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КРИМІНОЛОГІЯ

КРИМІНАЛЬНИЙ ПРОЦЕС

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AI GENERATED WORKS AND COPYRIGHT PROTECTION

Abstract. The ***purpose of the article*** is to find the most promising and practical way of applying copyright to AI generated works, taking into account the objectives of copyright law and technological progress.

Research methods. The methodology of this study includes analytical, comparative and dialectic methods of scientific research.

Results. Due to the human-centered approach to authorship, the existing copyright legislation of most countries cannot provide protection for AI generated works. Even the concept of computer-generated works, implemented in the legislation of some countries, cannot fully resolve all complex issues concerning AI generated works, because it confers copyright on those, who design and operate AI systems. At the same time, another concept, proposed for AI generated works, regards such works as public property (public domain), which may be good for the general public, but not good for those who create and operate AI systems. As for the novel concept of electronic persons, providing legal personality for autonomous AI systems, this approach is quite flexible as it allows giving copyright to an AI system itself and enables the owner of such a system to control the exercise of copyright by this system. However, it may still take a while before this concept is finally appreciated and implemented. In fact, it may even require reaching the next stage of AI development, namely Artificial General Intelligence (AGI).

Conclusions. At present, copyright law does not protect AI-generated works in most countries. Only a few countries have copyright legislation on computer-generated works applying to the works created by AI systems. According to this legislation, copyright is given to those who have undertaken the necessary arrangements in order for the computer to produce the works. Even though this approach protects the economic interests of those who design and operate AI systems, it cannot always provide a fair allocation of copyrights in situations, involving a large number of stakeholders, due to the complexity of such systems. Another idea is to treat AI generated works as public property (public domain). However, it cannot have a wide application, as it lacks the incentives for those who design and operate AI systems. In theory, it is also possible to give autonomous AI systems their own legal personhood enabling them to become copyright owners. In this case, autonomous AI systems with the legal status of electronic persons could be recognized as authors of the works they generated. This flexible approach also enables the owners of AI systems to control the exercise copyrights belonging to such systems. Although it is unclear if the concept of electronic person can be implemented at this point, it is quite likely to be recognized when the stage of Artificial General Intelligence (AGI) is reached.

Key words: artificial intelligence, intellectual property, copyright, AI generated works, legal personhood, electronic person.

1. Introduction

Artificial intelligence (AI) is no longer science fiction. Due to the advances in digital technologies, AI applications have recently been developing at an accelerating pace. AI is already deployed in different application domains, e.g., recommendation systems, spam filters, image recognition, voice recognition, virtual assistants, etc. (Delipetrev, Tsinarakli, Kostić, 2020, p.4). As a result, AI is starting to have a significant impact on our daily lives, economy and society as a whole. As AI gradually penetrates all areas of life, it becomes increasingly clear that the use of AI has to be governed by

law. Like many other new technologies, AI raises a wide range of legal and human rights issues. According to Rowena Rodrigues, the AI-related issues include: the lack of algorithmic transparency; cybersecurity vulnerabilities; unfairness, bias and discrimination; the lack of contestability; legal personhood issues; intellectual property issues; adverse effects on workers; privacy and data protection issues; liability for damage and lack of accountability for harms (Rodrigues, 2020).

Among numerous legal issues and challenges associated with AI, the issues of intellectual property seem to be the most evident as AI is increasingly used for creative purposes. In recent years, there have been a lot of examples of AI systems writing novels, essays and articles (Loutfi, 2021), painting pictures (the next Rembrandt), and composing music (Lauder, 2017). Contrary to a common belief that only humans are capable of being creative, modern AI systems demonstrate a growing capacity to produce creative works. The creative potential of AI must not be ignored by law in the sense that there has to be a clear and unambiguous legal approach to dealing with AI generated works that would promote innovation in the field of AI and its creative application. Taking into account the above, it is necessary to explore all potential options of copyright protection with regards to AI generated works.

In this respect, it is necessary to give credit to lawyers and scholars, such as R. Rodrigues, C. R. Davies, L. Gathercole, M. Iglesias, S. Shamuilia and A. Anderberg, S. F. Hedrick, M. Kop, I. Veiksa, R. Free, R. D. Brown, S. Karnouskos, who have already examined some legal issues of AI and various ways of applying copyright protection to AI generated works. Although many interesting ideas regarding the application of copyright law to AI generated works have been put forward, the findings of the legal research on this issue vary dramatically. Therefore, the purpose of this study is to find the most promising and practical way of applying copyright to AI generated works, taking into account the main objectives of copyright law as well as technological progress.

This study involves the use of analytical, comparative and dialectic methods of scientific research. The analytical method is used for exploring different avenues of copyright application to AI generated works as well as examining the relevant legislation. The use of the analytical method is coupled with the comparative method of research, which is used for identifying the advantages and shortcomings of different concepts suggesting copyright protection for AI generated works. The dialectic method is applied for the investigation of AI technological development stages.

2. AI generated works and current copyright regulation

As AI systems become increasingly sophisticated, their autonomy and creative capacity grow considerably. In fact, even today, when we can witness only the dawn of the AI era (the stage of the so-called "weak AI" or "Artificial Narrow Intelligence"), intelligent machines powered by AI are already capable of producing original creative works by themselves. In other words, creative activities leading to the appearance of new original works are no longer the monopoly of human beings.

Naturally, it gives rise to a question – is the current copyright law ready to face a new reality, in which original works are created not only by humans, but by smart machines as well? For the vast majority of countries, the answer is no. In particular, C. R. Davies concludes that the current regime is woefully inadequate to deal with the growing use of more and more intuitive artificial intelligence systems in the production of such works (Davies, 2011).

The thing is that the existing copyright law has been built on the idea that creativity is a purely human attribute. Hence, the origins of copyright are basically human. As a result, only a human author can have moral rights to his/her works, whereas economic rights to such works also originate from a human author even in the case of their transfer to another individual or a legal person.

This human-centered approach to authorship is well reflected in the copyright legislation of Ukraine. In particular, the Law of Ukraine "On copyright and related rights" defines an author as a natural person, who produced a work by way of creative labor. The approach is quite similar in many other countries. According to M. Iglesias, S. Shamuilia and A. Anderberg, most copyright legislation across EU Member States is very much dependent on human-centred concepts, for: the beneficiary of protection (i.e. the author); the conditions for protection (e.g. originality); and the rights granted (economic, but also moral rights). This human-centred focus is also present in the *acquis communautaire*, although arguably to lesser extent due to the lack of regulation on moral rights... The outcome is similar under US law. The US Copyright Act protects original works of authorship and, to qualify as a work of authorship, a work must be created by a human being. The general guide to the policies and procedures of the US Copyright Office is also clear in this regard: 'the Office will not register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author (Iglesias, Shamuilia, Ander-

berg, 2021, p. 14; the Compendium of U.S. Copyright Office Practices).

Given the above, it is possible to conclude that under the existing legislation of most countries, copyright protection applies only to original works created by human authors. Therefore, currently works created by autonomous AI systems cannot be protected by copyright, even if they meet the criterion of originality. So, it turns out that there is a large gap in the copyright regulation when it comes to the original works generated by autonomous AI systems.

Considering the objectives of copyright law, the current lack of copyright protection for AI generated works appears to be unacceptable. The main purpose of intellectual property law in general and copyright law in particular is to promote creative activities and innovation by providing legal protection for the results of such activities. If there is no copyright protection for the works generated by AI systems, there will be no incentives for high-tech companies to design new AI systems and no incentives for users to make use of such systems for creative purposes. As a result, this lack of incentives may lead to lower investments in the development of AI and a lower level of creative activities in the field of science, literature, art and entertainment industry, holding back scientific, economic and cultural progress.

3. AI generated works and human copyright holders

Unlike most countries, where there is no copyright protection for AI generated works, some countries, including the UK, South Africa, Hong Kong, India, Ireland and New Zealand, have enacted legislation protecting computer-generated works ... In the UK, computer-generated works are defined as works 'generated by computer in circumstances such that there is no human author of the work' (Iglesias, Shamuilia, Anderberg, 2021, p. 13). Thus, the concept of computer-generated works applies to works created by autonomous AI systems.

According to Laura Gathercole, the current position under the Copyright, Designs and Patents Act 1988 is that, where a computer has generated the works, the author is the person who has undertaken the necessary arrangements in order for the computer to produce the works. The author enjoys copyright protection for 50 years from the date of creation (Gathercole, 2022). In other words, in a situation where there is no real human author of an AI generated work, there is a possibility of designating a copyright holder who will act as an author. This pragmatic approach provides the possibility of granting copyright to a person, who has made the most significant contribution to the creation and operation of an autonomous AI system, which generated a work. In most cases a copyright holder is likely to be either the programmer or the user of an AI system.

This approach seems to be largely in line with the views, expressed by Ingrida Veiksa, who points out that works created by artificial intelligence must be protected by copyright, and such protection must not differ from the usual (traditional) protection of authors' works ... and only humans can be recognized as the author of a work, and no computer or algorithm can be identified as the copyright owner (Veiksa, 2021, p. 235). Furthermore, as Samantha Fink Hedrick points out, the incentives inherent in the copyright bargain – and the very rationale for the existence of copyright law – are only advanced when copyright is allocated to a human, whether that is the programmer, user, data owner, or a combination of them (Hedrick, 2019, p. 375).

At the same time, the concept of computer-generated works has its drawbacks. Due to the growing complexity of modern AI systems, it is not always possible to clearly identify a person, who has undertaken all necessary arrangements for the AI system to produce a work, because in many cases there are dozens of people involved in the process of designing, programming, training and running an AI system. In this regard, it is not quite clear how the concept of computer-generated work addresses the use of various data for machine learning, which is considered to be a crucial part of any modern AI system. The thing is that such data may belong to different persons, who are neither programmers nor users of AI systems. So, the question is whether they can also be recognized as co-authors of the works created AI systems using their data. For instance, it is quite possible for a modern AI system to create a beautiful picture after studying hundreds or thousands of paintings created by human artists. Would it be fair not to recognize these human artists as co-authors of an AI generated picture along with the programmers and users of the relevant AI system?

In addition, an autonomous AI system, which is capable of making its own decisions, may resort to some illegal actions, like stealing data from their rightful owners, without the knowledge and authorization of those in charge of such a system. A situation like this may give rise to questions like: "Who is going to be responsible for such violations?", or "Is it fair to make persons, who design or run autonomous AI systems, responsible for their violations?".

4. AI generated works and the public domain

Unlike the concept of computer-generated works, which aims to provide incentives for all

those involved in the creation and use of AI systems by granting them copyright protection, the concept of public domain for AI generated works has a completely different objective. It is aimed at providing open access for the general public to the works generated by AI systems, rather than protecting individual economic interests.

According to the proponents of the AI public domain, the concept of AI at the current state of the art does not need an incentive to create, nor recognition or reward for its endeavours. It simply does not need exclusive rights. Additionally, it is argued that extending copyrights hinders innovation, cultural diversity and even fundamental freedoms, and adding extra layers to the existing rainbow of IP rights is not a good solution to balance the societal impact of technological progress. Drawing inspiration from the Roman Law, Mauritz Kop puts forward an idea of Res Publicae ex Machina (Public Property from the Machine) for AI creations that crossed the autonomy threshold. According to him, the introduction of the legal concept of Public Property from the Machine is a Pareto improvement; many actors benefit from it while nobody – at least no legal person – will suffer from it (Kop, 2020, p.p. 306, 339).

On the face of it, this approach puts the interests of the general public first. In theory, on the one hand, the fewer restrictions, the better for people and companies, when it comes to using AI generated works. However, on the other hand, this approach may discourage investment in complex and costly IA development projects as investors will not be willing to spend their money on technologies that do not yield a profit. From a practical point of view, this approach appears to be suitable only for state-funded and charitable projects of AI development designed to meet some social needs. Big high-tech companies are unlikely to engage in such projects without any copyright protection of their economic interests.

The copyright law has to ensure a well-balanced approach to the protection all stakeholders' interests (both the creators and the general public). Striking this balance is not an easy task, when it comes to the copyright protection of works generated by autonomous AI systems. Certainly, AI generated works must be recognized eligible for copyright protection. At the same time, this protection must not become an insurmountable barrier for all those interested in using these works. In light of this, the concept of public domain for AI generated works (Public Property from the Machine) does not seem to have a universal application, even though it may be applied to the works created by state-funded or charitable AI projects. In general, the public domain for AI generated works would be appropriate after the expiration copyright protection, just like in the case of other literary and art works.

If the concept of public domain is ever applied in relation to AI generated works, the issues of moral rights to such work will remain anyway. According to the classic approach of the public domain concept, which is well reflected in article 30 of the Law of Ukraine "On copyright and related rights", only economic rights to works are transferred into the public domain after the expiration of a certain time period. This transfer, essentially, means that such a work may be used without paying any fees to its copyright owner. An author's moral rights to works must be observed even after this transfer takes place. Therefore, the basic question remains the same – who is entitled to claim authorship for an AI generated work? The public domain concept does not seem to provide any answers to this question.

