies the availability of options and the choice of one, according to objective circumstances, interests and needs; b) the choice and adoption of the option are the result of a conscious mental and psychological activities; c) the need for

and substantive content of the managerial decision are determined by and oriented towards the achievement of the objective; d) the managerial decision has a catalytic and organizing power (Dzhafarova, 2008).

The process of managerial decision-making involves the following components:

1. A decision-maker is a person or group of people who have the necessary decision-making power and are responsible for it.

2. Controllable variables are the set of factors and conditions that give rise to a problem, which can be managed by a decision-maker.

3. Uncontrollable variables are situations that may not be managed by a decision-maker, but that may be managed by others. When combined with controllable variables, uncontrollable variables can influence the outcome of the choice, forming the background of the problem or its environment.

4. Constraints (internal and external) on the value of controllable and uncontrollable variables that together define the tolerance range of a decision.

5. Criterion (or criteria) for evaluating alternative decisions. The criterion may be quantitative or qualitative (in terms of individual preferences or in terms of fuzzy logic).

6. A decisive rule (or system of decisive rules) is the principles and methods of decision-making that result in recommendations or a registered decision (although the final choice depends on the decision-maker).

7. Alternatives (possible results) can depend both on the qualitative or quantitative value of the controllable and uncontrollable variables and on the choice itself.

8. The decision can imply at least two alternatives to conduct (otherwise the problem of managerial decision does not arise due to lack of choice).

9. Possibilities exist for implementation of the decision (Bilinska, Kovbasiuk, 2011, pp. 58–59).

Therefore, the managerial decision is the professional performance of the authorized person, aimed at ensuring the efficient functioning of the managed system. We argue that the procedure for applying incentives to local self-government employees is directly related to the consistency of making certain managerial decisions. In this context, we consider it appropriate to identify the following stages and sub-stages in applying incentives for local self-government employees:

1) preparation for a managerial decision. This step includes: a) identification of employees and their merits, i.e. the appropriateness of incentives; b) determination of the amount of funds that are in the bonus fund which can be used to reward;

c) determination of the amount of the award (for example, the amount of the bonus);

2) the adoption of a managerial decision accompanied by the issuance of an order, that is, its legal form;

3) the implementation of a managerial decision that provides for the direct award (direct accrual and payment of bonuses);

4) control of the implementation of the managerial decision.

The initial impulse of the decision-making process is information about the state of the object managed, that is, identification of the problem situation. The action on the object managed is carried out after the development and adoption of the relevant decision, which in the form of information is submitted to the object managed. Therefore, the managerial decision-making process is cyclical, and its main element is the problem, that is, the discrepancy of the actual state of the object managed with the desired or given, with the established objective or the desired result. Developing an action plan to address the problem is the essence of the decision-making process. The problem is always related to the combination of conditions or factors that create the problem situation. That is why the beginning of the decision-making process is the description of the problem situation and the factors that led to it (Morhulets, 2012).

Therefore, the preparation of a managerial decision, according to A.F. Melnyk, combines: the identification of an objective (set of objectives); the collection and analysis of information on the task to be solved; the identification, forecasting of the unfold of the situation and problems; making of options for possible managerial decisions; development of criteria and selection of effective options of managerial decisions (Melnyk et al., 2003, p. 115).

For example, with regard to the preparatory phase, the first point to be made is the need to identify the range of employees and their merits, i. e. the appropriateness of incentives. Thus, local self-government employees are awarded bonuses in accordance with their personal contribution to the overall results of the performance, within the bounds of the bonus fund, formed in the amount of three months' fund for remuneration and savings of the wage fund. They may also be provided with pecuniary assistance to solve social and welfare problems and assistance for convalescence in the amount of the average monthly wage. Bonuses for managers and their deputies, allowances and supplements to their salaries, and pecuniary assistance are provided by the higher-level body's decision, within available funds for remuneration (Yarmysh, Serohin, 2002).

With regard to the sources of funding for incentives, focus should be on para. 2 of part 2 of the Resolution "On streamlining the structure and conditions of remuneration of employees of the staff of executive authorities, prosecutors, courts and other bodies" which states that heads of SGBs shall be entitled to award bonuses to employees in accordance with their personal contribution to overall performance, as well as on public and professional holidays and anniversary dates. Moreover, the above-mentioned bonuses are paid within a bonus fund established in the amount of not less than 10 per cent of the salary and savings of the wage fund. The savings may arise, inter alia, from vacancies, sick leave and unpaid leave, and in other cases (Cabinet of Ministers of Ukraine, 2006).

### **3. Bonuses and allowances are awarded to the staff**

Bonuses and allowances are awarded to the staff based on a comprehensive analysis of the performance of basic duties in accordance with the order of the village head, within the funds provided for the bonus. The amount of the bonus for each worker is determined according to his/her personal contribution to the overall results of the village council's activities. Assessment of the personal contribution of employees considers competence, initiative, complexity, quality and speed of the work, its scope, creative and analytical work, efficiency and productivity of developments, decisions taken and other achievements (Cabinet of Ministers of Ukraine, 2006).

It should be noted that the main indicators (conditions) for awarding bonuses to the employees of the Village Council apparatus are: the implementation of the activities envisaged in the Council's work plans; rational and efficient organization of the work of the team and conscientious performance of the job responsibilities; effective managerial decisions, high performance; timeliness and quality of preparation of background and analytical materials for draft legal regulations for consideration at sessions and meetings; closer cooperation with the public, the relevant services of the district, the village, enterprises and entrepreneurs; timely and effective execution of the orders, recommendations of the highest authorities, tasks and commissions assigned by the leadership of the village council; creativity, initiative, professionalism and application of effective working methods; quality and timely preparation of documents; quality and effective processing of citizens' letters and appeals; additional time worked; performance of duties that are not part of the post in accordance with the job description; constant self-improvement, professional development; proper maintenance

of the workplace, preservation of the property of the village council and its rational and careful use; compliance with labour legislation, labour regulations, labour and financial discipline, occupational safety and health and fire safety.

The next step, as noted above, is the adoption of a managerial decision accompanied by the issuance of an order, that is, its legal form. Decision-making is the part of any management function, as decision-making is the main product of a manager's work. Therefore, understanding the nature of managerial decision-making is essential for a better understanding of the management process in general (Petrunia et al., 2011).

According to O.N. Yevtushenko, managerial decision-making may be intuitive (own feeling that the choice is right); be based on judgment (choice based on knowledge or experience, that is, the manager uses knowledge of what has happened in such situations in the past and chooses such an option, which he believes will be the most successful); be rational (decision is based on an objective analytical process implying the relationship of consecutive stages: diagnosis of problem – formulation of criteria for decision-making decision – identification of alternatives – assessment of alternatives – choice of decision) (Yevtushenko, 2014, p. 49). In addition, the author argues that managerial decision-making requires a high level of competence, time, energy, experience and responsibility on the part of managers. Managerial decision-making is an important part of the management activities around which the life of an organization revolves. Sound and effective managerial decisions by the head affect the success of the organization (Yevtushenko, 2014, p. 49).

Finally, managerial decisions should meet certain requirements: efficiency (to fully contribute to achievement of the organization's objective); cost-effectiveness (to contribute to achievement of the objective set in a cost-effective manner); timeliness (not only in decision-making, but also in achieving an objective); validity (executors of a decision must understand the reasons for making that decision); reality (a decision must not be abstract) (Shcheblykina, Hrybova, 2015). Key ones are validity, clarity of language, real feasibility, timeliness, cost-effectiveness (measured by cost), efficiency (measured by the degree to which objectives are achieved in relation to resource costs) (Shcheblykina, Hrybova, 2015).

Therefore, the adoption of a managerial decision is an important stage in applying incentives to employees of local self-government bodies, since in fact, at this stage the legal form of the respective actions is carried out

by issuing an order. B.I. Sazonov proves that an order is a legal document that begins a management cycle, so that an adequate perception of the information in it is important for the entire management organization (Sazonov, 1976, p. 112).

The Incentive Order for local self-government employees must contain the following information: a) the list of persons to whom the incentive is applied; b) grounds for granting the incentives; c) the type of incentives; d) time for which an incentive must be granted; e) in addition, the order must contain all details necessary for the said documents.

Another stage in applying incentives for local self-government employees is the implementation of a managerial decision. The implementation of the managerial decision is directly related to the implementation of the accrual and payment of bonuses of incentives to local self-government employees. For example, the monthly bonus for public officials of a public authority is paid not later than the date of payment of wages for the month in which the bonus is accrued, and the quarterly bonus not later than the date of payment of wages for the last month of the quarter, in which the bonus is accrued.

The final stage, which should be underlined, is the control of the implementation of the relevant managerial decision. Traditionally, control is the process of ensuring that the objectives set are met (Bandurka, 1998). According to Yu.O. Tykhomyrov, control is the verification of compliance with and fulfilment of the tasks, plans and decisions, set according to law, that is, the beginning of a cycle devoted to the evaluation of the ongoing process. In this context, the author emphasizes: first, the functional assignment of control, second, that it arises at a certain stage of the management process, and third, that control is exercised by all public administrators (Tykhomyrov, 1998, p. 58).

As a management function, control is the continuation of planning and regulatory functions and accompanies the implementation of managerial decisions. Control involves identifying and documenting actual indicators (outcomes of decision implementation) and comparing them with indicators planned to measure organizational performance. Control also includes comparing the expected and actual implementation rates of plans, verifying the admissibility of underlying assumptions and control of the methodological and substantive consistency of management implementation plans. Moreover, control includes a set of actions to analyse potential deviations from planned indicators. Comparison and analysis stimulate new decision-making processes,

which in turn initiate remedial actions and provide long-term learning effects (Trofymova, Trofymov, 2012).

In the context of the topic, it should be noted that the control of applying initiatives has not been sufficiently regulated to date, in particular with regard to its procedure and the actors authorized to carry it out. Control of decision implementation involves the establishment of a control mechanism to detect changes in the external and internal environments in which organizations operate, the location of problems, and the need for additional decisions to achieve the objectives of the system. The control mechanism should consist of two parts: control of changes in the external environment (system input) and internal (in organization and system outputs) (Trofymova, Trofymov, 2012).

#### 4. Conclusions

Therefore, the procedure for applying incentives to employees of local self-government bodies has been rather superficially regulated, and the corresponding regulatory provisions are scattered in numerous legal regulations of different legal force, that in turn leads to ambiguous interpretations. The shortcomings of this procedure include:

- a) the clear criteria to be taken into account in determining who should be rewarded are absent;
- b) the procedure for formation and issuance of the Incentive Order, its content and structure are not sufficiently regulated;
- c) the issue of supervising and control the implementation of managerial decisions related to applying incentives to local self-government employees is not regulated.

#### References:

- Bandurka, O.M.** (1998). *Upravlinnia v orhanakh vnutrishnikh sprav Ukrainy [Department of Internal Affairs of Ukraine]*. Kharkiv: Un-t vnutr. sprav [in Ukrainian].
- Bilinska, M.M., Kovbasiuk, Yu.V.** (2011). *Pryiniattia upravlinskykh rishen: orhanizatsino-psykholohichni aspekt [Managerial decisions: organizational and psychological aspect]*. Kyiv: NADU [in Ukrainian].
- Cabinet of Ministers of Ukraine** (2006). Pro uporiadkuvannya struktury ta umov oplaty pratsi pratsivnykiv aparatu orhaniv vykonavchoi vlady, orhaniv prokuratury, sudiv ta inshykh orhaniv: Postanova Kabinetu Ministriv Ukrainy vid 9 bereznia 2006 roku № 268 ["On streamlining the structure and conditions of remuneration of employees of the staff of executive authorities, prosecutors, courts and other bodies": Resolution of the Cabinet of Ministers of Ukraine from March 9, 2006, № 268]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/go/268-2006-п> [in Ukrainian].
- Dzhafarova, M.V.** (2008). Administratyvni protsedury pryiniattia ta realizatsii upravlinskykh rishen orhaniv vnutrishnikh sprav u vidnosynakh z naseleнням [Administrative procedures for making and implementing managerial decisions of law enforcement agencies in relations with the population]. *Candidate's thesis*. Kharkiv [in Ukrainian].
- Melnyk, A.F., Obolenskyi, O.Yu., Vasina, A.Yu.** (2003). *Derzhavne upravlinnia [Governance]*. Kyiv: Znannia-Pres [in Ukrainian].
- Morhulets, O.B.** (2012). *Menedzhment u sferi posluh [Management in the field of services]*. Kyiv: Tsentr uchbovoi literatury [in Ukrainian].
- Navrotskyi V.O.** (2011). *Kryminalne pravo Ukrainy [Criminal law of Ukraine]*. Kyiv: Znannia [in Ukrainian].
- Petrunia, Yu.Ye., Hovorukha, V.B., Litovchenko, B.V. et al.** (2011). *Pryiniattia upravlinskykh rishen [Making managerial decisions]*. Kyiv: Tsentr uchbovoi literatury [in Ukrainian].
- Ruliev, V.A., Hutkevych, S.O.** (2011). *Menedzhment [Management]*. Kyiv: Tsentr uchbovoi literatury [in Ukrainian].
- Sazonov, B.I.** (1976). Informatsyonnaia sistema mynysterstv: sodержanye y pravovoe rehulyrovanye [Information system of ministries: content and legal regulation]. *Sovetskoe gosudarstvo i pravo – Soviet state and law*, no. 3, pp. 110–113 [in Russian].
- Shchablykina, I.O., Hrybova, D.V.** (2015). *Osnovy menedzhmentu [Fundamentals of management]*. Melitopol: Melitopolska miska drukarnia [in Ukrainian].
- Trofymova, L.A., Trofymov, V.V.** (2012). *Metody priniattia upravlencheskikh reshenii [Managerial decision making methods]*. St. Petersburg: SPbGUEF [in Russian].
- Tykhomyrov, Yu.A.** (1998). *Kurs admystratyvnoho prava i protsessa [Administrative Law and Process Course]*. Moscow: Izd. h-na Tykhomyrova M.Yu. [in Russian].
- Yarmysh, O.N., Serohin, V.O.** (2002). *Derzhavne budivnytstvo ta mistseve samovriaduvannya v Ukraini [State building and local self-government in Ukraine]*. Kharkiv: Nats. un-t vnutr. sprav [in Ukrainian].
- Yevtushenko, O.N.** (2014). Upravlinski rishennia: sutnist ta kharakterni rysy [Managerial decisions: essence and characteristics]. *Naukovi pratsi Chornomorskoho derzhavnogo universytetu imeni Petra Mohyly – Scientific works of Petro Mohyla Black Sea State University*, no. 237, pp. 47–51 [in Ukrainian].

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## ПОРЯДОК ЗАСТОСУВАННЯ ЗАОХОЧЕНЬ ДО ПРАЦІВНИКІВ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ

**Анотація.** Актуальність статті полягає в тому, що для використання заохочень до працівників органів місцевого самоврядування з дотриманням принципів законності та справедливості важливе їх застосування в певному порядку. **Метою статті** є характеристика порядку застосування заохочень до працівників органів місцевого самоврядування та визначення його недоліків. **Результати.** Встановлено, що управлінське рішення – це професійна діяльність уповноваженої особи, спрямована на те, щоб забезпечити ефективне функціонування керованої системи. Порядок застосування заохочень до працівників органів місцевого самоврядування безпосередньо пов'язаний із послідовністю прийняття певних управлінських рішень. Наголошено на тому, що основними показниками (умовами) для преміювання працівників апарату сільської ради є такі: 1) виконання заходів, передбачених планами роботи органу; 2) раціональна й ефективна організація роботи колективу та добросовісне виконання посадових обов'язків; 3) прийняття ефективних управлінських рішень, висока результативність у роботі; 4) своєчасність і якість підготовки довідкових та аналітичних матеріалів до проєктів нормативно-правових актів для розгляду на сесіях і засіданнях; 5) налагодження тісної співпраці з громадськістю, відповідними службами району, села, з підприємствами, підприємцями; 6) своєчасне й ефективне виконання розпоряджень, рекомендацій вищих органів влади, завдань і доручень, поставлених керівництвом сільської ради; 7) творчість, ініціатива, професійність та використання ефективних методів роботи; 8) якісна та своєчасна підготовка документів; 9) якісна й ефективна робота з листами та зверненнями громадян; 10) додатково відпрацьований час; 11) виконання робіт, які не належать до посадових обов'язків згідно з посадовою інструкцією; 12) постійне самовдосконалення, підвищення професійної кваліфікації; 13) належне утримання робочого місця, збереження майна сільської ради та його раціональне й бережливе використання; 14) дотримання вимог трудового законодавства, правил трудового розпорядку, трудової та штатно-фінансової дисципліни, техніки безпеки і пожежної безпеки, охорони праці. **Висновки.** На сьогодні порядок застосування заохочень до працівників органів місцевого самоврядування врегульований досить поверхнево, а норми права, якими вони регулюються, розпорошені в численних нормативно-правових актах різної юридичної сили, що своєю чергою призводить до неоднозначного їх тлумачення. До недоліків вказаного порядку варто віднести: а) відсутність чітких критеріїв, які необхідно враховувати під час визначення кола осіб, котрі заслуговують на заохочення; б) не досить урегульований порядок формування та видання наказу про заохочення працівників, його зміст і структуру; в) неврегульованість питання здійснення нагляду й контролю за реалізацією управлінських рішень, пов'язаних із застосуванням заохочень до працівників органів місцевого самоврядування.

**Ключові слова:** управління, контроль, функція, реалізація, документування, показники.

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## ACTORS OF PREVENTION AND THE PLACE OF THE NATIONAL POLICE OF UKRAINE AMONG THEM

**Abstract. Purpose.** The aim of the article is a general description of the role and place of the National Police of Ukraine in the system of preventive activities. **Results.** The author argues that the study of the role and place of the National Police of Ukraine in ensuring the functioning of the administrative and legal mechanism in general and the application of proper segment of this mechanism, in particular, is a topical issue of domestic jurisprudence. Moreover, focus is on the fact that the issue of ensuring the functioning of the administrative and legal mechanism for preventive activities as the comprehensive system of crime prevention measures at state level is possible only provided clear division of preventive powers among all law enforcement agencies and determination of the procedure for their interaction in the context of the implementation of preventive functions. The author underlines the logics of the conclusion that preventive activities in general and preventive activities by the National Police of Ukraine in particular are the implementation of voluntary or coercive actions, provided for by Ukrainian legislation, authorized persons (including police officers) before the commission of the offence and aimed at its prevention. Furthermore, the focus is on the possibility of dual application of this concept, which includes the fact that not only the National Police of Ukraine carry out preventive activities within the framework of the legislation of Ukraine. **Conclusions.** This, in turn, justifies and requires further study of the specific powers exercised by other law enforcement bodies. In addition, the author identifies units of prevention, district police officers, patrol police and juvenile prevention in the system of the National Police of Ukraine as the main units of the police conduction prevention functions. It is underlined that their activities are elaborated in detail and vested by Ukrainian legislation with the powers of crime prevention, precaution and other forms of crime deterrence in a wide range of legal relations among citizens. Moreover, the system of actors of prevention in Ukraine is rather broad that allows discussing close cooperation, which requires further scientific research.

**Key words:** administrative and legal mechanism, prevention, activity, police, guard, crime prevention, border service.

### 1. Introduction

The relevance of the topic is based on the priority, in the context of increasing crime, of the issues of the effective functioning of the preventive measures system, scattered between different law enforcement bodies in Ukraine.

Moreover, the rapid increase in crime rates threatens the protection of human and citizen rights and freedoms, which in turn ruins the foundations of democracy and the rule of law on which the State is established.

Taking into account that the most effective and expedient method of fighting crime is to prevent offenses (which is the aim of the prevention system) – this issue requires systematic and thorough elaboration.

In turn, this issue has been repeatedly raised in studies of various domestic and international scientists, since ensuring proper functioning of this institution in national and international law is a priority. In addition, given the rapid development of the legal system of Ukraine, the issue of determining the role and place of the National Police of Ukraine in the system of actors of prevention should be considered in detail.

The **purpose** of the article is a general description of the role and place of the National Police of Ukraine in the system of preventive activities. The aim statement, in turn, determines the list of **tasks** which include: the need to outline the concept of preventive activities in general and of such phenomenon in the con-

text of the functioning of the National Police, in particular, taking into account the understanding of the concept of “prevention”; establishment of other actors of law enforcement in Ukraine empowered to exercise the preventive function; identification of the place and role of the National Police of Ukraine among these actors with specific examples.

## 2. Preventive work of the National Police of Ukraine

The study of the role and place of the National Police of Ukraine in ensuring the functioning of the administrative and legal mechanism in general and the application of proper segment of this mechanism in particular is a topical issue of domestic jurisprudence. Moreover, a detailed study of the corresponding issue is possible only if the proper functioning of all police institutions aimed at providing and forming and implementing preventive work of the National Police of Ukraine.

The Constitution stipulates that the legal order in Ukraine is based on principles according to which no one can be forced to do what is not stipulated by law (Verkhovna Rada of Ukraine, 1996). Taking into account the provisions of the Basic Law of Ukraine, it should be noted that without specifying the essence and content, as well as determining the role of the National Police of Ukraine in preventive activities in general, such activities can be carried out only within the framework and in the manner provided by the legislation.

Most scientists mentioned in the introduction underline that preventive function is one of the priorities in the police activities, since precaution as a characteristic of prevention is the basis of a well-formed democratic society.

According to O. Pronevych, preventive trend provides for a departure from repressive intervening public policy on law enforcement, recognition of the special social significance of the problem of counteracting crime, establishment of close interaction of state and communal police actors with institutions of civil society in explanatory and preventive activities for correcting destructive conduct of individual citizens and eliminating factors determining violations of law (Pronevych, 2011, pp. 639–640). In other words, the author argues that the most significant in the context of the main approach to solving the problem of growing crime is realization of the prevention and precaution, explanatory work on deterring such manifestations, since at the stage of prevention the rights and freedoms of the person and the citizen protected by the State are not violated.

With regard to the meaning of the word “prevention”, from Latin “precaution, deterrence of criminal offenses”. According to the law, preventive measures are precautionary

measures and other measures aimed at deterrence of criminal offenses and other offenses (Kovryha et al., 2005).

However, the concept of preventive activities and its interrelation with the functioning of the National Police of Ukraine requires detailed attention taking into account the current approach to general categories.

For example, O. Bandurka believes that the concept of prevention is most often used regarding the main powers of the police, one of which is the implementation of preventive and precautionary activities aimed at deterrence of violations (legal education; constant informing of the population about the state of affairs in tranquillity and the fight against crime; agitation and explanatory work among the population; criticism of anti-public manifestations; incentive measures; work with offenders, persons from so-called risk groups; dissemination and popularization of best practices in the fight against violations of public order and others) (Bezpalova et al., 2017, p. 34). In its turn, the authors’ definition of the essence of preventive activities of the police, first of all, is characterized by high accuracy and conformity with the legislation of Ukraine, which forms the basic trends of preventive measures and provides realization of the defined functions.

Ya. Posokhova specifies and focuses on psychological features of the prevention, that is, primarily the implementation by police officers in the course of precaution and deterrence of offences, in the course of preventive control over compliance with the requirements of laws and other legal regulations concerning children, road safety, protection of human rights and freedoms, the interests of society and the state, combating crime, organization of work of the permit system, prevention and termination of violence in the family, etc. (Posokhova, 2018, pp. 108–109).

Therefore, it proves that preventive activities in general and preventive activities by the National Police of Ukraine in particular, are the implementation of voluntary or coercive actions provided for by Ukrainian legislation, by authorized persons (including police officers) before the commission of the offence and aimed at its prevention. The possibility of dual application of this concept is due to the fact that not only the National Police of Ukraine carry out preventive activities within the framework of the legislation of Ukraine. This, in turn, justifies and requires further study of the specific powers exercised by other law enforcement bodies.

For example, in addition to the National Police of Ukraine, the Ministry of Internal Affairs also coordinates the work of the State Border Service of Ukraine and the National Guard of Ukraine.

The State Border Service is responsible for organizing the prevention of criminal and administrative offences, as its competence of combating them is prescribed by the law; preventing and deterring illegal crossing of the State border of Ukraine, etc. (Law of Ukraine "On the State Border Guard Service of Ukraine" from April 3, 2003 № 661-IV (Verkhovna Rada of Ukraine, 2003)). It should be noted that the prevention and precaution of such offences as illegal crossing of the State border are primarily the responsibility of the State Border Service. Therefore, prevention among the population adjacent to the border territories, patrols of "blind" State border sections and other preventive measures, aimed at deterring violations of the law in the sector assigned to the State Border Service, first and foremost, constitute a preventive aspect of the work of this service.

At the same time, the National Guard of Ukraine, in accordance with the tasks assigned to it regarding the exercise of a preventive function, is obliged to take measures aimed at fulfilling the tasks of joint patrols of streets, squares, parks, public gardens, railway stations, airports, sea- and riverports, other public places, as well as public security tasks during meetings, street marches, demonstrations, other mass and sporting events, as well as events in public places with the participation of persons subject to State protection; as well as joint actions to stabilize the operational situation in the event of deterioration within one or more administrative and territorial units or others (Order of the Ministry of Internal Affairs of Ukraine "On approval of the Procedure for organizing the interaction of the National Guard of Ukraine and the National Police of Ukraine during the provision (protection) of public security and order" from August 10, 2016 № 773 (Ministry of Internal Affairs of Ukraine, 2016)).

Moreover, it should be noted that the National Police of Ukraine is directly mandated by law to carry out preventive activities. In Ukraine, current legislation provides for that the police, in accordance with the tasks assigned to them, carry out preventive and precautionary activities aimed at deterrence of committing offences (Law of Ukraine "On the National Police" from July 2, 2015 № 580-VIII (Verkhovna Rada of Ukraine, 2015)). This statement reveals, primarily, that these activities are quite extensive, considering the range of administrative and criminal offences attributed to the jurisdiction of the National Police of Ukraine. Moreover, given the size of the police force, as well as the number of units designated for preventive action, they are undoubtedly more thorough and substantive than that carried out by other Ukrainian authorities.

According to the Law of Ukraine "On the National Police" from July 2, 2015 № 580-VIII, the tasks of the police are the provision of police services in: ensuring public security and order; protection of human rights and freedoms, as well as interests of society and the State; counteracting crime. In addition, article 23 of the Law states that, in accordance with the tasks assigned to them, the police shall: carry out preventive and precautionary activities aimed at deterrence of committing offences; identify causes and conditions that facilitate the commission of criminal offences; take measures to eliminate them and to detect criminal offences; terminate the identified criminal and administrative offences; take measures to prevent and stop domestic violence, etc. (Verkhovna Rada of Ukraine, 2015).

Scholars underline that it is precisely the relevant Law of Ukraine that determines the term "crime deterrence" as the implementation of preventive and precautionary activities.

In addition, it should be noted that the Department of Preventive Activities is part of the National Police of Ukraine, and the main base unit, which organizes and implements the preventive functions assigned to the National Police of Ukraine (Order of the National Police of Ukraine "On approval of the regulation «On the Department of Preventive Activities of the National Police of Ukraine»" from November 27, 2015 № 123 (National Police of Ukraine, 2015b)).

Moreover, preventive functions are determined in a fragmented manner in the activities of each police unit and body, but the most significant is reflected in the legal and regulatory framework for the Patrol Police Department, as well as the District Police Officers and Juvenile Prevention Department.

### **3. Patrol Police Department of the National Police of Ukraine**

Therefore, according to the Regulation on the Patrol Police Department of the National Police of Ukraine, the main tasks are, within the competence of the public policy on the protection of human rights and freedoms, the interests of society and the State, to combat crime and ensure public security and order; to provide, within the limits set by law, assistance services to persons who, due to personal, economic, social or emergency reasons, need such assistance; to ensure road safety; to timely response to complaints and reports of criminal, administrative offences or events (Order of the National Police of Ukraine "On approval of the regulation «On the Patrol Police Department of the National Police of Ukraine»" from November 6, 2015 № 73 (National Police of Ukraine, 2015a)).

Moreover, the Regulation on the Organization of District Police Officers' Performance stipulates that the main areas of district police officers' performance (we identify those directly related to their preventive activities) are:

- to carry out preventive and precautionary activities aimed at deterrence of committing criminal and other offences;
- to identify the causes and conditions leading to the commission of criminal and administrative offences and to apply measures to eliminate them, within their competence;
- to take measures aimed at eliminating threats to the life and health of natural persons and public security, resulting from the commission of a criminal or administrative offence;
- to take measures to prevent, combat and stop domestic violence;
- to participate, within their competence provided for by law, in measures aimed at the social adaptation of persons released from places of deprivation of liberty;
- to carry out precautionary activities aimed at preventing children from committing criminal and administrative offences, identifying the causes and conditions for such offences and to take measures within their competence to eliminate them (Order of the Ministry of Internal Affairs of Ukraine "On approval of the Instruction on the organization of activities of district police officers" from July 28, 2017 № 650 (Ministry of Internal Affairs of Ukraine, 2017a)).

In addition, in the light of the European integration reforms, the focus should be on the study of the activities of the units of juvenile prevention, which is a specialized department of the National Police of Ukraine, the performance thereof is preventive and extends to juvenile justice.

Therefore, according to the Instruction on the organization of work of juvenile prevention units of the National Police of Ukraine, the main tasks of the units of juvenile prevention are: precautionary activity, aimed at preventing children from committing criminal and administrative offences, to identify the causes and conditions that contribute to this, and to take measures within their

competence to eliminate them; maintaining preventive records of children at risk of committing offences and conducting individual preventive measures with them; taking measures to prevent and combat domestic violence committed by and against children, as well as child abuse; taking measures to prevent child neglect, including police custody of minors (Order of the Ministry of Internal Affairs of Ukraine "On approval of the Instruction on the organization of work of juvenile prevention units of the National Police of Ukraine" from December 19, 2017 № 1044 (Ministry of Internal Affairs of Ukraine, 2017b)).

The above-mentioned not only distinguishes the juvenile prevention units among others, but also declares the specific powers of the body in carrying out the preventive function of the National Police of Ukraine in a separate branch of social life. Moreover, the review of the main legal regulations on the exercise of the preventive function of the National Police of Ukraine has provided grounds for proving that: the police in Ukraine is the most significant regulator in the field of prevention and exerts the most comprehensive and multi-dimensional influence.

#### 4. Conclusions

Therefore, the analysis enables to prove that the conclusion that preventive activities in general and preventive activities by the National Police of Ukraine in particular, are the implementation of voluntary or coercive actions, provided for by Ukrainian legislation, by authorized persons (including police officers) before the commission of the offence and aimed at its prevention.

In addition, identifying units of prevention, district police officers, patrol police and juvenile prevention in the system of the National Police of Ukraine, it should be underlined that their activities are elaborated in detail and vested by Ukrainian legislation with the powers of crime prevention, precaution and other forms of crime deterrence in a wide range of legal relations among citizens.

Moreover, the system of actors of prevention in Ukraine is rather broad to enable close cooperation, requiring further scientific research.

#### References:

- Bezpalova, O.I., Dzhafarova, O.V., Kniaziev, S.M.** (2017). *Administratyvna diialnist politsii u pytanniakh ta vidpovidiakh* [Administrative activities of the police]. Kharkiv: KhNUVS (in Ukrainian).
- Kovryha, L.P., Kovalova, T.V., Ponomarenko, V.D.** (2005). *Tlumachnyi slovnyk suchasnoi ukrainskoi movy* [Explanatory dictionary of the modern Ukrainian language]. Kharkiv: Belkar-knyha (in Ukrainian).
- Ministry of Internal Affairs of Ukraine** (2016). Pro zatverdzhennia Poriadku orhanizatsii vzaiemodii Natsionalnoi hvardii Ukrainy ta Natsionalnoi politsii Ukrainy pid chas zabezpechennia (okhorony) publichnoi (hromadskoi) bezpeky i poriadku: Nakaz Ministerstva vnutrishnikh sprav Ukrainy vid 10 serpnia 2016 roku № 773 [On approval of the Procedure for organizing the interaction of the National Guard of Ukraine and the National Police of Ukraine during the provision (protection) of public security and order: Order of

the Ministry of Internal Affairs of Ukraine from August 10, 2016 № 773]. *rada.gov.ua*. Retrieved from: <http://zakon0.rada.gov.ua/laws/show/z1223-16> (in Ukrainian).

**Ministry of Internal Affairs of Ukraine** (2017a). Pro zatverdzhennia Instruksii z orhanizatsii diialnosti dilnychnykh ofitseriv politsii: Nakaz Ministerstva vnutrishnikh sprav Ukrainy vid 28 lypnia 2017 roku № 650 [On approval of the Instruction on the organization of activities of district police officers: Order of the Ministry of Internal Affairs of Ukraine from July 28, 2017 № 650]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z1041-17#Text> (in Ukrainian).

**Ministry of Internal Affairs of Ukraine** (2017b). Pro zatverdzhennia Instruksii z orhanizatsii roboty pidrozdiliv yuvenalnoi preventsii Natsionalnoi politsii Ukrainy: Nakaz Ministerstva vnutrishnikh sprav Ukrainy vid 19 hrudnia 2017 roku № 1044 [On approval of the Instruction on the organization of work of juvenile prevention units of the National Police of Ukraine: Order of the Ministry of Internal Affairs of Ukraine from December 19, 2017 № 1044]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0686-18/conv#n2> (in Ukrainian).

**National Police of Ukraine** (2015a). Pro zatverdzhennia polozhennia "Pro departament patrolnoi polit-sii Natsionalnoi politsii Ukrainy": Nakaz Natsionalnoi politsii Ukrainy vid 6 lystopada 2015 roku № 73 [On approval of the regulation "On the patrol police department of the National Police of Ukraine": Order of the National Police of Ukraine from November 6, 2015 № 73]. *police.gov.ua*. Retrieved from: [http://patrol.police.gov.ua/wp-content/uploads/2016/03/Polozhennya\\_DPP\\_zi\\_zminyamy\\_vid\\_31\\_10\\_16.pdf](http://patrol.police.gov.ua/wp-content/uploads/2016/03/Polozhennya_DPP_zi_zminyamy_vid_31_10_16.pdf) (in Ukrainian).

**National Police of Ukraine** (2015b). Pro zatverdzhennia polozhennia "Pro departament preventyvnoi diialnosti Natsionalnoi politsii Ukrainy": Nakaz Natsionalnoi politsii Ukrainy vid 27 lystopada 2015 roku № 123 [On approval of the regulation "On the Department of Preventive Activities of the National Police of Ukraine": Order of the National Police of Ukraine from November 27, 2015 № 123]. *police.gov.ua*. Retrieved from: [http://tranzit.ltd.ua/nakaz/files/Наказ%20НП%20123%20-%202027112015%20положення%20ДПД%20\(зміни%20377%20-%2018042019\).pdf](http://tranzit.ltd.ua/nakaz/files/Наказ%20НП%20123%20-%202027112015%20положення%20ДПД%20(зміни%20377%20-%2018042019).pdf) (in Ukrainian).

**Posokhova, Ya.S.** (2018). Preventyvna diialnist politseiskykh: psykholohichni osoblyvosti zdiisnennia [Preventive activity of police officers: psychological features of implementation]. *Pidhotovka politseiskykh v umovakh reformuvannia systemy MVS Ukrainy: zbirnyk naukovykh prats – Training of police officers in the conditions of reforming the system of the Ministry of Internal Affairs of Ukraine: collection of scientific works*. Kharkiv: KhNUVS, pp. 106–109 (in Ukrainian).

**Pronevych, O.S.** (2011). Proaktyvna diialnist politsii (militsii) yak skladova suchasnoi paradyhmy okhorony pravoporiadku [Proactive activity of the police (militia) as a component of the modern paradigm of law enforcement]. *Forum prava – Forum of Law*, no. 3, pp. 639–643 (in Ukrainian).

**Verkhovna Rada of Ukraine** (1996). Konstytutsiia Ukrainy: Zakon Ukrainy vid 28 chervnia 1996 roku № 254к/96-ВР [Constitution of Ukraine: Law of Ukraine from June 28, 1996 № 254к/96-ВР]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> (in Ukrainian).

**Verkhovna Rada of Ukraine** (2003). Pro Derzhavnu prykordonnu sluzhbu: Zakon Ukrainy vid 3 kvitnia 2003 roku № 661-IV [On the State Border Guard Service of Ukraine: Law of Ukraine from April 3, 2003 № 661-IV]. *rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/661-15#Text> (in Ukrainian).

**Verkhovna Rada of Ukraine** (2015). Pro Natsionalnu politsiiu: Zakon Ukrainy vid 2 lypnia 2015 roku № 580-VIII [On the National Police: Law of Ukraine from July 2, 2015 № 580-VIII]. *rada.gov.ua*. Retrieved from: <http://zakon.rada.gov.ua/laws/show/580-19> (in Ukrainian).

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## **СУБ'ЄКТИ ПРЕВЕНТИВНОЇ ДІЯЛЬНОСТІ ТА МІСЦЕ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ СЕРЕД НИХ**

**Анотація.** *Метою* статті є загальна характеристика ролі й місця Національної поліції України в системі суб'єктів превентивної діяльності. **Результати.** Автором зазначається, що дослідження ролі й місця Національної поліції України в забезпеченні функціонування адміністративно-правового механізму загалом та використання нею власного сегменту відповідного механізму зокрема є актуальним питанням вітчизняної юриспруденції. Крім того, звертається увага на те, що питання забезпечення функціонування механізму превентивної діяльності як комплексної системи заходів запобігання злочинності на державному рівні можливе лише за умови чіткого розподілу повноважень превентивного характеру серед усіх органів правопорядку та визначення порядку їх взаємодії в контексті реалізації превентивних функцій. Автором вказується на логічність обґрунтування висновку про те, що превентивна діяльність загалом і превентивна діяльність Національної поліції України зокрема полягає в реалізації дій добровільного чи примусового характеру, передбачених

законодавством України, що вчиняються уповноваженими особами (у тому числі поліцейськими) перед початком вчинення правопорушення та спрямовані на його попередження. Водночас чітко підкреслюється можливість дуального застосування цього поняття, що полягає в тому, що не тільки Національною поліцією України здійснюється превентивна діяльність у межах законодавства України. **Висновки.** Наведене зумовлює необхідність додаткового дослідження конкретних повноважень, що реалізуються іншими органами правопорядку. Водночас автором виділяються підрозділи превентивної діяльності, дільничних офіцерів поліції, патрульної поліції та ювенальної превенції в системі Національної поліції України як одні з основних підрозділів у складі поліції, що здійснюють превентивні функції. Звертається увага на те, що їх діяльність характеризується детально пропрацьованими та передбаченими законодавством України повноваженнями з попередження, профілактики та інших форм запобігання злочинності в широкому колі правовідносин громадян. Крім цього, автор констатує, що система суб'єктів превентивної діяльності в Україні є досить широкою, що дає змогу говорити про тісну взаємну співпрацю, дослідження механізму якої пропонується здійснити в подальших наукових працях.

**Ключові слова:** адміністративно-правовий механізм, превенція, діяльність, поліція, гвардія, запобігання злочинам, прикордонна служба.