5. AI generated works and the legal personhood of AI systems

Copyright protections for AI generated works based on the concepts of public domain and computer-generated works have their roots in the current anthropocentric copyright legal regime. Thus, it is natural that the drawbacks of these concepts with regards to AI generated works are also caused by the human-centered approach of the existing copyright law. So, what about an alternative to this approach?

In recent years, the growing autonomy of modern AI systems, the narrowing gap between AI and human intelligence as well as numerous legal issues stemming from the application of AI systems have provided ample grounds for interesting suggestions of granting autonomous AI systems their own legal personhood. Furthermore, these suggestions are no longer purely theoretical as they are considered at the level of the European Parliament and take shape of recommendations to the Commission (European Parliament resolution).

Although these proposals and recommendations to the Commission primarily deal with the issues of civil liability for the damages resulting from the application of AI systems, the very idea of granting AI systems legal personality and turning them into the so-called "electronic persons" implies a totally new approach to many AI related problems in different areas of law, including copyright law.

In fact, the emergence of new legal entities, such as "electronic persons", may signify one of the greatest shifts in the field of law in centuries. Ever since legal persons came into existence there have been only two types of legal subjects, namely natural persons and legal persons.

If the idea of creating electronic persons as legal subjects gains recognition and eventually finds its way into the legislation, natural and legal persons will have to share the legal space with electronic persons. With regards to the AI related issues of copyright the emergence of electronic persons as the embodiment of the legal personality of autonomous AI systems may be quite significant, as it offers new avenues of solving the existing problems of authorship and copyright for AI generated works.

In theory, the legal personhood of autonomous AI systems may serve as a legal basis for recognizing autonomous AI systems as the authors of copyright and owners of intangible assets. In light of this, it is worth considering some of the options, set out by Dr. Rachel Free. According to her, "one option is to enable the autonomous AI itself to own the intangible assets. Those who argue that giving autonomous AI the status of a legal person would address the issue of accountability, effectively imply this solution... if a fully autonomous robot, such as Rachel in Bladerunner, has the status of a legal person, then it follows that she can be an inventor and subsequent owner of a patent. In the same way, she could be the author of copyright in a computer program..." (Free, 2018). Although in this case the status of legal person is referred to as a precondition for owning intangible assets and being an author of copyright, it is possible to assume that the status of electronic person might also be appropriate.

According to the same legal scholar, another option might be giving autonomous robots a status akin to that of a child. A human would then be responsible for the robot in the same way a human parent or guardian is responsible for a child (Free, 2018). In this case it is necessary to point out that a child is a natural person, who can have rights and duties, even though a child's legal capacity is somewhat limited. The idea of a child-like status for robots suggests that an autonomous AI system as an electronic person could have a limited legal personality and remain under the control of natural and legal persons. In effect, regardless of whether AI systems are granted legal personhood, they themselves will always remain someone's property, which means that they will always be under the legal control of natural and legal persons. This approach gives some flexibility, which means that an autonomous AI system as an electronic person could be recognized as a copyright owner and an author, whereas the owners of such a system itself could control the use of copyright and protect the authorship belonging to an AI system.

Although in theory it is possible for an autonomous AI system to become an electronic person with certain intellectual property rights, including the rights to claim authorship and to enjoy copyright protection, it is far from clear if the society is ready to accept this idea. Perhaps, the most likely scenario is the one described by Rafael Dean Brown. According to him, "it is unlikely that governments and legislators will suddenly recognise in one event AI's ownership of property and AI's legal personhood. Rather, acceptance of AI's legal personhood, as with the acceptance of a corporate personhood will develop as a process and in stages, ... However, as AI develops its ability to communicate and assert more autonomy, then AI will come to own all sorts of digital assets" (Brown, 2021, p. 233). In other words, the recognition of AI systems' personhood will depend on the technological progress of AI. Therefore, it is possible to assume that the conferral of intellectual property rights, including copyright, on autonomous AI systems will also depend on the progress of AI technology.

There are several evolutionary levels of AI, including Artificial Narrow Intelligence (ANI) or weak AI, Artificial General Intelligence (AGI) also known as strong AI or Human-Level AI and Artificial Super Intelligence (ASI), surpassing by far human capabilities. Although we are still in the age of ANI with self-driving cars, voice interactions (e.g., Siri/Cortana), recommendations (e.g., Amazon and Facebook), automatic translations (Google translate), the next level, i.e., AGI may not be very far in the future (Karnouskos, 2022, p.94).

While at the current level of weak AI (ANI) the discussion of AI systems' legal personhood and the conferral of intellectual property rights on such systems appears to be largely theoretical, the next level of AI development (AGI) will pose practical challenges for people living side by side with human-like intelligent machines. So, it is not difficult to predict that the advent of strong AI (AGI) may turn this theoretical issue into a practical one, as there may be a pressing need to recognize autonomous AI systems as electronic persons capable of being authors and enjoying copyright protections. At the same time, it is necessary to be careful with the legal personhood of autonomous AI systems and the conferral of intellectual property rights on them. In the interests of humanity, the legal personhood of such systems will have to be limited at the stage of AGI and even more so at the stage of ASI. As for AI systems' intellectual property rights, they should be exercised under human supervision and control, since it is important to prevent any dangerous concentration of intellectual property rights, including copyright, in the hands of intelligent machines.

6. Conclusions

As a conclusion, it is necessary to point out that the copyright legislation of most countries is currently not ready to deal with AI generated works and, as a result, such works are not protected by copyright.

At the same time, a number of countries have adopted the legislation on computer-generated works allowing to protect such works by conferring copyright on those, who has undertaken the necessary arrangements in order for the computer to produce the works. However, it is not quite clear how this approach can apply to works, generated by complex AI systems, involving the activities of a large number of professionals and/or requiring the use of data belonging to different persons. So, even though this approach protects the economic interests of those, who design and operate AI systems, it cannot always provide a fair allocation of copyright in complex situations, involving a large number of stakeholders.

Another approach discussed in the legal community is to treat AI works as public property (public domain) with open access for the general public. Although the public domain concept may potentially apply to works created by state-funded or charitable AI projects, it cannot have a wide application, as it lacks incentives for all those, who design and operate AI systems.

There is also a hypothetical possibility of giving autonomous AI systems their own legal personhood and enabling them to be copyright owners. In this case autonomous AI systems as electronic persons with their own legal personality could be recognized as the authors of the works they generated. This approach appears to be quite flexible, as it also allows the owners of autonomous AI systems to control the exercise of copyrights belonging to such systems (electronic persons). At the same time, it is unclear, if the society is ready to implement the concept of electronic persons (AI systems' legal personhood) at this point. It is more likely that over time, when we move from the weak AI (ANI) to the strong AI (AGI) stage of AI technological development, the governments will realize that this legal innovation is necessary. However, the recognition of autonomous AI systems as electronic persons and copyright owners has to have certain limitations enabling the human owners of such systems to control the exercise of their copyrights.

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ТВОРИ, СТВОРЕНІ ШТУЧНИМ ІНТЕЛЕКТОМ, ТА ЇХ ОХОРОНА АВТОРСЬКИМ ПРАВОМ

Анотація. ***Метою*** статті є виявлення найбільш перспективного та практичного способу застосування авторського права до творів, створених штучним інтелектом, з урахуванням цілей авторського права та технічного прогресу.

Методи дослідження. Методологія цього дослідження включає у себе аналітичний, порівняльний та діалектичний методи наукового дослідження.

Результати. З огляду на підхід до авторства, орієнтований на людину, наявне законодавство про авторське право більшості країн не може забезпечити захист творів, створених штучним інтелектом. Навіть концепція комп'ютерних творів, запроваджена у законодавстві деяких країн, не може повною мірою вирішити всі складні питання, що стосуються творів, створених штучним інтелектом, незважаючи на те, що вона надає авторські права тим, хто розробляє та керує системами штучного інтелекту. Водночас інша концепція, запропонована для творів, створених штучним інтелектом, розглядає такі твори як суспільну власність (суспільне надбання), що може бути корисним для широкої громадськості, але не корисним для тих, хто створює та керує системами штучного інтелекту. Що стосується нової концепції електронних осіб, яка говорить про правосуб'єктність автономних систем штучного інтелекту, цей підхід є досить гнучким у тому сенсі, що він дозволяє надати авторське право самій системі штучного інтелекту та дає можливість власнику такої системи контролювати здійснення авторського права цією системою. Однак для того щоб ця концепція була нарешті оцінена та реалізована, може знадобитися ще деякий час. Насправді, це може навіть вимагати досягнення наступного етапу розвитку штучного інтелекту, а саме штучного загального інтелекту.

Висновки. Нині авторське право в більшості країн не захищає роботи, створені штучним інтелектом. Лише в кількох країнах діють закони про авторське право на комп'ютерні твори, які застосовуються до творів, створених за допомогою систем штучного інтелекту. Відповідно до цього законодавства авторське право надається тим, хто вжив необхідних заходів для того, щоб комп'ютер створив твір. Незважаючи на те, що такий підхід захищає економічні інтереси тих, хто розробляє та експлуатує системи штучного інтелекту, через складність таких систем він не завжди може забезпечити справедливий розподіл авторських прав у ситуаціях із залученням великої кількості зацікавлених осіб. Інша ідея полягає в тому, щоб розглядати створені штучним інтелектом твори як суспільну власність (суспільне надбання). Однак він не може мати широкого застосування, оскільки не забезпечує стимулів для тих, хто розробляє та керує системами штучного інтелекту. З теоретичної точки зору також можна надати автономним системам штучного інтелекту власну правосуб'єктність, що дозволить їм стати власниками авторських прав. У цьому випадку автономні системи штучного інтелекту з правовим статусом електронних осіб можуть бути визнані авторами створених ними творів. Цей гнучкий підхід також дозволяє власникам систем штучного інтелекту контролювати використання авторських прав, що належать таким системам. Хоча поки що неясно, чи можна реалізувати концепцію електронної особи на такому етапі, цілком ймовірно, що вона буде реалізована тоді, коли буде досягнута стадія загального штучного інтелекту.

Ключові слова: штучний інтелект, інтелектуальна власність, авторське право, твори, створені штучним інтелектом, правосуб'єктність, електронна особа.

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DE-SOVIETIZATION OF HOUSING LEGISLATION: CURRENT CHALLENGES IN MARTIAL LAW

Abstract. ***Purpose of the study***. The purpose of the article is the study of the current state and prospects of scientific research on the regulation of housing relations, the substantiation of the foundations that will be laid in the new wording of the Housing Code, the legal characteristics of housing as an appropriate and affordable, as well as their relationship with the state guarantees of property rights to housing conditions of military aggression of the Russian Federation.

Methodology. The dominant methodological approach in the study is a comparative legal approach, which became the basis of understanding the content of such basic legal categories as "state housing policy", "housing fund", "housing" and made it possible to identify their specific features and differences. To understand and analyze the content of the norms of existing legislative acts regulating the procedure for providing housing to the population, used the normative-dogmatic method, and the method of system-structural analysis allowed to clarify the place of state housing policy in the system of state policy in general.

Results. Analysis of the Law of Ukraine "On the Desovietization of Ukrainian Legislation" indicates two directions of "desovietization": a) change of the word combination indicating state authorities of the USSR period; b) redistribution of powers between state authorities and local self-government bodies for the management of the housing stock. Along with the decentralization of housing management, the so-called "privatization" of public relations should occur when it is impossible to adequately influence public relations in order to adequately regulate them through the regulation of relations. Housing ownership and affordability standards should be established at the level of housing. It is right to carry out a housing reform, based on the dual nature of housing (social and economic good). The priority for Ukraine is to support the system of repair of damaged housing stock. Draft № 7198 does not directly pursue the goal of compensation for housing, thus creating a dual understanding of security within the property relationship and within the housing relationship. The science of housing law should establish the scope of state compensation guarantees for damaged and destroyed property, taking into account the attributes of adequate and affordable housing.

Conclusions. Desovietization of housing legislation did not enshrine new norms, even to a certain extent affirmed certain communist principles. The new wording of the Housing Code should be based on private law principles of realization of housing rights of persons, in particular in terms of improving the existing methods of acquiring ownership and other proprietary rights to housing. It is necessary to specify an exhaustive list of housing (social dormitories), social standards of restored housing, the boundaries of compensation. The relationship of the construction of social housing, which is not subject to privatization and is provided to resettlers for long-term use, needs to be

studied. It is essential not only to restore the state and communal housing fund but also establish new mechanisms for the legal realization of everyone's housing rights. Housing conditions for those deprived of housing must be provided additionally. Providing IDPs with housing in new settlements is temporary in nature and should not be considered a solution to housing needs.

Key words: housing policy, right to housing, housing rights, Housing Code, desovietization of housing legislation, social housing.

1. Introduction

Analysis of the current Housing Code of Ukraine (hereinafter – HC) and other legal acts allows to assert that the housing legislation still remains a legal field *hic sunt dracones* (from the Latin "here live dragons" – a constant expression, which means dangerous or unexplored areas), because it almost unites the provisions of working acts, "purified" from Soviet features, without forming a new legislative concept of regulation of housing relations.