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## FOREIGN POLICE EXPERIENCE IN ENSURING RIGHTS, FREEDOMS AND LEGITIMATE INTERESTS OF CITIZENS

**Abstract.** *The purpose* of the article is to analyse international standards on the activities of law enforcement officers in ensuring the rights of citizens, as well as the experience of police units of some countries in implementing them. In the article, the author studies the system of international standards for the activities of law enforcement agencies in observing the rights, freedoms and legitimate interests of citizens. **Results.** Among the key legal regulations, the article analyses the Code of Conduct for Law Enforcement Officials, the European Code of Police Ethics, the Resolution of the Parliamentary Assembly of the Council of Europe on “Declaration on the Police” and others. The work makes it possible to determine the key principles of police activity in safeguarding the rights and freedoms of citizens: the rule of law, prohibition of discrimination, limited use of coercion and firearms, presumption of innocence, prohibition of torture and other degrading punishments, the right to protection and urgent medical care, zero tolerance for corruption and the provision of adequate conditions for detainees. The experience of the Republic of Kazakhstan and the Georgia in reforming their own police systems and introducing world best practices in protecting the rights and legitimate interests of citizens is analysed. **Conclusions.** The author identifies these countries’ main developments and innovations, which are worthy to be studied and incorporated into domestic police activities, such as: the introduction of front-line police offices, and modules for the reception of citizens’ communications, equipping of offices for investigative actions with surveillance cameras, establishment of separate police units for the protection of women and children from violence, introduction of specialization of investigators in cases involving women and children, operation of specialized Inter-agency coordination bodies for the prevention of domestic violence; implementation of international projects of human rights protection; the processing of information banks on the investigation of crimes related to the fight against human trafficking and the activities of the police public safety management centres.

**Key words:** police, human rights, rule of law, law enforcement, Georgia, Kazakhstan.

### 1. Introduction

The modern mission of the Ministry of Internal Affairs of Ukraine, an integral part of which is the National Police, is based on the principles of a safe environment for human activity; a rapid and competent response to emergencies and events threatening personal or public security; public security and law enforcement, as well as minimum violations of human rights and fundamental freedoms in the activities of the Ministry of Internal Affairs; rapid access of people to effective mechanisms for the restoration of violated rights.

Therefore, ensuring the rights and freedoms of citizens by the police is a relevant and necessary condition for strengthening public confidence in state institutions and an atmosphere

of public order, the integration of the national law enforcement system into the world and Europe.

Moreover, the development of national law enforcement should be based on the best practices of the world, which have proved to be effective in strengthening the rights, freedoms and legitimate interests of natural and legal persons, consequently, their study and implementation in the work of the National Police of Ukraine becomes relevant and necessary.

V. Halai, V. Beschasnyi, K. Buhachuk, S. Zabroda, A. Sokolenko and others have contributed, to some extent, to research on the protection and observance of the rights and freedoms of citizens by the police abroad. However, it should be noted that in these and other sci-

entific works many researchers have simply stated the existence of international agreements, conventions and rules on human rights, or they considered the relevant police activities only on the basis of the provisions of the appropriate police laws. In addition, we believe that this issue requires detailed scientific research in order to highlight the specific measures applied by foreign police in the field of public relations being investigated.

The aim of the article is to analyse international standards on the activities of law enforcement officers in ensuring the rights of citizens, as well as the experience of police units of some countries in implementing them.

## 2. International standards of activity of police bodies

First of all, it should be noted that many special international instruments and recommendations by the United Nations and the Council of Europe have established standards for the performance of police bodies and units responsible for the rights and freedoms of citizens. For example, according to the Code of Conduct for Law Enforcement Officials approved by General Assembly Resolution 34/169, law enforcement officials must respect and protect human dignity, maintain and uphold the human rights of all persons while performing their duties. Law enforcement officials may use force only when it is strictly necessary and to the extent required for the performance of their duty, and they should ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required (Banchuk, 2013, pp. 9–11).

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 27 August 1990, state that: these persons, in their relations with persons in custody or detention, shall not use force, except when it is strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened (Banchuk, 2013, p. 14).

Furthermore, Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe on the “Declaration on the Police” indicates that a police officer should fulfil the duties the law imposes upon him by protecting his fellow citizens and the community against violent and other dangerous acts, as defined by law. He shall not cooperate in the tracing, arresting, guarding or conveying of persons who, while not being suspected of having committed an illegal act, are searched for, detained or prosecuted because of their

race, religion or political belief. A police officer having the custody of a person needing medical attention shall secure such attention by medical personnel and, if necessary, take measures for the preservation of the life and health of this person (Council of Europe, 1979).

The Recommendation of the Committee of Ministers to Member States of the Council of Europe “On the European Code of Police Ethics” of 19 September 2001 established the guiding principles for police activities to respect and ensure the rights and freedoms of citizens, in particular:

- the police, and all police operations, must respect everyone’s right to life;
- the police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances;
- the police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective;
- the police must always verify the lawfulness of their intended actions;
- the police shall provide the necessary support, assistance and information to victims of crime, without discrimination (Council of Europe, 2001).

*A Manual for Police Trainers* by the United Nations states that respect for human rights by law enforcement agencies actually increases their effectiveness. In units that respect human rights systematically, police officers have already learned to be effective in addressing and preventing crime-related problems. In this regard, respect for human rights by the police is not only a moral, legal and ethical imperative, but also a practical requirement for law enforcement. When police officers demonstrate respect for, encourage and protect human rights, the public’s confidence is enhanced, the positive cooperation of citizens with police bodies and units is enhanced, and the police are seen as an integral part of society, which fulfils an important social function (Office of the United Nations High Commissioner for Human Rights, 2002, p. 32).

Thus, it should be noted that international instruments basically set out the following standards of police activities: 1) respect for the rights of citizens; 2) prevention of the excessive use of force and weapons; 3) prevention of torture and other acts, degrading treatment; 4) guarantee of the right to protection; 5) provide medical and other assistance; 6) promote cooperation with civil society and build mutual trust.

The following should analyse the practical experience of individual countries in implementing the standards in their activities.

### 3. The Ministry of Internal Affairs of the Republic of Kazakhstan

The unified system of internal affairs agencies in Kazakhstan consists of the police, the penitentiary system, military investigative bodies, the National Guard and protection bodies. The Police are made up of the Criminal Police, the Administrative Police, Investigation Units, Inquests and other units.

The Local Police Service consists of units of District Police Inspectors, Juvenile Police, Protection of Women against Violence, Patrol Police, etc. It is interesting to note that the relevant law contains a provision whereby a district police inspector reports at least once every quarter to the population living in the administrative unit of the relevant administrative and territorial unit (Law of the Republic of Kazakhstan "On the Internal Affairs Bodies of the Republic of Kazakhstan" from April 23, 2014 № 199-V (Parliament of the Republic of Kazakhstan, 2014)).

According to the Address of the President of the Republic of Kazakhstan "Growth of Welfare of Kazakhs: Increase in Income and Quality of Life" the Ministry of Internal Affairs developed "Roadmap" on modernization of Internal Affairs bodies for 2018–2021, which was subsequently approved by Decision 897 of the Government of Kazakhstan of 27 December 2018. The Roadmap provides for 9 areas of reform, including the elimination of inappropriate police functions, new formats for work with the population, new evaluation criteria, and the elimination of causes and conditions contributing to corruption (Government of the Republic of Kazakhstan, 2018). Within the framework of these tasks and with a view to improving the exercise of the rights and freedoms of citizens, the police bodies have planned the activities as follows:

1) development and implementation of a new system of evaluation criteria for the performance of the police, including indicators that objectively reflect the quality of the performance of the tasks assigned to the police and the assessment of the overall security and performance of the police by the population;

2) public outreach regarding the positive perception of the police;

3) creation of internal affairs bodies' specialized premises (front offices) for reception of citizens with convenient location and working hours; implementation of a qualitative staffing for work in front offices and regular services, providing them with special psychological training;

4) consideration of the development and introduction of a mobile application to inform the police bodies of public order viola-

tions (photo, video) by citizens with a feedback function (service model of interaction).

At the beginning of 2021, police officers of Almaty showed the first front office and the module for reception of citizens by the police. Currently, the city has 12 front offices and 5 modules for reception of citizens. According to the police, the modules for the reception of citizens are situated taking into account the crime situation. For the convenience of the applicants, a juvenile affairs inspector, a public security inspector, a duty investigator and a local police inspector are present at these facilities.

The premises have everything necessary for work and a place to eat. At night, the module goes on working. According to law enforcement officers, so far, people come to them mostly for advice. All citizens' complaints are recorded in a special register and, if necessary, the complainants are referred to the district police department.

Front offices, as well as modules, have all the conditions for a comfortable stay of visitors: an organized modern reception with consultants, transparent stalls with regular criminal and administrative police officers. Citizens can obtain competent answers to their questions, submit an application or receive legal clarifications. Front offices have a waiting room, an advisory sector, a checkpoint, toilets. The main objective of the law enforcement bodies in introducing this innovation is to reduce times of waiting and the receipt of applications, as well as to ensure the right of citizens to file complaints to the police (Abramova, 2020).

In 2020, Order 358 of the Minister of Internal Affairs of the Republic of Kazakhstan of 24 April 2020 approved "Policeman's Standard" to strengthen the image of the police and to ensure the rights and freedoms of citizens by personnel in their performance, and to strengthen the moral education and image of police bodies. According to its provisions, police service is an expression of special trust by society and the State and requires high personal and professional qualities of police officers. Police officers should always remember that every individual and citizen of the Republic of Kazakhstan must feel safe and consider a police officer as one's defendant ready to assist in need and able to protect one's life, health, rights and freedoms, honour and dignity against criminal and other unlawful attacks.

In their professional activities, police officers should: vigorously repress offences; take fair and logical actions to exclude violations of the law and oppression of the rights of citizens, including persons in custody or detention; to act honestly, impartially, to act vigorously against corruption; to respect the constitu-

tional rights of citizens to privacy; to be polite and tactful communicating with citizens, especially children, women, persons with disabilities and older persons, and to be sensitive and impartial regarding their appeals and statements; to provide necessary assistance, including first aid (Minister of Internal Affairs of the Republic of Kazakhstan, 2020).

In addition, in the Department of Economic Investigation in the city of Nur-Sultan, in order to ensure the transparency of the interrogation all investigator offices have been equipped with video surveillance cameras with wide-format monitors in the waiting rooms. In this way, the relatives and friends of the persons interviewed may observe the course of the investigation. According to the police authorities, the innovations enable to ensure the rule of law, the security of citizens, the transparency of the work of departmental staff, and the avoidance of unlawful methods of obtaining evidence, to prevent corruption and reduce complaints from participants in criminal proceedings (Official website of the President of the Republic of Kazakhstan, 2020).

In February 2021, the Ministry of Internal Affairs of Kazakhstan increased the number of internal affairs units for the protection of women and children against violence by 129, and units for minors by 448; in addition, specialized female and child investigators were introduced in the police (Multimedia information and analytical portal "Infomburo.kz", 2021).

#### **4. The Ministry of Internal Affairs of Georgia**

Next, the experience of Georgia should be analysed, since it was one of the first post-Soviet countries to initiate a wide-ranging reform of the police and bring its activities into line with international and European standards.

The Police of Georgia is a system of law enforcement agencies within the structure of the Ministry of Internal Affairs, which, within its competence, is responsible for preventing and responding to violations of Georgian legislation and for protecting public safety and legal order. According to Article 8 of the Law "On Police", the police officer in his/her performance strictly adheres to the principles of respect for fundamental human rights and freedoms, legality, non-discrimination, proportionality, exercise of discretionary powers, political neutrality and transparency. The forms, methods and means of police action must not violate human dignity and the honour of human life, physical integrity, property rights and other fundamental rights and freedoms (Official site of the Ministry of Internal Affairs of Georgia, <https://police.ge>). The Human Rights and Investigation Quality Monitoring Depart-

ment operates within the Ministry of Internal Affairs of Georgia, which, within its competence, ensures timely response and effectiveness of the ongoing investigation of crimes in the following areas: domestic crime, violence against women, crimes motivated by discrimination and intolerance, human trafficking, crimes committed by minors, crimes against life and health.

The Department also ensures the development and implementation of a methodology for the investigation of crimes, develops proposals for the planning and implementation of preventive measures and submits them to the relevant units of the Ministry, has the right to submit proposals to the competent department of the Ministry of Internal Affairs on the introduction of legislative changes with regard to guaranteeing the rights of citizens, and ensure the study and analysis of the recommendations of the Public Defender (Ombudsman) of Georgia and non-governmental organizations working in the field of human rights protection (Official site of the Ministry of Internal Affairs of Georgia, <https://police.ge>). The structural units of the Department are:

1. Human Rights Department supervises the investigation of criminal cases, the preparation of investigation reports, procedural documents and recommendations.

2. Investigation Quality Monitoring Department prepares analysis, recommendations and tools. It also conducts research to improve the quality of the investigation and provides overall supervision of the Office of Victim and Witness Coordinator.

3. Tbilisi and Regional Investigation Quality Monitoring Departments (Official site of the Ministry of Internal Affairs of Georgia, <https://police.ge>).

Resolution 630 of the Government of Georgia of November 25, 2014 adopted the composition of the Interdepartmental Council for the Prevention of Domestic Violence. It includes, inter alia, the Deputy Minister of Internal Affairs of Georgia, the Director of the State Fund for Protection and Assistance to Victims of Trafficking of Human Beings, the Head of the Main Criminal Police Department of the MIA of Georgia, the Director of the Patrol Police Department of the MIA of Georgia, Rector of the Academy of the MIA of Georgia. The main tasks of the Interdepartmental Council are to promote and coordinate the effective implementation of the functions assigned to the relevant State bodies in the field of preventing and combating domestic violence and providing assistance to victims of domestic violence; to make proposals on the prevention of domestic violence, elimination of the causes that contribute to the commission of such

unlawful acts for further submission to the Government of Georgia; to cooperate with State bodies of Georgia and the non-governmental sector, international and local organizations working in this field, as well as to develop joint proposals for subsequent submission to the Government of Georgia.

Furthermore, according to the Law of Georgia “On Combating Trafficking in Human Beings”, the Ministry of Internal Affairs of Georgia establishes a single information bank to identify the perpetrators and systematize the information available about them, which will include information on investigative activities and full progress in the investigation of crimes, including those related to trafficking in human beings (Official site of the Ministry of Internal Affairs of Georgia, <https://police.ge>).

The police of Georgia, in cooperation with international organizations and partner countries, carries out a number of important projects and programmes in the field of observance of human rights and freedoms by the law enforcement agencies of the country, implementation of best law enforcement practices in the activities of the Ministry of Internal Affairs and its components. In particular, the following projects are ongoing:

1. “Fight against discrimination, hate crimes and hate speech in Georgia”. The aim of the project is to exchange experience in combating discrimination, hate speech and hate crimes, to increase professional competence of police officers, to bring Georgian legislation in line with European standards (DANEP).

2. “Promotion of an integrated approach to preventing violence against women and strengthening gender equality in Georgia”. The aim of the project is to strengthen the capacity of parties concerned, including the Georgian police, involved in preventing violence against women and combating domestic violence, as well as in protecting the rights of victims. Project duration is 2020–2022, with funding provided by the Council of Europe.

3. “Support of juveniles in pre-trial investigation (JADES)”. The aim of the project is to train police officers and investigators to work with juvenile victims and offenders, to promote better conditions in temporary detention facilities in accordance with European standards, to monitor the observance of the rights and freedoms of persons in the activities of the police. Project duration is 2019–2021, with funding provided by the Council of Europe.

A system for referral and protection of children has been introduced into the practice of the Georgian police, which provides for the implementation of procedures to protect children from any form of violence, inten-

tional or unintentional harm. On 31 May 2010, the Minister of Labour, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Education and Science of Georgia issued a joint order approving the procedures for the referral and protection of children. The actors participating in these procedures are the Patrol Police Department and the district directorates of the territorial bodies of the MIA of Georgia, institutions, schools, specialized children’s institutions, day-care centres, medical institutions and the like.

The powers of the patrol police and district services in these procedures are to detect violence against children, prevent offences and protect victims of violence. When informed of such offences, the patrol police will arrive to the scene immediately. In territorial subdivisions where the areas of activity of the structural subdivisions of the Patrol Police Department of the MIA of Georgia are not defined, local police administrations perform this function.

Upon arrival at the scene, the patrol police or the neighbourhood police apply this algorithm: to examine and assess the situation, to interview potential victims, offenders, family members, witnesses, neighbours; to decide on the condition of the child (these actions should be primarily related to the safety and health of the child); call an ambulance or, at least, take the child to a medical institution for emergency medical treatment; take the child to a safe environment with parents or family members or alone and issue a prohibition document in cases provided for by law (Official site of the Ministry of Internal Affairs of Georgia, <https://police.ge>).

The Public Safety Management Centre “112” has proved to be a very effective institution in the field of provision of public services. It combines three emergency management centres in Georgia: patrol police, fire and rescue service and emergency medical assistance ([www.112.gov.ge](http://www.112.gov.ge)). Service 112 receives emergency calls from all over Georgia 24 hours a day and serves the population in six languages (Georgian, Russian, English, Armenian, Azerbaijani and Turkish). In addition, sign language interpreters can answer video calls (Koshkenova, Tabliashvili, 2019, pp. 18–19). In 2018, mobile applications were launched in Georgia with functions such as secret sending of the alarm signal to Service 112 (SOS) and correspondence with the operator (“chat”). Thus, a person in danger can secretly call a rescue service or inform the operator of the situation. The application itself establishes the location of the person, which significantly reduces the response time of the rescue service or police. This app is free, accessible in Georgian, English and Russian (Koshkenova, Tabliashvili, 2019, p. 22).

### 5. Conclusions

The study permits making *the following conclusions and overviews* reflecting current trends in this field:

1. The United Nations and Council of Europe's legal instruments establish the basic standards for the work of police officers in a democratic society. The basic principles and rules for police officers to exercise their powers may include:

- in the performance of their duties, the police must respect and ensure the rights of citizens, must respect and protect human dignity and must avoid any discrimination in their activities;
- police officers must use coercive measures, including firearms, only in exceptional cases and to the minimum extent required;
- in their relations with persons detained, the police must ensure that their health is protected and that they are given the necessary assistance;
- ill-treatment, torture and other forms of inhuman or degrading treatment or punishment are prohibited in the police;
- police officers must treat a detained or suspected person in accordance with the principle of presumption of innocence, and that every suspect of a criminal offence has certain rights.

2. Since 2018, the authorities and the MIA of Kazakhstan have been systematically implementing reforms of the law enforcement system, implementing both regulatory and organizational measures. The most significant achievements of Kazakhstan include:

- approval of Policeman's Standard;
- introduction of front-line police offices and modules for the reception of citizens' communications;

- equipping of offices for investigative actions with surveillance cameras;
- reactivation of the internal affairs units for the protection of women and children against violence and introduction of specialization of investigators in cases involving women and children.

3. Georgia was one of the first countries of the former post-Soviet area to initiate systemic reforms in the law enforcement, the basic idea of which was to bring police activities closer to recognized world standards. Among the experiences of the Georgian police that need to be studied for their introduction into national practice are:

- establishment of an independent Human Rights and Investigation Quality Monitoring Department;
- functioning of the Interdepartmental Council for the Prevention of Domestic Violence;
- establishment of a single data bank on the investigation of crimes related to combating trafficking in human beings;
- implementation of the projects "Fight against discrimination, hate crimes and hate speech", "Promotion of an integrated approach to preventing violence against women and strengthening gender equality", "Support of juveniles in pre-trial investigation (JADES)";
- implementation of a national mechanism for the referral and protection of children;
- creation of a single Public Safety Management Centre "112".

The promising areas for further research may be the analysis of criteria for the effectiveness of police activities in ensuring the rights and freedoms of citizens.