The new edition of the Housing Code ("Proekt Zhytlovoho kodeksu Ukrainy [Draft Housing Code of Ukraine]," 2021) as a proposal to update the housing legislation of Ukraine should be based on the constitutional norm of Art. 47 of the Law of Ukraine, as a result of which must necessarily receive regulatory and legal development: a) conditions under which every citizen will be able to build housing, acquire ownership or rent it (private-legal component); b) implementation of the needs of citizens for social protection, in particular, for the provision of housing by the state and local authorities free of charge or at an affordable fee for them in accordance with the law (social component).

The main shortcomings of the current legislation include uncertainty in the priority in the adoption of legislative acts, a huge number of configurations and additions to the already adopted laws; instability and internal contradictions of legislative acts and individual norms; lack of legal regulation of many public relations, which is due to the lack of state housing policy.

The aim of the article is to investigate the current state and prospects of scientific research in the sphere of regulation of housing relations, the substantiation of the foundations that will be laid in the new wording of the Housing Code, the legal characteristics of housing as an appropriate and affordable, as well as their relationship with the state guarantees of ownership rights to housing conditions of military aggression of the Russian Federation.

2. A new stage in the codification of housing legislation

The need to codify housing legislation has repeatedly been the subject of various scientific and practical discussions. Nowadays there is no doubt about the existence and development in domestic jurisprudence the doctrine of housing law (Haliantych, 2013). The main problem is not even in the formation of a single normative-legal act regulating housing relations, but in the real possibility of implementing the interrelated economic, social and legal guarantees that will be declared by the state in this act.

It is a matter of implementing the well-known idea of enshrining general as well as economic, social and cultural rights. S. P. Holovatyi draws attention to the division of international prescriptions into those containing the principles of human rights (the Universal Declaration of Human Rights) and those containing prescriptions of a legally binding nature (the International Covenant on Economic, Social and Cultural Rights) (Holovatyi, 2016, p. 267). Incidentally, this very division was accompanied by a deepening ideological confrontation between East and West during the Cold War, because in the consolidation of state social guarantees the United States saw a threat in their socialist nature, while the USSR considered liberalism as "one should not let a fox mind the henhouse" (Holovatyi, 2016, p. 268).

In actual conditions of the state ownership of only 3% of housing, there is an urgent need to reform the housing legislation, adapted to modern conditions, in particular, the subject of legal regulation of the new Housing of Ukraine should be the arising relations in the process: a) realization of the right to housing; b) provision of a physical person with housing for use; c) possession and use of housing; d) management of the housing fund; e) operation and protection of the housing fund; f) exclusion from the housing fund of houses and premises unfit for habitation; g) consideration of housing disputes, etc. (Haliantych & Pyzhova, 2019, p. 149).

The Law of Ukraine "On the Desovietization of the Legislation of Ukraine" of 21.04.2022, № 2215-IX aims to "reflect acts of Ukrainian legislation, both by making appropriate changes to existing laws, and by recognizing some regulatory legal acts (or their provisions) of public authorities and administration of the USSR and the USSR not applicable in Ukraine, which, while formally retaining their force, have no regulatory impact or, on the contrary, are now regulating a certain range of social relations, although the terminology used in them and the approaches to the subject regulation are outdated, irrelevant and conceptually incompatible with the legislation of Ukraine" (explanatory note). The Housing Code of the Ukrainian

SSR, 1983, which will be referred to as the Housing Code of Ukraine, has undergone significant changes in legal regulation.

The analysis of the changes indicates 2 directions of "desovietization": a) change of the phraseology containing an indication of the state authorities of the USSR period; b) redistribution of powers between state bodies and local self-government bodies for the management of the housing stock. Along with this comes a logical question: *has the HC become non-Soviet*? A certain rhetorical quality to this question is given by the norm of the final transitional provisions, which establishes the obligation of the Cabinet of Ministers of Ukraine "within one year from the date of entry into force of this Act to develop and submit to the Verkhovna Rada of Ukraine projects of the Housing Code of Ukraine ..."

One gets the impression that "desovietization" was a public rejection of the acts listed in the annexes to this Law, which constitute a kind of mappa mundi (Latin for "world map" – the common name for geographical maps of the European Middle Ages, which was intended to graphically illustrate the Christian picture of the world), i.e., documents that cannot be a priori normative legal, due to the provision of Part 2, Article 8 of the Constitution of Ukraine (e.g. Decree № 62/503 of the Central Executive Committee of the USSR and the Council of People's Commissars of March 27, 1933 "On improvement of housing conditions of scientific workers" or the Fundamentals of housing legislation of the USSR and Union republics of June 24, 1981 № 5150-X).

Desovietized Housing in the new wording of Art. 1 enshrines the right of citizens of Ukraine to housing, leaving the reproduction of the prescription of Art. 42 of the Constitution of USSR, 1978, as amended by Law № 1510-VI of 11.06.2009. Separately, it is worth noting the norms of the desovietized HC, which have signs of "building socialism and communism", in particular, articles 134 (registration of citizens wishing to join a housing and construction cooperative), 137 (procedure of organization and activities of housing and construction cooperatives), 138 (control over activities of housing and construction cooperatives), 141 (provision of housing and construction to members), 154 (control over maintenance of houses (apartments) belonging to citizens); 178 (assistance to citizens in current repairs of residential premises).

Undoubtedly, the new Housing Code of Ukraine shall regulate a wider range of social relations – arising, changing and terminating housing legal relations only in relation to the finished house or other premises suitable for permanent residence of an individual; besides, it shall take into account all features of legal regulation of housing legal relations, remove the problem of parallel application of legislative norms (Haliantych & Pyzhova, 2019, p. 149).

Along with the decentralization of housing management, which consists in the transfer of powers from state bodies to local governments, there must be the so-called "privatization" of public relations in the impossibility of proper public influence on public relations to regulate them adequately by regulating relations, given the need for proper management of housing that is in private ownership (reform of relations within housing societies; legal regime of dormitories and housing that belongs to legal entities of private law, etc.).

This model of social relations is market-oriented privatization model, which implies that the legal norms are eventually crystallized as a result of the desire of individuals to regulate themselves (Fisher, 2021, p. 179; Kochyn, 2021, p. 6). It is about the need to enshrine corporate norms that will ensure the housing rights of individuals, as well as a model of private-public partnership for the implementation of social guarantees.

3. Adequate and affordable housing

Legislative consolidation of the concept of "housing" (in addition to its functional purpose) requires the implementation of Article 48 of the Constitution of Ukraine, which established the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. This right correlates with the State's obligation to take appropriate measures to ensure the exercise of this right in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights.

According to the Guiding Principles on the Right to Adequate Housing (Report of the UN Special Rapporteur of 26.12.2019), this object of the relationship should not only be considered as physical shelter or housing in the form of goods, but also be linked to the concept of dignity, the due person (paragraph 15). As a result, the measures of this right include features such as availability of services, affordability, accommodation, physical accessibility, proper location, and cultural adequacy, among others (subparagraph "b" of paragraph 16).

M. V. Bernatskyi determines that among the list of objects enshrined in Articles 379–382 of the Civil Code of Ukraine (types of housing), only the apartment by its properties meets the definition of housing; others are either parts of the housing, or complex things within which the housing is located; therefore, the absence of one of the elements of housing suggested

by the author to ensure its habitability, such an object cannot be recognized as a housing (Bernatskyi, 2016, p. 3).

Currently, the legislation operates with different concepts: "norm of living space", which is 13,65 m^2 per person (Art. 47 of the HC); temporary "minimum standards of social housing" – 6 m^2 of living space per person (in social dormitories) and 22 m^2 of common area for a family of two and an additional 9,3 m^2 of common area for each additional family member (in apartments, homestead (single-family) houses) (Decree of the Cabinet of Ministers of Ukraine "On the establishment of temporary minimum standards of social housing" from 19.03.2008 № 219); the "sanitary standard" is 21 m^2 of total space per tenant and each member of his family and an additional 10 m^2 per family (Art. 3 of the Law of Ukraine "On privatization of the state housing fund").

Next to this uncertainty, let's highlight building code B.2.2-15:2019: "Residential buildings. Basic Provisions" (Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine of 26.03.2019 № 87), containing other technical properties of housing, establishing, depending on the type of housing minimum common room area (14 and 16 m^2), bedroom (8 and 10 m^2), kitchen (5 and 8 m^2), mediated by a minimum acceptable level of comfort (Section 5.19).

Thus, it is reasonable to establish standards of ownership and affordability of housing at the level of housing, which will be the initial element of state policy on the provision of individuals with housing.

Circumstances that have led to changes in housing policy are: the transition to market relations in general and the need to give the right of dynamism to a faster and more realistic provision of housing migrant labor force; reorientation of the solvent population to market ways of their satisfaction; the housing market is a universal mechanism for redistribution of housing; the inability of the state to solve the housing problem on its own. These circumstances are objective in nature, and in shaping housing policy, it must be borne in mind that the state is not in a position to assume the obligation to meet the housing needs of all its citizens without compensation, large-scale housing distribution programs are illusory (Nahorniak, 2000, p. 19).

It is correct to carry out a housing reform based on the dual nature of housing (social and economic good). From this point of view it is quite logical to recognize the realization of the right of citizens to housing construction with state support of affordable housing – given its cost, which citizens with low income who need to improve their housing conditions are able to purchase.

Today, the legal, organizational and social basis of state policy to ensure the constitutional rights of socially vulnerable population groups in Ukraine regarding obtaining housing is determined by the Law of Ukraine "On the social housing stock." The above law requires appropriate scientific rethinking in accordance with the proposed housing policy, in particular, in terms of enshrining provisions regarding adequate and affordable housing.

In Canada, housing is considered "affordable" if it costs no more than 30% of total family income, with costs including mortgage repayment and servicing, property tax, utility bills for owners, rent and utility bills for renters (Kovalevska, 2013).

In German law there are no concepts of "getting", "providing" an apartment, because low-income people are allocated financial aid for independent renting of housing in the private sector. More than half of the country's population rents apartments or houses, and in major cities such as Berlin, Hamburg, the proportion of renters is more than 80%. The contract for renting an apartment is agreed upon by the welfare office, which pays the rent and part of the cost of utilities. Social housing can only be changed with the consent of the social welfare office in the case of special circumstances, most of which are stipulated in legislation or bylaws. No assistance is payable if the total area of the rented apartment exceeds the set minimum (Kharechko, 2016).

In Canada, the directions of housing policy correlate with the level of government support for citizens in solving the housing problem as follows:

– in the segment of "market housing" there is no direct support of the state, the policy of the state is aimed at the development of the general market environment, in particular in the segment of housing construction, the financial sector and the income sphere of the population;

– in the "affordable housing" segment, some level of public subsidy is assumed to be provided by the federal government, provincial governments and municipalities;

– in the segment of "social housing" provided for rent, the level of state subsidy is the highest, the rent rate is set according to the level of income (rent geared to income or RGI housing) (Omelchuk, 2016).

4. Compensation for damage to and destruction of housing as a result of military actions, terrorist acts, sabotage caused by military aggression of the Russian Federation

Recovery for damage and destruction of housing as a result of military actions, terrorist acts, sabotage caused by military aggression of the Russian Federation depends on

the existence and effective operation of a legal mechanism to ensure them. On the territory of Ukraine, a significant number of citizens, having the right of ownership to housing located in the liberated territories, cannot use it, and having left for other regions of Ukraine, are forced to live, in particular, in rooms of sanatoriums, which in some cases are not suitable for living (i.e., have no signs of proper housing).

The draft of the Law of Ukraine "On compensation for damage and destruction of certain categories of real estate as a result of military actions, terrorist acts, sabotage, caused by military aggression of the Russian Federation" dated 24.03.2022 № 7198 (hereinafter – the Draft) was adopted as a basis. The need to adopt such a bill is extremely necessary, as evidenced by foreign experience of providing housing and compensation for damaged/destroyed housing in Armenia, Azerbaijan, Georgia, Cyprus, Colombia, Moldova, etc. The process of restoration of housing rights implies certain stages: restitution and then compensation. This approach makes it possible to include all persons affected by the war, regardless of their belonging to categories under Ukrainian law. In war time, providing compensation is complicated during the active phase of the conflict in the absence of a peace agreement.

The Supreme Court expressed the legal position that "in the case of application of the 'tort exception' any dispute arising on its territory from a citizen of Ukraine, even with a foreign country, including the Russian Federation, can be considered and resolved by a court of Ukraine as a proper and competent court." ("Postanova Kasatsiinoho tsyvilnoho sudu u skladi Verkhovnoho Sudu [Resolution of the Civil Court of Cassation of the Supreme Court]. 14.04.2022 № 308/9708/19," 2022) Consequently, compensation for damage and destruction of certain real estate (in particular, housing) caused by military aggression of the Russian Federation is considered in accordance with the principle of "general tort," that is, on private law principles.

The first priority for Ukraine is to support the system of repair of damaged housing stock as a response to the housing problems of people affected by war. It is proposed to compensate for the lost housing in Ukraine by compensating the property damage for the damaged and/or destroyed real estate, caused by military actions, terrorist acts, sabotage, caused by military aggression of the Russian Federation in the envisaged way. Compensation is provided by: monetary compensation or financing of construction works to restore the damaged common property of the apartment building (Art. 4 of the Draft).

Foreign experience shows that, as a rule, 10% of victims receive state funding to solve their housing problems. However, if the burden of proof shifts to the state, it significantly reduces the time for restitution and compensation. Compensation is determined for each piece of real estate separately. At the same time as receiving compensation, the recipient of compensation concludes an agreement on the assignment to the state of the right of claim against the Russian Federation for compensation for damage to or destruction of real property resulting from military actions, terrorist acts, sabotage, caused by military aggression of the Russian Federation. Such a treaty shall be concluded by accession to the treaty. The form of such contract shall be established by the Cabinet of Ministers of Ukraine (Art. 7 of the Draft).

In fact, the provision of compensation depends on international donors and organizations, the amount of such aid, and not on the order of receipt of applications for compensation, as proposed: 1) each locality (for damaged and destroyed objects of immovable property, which are (were) outside the locality – in the context of the territory of each territorial community); 2) the method of compensation within the relevant locality (territory of the relevant territorial community) (Article 8 of the Draft).

The Draft under study does not directly pursue the goal of compensation for housing, thus creating a dual understanding of security within the property relationship and within the housing relationship. For example, the limit amount of compensation in the form of an object of immovable property cannot exceed the value of 150 m^2 per object of immovable property (Part 2 of Art. 6). That is, the science of housing law should establish the scope of state compensation guarantees for damaged and destroyed property, taking into account the characteristics of adequate and affordable housing.

5. Conclusions

1. The Law of Ukraine "On the De-Sovietization of Ukrainian Legislation" did not enshrine new norms of housing legislation, moreover, it even approved certain communist principles to a certain extent. The new wording of the Housing Code should be based on private law principles of realization of housing rights, in particular in terms of improving the existing methods of acquiring ownership and other proprietary rights to housing. In addition, the norms of housing, which will establish social guarantees for citizens in view of existing social standards and the state's ability to implement these guarantees, require appropriate harmonization.

2. The difficult economic situation in the country, the lack of a clear housing policy, the lack of reforms in the sphere of housing provision for socially vulnerable citizens, all this creates legal problems in the realization of the housing rights of each person who has lost their housing. The legislation needs to be improved, the exhaustive list of housing (social dormitories), social standards of restored housing, the limits of compensation should be specified.

3. The relationship between the construction of social housing, which is not subject to privatization and is provided for long-term use to resettles, needs to be studied. It is believed that the provision of housing for temporary use should be in compliance with the constitutional right of citizens to an adequate standard of living (Article 48 of the Constitution of Ukraine), as well as providing such persons with benefits for the cost of housing and communal services.

4. The housing legislation that has been applied to date is extremely ineffective and fails to ensure the right of citizens to housing, both in the absence of a vision for solving the problem of the existence of waiting lists for housing and in the absence of compensation for it. It is necessary not only to restore the state, communal housing fund, fix the mechanism of legal implementation of housing rights, but also to fix new mechanisms of legal implementation of everyone's housing rights, which is an urgent need in the science of housing law.

5. Housing conditions for the dispossessed should be provided additionally, such as the construction of temporary settlements, which are already being established at the expense of foreign sponsors. Providing IDPs with housing in new settlements is temporary in nature and should not be seen as a solution to housing needs.

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ДЕРАДЯНІЗАЦІЯ ЖИТЛОВОГО ЗАКОНОДАВСТВА: СУЧАСНІ ВИКЛИКИ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. ***Мета.*** Метою статті є дослідження наявного стану та перспективи наукових пошуків у сфері регулювання житлових відносин, обґрунтування основ, які закладатимуться у нову редакцію ЖК, правові особливості характеристики житла як належного та доступного, а також їх взаємозв'язок із державними гарантіями реалізації права власності на житло в умовах військової агресії Російської Федерації.

Методи дослідження. Домінуючим у методологічному підході у проведеному дослідженні є порівняльно-правовий підхід, який став основою розуміння змісту таких базових правових категорій, як «державна житлова політика», «житловий фонд», «житло», і дав можливість виявити їхні специфічні особливості та відмінності. Для розуміння й аналізу змісту норм чинних актів законодавства, яке регламентує порядок забезпечення житлом населення, використано нормативно-догматичний метод, а метод системно-структурного аналізу дозволив з'ясувати місце державної житлової політики у системі державної політики взагалі.

Результати. Аналіз Закону України «Про дерадянізацію законодавства України» свідчить про 2 напрями «дерадянізації»: а) зміну словосполучень, які містять вказівку щодо органів державної влади періоду СРСР; б) перерозподіл повноважень між державними органами та органами місцевого самоврядування щодо управління житловим фондом. Поруч із децентралізацією управління житловим фондом має відбутися так звана «приватизація» суспільних відносин за умов неможливості належного публічного впливу на суспільні відносини з метою їх адекватного регулювання шляхом регламентації відносин. Слід встановити стандарти належності та доступності житла на рівні ЖК. Правильним є проведення житлової реформи, виходячи із двоякої природи житла (соціального та економічного блага). Першочерговою для України є підтримка системи ремонту пошкодженого житлового фонду. Проєкт № 7198 безпосередньо не має на меті компенсацію за житло, чим створює подвійне розуміння гарантування в межах відносин власності та в межах житлових відносин. У межах науки житлового права слід встановити обсяг державних гарантій компенсацій за пошкоджене та знищене майно з огляду на ознаки належного та доступного житла.

Висновки. Дерадянізація житлового законодавства не закріпила нових норм, навіть певною мірою утвердила окремі комуністичні принципи. Нова редакція ЖК має ґрунтуватися на приватноправових засадах реалізації житлових прав осіб, зокрема в частині удосконалення вже наявних способів набуття права власності та інших речових прав на житло. Слід конкретизувати вичерпний перелік житла (соціальні гуртожитки), соціальні стандарти відновленого житла, межі відшкодування. Потребують дослідження відносини будівництва соціального житла, яке не підлягає приватизації та надається переселенцям у довготривале користування. Слід не лише відновлювати державний, комунальний житловий фонд, а й закріпити нові механізми правової реалізації житлових прав кожного. Житлові умови для осіб, які втратили житло, мають бути забезпечені додатково. Забезпечення вимушених переселенців житлом у нових поселеннях має тимчасовий характер і не повинно розглядатися як вирішення житлової потреби.

Ключові слова: житлова політика, право на житло, житлові права, Житловий кодекс, дерадянізація житлового законодавства, житло соціального призначення.

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PROTECTION OF THE PROFESSIONAL HONOR AND DIGNITY OF A POLICE OFFICER IN WAR

Abstract. ***The purpose*** of the research is a comprehensive analysis of theoretical and applied issues related to the protection of professional honor and dignity of police officers, development of recommendations aimed at improving the mechanism of legal protection of personal non-property rights of police officers, and substantiation of proposal for improving the legislation.

The methodological basis of the study is a dialectical approach to the knowledge of theoretical and legal categories of honor and dignity. The scientific tools of the work comprise the principles of objectivity, systematicity, integrity, pluralism of knowledge of the civil doctrine on the protection of personal intangible assets.

Results. A comparative legal analysis of the legal categories of honor, dignity, professional honor and dignity of a police officer was conducted. The mechanism of responsibility for insulting a police officer in foreign countries was studied. It was established that the essence of protecting the professional honor and dignity of a police officer is not only the ethical rehabilitation of the victim but also the creation of a positive image of the police officer.

Conclusions. The article notes that the professional honor and dignity of a police officer acts both as an object of private legal protection and an object of public legal protection.

It was proved that under declared martial law, it is inadmissible to limit the protection of professional honor and dignity of police officers only by civil and administrative means.

It is proposed to provide for criminal liability for insulting a representative of law enforcement agencies in the performance of their official duties, in particular, in wartime. Criminalization of the relevant offense, along with civil and administrative liability, will be an adequate way to protect the honor and dignity of a police officer and an effective means of preventing such offenses.

Key words: personal non-property rights, honor and dignity, protection of professional honor and dignity, responsibility for insulting a police officer.

1. Introduction

Personal non-property rights, in particular, the right to life, health, bodily integrity, honor, and dignity, are central to the system of civil rights and freedoms of any civilized state. However, the civil law doctrine lacks modern comprehensive research devoted to protecting professional honor and dignity of law enforcement officials in wartime.

The relevance of the article is due to violations of personal non-property rights of police officers in the discharge of their duties, in particular, honor and dignity, the ineffectiveness of the legal mechanism regulating such relations, and the need to adjust modern legislation to current realities. The following domestic scientists devoted their contributions to studying such legal categories as honor and dignity and related issues: V. I. Bobryk, N.O. Davydova, O. V. Kokhanovska, L. V. Krasytska, N.S. Kuznietsova, R.A. Maidanyk, V.O. Slipchenko, R. A. Stefanchuk, Z. V. Romovska, and others. Problems of the legal protection of honor and dignity were the subject of monographic research by O. S. Zhydkova (2008), K. V. Mozharovska (2014), V. M. Pidhorodynskyi (2020), I. V. Saprykina (2006), O. V. Syniehubov (2008), R. O. Stefanchuk (2001), O. S. Subbotenko (2016), A. O. Tserkovna (2003), A. S. Shtefan, and a collective monograph "Fundamental Human Rights: the German-Ukrainian Legal Dimension" (2022).

The purpose of the study is to conduct a comprehensive analysis of theoretical and applied

issues related to the protection of professional honor and dignity of police officers, development of recommendations aimed at improving the mechanism of the legal protection of personal non-property rights of police officers, and motivation for the proposal to improve the relevant legislation. The outlined tasks are to determine the particularities of such legal categories as the honor and dignity of a police officer, to find out the nature of attacks upon the honor and dignity of police officers during the performance of their duties, and improve the mechanism for protecting the honor and dignity of police officers in wartime.

Research methodology relies on a dialectical approach to the knowledge of the theoretical and legal categories of honor and dignity. The scientific toolkit comprises the principles of objectivity, consistency, integrity, and pluralism of the knowledge of the civil law doctrine regarding the protection of personal non-property goods.

2. Honor and dignity as moral and legal categories

The right to honor and dignity is one of the fundamental human rights based on the standards enshrined in many international legal instruments. In particular, Art. 1 of the Charter of Fundamental Rights of the European Union proclaims as follows: "Human dignity is inviolable. It must be respected and protected". At the national level, this provision is enshrined in Art. 3 of the Constitution of Ukraine. Honor and dignity as independent theoretical and legal categories convey the relationship between the individual, society and the state, and the protection of honor and dignity of government officials acquires special importance given the modern wartime context.

In linguistic expert practice, the analysis of conflict-generating texts is traditionally carried out using dictionaries that reflect a particular stage of language development. Academic Dictionary of the Ukrainian language defines the concept of "dignity" as a set of traits that characterize positive moral qualities; a person's awareness of his public authority and duty (Slovnyk, p. 65). When we talk about the dignity of a particular person, it is primarily about one's self-esteem (internal assessment) (Osnovni prava lyudyny, 2022, p. 43), that is, it refers to the subjective self-esteem of an individual, attitude to oneself, and awareness of one's position in society. The doctrine of civil law usually renders honor as a positive social assessment of a person in the eyes of others, which relies on the correspondence of his actions (behavior) to generally accepted ideas of good and evil and his awareness of such assessment (Stefanchuk, 2001, p. 16). Foreign researchers define the concept of honor as dignity to be supported (Decker, 2014, p. 119). The legal categories of honor and dignity are not identical. In domestic legislation, the right to respect for the honor and dignity of an individual is declared in Art. 297 of the Civil Code of Ukraine. In other words, the above concepts are grounded on an objective (honor) and subjective idea (dignity) of a person's social position.

Honor and dignity may be humiliated by offensive words or obscene assessments addressed to an individual or his actions or behavior. An insult focuses on humiliation and concerns two spheres of human life: emotional and social. In the emotional sphere, an insult is associated with the deliberate humiliation of human dignity and feelings. In the social sphere, an insult acts as a form of interpersonal conflict with negative expressions in words or behavior. The task of the State is to create an effective protection mechanism that would ensure the renewal of violated rights.

At the same time, the right to free expression may conflict with the right of individuals to honor, dignity, integrity, and business reputation inviolability.

Expression offences always contradict the freedom of speech, so an optimal balance must be found between intelligent discussion, censorship and criminal rules (Reinbacher, 2020, p. 196). Offensive statements must be distinguished from evaluative judgments. Descriptive statements contain information about facts and events that can be verified, that is, descriptive statements can be offensive, but they can be refuted if they are not true. As for evaluative judgments, they characterize the object in general.

According to Part 2 of Art. 30 of the Law of Ukraine "On Information", evaluative judgments, except defamation, are statements that do not contain factual data, criticism, assessment of actions, as well as statements that cannot be interpreted as containing factual data, in particular, given the nature of linguistic and stylistic means (use of hyperboles, allegories, and satire). Value judgments are not subject to disproof and justification of their truthfulness.