### References:

- Abramova, Yu.** (2020). Politceiskie Almaty pokazali pervyi front-ofis i modul dlia priema grazhdan [Almaty police showed the first front office and a module for receiving citizens]. *IT-kompaniia NUR.KZ – IT company NUR.KZ*. Retrieved from: <https://www.nur.kz/1836313-policejskie-almaty-pokazali-pervyj-front-ofis-i-modul-dla-priema-grazhdan-foto.html> (in Russian).
- Banchuk, O.A.** (2013). *Status politcii: mizhnarodni standarty i zarubizhne zakonodavstvo* [Police status: international standards and foreign legislation]. Kyiv: Moskalenko O.M. (in Ukrainian).
- Council of Europe** (1979). Rezoliutciia Parlamentskoi assamblei Soveta Evropy "Deklaratciia o politcii" ot 8 maia 1979 goda № 690 [Resolution of the Parliamentary Assembly of the Council of Europe "Declaration on the Police" from May 8, 1979 № 690]. *rada.gov.ua*. Retrieved from: [https://zakon.rada.gov.ua/laws/show/994\\_803#Text](https://zakon.rada.gov.ua/laws/show/994_803#Text) (in Russian).
- Council of Europe** (2001). *Evropeiskii kodeks politceiskoi etiki (Rec (2001) 10)* [European Code of Police Ethics (Rec (2001) 10)]. Strasbourg: Komitet ministrov Soveta Evropy (in Russian).
- Government of the Republic of Kazakhstan** (2018). Ob utverzhdenii Dorozhnoi karty po modernizacii organov vnutrennikh del Respubliki Kazakhstan na 2019–2021 gody: Postanovlenie Pravitelstva Respubliki Kazakhstan ot 27 dekabrya 2018 goda № 897 [On approval of the Roadmap for the modernization of the internal affairs bodies of the Republic of Kazakhstan for 2019–2021: Resolution of the Government of the Republic of Kazakhstan from December 27, 2018 № 897]. *zakon.kz*. Retrieved from: [https://online.zakon.kz/Document/?doc\\_id=33105099](https://online.zakon.kz/Document/?doc_id=33105099) (in Russian).
- Koshkenova, A., Tabliashvili, I.** (2019). Kommunikatsionnye resheniia kak sposob povysheniia doveriia k politcii. Opyt Gruzii [Communication solutions as a way to increase trust in the police. Experience of Georgia]. Retrieved from: [https://www.astanacivilservicehub.org/uploads/case\\_studies/Case-study\\_Georgia\\_HUB\\_01-2020\\_FINAL\\_FIN.pdf](https://www.astanacivilservicehub.org/uploads/case_studies/Case-study_Georgia_HUB_01-2020_FINAL_FIN.pdf) (in Russian).
- Minister of Internal Affairs of the Republic of Kazakhstan** (2020). Ob utverzhdenii Standarta politceiskogo: Prikaz Ministra vnutrennikh del Respubliki Kazakhstan ot 24 aprelya 2020 goda № 358 [On approval

of the Policeman's Standard: Order of the Minister of Internal Affairs of the Republic of Kazakhstan from April 24, 2020 № 358]. *zakon.kz*. Retrieved from: [https://online.zakon.kz/Document/?doc\\_id=34348076#pos=48;-52](https://online.zakon.kz/Document/?doc_id=34348076#pos=48;-52) (in Russian).

**Multimedia information and analytical portal "Informburo.kz"** (2021). MVD uvelichilo shtat spetspodrazdeleniy po zashchite zhenshchin i detey ot nasiliya [Ministry of Internal Affairs has increased the staff of special forces to protect women and children from violence]. *informburo.kz*. Retrieved from: <https://informburo.kz/novosti/mvd-uvelichilo-shtat-specpodrazdelenij-po-zashchite-zhenshin-i-detej-ot-nasiliya> (in Russian).

**Office of the United Nations High Commissioner for Human Rights** (2002). *Prava cheloveka i podderzhanie pravoporiadka [Human Rights and Law Enforcement]*. New York; Geneva: OON. Retrieved from: <https://www.ohchr.org/Documents/Publications/training5Add2ru.pdf> (in Russian).

**Official website of the President of the Republic of Kazakhstan** (2020). Poslanie Glavy gosudarstva Kasym-Zhomarta Tokaeva narodu Kazakhstana. 1 sentyabrya 2020 g. [Message from the Head of State Kassym-Zhomart Tokayev to the people of Kazakhstan. September 1, 2020]. *akorda.kz*. Retrieved from: [https://www.akorda.kz/ru/addresses/addresses\\_of\\_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g](https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g) (in Russian).

**Ombudsman in the Republic of Kazakhstan** (2021). Oborudovanie sistemoy videonablyudeniya v strane, v pomeshcheniyakh pravookhranitel'nykh organov [Equipment with a video surveillance system in the country, in the premises of law enforcement agencies]. *gov.kz*. Retrieved from: <https://www.gov.kz/memleket/entities/ombudsman/press/news/details/164313?lang=ru> (in Russian).

**Parliament of the Republic of Kazakhstan** (2014). Ob organakh vnutrennikh del Respubliki Kazakhstan: Zakon Respubliki Kazakhstan ot 23 aprelya 2014 goda № 199-V [On the Internal Affairs Bodies of the Republic of Kazakhstan: Law of the Republic of Kazakhstan from April 23, 2014 № 199-V]. *zakon.kz*. Retrieved from: [https://online.zakon.kz/document/?doc\\_id=31538985#pos=1;0](https://online.zakon.kz/document/?doc_id=31538985#pos=1;0) (in Russian).

საქართველოს შინაგან საქმეთა სამინისტროს ოფიციალური საიტი (2021). Sakartvelos shinagan sakmeta saminst'ros opitsialuri sait'i [Official site of the Ministry of Internal Affairs of Georgia]. *police.ge*. Retrieved from: <https://police.ge> (in Georgian).

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## ЗАРУБІЖНИЙ ДОСВІД ДІЯЛЬНОСТІ ОРГАНІВ ПОЛІЦІЇ ЩОДО ЗАБЕЗПЕЧЕННЯ ПРАВ, СВОБОД ТА ЗАКОННИХ ІНТЕРЕСІВ ГРОМАДЯН

**Анотація. Метою** статті є здійснення аналізу міжнародних стандартів діяльності співробітників правоохоронних органів у сфері забезпечення прав громадян, а також розгляд досвіду підрозділів поліції деяких країн щодо їх практичної реалізації. У статті автором досліджено систему міжнародних стандартів діяльності правоохоронних органів стосовно дотримання прав, свобод і законних інтересів громадян. **Результати.** З-поміж основоположних нормативних актів із зазначеної тематики у статті проаналізовані Кодекс поведінки службовців органів правопорядку, Європейський кодекс поліцейської етики, Резолюція Парламентської Асамблеї Ради Європи «Про Декларацію про поліцію» тощо. На підставі проведеної роботи визначені ключові принципи діяльності поліції щодо забезпечення прав і свобод громадян, зокрема: верховенство права, заборона дискримінації, обмежене застосування примусу та вогнепальної зброї, презумпція невинуватості, заборона катувань та інших покарань, що принижують гідність людини, право особи на захист та невідкладну медичну допомогу, нульова толерантність до корупції, забезпечення належних умов тримання затриманих осіб. Проведено аналіз досвіду Республіки Казахстан і Грузії щодо реформування систем органів поліції та запровадження передового світового досвіду захисту прав і законних інтересів громадян. **Висновки.** Серед основних напрацювань і нововведень зазначених країн, що заслуговують на вивчення й упровадження в національну поліцейську діяльність, автором виділені такі заходи: запровадження роботи фронт-офісів поліції та модулів прийому звернень громадян; обладнання кабінетів для проведення слідчих дій камерами спостереження; створення окремих підрозділів поліції щодо захисту жінок і дітей від насильства, запровадження спеціалізації слідчих у справах щодо жінок та дітей; функціонування спеціалізованих міжвідомчих координаційних органів із питань запобігання домашньому насильству; реалізацію міжнародних проектів у сфері захисту прав людини; введення інформаційних банків даних щодо розслідування злочинів у сфері протидії торгівлі людьми, сприяння діяльності центрів оперативного управління поліції.

**Ключові слова:** поліція, права людини, законність, правопорядок, Грузія, Казахстан.

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## PARTICULARITIES OF PUBLIC POLICY ON FIREARM CIRCULATION IN UKRAINE

**Abstract.** *The purpose* of the article is to clarify and analyse the key features of public policy on firearm circulation in Ukraine. **Results.** The state policy on arms circulation in Ukraine is a complex social and legal phenomenon, which in the process of its objectification can be distorted by the subjects of this state policy consciously or unconsciously due to the difficulty of understanding the essence of this phenomenon. However, a critical analysis of the modern features of public policy on firearm circulation in Ukraine allows one to fully understand its essence. The article reveals and comprehensively analyses the system of key particularities of public policy on firearm circulation in Ukraine. The author argues that nowadays the key features of this public policy are: 1) its objective (creating the most favourable conditions for the conduct of relations and processes in firearm circulation in the State which contribute to the enhancement of the legal capacity of citizens to protect their lives and health, in particular, using firearms), tasks (establishing relations and processes in the field of firearm circulation, ensuring the highest possible level of citizens' safety and national security of the State through the proper functioning of the firearm circulation mechanism, etc.) and functions (derived from the functions of the State and of the actors involved in the preparation and implementation of relevant public policy); 2) the special sector of manifestation (in the field of firearm circulation); 3) the constituent actors (covering the different levels of exercise of public power in Ukraine, and primarily, legislative, executive and judicial powers, as well as by civil society actors); 4) the legal and regulatory framework (laws and other legal regulations of the Parliament dealing with firearm circulation, by-laws regulating various aspects of firearm circulation); 5) guiding lines of the implementation of this public policy (determination of the legal regime governing firearms ownership, restrictions on the rights and freedoms of natural and legal persons in the field of firearm circulation, etc.); 6) existence and operation of an administrative and legal mechanism for the development and implementation of appropriate public policy. **Conclusions.** The conclusions of the article summarize the results of the study and also outline a list of managerial standards that the actors of public policy under study will comply with in order to prevent its distortion and abuse in disregard of its purpose of development and implementation.

**Key words:** public policy on firearm circulation, firearms, firearm circulation, legal and regulatory framework, implementation of public policy, specificities, formation of public policy.

### 1. Introduction

Public policy on firearm circulation in Ukraine is based on the provisions of current legislation, targeted, organized and managerial performance of the actors of state power related to regulating, developing and solving the problems of good social relations and processes in the field of firearm circulation. It is provided for by the legal and administrative mechanism for development and implementation of this public policy. At the same time, public policy is developed and implemented not only in the actions (omissions) of the relevant actors of administrative law, but also in their decisions. Therefore, the managerial performance of the actor of this public policy, in the form of actions or omis-

sions, should also be interpreted as managerial activities related to decision-making or refusal to make such decision.

### 2. Purpose, tasks and functions of the state policy in the field of arms circulation in Ukraine

Thus, public policy on firearm circulation in Ukraine is a complex social and legal phenomenon that may be deliberately or unconsciously distorted by the actors of this public policy in the course of their objective activities, because of the difficulty of understanding the nature of the phenomenon. However, a critical analysis of the modern features of public policy on firearm circulation in Ukraine allows one to fully understand its essence. Therefore, the practice

requires to identify the list and the key specificities of public policy in this field.

The wide range of challenging issues related to firearm circulation in Ukraine have been under focus of domestic scientists, but it should be noted that legal experts in administrative law have not yet attempted to define a system of essential particularities of public policy on firearm circulation in Ukraine. However, many legal experts in administrative law and specialists in public administration (such as V.A. Demianchuk, A.V. Merzliak, A.A. Mozhova, V.M. Pasichnyk, A.V. Ruban, H.P. Sytnyk, D.A. Tykhomyrov et al.) have already revealed the essence and regularity of the legal nature of public policy in fields intersected in one way or another with public policy under study. The scientific findings of the mentioned scholars together with the studies of public policy on firearm circulation will form the theoretical basis for a comprehensive scientific understanding of the system of essential specificities of public policy on firearm circulation in Ukraine.

Consequently, the aim of the article is to clarify and analyse the key particularities of public policy on firearm circulation in Ukraine. This aim is achieved by implementing the following tasks: 1) to identify a system of specificities of public policy on firearm circulation in Ukraine; 2) to analyse identified specificities of public policy being investigated; 3) to summarize the results of the study.

### 3. Implementation of state policy in the field of weapons in Ukraine

Public policy on firearm circulation in Ukraine derives from the phenomenon of "public policy", and therefore, it is natural that the type of policy being studied has the key specificities of public policy. With this regard and taking into account the elements that Ukrainian scholars usually use to characterize the legal phenomena they study (Borko, 2013; Slynko, 2015; Kovalyk, 2014), we argue that the key features of public policy on firearm circulation in Ukraine are:

I. The aim of public policy on firearm circulation in Ukraine which involves creating the most favourable conditions for the conduct of relations and processes in firearm circulation to enhance the legal capacity of citizens to protect their lives and health, in particular by the firearms use, as well as establishing lawful conduct in firearm circulation that shall prevent illegal trafficking in firearms and the existence and occurrence of other security risks in this field.

II. The tasks of public policy on firearm circulation in Ukraine. Public policy, like any other human activity (activities of people's associations), cannot be properly implemented without its attribute component, such

as the tasks in the form of appropriate ways of achieving the policy's objective. Currently, the main tasks are the following ways of achieving the objective of public policy on firearm circulation in Ukraine:

1) streamlining of relations and processes in the field of firearm circulation and progressive anti-shadowing of firearm circulation in the country;

2) ensuring the highest possible level of citizens' safety and national security of the State through the proper functioning of the firearm circulation mechanism;

3) eliminating security risks for the individual, society and the State in the field of firearm circulation in Ukraine (in particular, the expansion of the so-called "black market" of firearms coming from the territories of the United Forces operation) and the prevention of crisis situations in this field;

4) establishing a legal and regulatory basis for the circulation of firearms in Ukraine, monitoring their relevance and ability to be effective (fully meeting the security interests of the individual, society and the State by ensuring the proper circulation of firearms in the country), as well as identifying possibilities for improving the legal regulatory mechanism for firearms in the State;

5) establishing (as well as standardisation of the status), organization and maintenance of the functioning (as well as social, legal, economic and political provision of administrative influence) of the system of State bodies and other actors that develop and implement public policy on firearms circulation in the State;

6) development, approval and implementation of State strategies and targeted programmes in the field of firearm circulation in Ukraine;

7) monitoring and supervising relations and processes in the field of firearm circulation in the country, as well as the processes of development and implementation of this type of public policy in general;

8) involving the scientific community and the public in the development of public policy on firearm circulation in Ukraine, as well as taking into account the scientific ideas and proposals of civil society in the development and implementation of relevant public policy;

9) international cooperation to ensure the inviolability of the legal regime governing firearm circulation in Ukraine and in other States of the world.

III. Functions of public policy on firearm circulation in Ukraine. First of all, it should be noted that the functions of this type of public policy are determined by:

1) the basic (general) functions of the State, following them in a harmonious and logical man-

ner. According to domestic lawyers, the State's modern core functions include: "political; ideological; economic; fiscal; function of protecting human and civil rights and freedoms; law enforcement; social; function of state support for science, education and culture; environmental; information; national security function; defence; international integration function" (Heorhiievskiyi, 2016, p. 32);

2) the functions, powers and competencies of the actors authorised to develop and implement public policy on firearm circulation in Ukraine, since the functions of this type of public policy are, in practice, objectify precisely through the operation of those actors. In this context, the functions of public policy on firearm circulation are a manifestation of public administration in this field, and thus are a purely administrative and legal phenomenon.

In the light of the above, we can conclude that the functions of public policy on firearm circulation, as the main (general) areas of state activities (as well as components of the managerial performance of the authorized actors in the relevant field), aimed at stabilizing this field, ensuring the manageability (predictability) of the processes and relations in the field of firearm circulation, as well as enabling citizens to use full range of ways to protect their lives and health, etc., include: target, prognostic, regulatory, coordination, information, stimulation, supervision, protection, security functions.

IV. The special sector in which public policy on firearm circulation is manifested in Ukraine, namely, the sector in which social relations and processes for the production, repair, trade, acquisition, use, carrying, use, storage, record-keeping, seizure, destruction, collection, exhibition, promotion, transfer, inheritance, gifts transport, export, import, coming-in, transit transfer and export from the territory of Ukraine of firearms, their components and ammunition are established, carried out, discontinued and certified, as well as other civil and economic transactions or operations with regard to firearms, their main components and/or ammunition are carried out in accordance with valid permits for this type of activities.

V. The constituent actors of development and implementation of public policy on firearm circulation in Ukraine, covering the different levels of exercise of public power in Ukraine, and primarily, legislative, executive and judicial powers. Among them, the Verkhovna Rada of Ukraine, the President of Ukraine (together with the National Security and Defence Council of Ukraine), the Cabinet of Ministers of Ukraine, the Ministry of Internal Affairs and other central executive authorities; civil society actors are of particular importance.

VI. The legal and regulatory framework for public policy on firearm circulation in Ukraine and, by the way, on its development and implementation. These are mainly legal regulations such as:

1) laws and other legal regulations of the Parliament relating to firearm circulation (the Constitution of Ukraine; by-laws that regulate individual firearm circulation issues; legal regulations and parliamentary decisions, some provisions thereof regulate special firearm circulation issues);

2) by-laws regulating various aspects of firearm circulation in Ukraine, namely: a) issues relating to the operation of the authorization system and to the permit (licence) of the objects of the authorization system, as well as to the monitoring (supervision) of compliance with the legislation in this field; b) issues relating to the manufacture, repair of firearms and the acquisition, storage, transport and use of firearms, maintenance of shooting ranges, firing fields and stands, etc.

VII. Public policy on firearm circulation provides for guiding lines of the implementation of this public policy. In general, these are:

1) determination of the legal regime governing firearms ownership;

2) determination of the administrative and legal status of the actors of public policy on firearm circulation;

3) restrictions on the rights and freedoms of natural and legal persons in the field of firearm circulation;

4) guarantees for natural and legal persons to exercise the rights granted to them in the field of firearm circulation;

5) parliamentary and public supervision of the implementation of public policy on firearm circulation, etc.

VIII. Public policy on firearm circulation in Ukraine is implemented through the operation of an administrative and legal mechanism for the development and implementation of appropriate public policy, which is a legal framework establishing a mutually agreed system of legal, regulatory, institutional, enforcement and organizational forms and means, based on the current legislation, with a cumulative, holistic and consistent impact on actors, relations and processes in the field of firearm circulation, thus fulfilling the task of developing and implementing public policy in this field. The system of this legal mechanism includes:

1) the structural elements of a mechanism which are static (relatively static): a) elements of an ideological conceptual level (the doctrine of administrative law, legal culture); b) elements of a conceptual and fundamental level (principles for the development and implementation of public policy in this field); c) elements

of a legal and regulatory level (legal and regulatory framework for the development and implementation of public policy in question); d) elements of the institutional and democratic level (actors who develop and/or implement public policy on firearm circulation); e) acts implementing legal regulations on firearm circulation;

2) the structural elements of the mechanism that are dynamic: a) the performance of the actors of development and/or implementation of public policy on firearm circulation carried out in legal forms and methods, using certain means and methods of activity; b) administrative, legal and other relations in the field of firearm circulation; c) procedures for development and/or implementation of public policy on firearm circulation.