The Judgment of the European Court of Human Rights in the case of Ukrainian Press Group v. Ukraine dated 29 March 2005 states that the requirement to acknowledge the untruthfulness of certain value judgments is unenforceable and violates freedom of expression as a fundamental part of the right protected by Article 10 of the European Convention on Human Rights.

However, evaluative statements cannot be considered admissible if they contain

obscene vocabulary that directly characterizes a particular person or a group of persons. In judicial practice, the following categories of words and expressions, which are usually offensive, addressed to a specific person are distinguished: obscene words and expressions that characterize the person; words and expressions which mean anti-social, illegal socially negative activities; words that generally assess personal qualities; zoo-semantic metaphors, which refer to the name of animals, birds, and mammals, and highlight the negative characteristics of character, appearance or behavior of the person; negative neologisms; words of specific and brutal content; comparison with odious persons known for their extremely negative qualities; names of professions used in the figurative sense; verbs with a condemnatory meaning or a direct negative assessment (Zaika 2019, 71–72). In civil law, there is a presumption of a person's honor. In other words, a person has honor if he/she has not committed any shameful smearing his/her honor.

The concepts of professional honor and dignity of a police officer are interrelated and reflect the moral values of his professional activity. Service in the national police is a specific type of public service.

The National Police of Ukraine (police) is the central executive authority that serves society by protecting human rights and freedoms, preventing crime, and maintaining public security and order (Art. 1 of the Law of Ukraine "On the National Police").

The national police is entrusted with the performance of special tasks and functions and hence, its employees, in particular, police officers, are vested with broad powers: to take measures to identify criminal and administrative offenses; to cease detected criminal and administrative offenses; to take measures aimed at eliminating threats to the life and health of individuals and public security due to the commission of a criminal or administrative offense (Art. 24 of the Law "On the National Police"). Professional honor is the specification of the general category of honor regarding the assessment of the professional activities of certain employees.

The professional honor of a police officer is evident in public attitude to law enforcement agencies in general and their specific representative in particular. The professional dignity of a police officer is his intrinsic moral attitude to his activities and himself as a representative of the law enforcement agency. When performing tasks related to protecting public order and ensuring public safety, police officers face audacious defamation of their honor and dignity. Offensive actions against a police officer can be expressed in various obscene forms: verbal (linguistic) actions and non-verbal (behavior), in particular, verbal use of *obscene* (offensive) vocabulary; in writing – by demonstrating different drawings, posters, etc.; demonstrating disrespectful movements, gestures; certain actions – pushing, removing the honors on uniformed clothes, slapping, spitting, splashing paint or brilliant green paint, and other acts of a disrespectful nature. The language form can be considered offensive, that is, humiliating the honor and dignity of a police officer if 1) the vocabulary used is regarded as offensive in society; 2) the vocabulary is addressed to a specific representative (representatives) of law enforcement agencies; 3) the offensive vocabulary was used publicly; 4) the insult is directly related to the lawful actions of a representative of law enforcement agencies.

It is also about an insult when the negative statement is true but is expressed publicly using a rough, humiliating, and disrespectful vocabulary. Public tactful comment to a law enforcement officer regarding his illegal actions or personal qualities that do not correspond to the generally accepted ones is not an insult.

3. Responsibility for the insult of a representative of law enforcement bodies

When exercising their powers, law enforcement representatives become victims of offensive actions of unconscious citizens. This fact causes significant damage to social relations that ensure the adequate activities of government agencies and their authority and to the honor and dignity of its specific representatives.

To guarantee the legal protection of a police officer, some specialists proposed envisaging the responsibility for the insult of a police officer during the performance of his duties towards the protection of public order in the Code of Ukraine on Administrative Offenses (Buhaychuk, 2021, p. 18).

The submitted draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses to Protect the Honor and Dignity of Citizens and Law Enforcement Officials" was the logical outcome of such an initiative. It puts forward supplementing Art. 185 of the Code of Ukraine on Administrative Offense with part three, which would stipulate liability for the public insult of a police officer performing his official duties towards the protection of public order and the state border or a service member because of his involvement in the protection of public order in the form of fine or public works.

At the same time, in March 2022, the Criminal Code of Ukraine was supplemented with Article 435-1 "Insult to the honor and dignity of a serviceperson, a threat to a serviceperson",

the sanction of which provides for imprisonment for up to five years. However, during martial law or a state of emergency, police officers may also be engaged in the tasks assigned to servicepersons of the Armed Forces of Ukraine.

According to Part 2 of Art. 24 of the Law "On the National Police", in the event of a threat to the state sovereignty of Ukraine and its territorial integrity, as well as during the suppression of armed aggression against Ukraine, police bodies and units, following the legislation of Ukraine, are engaged in the performance of territorial defense tasks, ensuring and implementing measures of the legal regime of martial law in the case of its declaration throughout Ukraine or separate area.

Illegal actions in the form of an insult to the honor and dignity of a police officer are a public disregard for the official in the direct force of his professional duties or in the context of their performance, which negatively affects the authority of the government body as a whole. Protecting the honor and dignity of a police officer aims to restore humiliated dignity, honor, firstly, for the victim and his environment, and secondly, for other members of society.

The mechanism of ensuring human rights should be considered as a dynamic system of legal means, which is realized through the activities of state bodies protecting the rights of every individual (Hal'tsova, 2021, p. 254). In some European countries, the legislator provides a rather harsh punishment for an insult. In the Criminal Code of France, the term "disrespect" covers words, threats, gestures or images of any kind, or sending any items addressed to a public officer, that may harm dignity or respect due to one's official function. According to Art. 433-5 of the Criminal Code of France, public disrespect constitutes a qualified crime that entails a year of imprisonment or a fine of 15.000 euros.

An insult is also recognized as a criminal offense in Germany. Thus, according to § 185 of the Criminal Code of the Federal Republic of Germany, the specific crime can be punished by imprisonment for up to one year or a fine, and if the offense was committed by an act – imprisonment for up to two years. The judgment of the Tel Aviv court, which stood in defense of the police officer's honor and dignity, gained publicity. Thus, for the dissemination on social networks of the song about the police officer "Green Serpent", the court sentenced the lawyer K. to six months in prison suspended, pay compensation for 5000 shekels and a fine of 3000 shekels, and 300 hours of public work in the form of free legal assistance to African asylum seekers "for the insult of a public servant". The prosecutor's office demanded one year in prison. The court found the following words offensive "A snake with green eyes walks along the street: a small police officer collecting information for the regime" (News.ru.co.il).

The domestic legislator decriminalized such illegal actions as an offence and slander, incl. insulting government officials. The main way to protect the honor and dignity of an individual is to apply to the court in civil proceedings. Criminal law means should become an appropriate element of the mechanism protecting the rights of police officers. An insult to a police officer in the discharge of his official duties may cover two bodies of offenses: a simple one, liability for which must be provided in administrative procedure, and a special, qualified body – the same actions that are committed in public. In view of the social danger of the latter in wartime, such acts must be regarded as criminal and punished under criminal procedure.

Police bodies represent public authorities and, given the degree of public danger, it is advisable to criminalize illegal actions against police officers in terms of attacks on their honor and dignity and supplement Section XV of the Criminal Code of Ukraine "Criminal offenses against the authority of executive government agencies, self-government bodies, citizens' associations and criminal offenses against journalists" with Article 345-1 "Insult to the honor and dignity of a police officer".

Respect for the human being, his honor and dignity, in particular, a person who performs his official duties, is a core feature of the rule of law and a characteristic difference of civilized society.

4. Conclusions

The professional honor and dignity of a police officer are an object of both private and public protection. Law enforcement officers are a special category of persons. They are endowed with exclusive powers and require special protection in the process of their implementation. The essence of protecting the professional honor and dignity of a police officer is not only the ethical rehabilitation of the victim but also the creation of a positive image of a police officer in general. This is possible only by creating an effective system of ways to protect the personal non-property rights of law enforcement officers.

Non-system changes in the legislation providing for liability for such offenses hinder the development of an effective mechanism for the protection of personal non-property rights of law enforcement officials. During martial law, it is unacceptable to limit the protection of professional honor and dignity of police officers by civil and administrative means.

The introduction of criminal liability for the insult to a representative of law enforcement agencies in the discharge of his official duties, in particular, in wartime, the creation of the material structure of this crime, along with civil and administrative liability, will be a relevant way to protect the honor and dignity of a police officer and comply with the social and legal principles of criminalization of socially dangerous acts and an effective means of preventing such offenses.

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ЗАХИСТ ПРОФЕСІЙНОЇ ЧЕСТІ ТА ГІДНОСТІ ПОЛІЦЕЙСЬКОГО В УМОВАХ ВОЄННОГО ЧАСУ

Анотація. ***Метою дослідження*** є комплексний аналіз теоретичних та прикладних питань, що стосуються захисту професійної честі та гідності працівників органів поліції, розробка рекомендацій, спрямованих на удосконалення механізму правового захисту особистих немайнових прав поліцейських та обґрунтування пропозиції щодо вдосконалення законодавства.

Методологічною основою дослідження є діалектичний підхід до пізнання теоретико-правових категорій честі та гідності. Науковий інструментарій роботи побудований на засадах об'єктивності, системності, інтегративності, плюралізму пізнання цивілістичної доктрини щодо захисту особистих немайнових благ.

Результати. Проведено порівняльно-правовий аналіз правових категорій «честь», «гідність», «професійна честь та гідність поліцейського». Досліджено механізм відповідальності за образу поліцейського у зарубіжних країнах. Встановлено, що сутність захисту професійної честі та гідності поліцейського полягає не лише у етичній реабілітації потерпілого, а і у створенні позитивного іміджу працівника поліції.

Висновки. У статті зазначається, що професійна честь та гідність поліцейського виступає і як об'єкт приватно-правового, і як об'єкт публічно-правового захисту.

Доведено, що в умовах оголошеного воєнного стану неприпустимо обмежувати захист професійної честі та гідності поліцейських лише цивільно-правовими та адміністративно-правовими засобами.

Запропоновано передбачити кримінальну відповідальність за образу представника правоохоронних органів під час виконання своїх службових обов'язків, зокрема в умовах воєнного часу. Криміналізація цього правопорушення поруч із цивільно-правовою та адміністративно-правовою відповідальністю стане адекватним способом захисту честі та гідності поліцейського та ефективним засобом профілактики та попередження такого роду правопорушень.

Ключові слова: особисті немайнові права, честь та гідність, захист професійної честі та гідності, відповідальність за образу поліцейського.

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SCIENTIFIC AND PRACTICAL ANALYSIS OF CURRENT REGULATIONS, JUDICIAL PRACTICE AND LEGISLATIVE INITIATIVES IN THE FIELD OF COMPENSATION FOR PROPERTY DAMAGE CAUSED BY DAMAGE TO REAL ESTATE AS A RESULT OF ARMED AGGRESSION OF THE RUSSIAN FEDERATION

Abstract. The military aggression of the Russian Federation against Ukraine, which began on February 24th, 2022, has already raised a lot of questions about the grounds for the procedure and methods of compensation (retribution) for property damage caused by the Russian Federation as a result of military aggression. Let's analyze what prospects we have today regarding the possibility of implementation of such an opportunity.

Purpose. The main aim of the article is to show and stress that the present Ukrainian juridical compensation mechanisms (especially civil law regulation) are not proper to the case of the Russian war aggression. Such theoretical and practical issue may be solved by special complex rule concerning the compensation mentioned above.

Research methods. The biggest part of data in this article were used to analyze and compare two situations: the compensation for property damage caused by damage to real estate as a result of armed aggression of the Russian Federation in 2022 and the period of ORDLO (Russian aggression in Donetsk and Lugansk oblasts in 2014).

Results. The conclusions made in this article show that for Ukrainian residents affected by the Russian war aggression, especially ones whose property were damaged or ruined by the Russian Federation as a result of military aggression, are not provided with effective juridical compensation mechanisms to cover losses caused by the 2022 armed aggression of the Russian Federation.

Conclusions. The solution to the above problem is the adoption of a specific complex law. Such law should determine and provide the grounds, subjects, whose property is compensated, and procedure for seizing and recovering property in favor of Ukrainian residents who have suffered from property damage. The Ukrainian Parliament is already discussing some law drafts. The most debatable and polemical issues today are which sources of Russian assets could and should be used to cover losses caused by the Russian Federation's military aggression.

The Draft Law № 7169 was registered in the Verkhovna Rada; it intends to amend the Law of Ukraine "On Fundamental Principles of Forced Withdrawal in Ukraine of Property of Russian Federation and its Residents" that came into force on 7 March 2022 (hereinafter – Law of Ukraine № 2116-IX dated 03 March 2022). This Draft Law aims to widen the scope of persons, whose property could be withdrawn in Ukraine due to Russian full-scale military aggression and specifies the purpose of such actions: towards future reparations to Ukraine.

The second vector of the Draft Law – specification of the purpose of forced withdrawal, is clear and necessary. However, the first vector is ambiguous and potentially dangerous.