#### 4. Conclusions

In general, public policy is a complex social and legal, political, economic and cultural phenomenon and determines the level of civilizational development of the State in this field in which it objectifies. In this context, public policy on firearm circulation in Ukraine is a specific phenomenon that is aimed at creating the most favourable conditions in a holistic manner, primarily, for the conduct of relations and processes in firearm circulation in the State to enhance the legal capacity of citizens to protect their lives and health, in particular by the firearms use, as well as to prevent illegal trafficking in firearms and the existence and occurrence of other security risks in firearm circula-

tion in the country. These favourable conditions are achieved through the implementation by the competent state bodies of the tasks of this public policy, which are reflected in the establishment of a legal and regulatory framework for the proper flow of relations and processes in the field of firearm circulation, implementation of authorisation, State control and supervision in this field, etc. However, public policy on firearm circulation in Ukraine will achieve its goal of development and implementation only when managerial decisions and managerial actions within the framework of this public policy will:

1) be based on the facts of objective reality, taking into account a set of requirements of part 2 of art. 19 of the Constitution of Ukraine;

2) be fully consistent with the aim, tasks and functions of public policy on firearm circulation in Ukraine, on the one hand, as well as with public policy and the values of the State and society, on the other hand;

3) be carried out in accordance with the basic methods of decision-making and action of the public administrator;

4) be adopted and implemented in accordance with the needs and legitimate interests, objectively arising at the time that justifies these legal facts;

5) be a consequence of a (deliberate, verified and organized) choice of a certain response to a certain fact of objective reality that requires a decision to be made or an action (inaction) to be taken.

#### References:

**Borko, A.L.** (2013). Poniattia i osnovni rysy administratyvno-pravovoho zabezpechennia funktsionuvannia sudovoi systemy Ukrainy [The concept and key specificities of administrative and legal support for the functioning of the judicial system of Ukraine]. *Publichne pravo – Public law*, no. 2, pp. 71–77 (in Ukrainian).

**Heorhiievskyyi, Yu.V.** (2016). Nerozdileni povnovazhennia mizh orhanamy derzhavnoi vykonavchoi vlady i mistsevoho samovriaduvannia: problemy vyznachennia [Undivided powers between state executive bodies and local self-government: problems of definition]. *Sotsiologhiia prava – Sociology of law*, no. 1–2(16–17), pp. 30–35 (in Ukrainian).

**Kovalyk, V.V.** (2014). Poniattia, osnovni rysy i pryntsyipy derzhavnoi sluzhby yak instytutu administratyvnoho prava [Concepts, key specificities and principles of civil service as an institution of administrative law]. *Naukovo-informatsiynyi visnyk Ivano-Frankivskoho universytetu prava imeni Korolia Danyla Halytskoho – Scientific and Information Bulletin of Ivano-Frankivsk University of Law named after King Danylo Halytsky*, no. 10, pp. 113–117 (in Ukrainian).

**Slynko, D.V.** (2015). Osnovni rysy ta struktura pravozastosovnoi diialnosti [Key specificities and structure of law enforcement activity]. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina – Bulletin of V.N. Karazin Kharkiv National University*, no. 20, pp. 21–24 (in Ukrainian).

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## СУТНІСНІ РИСИ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЗБРОЇ В УКРАЇНІ

**Анотація.** *Метою* статті є з'ясування та аналіз основних сутнісних рис державної політики у сфері обігу зброї в Україні. *Результати.* Державна політика у сфері обігу зброї в Україні є складним соціально-правовим явищем, яке у процесі своєї об'єктивації може спотворюватися суб'єктами цієї державної політики свідомо чи несвідомо (через складність розуміння сутності цього явища). Однак повною мірою зрозуміти сутність державної політики у сфері обігу зброї в Україні можна лише на підставі критичного аналізу її сучасних особливих рис. Статтю присвячено з'ясуванню та комплексному аналізу системи основних сутнісних рис державної політики у сфері обігу зброї в Україні. Автором обґрунтовується, що основними рисами цієї державної політики наразі є такі: 1) її мета (створення в державі найбільш сприятливих умов перебігу відносин і процесів у сфері обігу зброї, що розширюватимуть правові можливості громадян захищати своє життя і здоров'я, зокрема, з використанням зброї), завдання (упорядкування відносин і процесів у сфері обігу зброї, забезпечення найвищого можливого рівня безпеки громадян та національної безпеки держави за рахунок належного функціонування механізму обігу зброї тощо) та функції (постають із функцій держави та суб'єктів формування й реалізації відповідної державної політики); 2) особлива сфера вияву (власне, сфера обігу зброї); 3) суб'єктний склад (охоплено різні рівні реалізації публічної влади в Україні, насамперед законодавчу, виконавчу та судову гілки, а також суб'єктів громадянського суспільства); 4) нормативна основа (законодавчі акти та інші акти парламенту, норми яких стосуються питань обігу зброї; підзаконні акти, норми яких регулюють різні аспекти обігу зброї); 5) напрями реалізації цієї державної політики (визначення правового режиму власності на зброю, обмеження прав і свобод фізичних та юридичних осіб у сфері обігу зброї тощо); 6) існування та функціонування адміністративно-правового механізму формування й реалізації відповідної державної політики. **Висновки.** У підсумку роботи узагальнюються результати дослідження, а також окреслюється перелік стандартів управлінської діяльності, дотримання яких суб'єктами досліджуваної державної політики сприятиме тому, що вона не буде спотворюватися та використовуватися всупереч її меті формування й реалізації.

**Ключові слова:** державна політика у сфері обігу зброї, зброя, обіг зброї, правове регулювання, реалізація державної політики, риси, формування державної політики.

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DOI <https://doi.org/10.32849/2663-5313/2021.8.13>**Sviatoslav Skliar,***Postgraduate Student at the Department of Public Law, Yuriy Fedkovych Chernivtsi National University, 2, Kotsiubynskoho street, Chernivtsi, Ukraine, postal code 58012, skliar.sviatoslav@chnu.edu.ua***ORCID:** [orcid.org/0000-0002-1279-611X](https://orcid.org/0000-0002-1279-611X)Skliar, Sviatoslav (2021). Legal factors influencing tax compliance. *Entrepreneurship, Economy and Law*, 8, 83–87.

## LEGAL FACTORS INFLUENCING TAX COMPLIANCE

**Abstract.** *The purpose* of the research is to study the influence of anthropological and sociocultural factors in tax compliance and determine an approach to understanding the state (statism or anthropocentrism) that drives tax compliance. Research methods comprise the analysis of empirical data which touch upon tax compliance. **Results.** The author has analyzed two opposite approaches to the understanding of factors influencing tax compliance: statism (by distancing oneself from the state, a person maximizes pecuniary benefits through tax evasion) and anthropocentrism (realizing the importance of tax and reciprocal interaction, a person voluntarily pays tax). It is proved that the anthropocentric paradigm (under which the state exercises exclusively auxiliary function) plays a pivotal role in tax compliance, while the primacy of the state predominant in society, under which people serve to support its existence, causes tax evasion. The research emphasizes the failure of the factors shaped following the statist approach to positively influence tax compliance in the long run. **Conclusions.** In the context of a prevalent statism-based understanding of the state and thus, a low level of confidence, citizens are about not to finance the government, which doesn't care about them. At the same time, anthropocentrism and a high level of confidence lead to voluntary tax compliance. That sort of behavior is conditioned by society's understanding of the importance to shape and distribute public goods. As a result, the progress of any long-term fiscal policy primarily depends on the way it affects the perception of taxpayers of the state, namely, whether such measures can assure the public of the government's good intentions and consolidate inseparability between citizens and the state. Therefore, the study of the factors shaped following the anthropocentric concept is a priority of domestic science because they have the greatest impact on tax compliance and thus, generate tax revenues and economic prosperity.

**Key words:** anthropological and sociocultural approach, statist approach, tax compliance, tax amnesty, tax evasion.

### 1. Introduction

Tax relations are peculiar to any society which starts generating or using public funds at some stage of its development (Adams, 1992, pp. 1–2). At the same time, the first attempts to evade taxes coincide with the origin of the very taxes and come well ahead of the origin of the very state (Havrylyuk, 2014b, pp. 347–348). The issue of tax evasion is also relevant to Ukraine. Therefore, as estimated by the State Border Guard Service of Ukraine, Ukrainian losses from using tax evasion (minimization) schemes are about USD 7.7 billion per year, including “envelop” salary – 4.3 billion USD, the activities of “twist” and conversion centers – 1.5 billion USD, offshore – 0.8 billion USD, excisable goods – 1.0 billion USD, losses of state-owned enterprises – 0.1 billion USD (Liubchenko, 2021). To advance the efficacy of tax control and fight against tax evasion, Ukraine is seeking to introduce the tools of counteracting aggressive tax planning (BEPS) into tax laws and update the system of tax administration

and payment. At the same time, according to the laws № 1539-9 and № 1542-9, Ukraine commences tax amnesty from September 1, 2021, to September 1, 2022. Under such conditions, it would make sense to update a theoretical and practical basis of tax compliance<sup>1</sup>, in particular, in terms of voluntary tax payment.

### 2. The review of recent researches and publications

In recent years, the domestic scientific community has shown a growing interest in tax compliance. In particular, I.V. Lytvynchuk, L.M. Kasianenko, V.Yu. Ilin, M.I. Vykliuk, I.A. Maiburova et al. have studied either the mentioned phenomenon or subject-related issues. Western science began dealing with tax compliance (incl. in terms of voluntary tax

<sup>1</sup> Tax compliance is hereinafter regarded as a lack of lawful (tax avoidance) and illegal (tax evasion) ways of tax dodging as well as the accessibility of tax legislation and mechanisms of tax payment, service orientation of tax authorities, a high level of digitalization of tax payment procedure, etc.

payment) in the late 20<sup>th</sup> century. A. Mumford, W. Martin, J. Campbell, J. Backhouse studied the relations between taxes and sociology, and such scholars as A. Sandmo, M. Ellingham, J. Alm, E. Kirchler, et al. studied non-economic factors affecting tax compliance. At the same time, R.O. Havryliuk, V. Stopin, V.I. Manzhura, P.M. Rabinovych, O.S. Kulina, et al. highlighted the importance of anthropological and sociocultural approaches in examining tax relations.

### 3. A role of the anthropological and sociocultural and statist approaches in tax compliance

The analysis of tax compliance in literature relies on two approaches (James, Alley, 2002, p.28). The former is grounded on the opposition of man and the state (statism, positivism, the economic or standard model) under which a person, by distancing himself from the state, maximizes pecuniary benefits through tax evasion. The latter (anthropocentrism) touches upon anthropological and sociocultural factors which determine the behavior of a tax payer (e. g. public confidence in the government, tax equity etc.) (Kirchler et al., 2007, p. 24).

The economic model was introduced in 1972 by Agnar Sandmo & Michael G. Allingham (Allingham, Sandmo, 1972). Based on the mentioned approach, to clarify the phenomenon of tax compliance in the late 20<sup>th</sup> century, academic economists used precise calculations of benefit ratio, which on the one hand, comprises the amount of money that can be saved through tax evasion and, on the other hand – the risk of exposure together with the amount of punitive damages. In other words, following the relevant model, human behavior is focused on utility maximization during tax payment.

The standard model doesn't work in practice despite its simplicity and logical perfection. Thus, in 1992, James Alm, Harry McClelland and William Schultz concluded that models which are based on the economic approach to forecasting taxpayers' behavior drastically depreciate tax compliance (Alm et al., 1992). It became clear the impossibility to explain an individual's behavior by relying only on the concept of "rational" and "egoistic" man under which citizens, understanding their distancing from the state, seek to protect their income from external encroachments. Over time, James Alm, Izabel Sanchez, and Anna Juan looked beyond the standard approach to evaluating the rate of tax payment. The authors conducted pioneering empirical studies which addressed the impact of social norms on tax compliance and summarized: "*<...> in studying tax compliance, it is essential to consider myriads of the factors which affect a payer's motivation,*

*of the factors which extend the economic theory and take into account the payer's behavior and his psychology*" (Alm et al., 1995, p. 17). In 2002, Bruno S. Frey & Lars P. Feld paid attention to a fundamentally different factor of tax compliance – "tax morale", and deduced that tax morale is raised when the tax officials treat them with respect. In contrast, when the tax officials consider taxpayers purely as "subjects" who have to be forced to pay their dues. Moreover, the reduction of tax morale reduces the level of tax payment, and the taxpayers tend to respond by actively trying to avoid taxation (Frey, Feld, 2002).

It is worth mentioning that the role of non-economic phenomena in tax compliance had been studied by scientists of fiscal sociology – financial knowledge of the influence of taxes on morale, politics, culture, and ecology (Andrushchenko, Tuchak, 2013). Theorists of fiscal sociology had repeatedly highlighted the importance of human-centric preconditions when analyzing tax relations, but the advancement of empirical research coincided with the beginning of the 21<sup>st</sup> century. That period was characterized by the commencement of active studies of connections between taxes and historical specifics of society, the effect of taxation on social equity, psychological aspects of human attitude towards taxes, etc. (Martin et al., 2009).

Over time, in 2008, Eric Kirchler, Ingrid Wahl and Eric Hoelzl (Kirchler et al., 2008) introduced a "slippery slope framework" under which public trust in the state is one of two major factors which influence tax compliance. The authors consider 2 models of the existence of society: antagonistic – citizens seek to avoid taxes by all means and play the role of "a criminal" (the state becomes a "police officer" and strives to collect taxes), and synergetic – citizens and the state are inseparable and pursue the same goal (thus, the public acts as a "client" and the state – as a "servant"). In an antagonistic society, the state relies on power to ensure a high level of tax payment, and in a synergistic one – on trust. In addition, power is regarded as taxpayers' perception of the authorization of tax bodies to find and punish a trespasser, and trust – as the utility of government and taxes for the whole society. The authors of the "slippery slope" framework pay attention to the importance of both power and trust, and citizens' tax compliance may be expected if both indicators are at a high level due to functioning in synergy. At the same time, it is crucial to differentiate legitimate power from coercive power. In the former case, society understands that power is aimed at not allowing others to avoid tax payment and guaranteeing

the satisfaction of public needs. In other words, that kind of power is meant not to punish but exercise the right of a prompt payer to taxes (Havrylyuk, 2014a). Therefore, coercive power (numerous audits, high penalties, “authoritarian” attitude of tax authorities towards taxpayers, etc.) reinforces the mutual antagonistic attitude of the state and taxpayers. In extreme cases, such opposition evolves into the fight in which a taxpayer has the moral right not to finance rogue government, and tax authorities treat society as the soulless crowd which needs external impact for further mutual existence. In fact, it refers to the statist and anthropocentric concepts in the analysis of tax compliance. The “slippery slope” framework is grounded on a deal of theoretical and empirical researches (Bose, Jetter, 2012). In the first instance, one should draw special attention to the research “Trust and power as determinants of tax compliance across 44 nations” which was conducted by 63 scientists worldwide. The authors interviewed 14 509 respondents in 44 nations and concluded that trust and legitimate power have the most pronounced effect on the level of tax payment (at the same time, trust demonstrates more strong influence than legitimate power), and coercive power without trust has slight impact on tax compliance and in some case even increases tax evasion (though legitimate power with frequent audits and control causes the opposition of the citizens of Australia, Sweden, and Switzerland, i. e. when there is a high level of mutual trust, it is better not to “doubt” it using excessive control) (Batrancea et al., 2019).

In addition to the mentioned empirical data, the significance of the synergetic co-existence of man and the state is also supported by international practice as it is impossible to name any country with high tax compliance that does not care about its citizens. Despite the unambiguity of international experience, the author is limited to the China case, which despite its peak economic growth in the nineties of the 21<sup>st</sup> century (above 9–10% per year), demonstrates a correlation between a low level of observance of human rights and a low level of tax compliance. Thus, in 2015, only 2% of the Chinese paid income tax, which accounted for 8% of total tax revenues (compared to 24% in OECD members) (The Economist, 2018).

Therefore, the anthropocentric paradigm (under which the state conducts exclusively auxiliary function) plays a pivotal role in tax compliance, and the primacy of the state predominant in society, under which people serve to support its existence, leads to low tax compliance. This conclusion seems paradoxical as the more we praise the state and concurrently neglect a man, the weaker the state (keeping in

mind an obvious fact that tax revenues and their effective distribution are the backbones of any state). However, there are no contradictions in this context. The above statement naturally originates from the anthropocentric approach positing that the prosperity of the state and an individual is equal.

#### **4. The anthropocentric paradigm as a way of ensuring tax compliance**

Since the Revolution of Dignity and thus the commencement of becoming the anthropocentric paradigm, Ukrainian society is under the formation of a political-legal tradition of exercising human rights (Havrylyuk, 2014b, pp. 443–444). However, this process is far from being completed. At this stage, Ukrainian society especially needs to change the understanding of the state’s role and the realization of its inseparability. This goal also can be achieved by applying tax regulation as there is no better way to convince society of the importance of establishing the rule-of-law state than to guarantee a transparent formation of public goods, effective tax collection, and fair redistribution. At the same time, economic liberalization (it mainly depends on tax revenues and adequate funding priorities) leads to improving public trust, which causes economic growth. Thus, the mentioned processes reinforce each other, and it is the state which has to make the first step.

Researchers regard the factors as ones that boost the rate of tax payment in the state and are focused on switching the paradigm of public understanding of the state from statist into anthropocentric. Confidence in the state, transparency of the procedure of collection and redistribution, citizen participation in state tax policy, “service” orientation of fiscal authorities, concern about taxpayers’ opinion, fair and reasonable redistribution of goods, clearness of tax rules and free consultation – integral features of the anthropocentric state in which society understands the necessity of forming and redistributing public goods and ensures mutual satisfaction of public needs through reciprocal cooperation.

At the same time, statism-based understanding of the state as well as control techniques, which arise from that sort of understanding, cost taxpayers dear and establish favorable conditions for corruption (Muthukrishna et al., 2017) that further discredits the state that relies on power and neglects trust and thus, creates a favorable environment for tax evasion. Measures strengthening control over taxpayers, the sophistication of tax laws, and the increase of tax burden can be fruitful in the short run, but they will negatively affect subsequent tax compliance in the context of low trust.

At the moment, the Western scientific community has reached a consensus about the influence of anthropological and sociocultural factors on tax compliance. In the last few years, Ukrainian legal scholars heightened their interest in tax compliance in the context of European integration. In particular, the issue of a voluntary administration of tax compliance (as the mechanism of voluntary tax compliance) is one of the elements of the EU program entitled "Public Finance Management (PFM) for Ukraine – EU4PFM". Domestic scientists have recently become interested in tax compliance. Tax mentality, tax morale, culture, well-built interaction between taxpayers and tax authorities are among the factors that have already been noted by Ukrainian scholars as necessary for an effective tax strategy (Striashko, 2019, pp. 345–347). Attention has also been paid to the formulation of the definition of tax compliance (Koliada, 2020, pp. 791–794), its tasks, and the introduction of compliance strategies (Paltsun, 2013, pp. 134–141). However, there are not today comprehensive studies of anthropological and sociocultural factors affecting tax compliance.

### 5. Conclusions

As a result, the progress of any long-term fiscal policy primarily depends on the way it affects the perception of state taxpayers, in

other words, whether such measures can assure the public of the government's good intentions and consolidate inseparability between citizens and the state. Reforms directed at public understanding of unity between citizens and the state result in voluntary tax compliance. Moreover, technical changes of tax collection mechanisms based on the utility maximization model have long proved to be inefficient and solely complicate tax laws by compelling taxpayers to perceive taxes as an encroachment on the property and look for new ways to evade them. The significance of these conclusions involves their universal nature: despite the legal scholar's penchant for the statist or anthropological and socio-cultural approach in understanding the state's role, the goals of tax policy (including the generation of public revenue) coincide: it is essential to create an environment for mutual trust when society realizes the functional role of the state and the need for taxes.

Thus, keeping in mind the importance of taxes, on the one hand, and a traditionally high level of Ukrainians' tax evasion, on the other hand, the study of factors based on the anthropocentric concept is a current priority of domestic science since they have the greatest impact on tax compliance and thus lead to the economic prosperity of the country.