If the Verkhovna Rada would pass the Draft Law № 7169, it would be possible to withdraw the property which belongs not only to the residents of the Russian Federation and legal entities, where Russia acts as a shareholder, beneficiary and/or owns a share (expressly or implicitly) in the charter capital. Property withdrawal may concern any individuals and legal entities (irrespective of their nationality, residency, centre of main interests etc.), who have political and/or economic links with the aggressor state. Political links are expressed in public support or objection of military aggression of the Russian Federation in Ukraine. Economic links are shown in proceeding of business activities on the territory of the aggressor state during martial law in Ukraine.

In other words, authors of the Draft Law № 7169 laid a potential opportunity to withdraw the property of any person, who "in word or in deed" supports military aggression against Ukraine, decisions of the Russian government and its policy

Key words: property damage, armed aggression, compensation, retribution violation of the Convention, assets, confiscation, withdraw property.

1. Introduction

General theoretical civil science defines overall characteristics of the grounds for civil liability for property damage caused by the actions of the Russian Federation on the territory of Ukraine.

The general grounds for liability for property damage are determined by the Civil Code of Ukraine, following the provisions of which:

– property damage caused by illegal decisions, actions or omissions to personal non-property rights of a person or entity, as well as damage caused to the property of a person or entity shall be reimbursed in full by the person who caused it. The person who caused the damage is exempt from reimbursed if he proves that the damage was not his fault (Article 1166 of the Civil Code of Ukraine. Implementation of this rule is carried out either in civil or criminal proceedings – when it is reviewed in a civil lawsuit);

– damage caused to an individual who has suffered from a criminal offense must be reimbursed in accordance with the law. Damage caused to the victim as a result of a criminal offense is compensated at the expense of the State Budget of Ukraine in cases and in the manner enshrined by law (Article 1177 of the Civil Code of Ukraine. However, this rule does not apply because there is no law);

– unless otherwise provided by law, taking into account the circumstances of the case, the court may, at the choice of the victim, oblige the person who caused damage to property, reimburse it in kind (transfer the thing of the same kind and quality, repair the damaged thing, etc.) or reimburse damages in full. The amount of damages to be reimbursed to the victim is determined in accordance with the real value of the lost property at the time of the case or the performance of work necessary to restore the damaged thing (Article 1192 of the Civil Code of Ukraine).

Thus, the implementation of the institute of civil liability in Ukraine, in particular in the form of compensation for property damage, is carried out either voluntarily or compulsorily (judicially). The legal basis for such liability is the body of a civil offense and also identification of the violator who caused property damage. Proof of these facts (except guilt) rests with the victim. Compensation for property damage is a measure of civil liability; the principle of full compensation for damage is applied.

In order to impose civil liability in the form of compensation for property damage caused to immovable property on the territory of Ukraine as a result of armed aggression of the Russian Federation, it requires each individual victim – the owner of the damaged property – to sue the state of the Russian Federation. That is, the state of the Russian Federation must act as a defendant in a civil lawsuit.

It should be noted that four years ago, the Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" as of January 18, 2018, № 2268-VIII provided that liability for material or immaterial damage caused to Ukraine as a result of the armed aggression of the Russian Federation shall be borne by the Russian Federation in accordance with the principles and norms of international law (Part 4, Article 2 of this Law). In addition, the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" as of April 15, 2014, № 1207-VII also provided that: *compensation for material and moral damage* caused by the temporary occupation of Ukraine, legal entities, public associations, citizens of Ukraine, foreigners and stateless persons, *is fully imposed on the Russian Federation* as the state carrying out the occupation. The State of Ukraine will use all possible means to compensate for material and moral damage by the Russian Federation (Part 6 of Article 5 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine"). This Law even established that in case of damage by non-resident foreign state entities, jurisdiction will

be established by the place of damage, taking into account the rules of jurisdiction established by this Law (Article 12).

To implement these provisions in terms of judicial protection in Ukrainian courts, the Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" amended Article 28 of the CPC of Ukraine (paragraph 17) and Article 5 Of the Law of Ukraine "On Judicial Fees" (paragraphs 21 and 22), by which the state of Ukraine "formally" provided for the legal possibility for victims of property destruction in eastern Ukraine, citizens of Ukraine, to fill with the national (Ukrainian) courts (at their place of residence or stay) against the aggressor state of the Russian Federation for compensation for property and / or moral damage in connection with the temporary occupation of Ukraine, armed aggression, armed conflict that led to forced relocation from the temporarily occupied territories of Ukraine, deaths, captivity, unlawful imprisonment or abduction as well as violation of the right of ownership on movable and/or immovable property under the rules of the CPC of Ukraine.

As mentioned above, in the implementation of civil liability in the form of compensation for property damage, the state of the Russian Federation must act in a civil case in the procedural status of the defendant in a civil lawsuit filed against it. However, it should be noted that filing lawsuits against a foreign state without the consent of its competent authorities is expressly prohibited by Art. 79 of the Law of Ukraine "On Private International Law", provisions on diplomatic missions and consular posts of foreign states in Ukraine, approved by Presidential Decree as of June 10, 1993, № 198/93 (198/93), Article 32 of the 1961 Vienna Convention, Article 5 of the Convention of United Nations on the jurisdictional immunities of states and their property as of December, 2· 2004. It is unrealistic to obtain such consent from the competent authorities of the Russian Federation. And neither Ukraine's international treaty nor the law of Ukraine provides for the direct possibility of filing a lawsuit against the Russian Federation in a Ukrainian court. That is, the exercise (including in court) in the Ukrainian courts by citizens of the right for compensation for damage caused by the destruction of their property at the expense of the Russian Federation is excluded, even if the actions of the Russian Federation will be proven as a civil offense.

In addition, the case law of the Supreme Court on filing such lawsuits against the state of the Russian Federation has already been formed. For example, the judgment of the Supreme Court of the Second Judicial Chamber of the Civil Court of Cassation as of 27.10.2021 in case № 710/784/19 (proceedings № 61-5289св20) concluded that the defendant, the Russian Federation, has judicial immunity in Ukraine and, therefore, the consent of the diplomatic mission is required to file a claim for damages. In the absence of such consent, a foreign state cannot obtain the legal status of a defendant in the civil proceedings in Ukraine, and the Ukrainian court has no right to carry out further procedural actions. Similar conclusions are found in the judgment of the Supreme Court as of May 13, 2020, in case № 711/17/19, as of June 9, 2021, in case № 265/7703/19, as of August 11, 2021, in case № 542/1323/18, as of September 1, 2021, in the case № 754/10080/19 (Judgment of the Supreme Court of the Second Judicial Chamber of the Civil Court of Cassation as of 27.10.2021 in case № 710/784/19 (case № 61-5289св20) (URL: https://www.zakon-i-normativ.info/index.php/component/lica/?href=0&view=text&base=5&id=134424&menu=135063).

Therefore, a civil lawsuit can be filed against the Russian Federation for compensation for property damage caused to real estate in Ukraine as a result of the armed aggression of the Russian Federation only in the relevant national court of the Russian Federation in accordance with the procedural legislation of the Russian Federation.

After applying to the national courts of the Russian Federation and receiving a refusal of judicial protection (final judgment of the court of the Russian Federation refusing compensation), the victim, the citizen of Ukraine or Ukrainian legal entity, has the right under the Convention for the Protection of Human Rights and Fundamental Freedoms to apply to the European Court of Human Rights, which will be an effective means of protection. However, it is worth highlithing the recent resolution of the European Court of Human Rights (March 22, 2022) on the consequences of Russia's termination of membership in the Council of Europe in the light of Article 58 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to which the judge of the Supreme Court T. Antsupova rightly drew attention: a) The Russian Federation ceases to be a High Signatory Party to the Convention as of September 16, 2022; b) The Court shall have jurisdiction to rule on applications against the Russian Federation which may constitute a violation of the Convention, provided that they have lasted until September 16, 2022 (Comment of the judge of the Supreme Court Tetyana Antsupova on the adoption by the European

Court of Human Rights of the Resolution on the consequences of the termination of Russia's membership in the Council of Europe. Official website of the Supreme Court. URL: https://supreme.court.gov.ua/supreme/pres-centr/news/1264425/). Therefore, the facts of causing property damage as a result of destruction and damage to immovable property on the territory of Ukraine as a result of military aggression of the Russian Federation from February 24th, 2022 till September 16th, 2022 may be reviewed by the European Court of Human Rights.

2. Analysis of the draft law No. 7198 (as adopted on April 1, 2022)

Given the above provisions of civil law of Ukraine, owners, citizens and legal entities, can obtain compensation for property damage caused by the damage or destruction of property in Ukraine on the grounds and in the manner prescribed by law and from a clearly defined responsible entity.

As noted above, it is impossible to exercise civil liability in Ukrainian courts in relation to the state of the Russian Federation within the legal field of Ukraine. Therefore, in order to ensure real compensation for property damage, another entity must be identified, which with its consent (in the absence of a statutory obligation to bear civil liability for the actions of another entity) will provide compensation for destroyed and damaged property due to hostilities, terrorist acts, and sabotage caused by the military aggression of the Russian Federation. Therefore, in order to determine the legal and organizational basis for state compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, and sabotage caused by military aggression of the Russian Federation from the date of entry into force of Presidential Decree as of February 24, 2022, № 64 "On the imposition of martial law in Ukraine", the Verkhovna Rada of Ukraine submitted the draft law of Ukraine "On compensation for damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation", adopted by the Verkhovna Rada of Ukraine in the first reading on the basis from 01.04.2022 (Draft Law of Ukraine "On Compensation for Damage and Destruction of Certain Categories of Immovable Property as a Result of Combat, Terrorist Acts, Sabotage Caused by Military Aggression of the Russian Federation" from March 24th, 2022 № 7198. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=7198&skl=10)(hereinafter – bill № 7198).

Analysis of the provisions of the content of draft № 7198 shows that its legal regulation will apply to:

1) individuals – citizens of Ukraine who are: a) owners of damaged and/or destroyed real estate; b) individuals who have invested and financed the construction of housing construction objects in respect of which the right to perform construction works has been obtained and which have not been put into operation; c) members of housing construction (housing) cooperatives who bought an apartment, other residential premises of the cooperative, but did not register the ownership of it; d) the heirs of the individuals specified in subparagraphs "a" – "c" of this paragraph;

2) associations of co-owners of apartment buildings, managers of apartment buildings, housing construction (housing) cooperatives, which maintain the relevant buildings, to restore the damaged common property of the apartment building.

The compensation mechanism provided in draft № 7198 is relatively simple and includes the following stages: a) submission of an application (including in electronic form) for compensation to the relevant Commission, regardless of the place of residence (stay) of the individual or location of the legal entity the recipient of compensation may independently provide an assessment of the value of the damaged real estate or an inspection of the possibility/impossibility of restoring of real estate). The application is submitted through the administrator of the center for the provision of administrative services, an official of the social protection body, or a notary; b) consideration of the application for compensation by the Commission and decision-making on compensation (the term of consideration of the application by the Commission does not exceed 30 calendar days from the date of submission of the application); c) providing the executive body of the council with compensation.

The draft law provides for the provision of compensation in the form of: 1) monetary compensation by transferring funds to the current account of the recipient of compensation with a special regime of use for these purposes. The procedure for opening and maintaining such accounts is determined by the National Bank of Ukraine (the amount of monetary compensation is determined by the assessment of the cost of restoration of the damaged property, considering the degree of its damage and the cost of its restoration); 2) a real estate object by financing its construction (by financing the construction of a new real estate object with an equivalent area, type and functional purpose. The maximum amount of compensation in the form of a real estate object may not exceed 150 m^2 per unit) The calculation of the value of 1 m^2 of the area of the real estate object is carried out according

to the methodology determined by the Cabinet of Ministers of Ukraine); 3) financing of construction works on restoration of damaged joint property of an apartment building (the amount of compensation in the form of financing of construction works is determined by estimating the cost of restoration of damaged common property of an apartment building taking into account the degree of damage).

However, as it can be seen from the explanatory note to the relevant draft, *"implementation of the draft law will not require additional funding from state or local budgets"*, so it needs a detailed analysis of the compensation mechanism provided by the bill to assess its feasibility. It should also be noted that the draft law *will not directly regulate* public relations to which it is aimed, because in accordance with its Final and Transitional Provisions, the Cabinet of Ministers of Ukraine is tasked *to develop a procedure for compensation,* and ensure: *approval of action plan* of actions for implementation of this law; *development and submission* to the Verkhovna Rada of Ukraine of the draft law of Ukraine on amendments to some legislative acts aimed at providing compensation for destroyed real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation in the form of providing facilities real estate; *adoption of normative legal acts* necessary for the implementation of this Law and bringing its normative legal acts in compliance with this Law; *adoption of the procedure and conditions for providing* and using subventions from the state budget to local budgets to provide compensation for damaged and destroyed real estate as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation; bringing ministries and other central and local executive bodies in line with their regulations in accordance with this Law; bringing building norms and other normative documents in line with the Law of Ukraine "On Energy Efficiency of Buildings", including the definition of an energy certificate as the only document that defines energy characteristics during the design of a construction project; *creation of the State Register of property* damaged and destroyed as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation; *collection of information* on apartments, other living quarters in the building, private houses, garden and country houses that were destroyed as a result of hostilities, terrorist acts, sabotage caused by military aggression of the Russian Federation in the manner prescribed by the Cabinet of Ministers of Ukraine; *annually in the state budget to provide expenditures* for the implementation of measures provided by this Law.