### References:

- Adams, C.** (1992). *For Good and Evil: The Impact of Taxes on the Course of Civilization*. New York; Oxford: Madison Books (in English).
- Allingham, M.G., Sandmo, A.** (1972). Income tax evasion: a theoretical analysis. *Journal of Public Economics*, vol. 1, iss. 3–4, pp. 323–338 (in English).
- Alm J., McClelland G., Schulze, W.** (1992). Why Do People Pay Taxes? *Journal of Public Economics*, vol. 48, pp. 21–38 (in English).
- Alm, J., Sanchez, I., Juan, A.** (1995). Economic and Noneconomic Factors in Tax Compliance. *Kyklos*, vol. 48, pp. 3–18 (in English).
- Andreoni, J., Erard, B., Feinstein, J.** (1998). Tax Compliance. *Journal of Economic Literature*, vol. 36, no. 2, pp. 818–860 (in English).
- Andrushchenko, V.L., Tuchak, T.B.** (2013). *Moralno-etychni imperatyvy podatkiv ta opodatkuvannia (zakhidna tradytsiia): monohrafiia [Moral and ethical imperatives of taxes and taxation (Western tradition): monograph]*. Kyiv (in Ukrainian).
- Batrancea, L., Nichita, A., Olsen, J., Kogler, C., Kirchler, E., Hoelzl, E. et al.** (2019). Trust and power as determinants of tax compliance across 44 nations. *Journal of Economic Psychology*, vol. 74, pp. 44 (in English).
- Bose, P., Jetter, M.** (2012). Liberalization and tax amnesty in a developing economy. *Economic Modelling*, vol. 29, iss. 3, pp. 761–765 (in English).
- Frey, B.S., Feld, L.P.** (2002). Deterrence and Morale in Taxation: An Empirical Analysis. *CESifo Working Paper*, № 760, pp. 1–41 (in English).
- Havrylyuk, R.O.** (2014a). Pravova model lehitymatsii prava liudyny na podatky [Legal model of legitimation of the human right to taxes]. *Naukovyi visnyk Chernivetskoho universytetu: zbirnyk naukovykh prats – Scientific Bulletin of Chernivtsi University: a collection of scientific papers*, iss. 728, pp. 89–98 (in Ukrainian).
- Havrylyuk, R.O.** (2014b). Pryroda podatkovoho prava: antroposotsiokulturnyi pidkhid: monohrafiia [The nature of tax law: anthroposociocultural approach: monograph]. Chernivtsi (in Ukrainian).
- James, S., Alley, C.** (2002). Tax compliance, self-assessment and tax administration. *Journal of Finance and Management in Public Services*, vol. 2, no. 2, pp. 27–42 (in English).
- Kirchler, E., Hoelzl, E., Wahl, I.** (2008). Enforced versus voluntary tax compliance: the "slippery slope" framework. *Journal of Economic Psychology*, vol. 29, iss. 2, pp. 210–225 (in English).
- Kirchler, E., Muehlbacher, S., Kastlunger, B., Wahl, I.** (2007). Why Pay Taxes? A Review of Tax Compliance Decisions. Retrieved from: [https://icepp.gsu.edu/files/2015/03/isppw0730.pdf?\\_cf\\_chl\\_captcha\\_tk\\_\\_=pmd\\_vCGyFhPHDK8ajKKv5gA1fsCM7zXUCbvCiKJ0e3jB9\\_w-1633499598-0-gqNtZGzNAtCjcnBszQi9](https://icepp.gsu.edu/files/2015/03/isppw0730.pdf?_cf_chl_captcha_tk__=pmd_vCGyFhPHDK8ajKKv5gA1fsCM7zXUCbvCiKJ0e3jB9_w-1633499598-0-gqNtZGzNAtCjcnBszQi9) (in English).

**Koliada, I.V.** (2016). Poniattia ta sutnist komplaiens-kontroliu u vitchyzniani ekonomichnii nauksi ta suspilnomu dyskursi [The concept and essence of compliance control in domestic economics and social discourse]. *Molodyi vchenyi – Young scientist*, no. 12.1(40), pp. 791–794 (in Ukrainian).

**Liubchenko, O.** (2021). Kolonka Holovy Derzhavnoi podatkovoi sluzhby Ukrainy Oleksiia Liubchenka u vydanni "Dzerkalo tyzhnia", 29 bereznia 2021 r. [Column of the Head of the State Tax Service of Ukraine Oleksiy Lyubchenko in the publication "Mirror of the Week", March 29, 2021]. Retrieved from: <https://www.kmu.gov.ua/news/kolonka-golovi-derzhavnoyi-podatkovoyi-sluzhbi-ukrayini-oleksiya-liubchenka-u-vidanni-dzerkalo-tizhnya-29-bereznia-2021-r> (in Ukrainian).

**Martin, I.W., Mehrotra, A.K., Prasad, M.** (2009). The new fiscal sociology: taxation in comparative and historical perspective. *The New Fiscal Sociology Taxation in Comparative and Historical Perspective*, Cambridge: Cambridge University Press, pp. 1–313 (in English).

**Muthukrishna, M., Francois, P., Pourahmadi, S., Henrich, J.** (2017). Corrupting cooperation and how anti-corruption strategies may backfire. *Nature Human Behaviour*, no. 1(7), pp. 0138 (in English).

**Paltsun, I.M.** (2013). Compliance-polityka yak skladova korporatyvnoi kultury pidpriemstva [Compliance policy as a component of corporate culture of the enterprise]. *Torhivlia i rynok Ukrainy – Trade and market of Ukraine*, no. 35, pp. 134–141 (in Ukrainian).

**Striashko, G.M.** (2019). Podatkovyi komplaiens yak odyn iz faktoriv efektyvnoho usunenня podatkovykh ryzykiv [Tax compliance as one of the factors of effective elimination of tax risks]. *Porivnialno-analitychne pravo – Comparative and analytical law*, no. 6, pp. 345–347 (in Ukrainian).

**The economist** (2021). Why only 2% of Chinese pay any income tax. Retrieved from: <https://www.economist.com/china/2018/12/01/why-only-2-of-chinese-pay-any-income-tax> (in English).

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## **ПРАВОВІ ФАКТОРИ ВПЛИВУ НА ДОТРИМАННЯ ПОДАТКОВОГО ЗАКОНОДАВСТВА**

**Анотація. Метою** статті є дослідження впливовості антропосоціокультурних факторів у податковому комплаєнсі та визначення підходу до розуміння держави (етатистського чи людиноцентристського), що зумовлює дотримання податкового законодавства. **Методи дослідження.** Методом дослідження обрано аналіз емпіричних даних, що стосуються податкового комплаєнсу.

**Результати.** Проаналізовано два протилежні підходи до розуміння факторів впливу на податковий комплаєнс: етатистський (за якого людина, відсторонюючись від держави, максимізує грошову вигоду шляхом ухилення від сплати податків) та людиноцентристський (за якого людина, розуміючи важливість податку та реципрокної взаємодії, добровільно сплачує податок). Доведено, що парадигма людиноцентризму (коли держава виконує виключно обслуговуючу функцію) відіграє вирішальну роль у податковому комплаєнсі, тоді як панування в суспільстві концепції верховенства держави, за якої люди покликані лише підтримувати існування держави, призводить до ухилення від сплати податків. Зазначено неспроможність факторів, що сформовані за етатистським підходом максимальної вигоди, позитивно вплинути на податковий комплаєнс у довгостроковій перспективі.

**Висновки.** Констатовано, що в разі панування етатистського розуміння держави та, відповідно, низького рівня довіри громадяни відчують моральне право не фінансувати владу, яка про них не дбає. Водночас парадигма людиноцентризму й високий рівень довіри зумовлює добровільне дотримання податкового законодавства. Така поведінка зумовлена розумінням важливості формування та розподілу публічних благ у суспільстві. Отже, успішність будь-якої фіскальної політики в довготривалій перспективі залежить насамперед від того, яким чином вона вплине на сприйняття держави платниками податків, тобто від того, чи зможуть такі заходи переконати суспільство в добрих намірах влади та затвердити нерозривність громадян і держави. Таким чином, дослідження факторів, сформованих за людиноцентристською концепцією, є пріоритетним напрямом вітчизняної науки, оскільки саме вони здійснюють найбільший вплив на податковий комплаєнс та, відповідно, зумовлюють податкові надходження й економічне процвітання загалом.

**Ключові слова:** антропосоціокультурний підхід, етатистський підхід, податковий комплаєнс, податкова амністія, ухилення від сплати податків.

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## SPECIFICITIES OF GENERAL SOCIAL PREVENTION OF CRIMINAL OFFENCES RELATED TO ILLEGAL CONTENT ON THE INTERNET

**Abstract.** *The purpose* of the article is to identify actors of general social prevention of criminal offences related to illegal content on the Internet, to formulate general social guidelines to prevent the commission of such criminal offences. **Results.** The article defines the content and structure of the multi-level system of actors responsible for the prevention of criminal offences related to illegal content on the Internet as a totality of state bodies, the activities of which are related to the prevention of using the Internet for unlawful purposes. The main actor of prevention is the State, which performs functions in this field through the bodies of legislative, executive and judicial power (the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine etc.). It is proved that the Cabinet of Ministers of Ukraine is involved in developing public policy on preventing the commission of criminal offences, according to the Constitution, laws and decrees of the President of Ukraine, related to illegal content on the Internet, e. g., through the Concept and targeted programmes on the issue. In the narrow sense, a (specialized) system where the actors of prevention are only those state authorities for which the prevention of criminal offences related to illegal content on the Internet is (or should be) as one of the main functions (State Special Communications, Ministry of Digital Transformation of Ukraine, Security Service of Ukraine, National Police of Ukraine). **Conclusions.** The aim of general social prevention of illegal content on the Internet is to eliminate, attenuate and neutralize all negative effects of illegal content on social relations. Proposals have been made for the general social prevention of the commission of criminal offences related to illegal content on the Internet, grouped into economic, regulatory, organizational and managerial, scientific and educational.

**Key words:** general social prevention, illegal content, Internet, actors of prevention.

### 1. Introduction

Today, it is almost impossible to imagine a comfortable life without innovative technology. Through the Internet, we communicate, work, learn, buy goods and services, perform various banking operations, search for information and the like. We are used to finding a solution to any problem in a smartphone and a computer. In addition, state and local self-governments increasingly digitize. For example, they create and support the website, electronic mail, and provide their services through the Internet, electronic document flow system, etc.

However, the rapid development of information technologies in Ukraine is inevitably accompanied by a dynamic development of crimes in this field. Over the past five years, cybercrime has increased by a factor of 2.5, and cyberspace has become the fifth area of combat. Ukraine

is at the forefront of this new war (Avakov, 2020). A significant number of crimes committed on the Internet are illegal content contributing to unlawful interference in the operation of information systems and their intentional damage, unlawful collection, storage and use, destruction and dissemination of personal data and information with restricted access, establishment of arms and drug distribution channels; illegal financial transactions; theft and fraud on the Internet; spread of spam and virus programs.

In such circumstances, the organization and conduct of preventive measures against commission of criminal offences related to illegal content on the Internet are of importance in the activities of law enforcement bodies, in particular those units, which, in accordance with their functional duties, counteract to these criminal offences, requiring relevant studies on

the development of general social prevention of criminal offences related to illegal content on the Internet, making this article relevant.

Various issues of general social prevention of criminal offences connected with the Internet have been investigated by O.M. Bandurka, V.V. Vasilevich, A.V. Vozniuk, I.M. Danshyn, O.M. Dzhuzha, O.O. Dudorov, O.M. Lytvynov, M.I. Melnyk, Yu.Yu. Orlov, A.V. Savchenko, S.S. Cherniavskiy, V.I. Shakun and others.

However, despite the significant contributions by many scholars to studying general social prevention of criminal offences related to the Internet, today a number of issues regarding the definition of actors to be involved in such activities and their content and areas of implementation remain unrevealed.

The aim of the article is to identify actors of general social prevention of criminal offences related to illegal content on the Internet, as well as to formulate general social guidelines to prevent the commission of such criminal offences.

## 2. Subjects of general social prevention of criminal offences

The wide range of causes and conditions conducive to the spread of illegal content on the Internet determine the multi-level and diverse activities of the actors responsible for precautionary measures. Usually, the concept of the actor involved in the general social prevention of crime, including criminal offences related to illegal content on the Internet, is understood by scholars as a state body, organization or persons who: purposefully prevent criminal offences; are coordinated with and subordinated to other actors; organize their activities according to the commands of the "management mechanism" of the system; have the option of choosing a course of action depending on the state of the object of the preventive action (Bluvshstein et al., 1986, pp. 32–33).

However, while agreeing with the views of O.M. Dzhuzha and V.V. Vasylevych, we argue that the actors of general social prevention of criminal offences related to illegal content on the Internet should be understood as bodies, institutions and organizations, enterprises, as well as officials (employees) and individuals authorized by law or entrusted with tasks and functions to detect, eliminate, reduce and neutralize the causes and conditions conducive to the existence and spread of crime in general, its individual types and specific criminal offences, as well as gaining from transition to a criminal path and resocialization of persons, prone to commit criminal offences (recidivism) (Dzhuzha et al., 2011).

In the theory of criminology, it is common to consider the system of actors in crime prevention in a broad and narrow sense. In a broad

sense, the (general) system of actors responsible for the prevention of criminal offences related to illegal content on the Internet is a totality of state bodies, the activities thereof are related to the prevention of using the Internet for unlawful purposes. In the narrow sense, the (specialized) system of actors of prevention involves only those public authorities for which the prevention of criminal offences related to illegal content on the Internet is (or should be) a core function (Povolotska, 2015).

It should be noted that the President of Ukraine, as guarantor of the Constitution of Ukraine, and the National Security and Defence Council of Ukraine, the Verkhovna Rada of Ukraine are non-specialized actors involved in the prevention of criminal offences related to illegal content on the Internet.

Therefore, the President of Ukraine according to the Art. 106 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) ensures the national security of the State and is therefore the overall head of the State system for the prevention of criminal offences related to illegal content on the Internet, for example, he issues relevant decrees and orders, which are binding in the territory of Ukraine. With a view to restricting access to resources on the Internet and prohibiting the dissemination of content, the President of Ukraine imposes sanctions on identified legal entities and individuals in accordance with the provisions of para. 9 of part 1 of article 4 of the Law of Ukraine "On Sanctions" from August 14, 2014 № 1644-VII (Verkhovna Rada of Ukraine, 2014), which stipulate, inter alia, "restriction or termination of telecommunication services and use of public telecommunication networks" (Decree of the President of Ukraine on the application of personal, special, economic and other restrictive measures (sanctions) from May 15, 2017 № 133/2017 (President of Ukraine, 2017)).

Furthermore, according to the decisions of the National Security and Defence Council of Ukraine, which provide for counteracting illegal content on the Internet, the Decree 96/2016 of the President of Ukraine of 15 March 2016 "On approval of the decision of the National Security and Defense Council of Ukraine of January 27, 2016 «On Cybersecurity Strategy of Ukraine»" (President of Ukraine, 2016a) has been put into effect. The aim of the Cybersecurity Strategy of Ukraine is to ensure the safe functioning of cyberspace and its use in the interests of the individual, society and the State.

The Decree 242/2016 of the President of Ukraine of 7 June 2016 approved the Regulations on the National Coordination Centre for Cyber Security (President of Ukraine, 2016b), aimed, inter alia, at coordinating and moni-

toring the activities of security and defence actors that provide cybersecurity; estimating and identifying potential and real threats in the field of cybersecurity in Ukraine; taking measures to ensure cyber protection of critical infrastructure and protect production processes in the real sector of the economy; ensuring that cybersecurity actors develop and implement mechanisms for the exchange of information needed to respond to cyberattacks and cyber incidents, eliminating their causes and negative consequences, etc. Furthermore, Decree 27/2020 of the President of Ukraine dated January 28, 2020 “On amendments to Decree 37 of the President of Ukraine of January 27, 2015 and Decree 242 of June 7, 2016” strengthened the powers of the National Cybersecurity Coordination Centre and changed the format of its activities, in particular, involved private experts who specialize in cybersecurity (President of Ukraine, 2020).

The National Security and Defence Council of Ukraine is also responsible for coordinating and monitoring the activities of the executive authorities, in particular with regard to ensuring public security and combating crime in matters of national security and defence (Law of Ukraine “On the National Security and Defense Council of Ukraine” from March 5, 1998 № 183/98-BP (Verkhovna Rada of Ukraine, 1998)).

The Verkhovna Rada of Ukraine, as the highest legislative body of our State, adopts legislative and other regulations against the spread of illegal content on the Internet, primarily the Criminal Code of Ukraine, which establishes the commission of criminal offences related to illegal content on the Internet as crimes, as well as the Code of Administrative Offences provides for liability for administrative offences in this field. The Law of Ukraine “On the National Police” from July 2, 2015 defines the legal basis for organization and activity of the National Police of Ukraine, the status of police officers (Verkhovna Rada of Ukraine, 2015). The Law of Ukraine “On Operational and Investigative Activities” from February 18, 1992 № 2135-XII provides for the legal basis for the organization and implementation of transparent and covert search and counter-intelligence measures, taken using operational and operational technical means, including detection and prevention of criminal offences related to illegal content on the Internet (Verkhovna Rada of Ukraine, 1992). The Law of Ukraine “On Telecommunications” from November 18, 2003 № 1280-IV defines the powers of the State with regard to managing and regulating telecommunications, as well as the rights, obligations and principles of liability of natural and legal persons that

engage in the activity or use telecommunication services (Verkhovna Rada of Ukraine, 2004).

The Cabinet of Ministers of Ukraine, through the issuance of decrees and orders, involves in making public policy on preventing the commission of criminal offences, related to illegal content on the Internet, on the basis of and in compliance with the Constitution, laws and decrees of the President of Ukraine, i. e. through a Concept and targeted programmes on the issue. The State authorities, responsible for preventing the commission of criminal offences related to illegal content on the Internet are the State Service for Special Communication and Information Protection (State Special Communication), entrusted with:

- making public policy on cryptographic and technical protection of information, cyber protection, telecommunications, the use of the radio frequency resource of Ukraine, postal communication for special purpose, government field communication, protection of State information resources and information required by law; on information, telecommunications, as well as information and telecommunication systems, and information facilities, as well as on the use of State information resources in terms of information protection and counteracting technical intelligence, functioning, security and development of the State system of governmental communication, the National System of Confidential Communication;

- participation in making public policy on electronic document flow (in terms of the protection of information of State and local self-government authorities), electronic identification (with the use of electronic trust services), electronic trust services (in terms of establishing security and protection requirements for the provision and use of electronic trust services, monitoring compliance with legislation in the field of electronic trust services) (Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Regulations on the Administration of the State Service for Special Communications and Information Protection of Ukraine” from September 3, 2014 № 411 (Cabinet of Ministers of Ukraine, 2014)).

The Ministry of Digital Transformation of Ukraine, which is the main body within the system of central executive authorities responsible for making public policy on digitization, digital development and the digital economy, digital innovation and technology, e-government and e-democracy, information society development, informatization; one-document flow; digital skills development and citizens’ digital rights; on open data, development of national electronic information resources

and interoperability, development of broadband Internet and telecommunications infrastructure, electronic commerce and business; on electronic and administrative services; electronic trust services and e-identity; on IT Industry development (Resolution of the Cabinet of Ministers of Ukraine “On approval of the Regulation on the Ministry of Digital Transformation of Ukraine” from September 18, 2019 № 856 (Cabinet of Ministers of Ukraine, 2019)).

However, the National Police and the SSU are the main actors entrusted with the task of preventing the commission of criminal offences related to illegal content on the Internet. Under the current conditions, the system of actors of the National Police of Ukraine that take measures to prevent the commission of criminal offences related to illegal content on the Internet can be divided into two main groups. The first group should include those units specially authorized to take measures to prevent the commission of criminal offences related to illegal content on the Internet. These units include the Cyber Police Department of the National Police (hereinafter – CPD).

In accordance with the Regulations on the CPD, this unit is an interregional territorial body of the National Police of Ukraine and, in accordance with Ukrainian legislation, it ensures the implementation of public policy on countering cybercrime, provides information and analysis support to the headship of the National Police of Ukraine and the State authorities on the status of issues falling within their competence. The CPD participates in making public policy on preventing and combating criminal offences, preparation and commission or concealment thereof include the use of computers, systems and computer networks and telecommunications (Order of the National Police of Ukraine “On approval of the Regulations on the Cyber Police Department of the National Police of Ukraine” from November 10, 2015 № 85 (National Police of Ukraine, 2015).

The second group consists of units that take measures to prevent the commission of criminal offences related to illegal content on the Internet, in parallel with the performance of basic duties. These are investigation units, anti-drug units, strategic investigation units, criminal investigation units, migration police units, internal security units, operational units, technical and operational units.

Therefore, in the country, a multi-level system of bodies has been established and is in operation to prevent the commission of criminal offences related to illegal content on the Internet. Some actors govern, direct and coordinate such prevention, while others directly organize and prevent such criminal offences.

### 3. Directions of general social prevention of criminal offenses

With regard to the definition of areas of general social prevention of the commission of criminal offences related to illegal content on the Internet, it is proposed to group them into four categories: economic support; legal and regulatory support; organizational and management support; scientific and educational activities.

An important factor in reducing the rate of commission of criminal offences related to illegal content on the Internet is the economic support provided by the State to the information technology sector of Ukraine, since IT-market of Ukraine develops faster than other industries. Under favourable conditions, the IT industry is expected to grow to \$840,000,000 by 2025, and the number of jobs will increase to more than 240,000 (Antonyuk, 2017). This will reduce the number of individuals involved in illegal cybercrime activities. To this end, we make proposals of:

- creating economic conditions for the growth of the IT industry in Ukraine, primarily in the private sector. The establishment of specialized funds enable to finance high-technology start-ups, to develop the IT sector, which produces various information products and services, as well as to increase the investment attractiveness of the IT sector and create favourable tax conditions to attract international and domestic investment in the development of the information infrastructure of the Ukrainian information and communication technology market;

- extending the coverage of the Internet to the regions of our State, increasing the speed of data transmission, including through the introduction of 5G communications, which will improve the population's access to information infrastructure and network services, along with protecting such networks, ensuring a safe and socially favourable environment for the use of information and communication technologies.

An analysis of our State's legal and regulatory instruments enables to identify the main lines of legal and regulatory support for the general social prevention of the commission of criminal offences related to illegal content on the Internet:

- to continue to improve the legal and regulatory framework for the use of information, in particular in the field of data protection in telecommunications networks; to improve and spread reliable identification and authentication procedures; to encourage the use of reliable cryptography by operators, especially in high-risk areas (satellite or mobile); to improve existing and create new security standards for

key or public functions, including the introduction of (where appropriate) mandatory quality control of information processes;

- to provide legal and regulatory framework for the procedure for terminating accounts, web pages, used to disseminate illegal content on the Internet, by law enforcement bodies, and to establish the grounds and procedure for the disclosure of information on users by operators and the Internet providers at the request of law enforcement bodies and the possibility of using such information in criminal, administrative and civil proceedings, etc.;

- to provide the legal and regulatory framework for citizens' information rights, as well as their rights to the results of creative work (intellectual property), including through the development of a system of special courts dealing with intellectual property issues;

- to harmonize Ukrainian legislation with the provisions of international law, primarily the EU, regarding the detection and prevention of illegal content on the Internet;

- to make users' identification and authentication on web-based platforms, used for the purchase/sale of property (goods), mandatory;

- to continue the improvement of existing and the creation of new legal and regulatory instruments for the protection of public information important to individuals, society and the State, and to establish penalties for new criminal offences, spreading due to illegal content on the Internet, as well as to identify other promising areas for the development of legislative and regulatory instruments against illegal content on the Internet.

The organizational and management support may be considered as measures of general social prevention of the commission of criminal offences related to illegal content on the Internet such as:

- to transfer most public services online, to make information accessible through computer networks, and to create public platforms to connect open public information resources to them;

- to improve ongoing cooperation between the competent State authorities (the Ministry of Digital Transformation, the State Special Communications, the SSU and the CPD of the National Police) and State bodies, local self-governments and businesses with a view to enhancing the cyber-security of their electronic information resources and increasing the media literacy of users of computer equipment, especially officials;

- to continue measures to establish units (individual posts) for the organization of information protection in State authorities, local self-government bodies and enterprises, institutions and organizations of all forms of ownership;

- to promote cooperation between international payment systems and issuing banks to detect illegal content and criminal offences committed on the Internet;

- to improve coordination, to strengthen cooperation and to establish closer cooperation between the National Police and the law enforcement agencies of foreign countries in preventing illegal content on the Internet;

- to continue a unified policy on certification of protective equipment, licensing of organizations working in the field of information protection, development and implementation of national standards and technical regulations, and application of information and communication technologies harmonized with relevant international standards, in particular for telecommunications operators and providers.

Scientific and educational activities envisage the following measures for the general social prevention of the commission of criminal offences related to illegal content on the Internet:

- introduction of new educational programmes to upgrade cybercrime specialists, provision of appropriate computer equipment, modern licensing software and highly qualified scientific and pedagogical staff to educational institutions that train such persons;

- development of the system of further training of persons, who combat cybercrime, primarily law enforcement bodies, involving international experts;

- monitoring and assessment of the state of affairs in illegal content on the Internet, research and development of appropriate methods for the prevention and detection of criminal offences, related to illegal content on the Internet.

#### 4. Conclusions

The main actor of prevention is the State, which performs functions in this field through the bodies of legislative, executive and judicial power (the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine) and, in the narrow sense, a (specialized) system where the actors of prevention are only those State authorities for which the prevention of criminal offences related to illegal content on the Internet is (or should be) one of the main functions (State Special Communications, Ministry of Digital Transformation of Ukraine, Security Service of Ukraine, National Police of Ukraine). The aim of general social prevention of illegal content on the Internet is to eliminate, attenuate and neutralize all negative effects of illegal content on social relations. Proposals are made for the general social prevention of the commission of criminal offences related to illegal content on the Internet, grouped into economic, regulatory, organizational and managerial, scientific and educational.

## References:

- Antonyuk, Yu.** (2017). Ukrainskii IT-rynok: itogi 2017 i perspektivy 2018 [Ukrainian IT market: results of 2017 and prospects for 2018]. *dou.ua*. Retrieved from: <https://dou.ua/lenta/articles/2017-summary> (in Ukrainian).
- Avakov, A.B.** (2020). Kiberpolitsiia perekhodyt na novyi riven roboty ta oholoshuie velykyi nabir spetsialistiv [Cyberpolice is moving to a new level of work and is announcing a large set of specialists]. Retrieved from: <https://www.kmu.gov.ua/news/arsen-avakov-kiberpoliciya-perehodit-na-novij-riven-roboty-ta-ogoloshuye-velikij-nabir-specialistiv> (in Ukrainian).
- Bluvshstein, Yu.D., Zyrin, M.I., Romanov, V.V.** (1986). *Profilaktika prestuplenii [Crime prevention]*. Minsk: Universitetskoe (in Russian).
- Cabinet of Ministers of Ukraine** (2014). Pro zatverdzhennia Polozhennia pro Administratsiiu Derzhavnoi sluzhby spetsialnoho zviyzku ta zakhystu informatsii Ukrainy: Postanova Kabinetu Ministriv Ukrainy vid 3 veresnia 2014 roku № 411 [On Approval of the Regulations on the Administration of the State Service for Special Communications and Information Protection of Ukraine: Resolution of the Cabinet of Ministers of Ukraine from September 3, 2014 № 411]. *zakon.rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/411-2014-%D0%BF#Text> (in Ukrainian).
- Cabinet of Ministers of Ukraine** (2019). Pro zatverdzhennia Polozhennia pro Ministerstvo tsyfrovoi transformatsii Ukrainy: Postanova Kabinetu Ministriv Ukrainy vid 18 veresnia 2019 roku № 856 [On approval of the Regulation on the Ministry of Digital Transformation of Ukraine: Resolution of the Cabinet of Ministers of Ukraine from September 18, 2019 № 856]. *zakon.rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/856-2019-%D0%BF#Text> (in Ukrainian).
- Dzhuzha, O.M., Vasylevych, V.V., Hida, O.F., Kovalenko, V.V.** (2011). *Profilaktyka zlochyniv [Crime prevention]*. Kyiv: Atika (in Ukrainian).
- National Police of Ukraine** (2015). Pro zatverdzhennia Polozhennia pro Departament kiberpolitsii Natsionalnoi politsii Ukrainy: Nakaz Natsionalnoi politsii Ukrainy vid 10 lystopada 2015 roku № 85 [On approval of the Regulations on the Cyber Police Department of the National Police of Ukraine: Order of the National Police of Ukraine from November 10, 2015 № 85]. *zakon.rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/z0260-16#Text> (in Ukrainian).
- Povolotska, S.H.** (2015). Diialnist orhaniv vnutrishnikh sprav po profilaktytsi pravoporushen sered nepovolitnikh (administratyvno-upravlinske doslidzhennia) [Activities of law enforcement agencies for the prevention of juvenile delinquency (administrative research)]. *Candidate's thesis*. Kharkiv (in Ukrainian).
- President of Ukraine** (2016a). Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 27 sichnia 2016 roku "Pro Stratehiu kiberbezpeky Ukrainy": Ukaz Prezydenta Ukrainy vid 15 bereznia 2016 roku № 96/2016 [On the decision of the National Security and Defense Council of Ukraine of January 27, 2016 "On the Cyber Security Strategy of Ukraine": Decree of the President of Ukraine from March 15, 2016 № 96/2016]. *president.gov.ua*. Retrieved from: <https://www.president.gov.ua/documents/962016-19836> (in Ukrainian).
- President of Ukraine** (2016b). Pro zatverdzhennia Polozhennia pro Natsionalnyi koordynatsiinyi tsentr kiberbezpeky: Ukaz Prezydenta Ukrainy vid 7 chervnia 2016 roku № 242/2016 [On approval of the Regulations on the National Coordination Center for Cyber Security: Decree of the President of Ukraine from June 7, 2016 № 242/2016]. *zakon.rada.gov.ua*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/242/2016#n9> (in Ukrainian).
- President of Ukraine** (2017). Pro zastosuvannia personalnykh, spetsialnykh, ekonomichnykh ta inshykh obmezhuvalnykh zakhodiv (sanktsii): Ukaz Prezydenta Ukrainy vid 15 travnia 2017 roku № 133/2017 [On the application of personal, special, economic and other restrictive measures (sanctions): Decree of the President of Ukraine from May 15, 2017 № 133/2017]. *president.gov.ua*. Retrieved from: <https://www.president.gov.ua/documents/1332017-21850> (in Ukrainian).
- President of Ukraine** (2020). Pro vnesennia zmin do Ukaziv Prezydenta Ukrainy: Ukaz Prezydenta Ukrainy vid 28 sichnia 2020 roku № 27 [On Amendments to the Decrees of the President of Ukraine: Decree of the President of Ukraine from January 28, 2020 № 27]. *president.gov.ua*. Retrieved from: <https://www.president.gov.ua/documents/272020-32041> (in Ukrainian).
- Verkhovna Rada of Ukraine** (1992). Pro operatyvno-rozshukovu diialnist: Zakon Ukrainy vid 18 liutoho 1992 roku № 2135-XII [On operational and investigative activities: Law of Ukraine from February 18, 1992 № 2135-XII]. *zakon2.rada.gov.ua*. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/2135-12> (in Ukrainian).
- Verkhovna Rada of Ukraine** (1996). Konstytutsiia Ukrainy: Zakon Ukrainy vid 28 chervnia 1996 roku № 254к/96-BP [Constitution of Ukraine: Law of Ukraine from June 28, 1996 № 254к/96-BP]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254к/96-bp#Text> (in Ukrainian).
- Verkhovna Rada of Ukraine** (1998). Pro Radu natsionalnoi bezpeky i oborony Ukrainy: Zakon Ukrainy vid 5 bereznia 1998 roku № 183/98-BP [On the National Security and Defense Council of Ukraine: Law of Ukraine from March 5, 1998 № 183/98-BP]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, no. 35, art. 237 (in Ukrainian).
- Verkhovna Rada of Ukraine** (2003). Pro telekomunikatsii: Zakon Ukrainy vid 18 lystopada 2003 roku № 1280-IV [On Telecommunications: Law of Ukraine from November 18, 2003 № 1280-IV]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, no. 12, art. 155 (in Ukrainian).

**Verkhovna Rada of Ukraine** (2014). Pro sanktsii: Zakon Ukrainy vid 14 serpnia 2014 roku № 1644-VII [On Sanctions: Law of Ukraine from August 14, 2014 № 1644-VII]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, no. 40, art. 2018 (in Ukrainian).

**Verkhovna Rada of Ukraine** (2015). Pro Natsionalnu politsiu: Zakon Ukrainy vid 2 lypnia 2015 roku [On the National Police: Law of Ukraine from July 2, 2015]. *Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, no. 40–41, art. 379 (in Ukrainian).

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## ОСОБЛИВОСТІ ЗАГАЛЬНОСОЦІАЛЬНОГО ЗАПОБІГАННЯ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ, ПОВ'ЯЗАНИМ З ОБІГОМ ПРОТИПРАВНОГО КОНТЕНТУ В МЕРЕЖІ ІНТЕРНЕТ

**Анотація.** *Метою* статті є визначення суб'єктів, які здійснюють загальносоціальне запобігання кримінальним правопорушенням, пов'язаним з обігом протиправного контенту в мережі Інтернет, а також формулювання основних напрямів загальносоціального запобігання вчиненню вказаних кримінальних правопорушень. **Результати.** У статті визначено зміст і структуру багаторівневої системи суб'єктів, що здійснюють запобігання кримінальним правопорушенням, пов'язаним з обігом протиправного контенту в мережі Інтернет, яка являє собою сукупність державних органів, діяльність яких повністю чи в певній її частині пов'язана з вирішенням завдання недопущення використання мережі Інтернет у протиправних цілях. Основним суб'єктом запобігання є держава, що здійснює функції в цій сфері через органи законодавчої, виконавчої та судової влади (Президента України, Верховну Раду України, Кабінет Міністрів України тощо). З'ясовано, що Кабінет Міністрів України на підставі й на виконання Конституції України, законів, указів Президента України через видання постанов і розпоряджень бере участь у розробленні й реалізації державної політики з метою недопущення вчинення кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет, зокрема, шляхом розроблення концепцій і цільових програм із цього питання. У вузькому розумінні (спеціалізовану систему суб'єктів запобігання) становлять лише ті державні органи, для яких запобігання кримінальним правопорушенням, пов'язаним з обігом протиправного контенту в мережі Інтернет, є (або має бути) однією з основних функцій (це, наприклад, Державна служба спеціального зв'язку та захисту інформації України, Міністерство цифрової трансформації України, Служба безпеки України, Національна поліція України). **Висновки.** Метою загальносоціального запобігання обігу протиправного контенту в мережі Інтернет є усунення, послаблення, нейтралізація всього негативного впливу протиправного контенту на суспільні відносини. Запропоновано напрями загальносоціального запобігання вчиненню кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет, які умовно поділені на економічні, нормативно-правові, організаційно-управлінські та науково-освітні.

**Ключові слова:** загальносоціальне запобігання, протиправний контент, мережа Інтернет, суб'єкти запобігання.

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## MECHANISM FOR APPORTIONMENT OF JUDICIAL COSTS INCURRED BY THE PARTIES BECAUSE OF TERMINATION OF ADMINISTRATIVE OR CIVIL PROCEEDINGS DUE TO FILING LAWSUIT TO COURT OF INCOMPETENT JURISDICTION

**Abstract.** *The purpose* is to analyze the mechanism of distribution of court costs incurred by the parties due to the closure of proceedings in an administrative or civil case due to the filing of a lawsuit in a court of improper jurisdiction. **Results.** The article clarifies the concept and purpose of judicial costs in court proceedings. The compensatory, preventive and social function of judicial costs are described. Features and principles of compensation (recovery) of judicial costs are determined. The Supreme Court's practice regarding decisions on the apportionment of judicial costs in the event of the termination of proceedings is analysed. It is concluded that contrary to the provisions of part 5 of article 142 of the Civil Procedure Code of Ukraine on unjustified actions of the plaintiff in the procedural aspect (i. e., actions of filing a baseless lawsuit and actions in a proceeding characterized by abuse of procedural rights), part 9 of article 141 of the Civil Procedure Code of Ukraine is more concerned with improper actions of a party in the substantive aspect, which gave rise to the dispute and can be established only on the basis of the outcome of the dispute settlement (i. e. a decision on the merits of the dispute). The Supreme Court's ratio decidendi on the interpretation of these procedural law provisions is revealed. The article supports the perspective that the incurring of judicial costs is an autonomous type of procedural offence. The focus is on the general rule that the apportionment of judicial costs is allowable only within the limits of the case in which the proceedings are terminated. The provisions of the procedure law on the transfer of a case to the court of first instance, which has jurisdiction to hear such case, if the court of appeal (cassation) terminates the proceedings on the grounds of bringing a lawsuit before a court of incompetent jurisdiction, are analysed. **Conclusions.** In order to ensure that this “mechanism for transferring a case to a court of competent jurisdiction” does provide a solution for the apportionment of judicial costs within a particular case, the author concludes that it should be applied on a mandatory basis along with introducing a rule on the apportionment of the costs as a result of deciding the case on the merits before a court of competent jurisdiction.

**Key words:** judicial costs, apportionment, compensation, termination of proceedings, case, lawsuit, court, jurisdiction.

### 1. Introduction

Literature review reveals that judicial costs are considered as the costs incurred by the persons involved in a case and, in cases of their exemption from judicial costs – by the States that they incur in connection with the consideration and adjudication of a particular case. The main purpose of the concept of judicial costs is to reimburse the parties for the costs of the proceedings: payment for legal aid, recovery to

the parties, their representatives, witnesses, specialists, interpreters, experts of expenses, related to relocation, housing, daily subsistence allowance (in case of relocation), compensation for lost earnings or break in traditional occupation, compensation for costs incurred in examining evidence at their location and other actions necessary for the consideration of the case, etc. In addition, they provide some leverage to influence the conduct of participants in the pro-

ceedings and to prevent improper and unfair procedural conduct (Barankova et al., 2011, pp. 439–441). Moreover, some procedural law scholars believe that the name “judicial costs” does not accurately reflect their legal nature and refer to them “costs of civil litigation to be incurred by the parties, third parties with independent claims in action proceedings, applicants and persons concerned in special proceedings for procedural actions on their behalf” (Shtefan, 2005, pp. 236–237). Scholars identify the compensatory, preventive and social functions of judicial costs. The compensatory function is to reimburse costs incurred by the State in civil proceedings, as well as costs incurred by persons who apply to the court or carry out certain procedural actions. The preventive function is to prevent baselessness recourse to the courts and ensure that persons legally concerned in the outcome of a case fulfil their procedural obligations. The social function is to ensure available justice through judicial costs (Vasyliev, 2008, p. 116).