This set of measures, which the bill provides for the Cabinet of Ministers of Ukraine, as well as the bill provides sources of funding for compensation (fund for the restoration of property and destroyed infrastructure of Ukraine in connection with the armed aggression of the Russian Federation; international technical and/or repayable or non-repayable financial assistance; other sources, not prohibited by the legislation of Ukraine) in the absence of real guarantees for the formation of such a fund and the receipt of international assistance in sufficient quantities, *indicate an unlikely and long-term prospects for the purpose of the bill.*

Thus, the compensation mechanism provided by draft № 7198 is not legally compensation for property damage as a measure of civil liability, although it provides for the principle of full compensation in understanding of provisions of the Civil Code of Ukraine. And the implementation of the proposed compensation mechanism requires the implementation of a number of formalities and finding sources of funding.

3. Analysis of other drafts focused on compensation due to Russian aggression

The draft law of Ukraine "On Protection of Property Rights and Other Real Property Rights of Victims of Anti-Terrorist Operation or Joint Forces Operation"(Draft law of Ukraine "On Protection of Property Rights and Other Real Property Rights of Victims of Anti-Terrorist Operation or Joint Forces Operation" as of 17.03.2021 № 5177-1. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/25987) (draft № 5177-1) and the draft law of Ukraine "On Protection of Property Rights and Others Proprietary Rights of Victims of Armed Aggression" (Draft law of Ukraine "On Protection of Property Rights and Others Proprietary Rights of Victims of Armed Aggression" as of 01.03.2021 № 5177. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/25726) (draft № 5177), which set out alike mechanisms for state compensation (both drafts were included in the agenda), are similar to draft № 7198.

At the same time, two more drafts were registered in the Verkhovna Rada of Ukraine: the draft law of Ukraine "On Reconstruction of Housing Lost as a Result of the Russian Federation's Armed Aggression Against Ukraine" (Draft law of Ukraine "On Reconstruction of Housing Lost as a Result of the Russian Federation's Armed Aggression Against Ukraine" as of 10.03.2022 № 7134. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39189.) and the draft law of Ukraine "On Amendments to the Budget Code of Ukraine on Financing

the Reconstruction of Housing Lost as a Result of the Armed Aggression of the Russian Federation against Ukraine" (Draft law of Ukraine "On Amendments to the Budget Code of Ukraine on Financing the Reconstruction of Housing Lost as a Result of the Armed Aggression of the Russian Federation against Ukraine" as of 10.03.2022 № 7135. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39190) do not contain specific compensation mechanisms.

The draft law of Ukraine "On Compensation for Property Lost, Damaged and Destroyed as a Result of the Armed Aggression of the Russian Federation and Fair Distribution of Reparations" (Draft law of Ukraine "On Compensation for Property Lost, Damaged and Destroyed as a Result of the Armed Aggression of the Russian Federation and Fair Distribution of Reparations" from 31.03.2022 № 7237. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39332)(bill № 7237), which, compared to draft № 7198, provides for a slightly different compensation mechanism is of particular interest. The relevant draft stipulates that the protection of property rights of affected individuals, their heirs and affected legal entities is carried out by paying primary (1) and full (2) compensation for lost, damaged, or destroyed property. 1) Primary compensation is used to protect property rights, the right to housing of individuals, the restoration of vital functions and/or services provided by legal entities, as well as the restoration of normal life in Ukraine. The right to primary compensation is provided gradually and proportionally depending on the financial capabilities of the state of Ukraine. 2) Full compensation is used to protect the property rights of victims, to ensure fair and targeted distribution of reparations and/or other penalties from the Russian Federation. The right to full compensation is guaranteed subject to the payment of reparations and/or other penalties from the Russian Federation. It means that draft № 7237 does not provide for the principle of full reimbursement. Analysis of the content of the opinion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the draft № 7237 shows that it, according to experts, is not consistent with the draft № 7198, which was adopted in first reading on 01.04.2022, because Compensation for damage caused to the aggression of the Russian Federation on real estate remains unclear. The compensation payment mechanism proposed in this project needs to be refined.

Therefore, it can be assumed that the text of the draft № 7198 adopted in the first reading on 01.04.2022 will be the basis for legislative regulation of the compensation procedure.

4. Problems of compensation for property damage caused to citizens as a result of destruction or damage to their property due to the armed conflict in eastern Ukraine (2014-2021). Grounds of responsibility of the Russian Federation and the state of Ukraine.

In addition, it is worth taking into account the historical and legal experience and emphasizing that this problem of the legal field of Ukraine is not new, as the issue of compensation for property damage caused to citizens' property (as a result of damage or destruction of residential buildings (According to the Office of the UN High Commissioner for Human Rights, as of February 2019, about 50,000 houses on both sides of the line of contact were damaged or destroyed, of which about 20,000 were in the territory controlled by the Government of Ukraine.) as a result of the armed conflict in connection with the activities of illegal Russian and pro-Russian armed groups in the war in eastern Ukraine began to emerge after 2014 with the Ukrainian authorities conducting an anti-terrorist operation and a Joint Forces operation.

The Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" stipulates that *liability for material or non-material damage caused to Ukraine as a result of armed aggression by the Russian Federation imposed on Russian Federation* in accordance with international law (Part 4 of Article 2 of the Law of Ukraine "On Features of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts" as of January 18, 2018, № 2268-VIII).

Since the legal status of the temporarily occupied territories in Donetsk and Luhansk oblasts, as well as the legal regime in these territories is determined, in addition to the above Law, by the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and Legal Regime in the Temporarily Occupied Territories of Ukraine" then said Law also provided that: *compensation for material and moral damage* caused by the temporary occupation of the state of Ukraine to legal entities, public associations, citizens of Ukraine, foreigners and stateless persons, *fully relies on the Russian Federation* as the state carrying out the occupation. The State of Ukraine will use all possible means to compensate for material and moral damage caused by the Russian Federation (Part 6 of Article 5 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" of April 15th, 2014 № 1207-VII). This Law even established that in case of damage by residents of foreign state entities, jurisdiction is established at the place

of damage, considering the rules of jurisdiction established by this Law (Article 12). For this purpose, Article 28 of the CPC of Ukraine is supplemented by a new part 17, which stipulates that claims for protection of violated, unrecognized or disputed rights, freedoms or interests of individuals (including compensation for damage caused by restriction of ownership of real estate or its destruction, damage) in connection with the armed aggression of the Russian Federation, armed conflict, temporary occupation of the territory of Ukraine, emergency situations of natural or man-made may also be presented at the place of residence or stay of the plaintiff. And the plaintiff in lawsuits against the aggressor state of the Russian Federation for compensation for property and/or moral damage in connection with the temporary occupation of Ukraine, armed aggression, armed conflict, which led to forced relocation from the temporarily occupied territories of Ukraine, death, injury, captivity, unlawful deprivation of liberty or abduction, as well as violation of ownership of movable and/or immovable property, was exempted from court fees (paragraphs 21 and 22 of Part 1 of Article 5 of the Law of Ukraine "On Judicial Fees").

However, as mentioned above, since the recovery of property damage from the state of the Russian Federation necessitates filing of a lawsuit against it as a defendant by the affected citizens, but according to Article 79 of the Law of Ukraine "On Private International Law" *filing a lawsuit against foreign state, the involvement of a foreign state in the case as a defendant may be allowed only with the consent of the competent authorities of the state, unless otherwise provided by international treaty of Ukraine or the law of Ukraine, and since such consent of the competent authorities of Russian Federation will be unreal to obtain and neither an international treaty of Ukraine nor a law of Ukraine provides for a lawsuit against the Russian Federation in a Ukrainian court,* so the victims tried to recover property damage caused by destruction or damage to property (residential buildings) in eastern Ukraine from the state of Ukraine.

Thus, since the 2014 events in Donetsk and Luhansk oblasts were recognized as terrorist acts, and the activities to ensure peace and regain control of uncontrolled territories were called an anti-terrorist operation, it caused legal confusion and uncertainty regarding the application of relevant legislation. Opinions of lawyers were divided: some believed that compensation for damage to destroyed real estate should be based on Article 19 of the Law of Ukraine "On Combating Terrorism" as damage caused to citizens by a terrorist act; another opinion – on the basis of Article 1177 of the Civil Code of Ukraine as damage to an individual victim of a criminal offense (Shishkina E. Compensation for damaged/destroyed property due to armed conflict in court: mission possible? Legal newspaper. 2019. № 33–34 (687–688); Segeda U. Compensation for damage caused as a result. ATO: hopes and realities. Legal Gazette. 2016. № 18–19 (516–517)).

The national case law went two ways: in some cases, claims for damages for destroyed property as a result of an anti-terrorist operation were based only on the Law of Ukraine "On Combating Terrorism" (and some additionally referred to Article 1177 of the Civil Code), and in others – on the norms of the Civil Protection Code of Ukraine. With regard to the claims based on the provisions of the Law of Ukraine "On Combating Terrorism", the long-awaited decision of the Grand Chamber of the Supreme Court from 04.09.2019 in civil case № 265/6582/16-ц, which states that compensation for damage caused to citizens by the terrorist act, is carried out at the expense of means of the State budget of Ukraine *according to the law* and with the subsequent collecting of the sum of this compensation from the persons who caused damage, in the order *established by the law.* Compensation for damage caused to an organization, enterprise or institution by a terrorist act is carried out in the manner *established by law* (Article 19 of the Law of Ukraine "On Combating Terrorism"). The Grand Chamber concluded that the right, under Article 19 of the Law of Ukraine "On Combating Terrorism", for compensation for *established by law* damage caused to citizens by a terrorist act, *given the lack of relevant law* does not generate legitimate expectation to receive such compensation from the State of Ukraine for damages. During the anti-terrorist operation, the object of non-residential real estate, regardless of the territory in which – controlled or uncontrolled Ukraine – the specified act took place (Judgement of the Grand Chamber of the Supreme Court as of September 4, 2019, in a civil case № 265/6582/16-ц. URL: https://reyestr.court.gov.ua/Review/86310215). There have also been cases of lawsuits under Part 10 of Article 86 of the Civil Protection Code of Ukraine as compensation for damage to property caused by such an emergency situation as a terrorist act (Judgement of the Grand Chamber of the Supreme Court as of September 4, 2019, in a civil case № 265/6582/16-ц. URL: https://reyestr.court.gov.ua/Review/8631021). At the same time, Article 1177 of the Civil Code of Ukraine provides for the possibility of compensation for property damage caused to a victim of a criminal offense, by the State Budget of Ukraine, depending on the existence of a special (sepa-

rate) law, which does not currently exist. On the basis of the general norms on civil liability (Articles 1166, 1173, 1174 of the Civil Code of Ukraine) the state of Ukraine may be liable for damage to property of citizens in the territory of the anti-terrorist operation (Joint Forces operation) only in the case of establishing in the actions of state authorities of Ukraine of a civil offense.

Judge of the Civil Court of Cassation of the Supreme Court O.V. Stupak noted that this category of cases raises many questions about law enforcement. Most of the relevant lawsuits raised the issue of compensation for damage caused by a terrorist act, and to substantiate the fact of the latter was it was applied a certificate from the Security Service of Ukraine on inclusion of information into the Unified Register of Pre-Trial Investigations on the basis of a terrorist act. However, there is no judgment in this case yet. "The civil court in the case of compensation for damaged property cannot determine whether a terrorist act was committed," – said the judge. Thus, she noted the legal path in this category of cases, with reference to Article 19 of the Law of Ukraine "On Combating Terrorism", as unpromising. Another way for lawyers is to apply the Civil Protection Code of Ukraine, given that the order of the Cabinet of Ministers of Ukraine as January 26, 2015, № 47-r established a state of emergency in the conflict zone. Article 86 of the Code regulates the provision of housing for victims of emergencies. However, the judge noted that in this case, it is only about buildings, and a person can receive compensation only in the case of transfer of damaged housing to local government. The judge noted that today, before resolving these issues, the judicial system was practically left alone. After all, the legislature has not passed a law that determines the procedure for compensation for damage caused by events in eastern Ukraine (With the issue of compensation for housing destroyed by armed conflict, the judicial system was left alone. URL: https://supreme.court.gov.ua/supreme/pres-centr/news/753159/). However, none of the drafts submitted in 2014, 2015, 2016 to the Verkhovna Rada of Ukraine concerning compensation for property damage caused during the anti-terrorist operation in Donetsk and Luhansk regions has been adopted (Draft Law of Ukraine "On Compensation for Property Damage Caused During the Anti-Terrorist Operation in Donetsk and Luhansk Oblasts" as of 10.07.2014 № 4272a. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51684; Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Internally Displaced Persons" (on Compensation for the Value of Damaged Property)" as of 18.02.2015 № 2167. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54094; Draft Law of Ukraine "On Amendments to the Law of Ukraine, "On Combating Terrorism, "On Compensation for Damaged Housing as a Result of the Anti-Terrorist Operation" as of 09.11.2015 № 3434. URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57001; Draft Law of Ukraine "On Compensation for Destroyed or Damaged Private Housing to Persons Whose Private Housing or Private Households Were Damaged (Destroyed) During an Anti-Terrorist Operation" as of 24.03.2016 № 4301. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58524; Draft Law of Ukraine "On Compensation for Damage to Housing of the Population as a Result of the Anti-Terrorist Operation" as of 11.04.2016 № 4301-1. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58670).