### **2. Compensation (recovery) for judicial costs**

The compensatory function of judicial costs is exercised through the mechanism for apportionment of judicial costs. The literature review reveals that apportionment of judicial costs is understood as the obligation to recover (compensate) or pay the judicial costs of the other party totally or in part imposed by the court on one party to a litigation. Compensation (recovery) for judicial costs is understood as the return of money paid by a party or a third party for judicial costs. Compensation (recovery) for judicial costs is the result of their apportionment between the parties. It is characterised by features as follows: 1) compensation (recovery) of judicial costs is provided by the party to the litigation (as an exception, in cases provided by law, it may be paid from the State budget); 2) compensation (recovery) of judicial costs may be paid in favour of litigants and third parties, other persons or the state budget (Ustishenko, 2021, pp. 136–137). The apportionment of costs between the parties is based on the general principle that liability for damage is assigned to the person whose act or omission caused the damage (Vasyliev, 2008, p. 125). Some scholars underline that the civil law principle of full recovery for damages caused (Bohlia, 2005, p. 3), and the general principle of fairness and reasonableness (Bohomol, 2014, p. 236) should be applied in both the recovery of judicial costs to the parties and their apportionment.

### **3. Interpretation of the provisions of procedural law**

However, the purpose of the compensatory function of judicial costs is not achieved

at the termination of proceedings, in particular, because of filing a lawsuit to a court of incompetent jurisdiction. For example, in an administrative case № 810/5133/18 brought by a natural person before the Ministry of Justice of Ukraine, a third person – a private enterprise, for invalidation and annulment of an order relating to the decision on state registration of rights and their encumbrances, in which the court of first instance has terminated the proceedings, since the case has not been subject to the rules of administrative procedure, but recovered legal aid costs from the plaintiff on behalf of a third party, the Supreme Court denied a third person’s claim for judicial costs (legal aid costs) recovery because the courts had not confirmed that the plaintiff’s actions had been unjustified in bringing an action before a court of incompetent jurisdiction (Decision of the Supreme Court composed of the Panel of Judges of the Administrative Court of Cassation of 2 July 2020 in case № 810/5133/18, proceeding № K/9901/8853/20).

Thus, according to the provisions of procedure laws, in the event of the termination of the proceedings, the defendant is entitled to claim recovery for the costs incurred in the proceedings only as a result of the plaintiff’s unjustified actions (part 5, article 142 of the CPC of Ukraine, part 10, article 139 of the APC of Ukraine). However, based on the above principles of full recovery for damages caused, fairness and reasonableness, it is not clear how to address compensation (recovery) to the defendant and to third parties for the costs related to the proceedings, which will be furtherly terminated (in particular, the objective and necessary costs of legal aid; the costs of the parties and their representatives related to arriving at the court; the costs of involving witnesses, specialists, interpreters, experts and examinations; the costs of claiming evidence, examining evidence at their location, providing of evidence; costs of other procedural acts or preparing the case). The law, procedural science and judicial practice do not provide an answer to this question. Given this, the article seeks to study the matter.

In the author’s opinion, the absence of such compensation for judicial costs violates, primarily, the fundamentals of justice, because it forces defendants and third parties, in the absence of their guilt and objective need for this (since the proceedings have not been initiated by them), to bear, among other things, the costs of legal aid and the costs of appearing before a court in a case initiated by the plaintiff, but proceedings thereof are terminated furtherly due to filing a lawsuit in a court of incompetent jurisdiction. On the other hand, if the defendant still has some way to expect compensation

for the costs related to the proceedings (due to the plaintiff's unjustified actions, based on part 5, article 142 of the CPC of Ukraine), the plaintiff has no such right, since compensation for costs incurred by the plaintiff in connection with the proceedings is not regulated by law, if the proceedings are terminated by the Court of Appeal or the Supreme Court on the grounds of filing a lawsuit in a court of incompetent jurisdiction; since part 9 of article 141 of CPC of Ukraine providing for the possibility of recovering judicial costs, irrespective of the outcome of a dispute, from a party for abuse of procedural rights is applied if the dispute arises as a result of improper actions of a party, and it may be applied only on the basis of a decision on the merits that enables to establish the cause of the dispute and improper actions of the parties (defendant or plaintiff, or both) that have led to it, while provided the termination of proceedings it could not be determined by the court, since the court cannot establish the rights and relationship of the parties and the circumstances (legal facts) that gave rise to this legal relationship.

Therefore, it may be concluded that contrary to the provisions of part 5 of article 142 of the CPC of Ukraine which concerns unjustified actions of the plaintiff in the procedural aspect (that is actions of filing a baseless lawsuit and actions in a proceeding characterized by abuse of procedural rights), part 9 of article 141 of the Civil Procedure Code of Ukraine is more concerned with improper actions by a party in the substantive aspect, which gave rise to the dispute and can be established only on the basis of the outcome of the dispute settlement (i. e. a decision on the merits of the dispute).

It should be noted that this issue is connected with the costs related to proceedings, since, when the proceeding is terminated on the grounds that the case should not be considered under the rules of civil procedure, the defendant has the right to recover the amount of court fees not from the plaintiff, but from the State budget of Ukraine (such ratio *decidenti* is given in the decision of the Grand Chamber of the Supreme Court of May 12, 2020 in civil case № 464/104/16-c, proceeding № 14-441cs19).

The rules for the apportionment of costs in case of admission, termination of proceedings or dismissal of proceedings are provided for in part 5 of article 142 of the CPC of Ukraine, according to which, in the event of the termination of proceedings or the dismissal of proceedings, the defendant has the right to claim compensation for costs related to proceedings as a result of the unjustified actions of the plaintiff. Similarly, according to part 9 of article 141

of the CPC of Ukraine, which, in the event of abuse of procedural rights by a party or his/her representative, or if the dispute has arisen as a result of the improper actions by the party, the court may impose judicial costs on such party, entirely or in part, regardless of the outcome of the dispute.

The Supreme Court has already repeatedly argued on the interpretation of these provisions of the procedural law. For example, according to the Supreme Court, composed of the panel of judges of the Second Trial Chamber of the Civil Court of Cassation, in Judgement of January 14, 2021 in Civil Case № 521/3011/18 (proceedings № 61-10254sv20), the systematic interpretation of the provisions of parts 5, 6 of article 142, part 9 of article 141 of the CPC of Ukraine reveals that the plaintiff's unjustified actions as grounds for compensation for the defendant's costs related to proceedings in accordance with part 5 of article 142 of the CPC of Ukraine, are the plaintiff's wilful acting in bad faith which indicate an abuse of procedural rights. In administrative case № 820/4347/17 (proceeding № K/9901/39893/18), the Supreme Court, composed of a panel of judges of the Administrative Court of Cassation, in the decision of November 21, 2018, stated that the very filing of a lawsuit to the court with violation of jurisdiction rules and as a result, termination of the proceeding cannot be sufficient evidence of the plaintiff's unjustified actions. The Grand Chamber of the Supreme Court, in a decision of December 18, 2019 in a civil case № 640/1029/18 (№ proceeding 14-443cs19) did not accept the defendant's argument that the plaintiff's actions were unjustified due to "wilful" bringing a "pointless action before a court of incompetent jurisdiction", since the termination of the proceeding proved neither the absence of a dispute between the plaintiff and the defendant, nor the absence of the subject matter of the dispute, nor the plaintiff's wilful violation of the rules of subject-matter jurisdiction. Therefore, no grounds for charging the plaintiff with the defendant's costs of legal aid are provided by part 5 of article 142 of the CPC of Ukraine. Similar reasons are for compensation for the costs incurred by the parties or third parties in the event of the termination of the proceedings in the absence of the subject matter of the dispute or in the event of *nolle prosequi* (for example, Decision of the Supreme Court composed of the Panel of Judges of the First Trial Chamber of the Civil Court of Cassation of 21 April 2021, in civil case № 199/9188/16-c, proceeding № 61-12504sv20, and Decision of the Supreme Court composed of the Panel of Judges of Economic Court of Cassation of August 30, 2018 on case № 910/23235/17).

Supreme Court Judge A. Hrushytskyi argues that from the perspective of provisions of part 9 of article 141 of the CPC of Ukraine, the concept of “improper” in the Ukrainian language is defined as such that does not comply with certain norms, rules and requirements; does not meet the requirements of proportionality, symmetry, etc., as well as such that does not correspond to the truth, reality; false, wrong; incorrect; that does not lead to the desired results. The application of this provision is not well-established, while the notion of “improper actions by a party” should be interpreted together with the notion of “abuse of procedural rights”. According to Supplementary Decision of the GC SC of 23 October, 2019, administrative case № 815/6171/17, the person filed an administrative lawsuit to the State Registrar for the annulment of the decision and the obligation to perform certain actions in November 2017. At that time, there was no case law to attribute this category of disputes to the civil court jurisdiction, so there is no reason to believe that the plaintiff’s actions in bringing the lawsuit were improper or unjustified. The principle of proportionality in the apportionment of judicial costs may not be applied in case of abuse of procedural rights by a party if the action is denied, judicial costs may be imposed on the defendant (Hrushytskyi, 2019).

According to the Supreme Court in one case, the apportionment of judicial costs is compensatory and is, to a certain extent, the responsibility of each of the parties for acts, including procedural acts, in the course of proceeding (Decision of the Supreme Court composed of the Panel of Judges of the Administrative Court of Cassation of October 20, 2020, case № 520/928/19, proceeding № K/9901/6985/20). Moreover, from the perspective of some scientists, the incurring of judicial costs is an autonomous type of procedural offence (Stoliarov, 2004, p. 11), while the others do not consider apportionment of judicial costs liable (Zhukov, 2014, p. 102).

However, even if the apportionment of judicial costs is recognised as such that entails liability, no grounds for such liability exist in case of the termination of proceedings on the grounds that the case should be considered under the rules of another type of proceedings, in our opinion, it is not possible to accuse the plaintiff of unjustified actions in bringing a claim before a court of incompetent jurisdiction, since it is the court that is required to refuse to initiate proceedings on those grounds, and then acceptance and consideration of such claim (until the time of termination of the proceedings by a higher court) entails the liability of the court primarily. Similarly, it is impossible

to accuse the defendant of having had to go to court as a result of his/her improper actions, since the improper actions can only be established by the outcome of the dispute on the merits. That is to say, the termination of proceedings on grounds of bringing an action before a court of incompetent jurisdiction cannot apply the requirements of part 9 of article 141 and part 5 of article 142 of the CPC of Ukraine (or similar provisions of the APC or EPC of Ukraine) when considering the issue of apportionment of judicial costs. At the same time, the law does not allow to recover judicial costs by bringing an appropriate action (claim for compensation of judicial costs) in another proceeding. Therefore, the only solution is the apportionment of judicial costs within the limits of the case in which the proceedings are terminated.

Formerly, we have already proved the objective need to change the procedural regulatory mechanism for competence in civil proceedings by requiring the court to transfer the case (entirely or in part of plaintiff’s claims) by jurisdiction to another court, eliminating grounds for termination of proceedings such as non-jurisdiction (Koroied, 2014, p. 109). Only last year, in accordance with Law № 460-IX of January 15, 2020, articles 377 and 414 of the CPC of Ukraine were supplemented by corresponding provisions that regulate that in case of the termination of proceedings by the court of appeal (cassation), under para. 1 of part 1 of article 255 of the Code, the court, on the basis of application of the plaintiff, in written proceedings, makes a decision on the transfer of a case to the court of first instance, which has jurisdiction to hear such case, except if several claims subject to different proceedings are joined in one proceeding (or a case is transferred partly to a new consideration or to a further consideration). Similar provisions are contained in articles 319 and 354 of the APC of Ukraine and articles 278 and 313 of the EPC of Ukraine. Moreover, we argue that such mechanism should cover the court of first instance, as it can make a decision on the termination of proceedings on these grounds.

For example, the practical application of articles 377 and 414 of the CPC of Ukraine is the ruling of the Grand Chamber of the Supreme Court of May 12, 2020 in civil case № 464/104/16-c (proceedings thereof was terminated by the Grand Chamber of the Supreme Court), according to which, on the application of the plaintiff, case № 464/104/16-c, on the claim of the Sykhhiv District Administration of the Lviv City Council to PERSON\_1, PERSON\_2, third persons not claiming independent claims regarding the subject matter of the dispute: Lviv Municipal Enterprise Zhytlovyk-C, PERSON\_3, about the removal

of the unauthorized enlarged part of the balcony has been transferred to the Lviv District Administrative Court for further consideration. At the same time, before transferring the case to the court of competent jurisdiction, the Grand Chamber of the Supreme Court, in another ruling of May 12, 2020, did not establish that the plaintiff had abused his procedural rights, therefore, denied the defendant's claim for compensation from the Sykhiv District Administration of the Lviv City Council, for the costs of legal aid incurred by PERSON\_1 related to proceeding, as a result of the plaintiff's unjustified actions. That is, the issue of apportionment of judicial costs incurred in civil proceedings was decided before the transfer to the court of competent, administrative jurisdiction that deprived the defendant of the opportunity to claim for the compensation of costs incurred as a result of considering the case on the merits before the court of competent jurisdiction.

#### 4. Conclusions

In our opinion, this "mechanism for transferring a case to a court of competent jurisdiction" does generate a solution for the apportionment of judicial costs within a particular case provided this mechanism is applied not voluntarily (at the request of the plaintiff), but on a mandatory basis exclusively, along with introducing a rule on the apportionment of the costs as a result of deciding the case on the merits. Consequently, when a case, after being terminated in one type of proceeding, is brought unconditionally before the court of competent jurisdiction in another type of proceeding, the plaintiff, on the basis of the principle of disposition, will further

decide whether to dismiss the action (leave it pending) or to continue to defend his/her rights before a court of competent jurisdiction. In this case it will be possible to apply the general mechanism for apportionment of judicial costs, that is, the relevant provisions of apportionment of judicial costs, prescribed by procedure law, on adjudication of a case on the merits (article 141 of the CPC of Ukraine) or the rules of apportionment of judicial costs when a proceeding is terminated (in connection with nolle prosequi or amicable agreement) or dismissed (article 142 of the CPC of Ukraine).

Another option to resolve the issue of the apportionment of judicial costs in the event of the termination of proceedings on the above-mentioned grounds, may be a procedural time limit (for example, one month) for the plaintiff from the termination of proceedings on the grounds provided by para. 1 of part 1 of article 255 of the CPC of Ukraine to submit an application under articles 377 and 414 of the CPC of Ukraine on transferring the case to a court of competent jurisdiction. In such a case, the failure of the plaintiff to submit the application within the specified time limit should be considered an abuse of procedural rights (since the plaintiff has initiated proceedings in a court of incompetent jurisdiction and does not wish to continue it in a court of competent jurisdiction to prove the validity of his/her claims and the improper actions of the defendant), which is the ground for apportionment of judicial costs by the court that has terminated the proceeding, considering the provisions of either part 9 of article 141 or part 5 of article 142 of the CPC of Ukraine.

#### References:

- Barankova, V.V., Bihun, V.A., Komarov, V.V.** (2011). *Kurs tsyvilnoho protsesu [Course of civil proceedings]*. Kharkiv: Pravo (in Ukrainian).
- Bohlia, S.S.** (2005). *Sudovi vytraty v tsyvilnomu sudochynstvi [Judicial costs in civil proceedings]. Extended abstract of candidate's thesis.* Kharkiv (in Ukrainian).
- Bohomol, O.V.** (2014). *Shchodo poriadku rozpodilu sudovykh vytrat u hospodarskomu sudochynstvi [Regarding the order of apportionment of judicial costs in commercial litigation]. Rynkova ekonomika: suchasna teoriia i praktyka upravlinnia – Market economy: modern theory and practice of management, no. 1(1), pp. 235–240* (in Ukrainian).
- Hrushytskyi, A.** (2019). *Vidstuplennia vid pryntsypu proporsionosti pry rozpodili sudovykh vytrat mizh storonamy [Deviation from the principle of proportionality in the distribution of court costs between the parties]. Sudebno-yurydycheskaia hazeta – Judicial-legal newspaper.* Retrieved from: <http://bit.ly/37eLQJt> (in Ukrainian).
- Koroied, S.O.** (2014). *Protseualne zabezpechennia efektyvnosti tsyvilnoho sudochynstva [Procedural ensuring the effectiveness of civil proceedings]. Doctor's thesis.* Kyiv (in Ukrainian).
- Shtefan, M.Y.** (2005). *Tsyvilne protseualne pravo Ukrainy [Civil procedural law of Ukraine].* Kyiv: In Yure (in Ukrainian).
- Stoliarov, A.G.** (2004). *Sudebnye raskhody kak element sostava grazhdanskoi protseualnoi otvetstvennosti [Legal costs as an element of the composition of civil procedural responsibility]. Extended abstract of candidate's thesis.* St. Petersburg (in Russian).
- Ustushenko, S.E.** (2021). *Sudovi vytraty v tsyvilnomu protsesi Ukrainy [Judicial costs in civil proceedings in Ukraine]. Doctor's thesis.* Odesa (in Ukrainian).

Vasyliiev, S.V. (2008). *Tsyvylnyi protsesy [Civil proceedings]*. Kharkiv: Odissei (in Ukrainian).

Zhukov, A.A. (2014). Raspreделение sudebnykh raskhodov kak mera otvetstvennosti v arbitrazhnom protsesse [Apportionment of judicial costs as a measure of liability in the arbitration process]. *Probely v rossiiskom zakonodatelstve – Gaps in Russian legislation*, no. 2, pp. 100–102 (in Russian).

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## МЕХАНІЗМ РОЗПОДІЛУ ЗДІЙСНЕНИХ СТОРОНАМИ СУДОВИХ ВИТРАТ УНАСЛІДОК ЗАКРИТТЯ ПРОВАДЖЕННЯ В АДМІНІСТРАТИВНІЙ АБО ЦИВІЛЬНІЙ СПРАВІ ЧЕРЕЗ ПОДАННЯ ПОЗОВУ ДО СУДУ НЕНАЛЕЖНОЇ ЮРИСДИКЦІЇ

**Анотація.** *Метою* статті є визначення поняття та призначення судових витрат у судовому процесі, надання характеристики компенсаційної, превентивної та соціальної функцій судових витрат. **Результати.** Визначаються ознаки та принципи компенсації (відшкодування) судових витрат. Здійснюється аналіз судової практики Верховного Суду стосовно вирішення питання розподілу судових витрат у разі закриття провадження у справі. Обґрунтовується, що на відміну від положень ч. 5 ст. 142 ЦПК України, яка стосується необґрунтованих дій позивача саме у процесуальному аспекті (тобто дії з пред'явлення безпідставного позову та дії у процесі, які характеризуються зловживанням процесуальними правами), положення ч. 9 ст. 141 ЦПК України більше стосується неправильних дій сторони в матеріально-правовому сенсі, що призвели до виникнення спору та можуть бути встановлені лише за результатами вирішення такого спору (тобто під час ухвалення рішення по суті спору). Наводяться правові позиції Верховного Суду з приводу тлумачення зазначених положень процесуального закону. Підтримується підхід, згідно з яким спричинення судових витрат є самостійним видом процесуального правопорушення. Наводиться загальне правило, згідно з яким вирішення питання розподілу судових витрат допускається лише в межах тієї справи, провадження в якій закривається. Аналізуються положення процесуального закону про передачу справи до суду першої інстанції, до юрисдикції якого віднесено розгляд такої справи в разі закриття судом апеляційної (касаційної) інстанції провадження у справі з мотивів пред'явлення позову до суду неналежної юрисдикції. **Висновки.** Для того щоб зазначений «механізм передачі справи до суду належної юрисдикції» все-таки забезпечував вирішення питання розподілу судових витрат у межах конкретної справи, автором запропоновано, щоб його застосування відбувалося в обов'язковому порядку з одночасним запровадженням правила про вирішення питання щодо розподілу судових витрат саме за результатами вирішення такої справи по суті в суді належної юрисдикції.

**Ключові слова:** судові витрати, розподіл, компенсація, закриття провадження, справа, позов, суд, юрисдикція.

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