At the same time, the Resolution of the Cabinet of Ministers of Ukraine as of September 2, 2020, № 767 was approved by a new Order for providing and determining the amount of financial assistance to victims of emergencies and the amount of monetary compensation to victims whose houses (apartments) were destroyed due to a military emergency caused by the armed aggression of the Russian Federation (hereinafter – the Order № 767). This new Order was adopted to replace the previous Order as amended by the Resolution of the Cabinet of Ministers of Ukraine as of July 10, 2019, № 623. The victims are determined citizens of Ukraine, foreigners and stateless persons, whose residential buildings (apartments) (hereinafter – housing) are damaged/destroyed as a result of an emergency situation, or as a result of works to eliminate its consequences (hereinafter – the victims). Financial assistance is provided to victims whose homes have been damaged as a result of an emergency situation or work to eliminate its consequences *and who have refused to evacuate, resettle and remain at their previous place of residence and/or within the relevant settlement*. Monetary compensation is provided to victims who own housing located in the territories controlled by Ukraine and destroyed as a result of a military emergency caused by armed aggression of the Russian Federation, after the date of entry into force of the Presidential Decree as of April 14, 2014, № 405 "On the decision of National Security and Defense of Ukraine Council as of April 13, 2014 "On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine". Persons whose housing was destroyed, but on the date

of the inspections is fully or partially rebuilt, are entitled to monetary compensation, unless the same destroyed housing was completely restored at the expense of state or local budgets or business entities. Local governments, and in their absence – military-civil administrations of population centers conduct inspections of damaged or destroyed housing, record it, compile and approve lists of victims in the area, collect information necessary to make decisions on granting or refusing monetary compensation and issue certificates of recognition of a person as a victim of an emergency situation. The decision to provide financial assistance and its amount is made by the Council of Ministers of the Autonomous Republic of Crimea and local executive bodies (represented by the relevant commissions formed in Donetsk and Luhansk regions by Donetsk and Luhansk regional state administrations). *The amount of financial assistance to victims is from three to 15 subsistence minimums for employable persons.* When determining the amount of financial assistance, the amount of material damage, insurance payments, and other types of assistance are taken into account. The amount of monetary compensation to victims is determined by the indirect cost of housing construction in the regions of Ukraine according to the location of housing, which are valid on the date of approval of the generalized list, respectively (*but not more than 300 thousand hryvnias for one destroyed housing*). In the case of payment by the Treasury of funds for the execution of a court judgment on compensation (reparation) for the same destroyed housing, the maximum amount of monetary compensation determined by this paragraph is reduced by the total amount of previously received funds.

5. Prospects for the application of the Order № 767 in modern conditions

At the same time, it should be noted that the Oder № 767 can be applied even now, in the context of the full-scale armed aggression of the Russian Federation against Ukraine, which began on February 24th, 2022. However, the relevant order applies only to victims – citizens – and only to their residential buildings (apartments), which were just destroyed. This Oder does not apply to owners – legal entities and other real estate objects (non-residential premises and buildings), as well as to the facts of damage of residential buildings (apartments) without their complete destruction.

The Order applies only to those civilians who remain living in the settlement where their homes were destroyed. The resolution does not apply to internally displaced persons and other persons who have moved to another locality. It also does not apply to persons living on the territory controlled by armed groups. These shortcomings of the Order were highlighted in the report of the High Commissioner of the Office of the United Nations on the human rights on the situation with human rights in Ukraine (Report of the High Commissioner of the Office of the United Nations on the human rights on the situation with human rights in Ukraine from May 16th to August 15th, 2019.URL: https://www.ohchr.org/Documents/Countries/UA/ReportUkraine-16May15Aug2019_UA.pdf).

Therefore, if the payment of compensation does not fall under the said Oder № 767, to receive compensation (retribution) from the state of Ukraine in another way or in court (in particular based on Article 19 of the Law of Ukraine "On Combating Terrorism" and Article 86 of the Code of Civil Defense of Ukraine) is currently legally impossible.

6. State registration of termination of ownership due to the destruction of real estate as a result of hostilities. Termination of payment of real estate tax, other than land, and depreciation accrual

Since the objects of residential and non-residential real estate are subject to taxation on real estate other than land (except for objects listed in paragraph 266.2.2 paragraph 266.2 Article 266 and paragraph 38.6 paragraph 38 of subsection 10 of section XX of the Tax Code of Ukraine), and the payer of this tax are individuals and legal entities – owners of the real estate, so it is important to stop paying such tax due to the destruction of such objects (Note: The Law from 24.03.2022 № 2141 provides that for the period from March 1st, 2022 to December 31st, 2022 must not be charged and paid tax on real estate owned by legal entities located in combat areas. According to paragraph 69.22 of subsection 10 of section XX of the Tax Code of Ukraine, the temporary provisions of Art. 266 of the Tax Code are applied taking into account the following features: (for legal entities for non-residential buildings) temporarily, for the period from March 1st, 2022 till December 31st, in which the martial law imposed or abolished by Decree № 64/2022 is not accrued and will not be paid real estate tax for non-residential real estate, including their shares located in the territories where hostilities are (were) conducted or in the territories temporarily occupied by the armed forces of the Russian Federation. The Cabinet of Ministers of Ukraine is authorized to approve the list of such territories).

This issue is also relevant to legal entities that accrue depreciation of fixed assets, because depreciation is charged during the useful usage (operation) of fixed assets (Articles 138, 177

of the Civil Code of Ukraine), and the destruction of such fixed assets excludes this.

Thus, both the payment of real estate tax and the accrual are associated with the physical existence of the real estate (subject to recognition as an asset, i.e., crediting in balance sheet of the enterprise) and the existence of the of ownership to the subject. It is provided that the tax base of residential and non-residential real estate, including their shares owned by individuals, is calculated by the supervisory authority on the basis of the State Register of Real Property Rights (p. 266.3.2 p 266.3 Article 266 of the Tax Code of Ukraine).

Given that under Part 1 of Article 182 of the Civil Code of Ukraine, the right of ownership and other real rights to immovable property, encumbrance of these rights, their origin, transfer and termination are subject to state registration and, in accordance with paragraph 4 of Part 1 of Article 346, Article 349 of the Civil Code of Ukraine, ownership of property is terminated in case of destruction of property, such a fact is subject to state registration in accordance with the Law of Ukraine "On State Registration of Real Property Rights and Encumbrances", Article 14 of which states that in case of destruction of real estate, the relevant section of the State Register of Rights and the registration file are closed. From this point on, for the purposes of tax law, the person ceases to be the owner, and the relevant real estate object ceases to exist.

Therefore, the company must, after receiving information about the destruction of objects from the SES (taking into account the resolution of the Cabinet of Ministers of Ukraine as of April 5, 2022 "On amendments to the Procedure for inspection of commissioned construction sites"), conduct an inventory and write off such destroyed objects in the established manner, by drawing up of a document on the write-off of fixed assets – real estate from the balance of the enterprise in connection with the destruction, which will be grounds for exclusion of such object from the assets of the enterprise. This will be the basis for the termination of accrual of depreciation.

With regard to the payment of real estate tax, it is necessary to record information on the termination of ownership of the destroyed object in the State Register of Real Property Rights at the request of the owner. Since the state registration of ownership of a completed object in connection with its destruction is carried out in the presence of information on the fact of destruction obtained by the state registrar from the Unified State Electronic System in the field of construction (paragraph 75 of the State Registration of Real Property Rights and their encumbrances, approved in the edition of the resolution of the Cabinet of Ministers of Ukraine dated August 23, 2016, № 553), the owner of the destroyed property should ensure that relevant information is entered into the Unified State Electronic System in the Procedure approved by the Cabinet of Ministers of Ukraine as of June 23, 2021, № 681.

7. Conclusions

– The solution to the above problem is the adoption of a specific complex law. Such law should determine and provide the grounds, subjects, whose property is compensated, and procedure for seizing and recovering property in favor of Ukrainian residents who have suffered from property damage. The Ukrainian Parliament is already discussing some law drafts. The most debatable and polemical issues today are which sources of Russian assets could and should be used to cover losses caused by the Russian Federation's military aggression.

– Draft Law № 7169 was registered in the Verkhovna Rada; it intends to amend the Law of Ukraine "On Fundamental Principles of Forced Withdrawal in Ukraine of Property of Russian Federation and its Residents" that came into force on 7 March 2022 (hereinafter – Law of Ukraine № 2116-IX dated 03 March 2022). This Draft Law aims to widen the scope of persons, whose property could be withdrawn in Ukraine due to the Russian full-scale military aggression and specifies the purpose of such actions: towards future reparations to Ukraine.

– Increased attention should be focused on international efforts to block and afterwards seized Russians assets.

– Regardless of the country that supports EU or US sanctions against Russia or imposes its own sanctions against Russia due to military aggression against Ukraine, the most difficult and important measure is to take further steps with blocked Russian assets and, above all, with a legal mechanism to turn these seized assets in favor of Ukraine. It should be noted that this is the issue that is currently the "bottleneck", namely the inconsistency of the announced statements and slogans with the possibility of its implementation.

– Therefore, summarizing the above stated, it should be highlighted that without the adoption of a separate special comprehensive law on retribution (compensation) for damage caused by military aggression against Ukraine, which should determine the grounds, subjects whose property is compensated, and the procedure for seizure and reversal of this property in favor of Ukrainian residents who have suffered from property damage, there is no sense to talk about such compensation.

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Draft law of Ukraine "On Compensation for Property Lost, Damaged and Destroyed as a Result of the Armed Aggression of the Russian Federation and Fair Distribution of Reparations" from 31.03.2022 № 7237. URL: https://itd.rada.gov.ua/billInfo/Bills/Card/39332

According to the Office of the UN High Commissioner for Human Rights, as of February 2019, about 50,000 houses on both sides of the line of contact were damaged or destroyed, of which about 20,000 were in the territory controlled by the Government of Ukraine.

According to the Ministry of the Temporarily Occupied Territories and Internally Displaced Persons of Ukraine, 1,321 housing facilities were damaged (destroyed) in Luhansk and Donetsk oblasts, of which 825 were communally owned, 12,188 were privately owned, and 8 buildings were owned by unions of co-owners of apartment buildings). The estimated amount of funds needed for the restoration of these facilities is 2 billion 719 million.

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НАУКОВО-ПРАКТИЧНИЙ АНАЛІЗ ЧИННОГО НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ, СУДОВОЇ ПРАКТИКИ ТА ЗАКОНОДАВЧИХ ІНІЦІАТИВ У СФЕРІ ВІДШКОДУВАННЯ МАЙНОВОЇ ШКОДИ, ЗАВДАНОЇ ПОШКОДЖЕННЯМ НЕРУХОМОГО МАЙНА ВНАСЛІДОК ЗБРОЙНОЇ АГРЕСІЇ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ

Анотація. У статті представлений науково-практичний аналіз чинного нормативно-правового регулювання, судової практики та законодавчих ініціатив у сфері відшкодування майнової шкоди, завданої пошкодженням нерухомого майна внаслідок збройної агресії Російської Федерації від 24 лютого 2022 року. ***Мета.*** У статті за допомогою емпіричного матеріалу і проведеного аналізу обґрунтовується авторська позиція стосовно відсутності в українському відповідному законодавстві натепер ефективного механізму компенсації матеріальної шкоди, завданої внаслідок російської військової агресії від 24 лютого 2022 року. Окремо аналізуються процесуальні складнощі щодо визначення відповідного відповідача у таких провадженнях і визначення відповідної юрисдикції щодо подачі таких позовів.

Методи дослідження. Автором використовуються широкий спектр наукових методів пізнання сутності сформульованої проблеми і шляхів щодо вирішення останньої. Акцент зроблено на порівняльному методі дослідження, який дозволяє провести відповідні паралелі і віднайти спільні техніко-юридичні проблеми щодо відшкодування завданої матеріальної шкоди від російської агресії у 2022 році і ситуацією з російською агресією і окупацією деяких районів Луганської і Донецької областей у 2014 році.

Результати дослідження. У статті автор резюмує, що відсутність в українському відповідному законодавстві натепер ефективного механізму компенсації матеріальної шкоди, завданої внаслідок російської військової агресії від 24 лютого 2022 року, призводить до неможливості компенсації останньої за наявних юридичних механізмів. Питанню судового імунітету відповідача – Російської Федерації в Україні приділена окрема увага, адже необхідність згоди дипломатичного представництва на пред'явлення до нього позову про відшкодування шкоди призводить до неможливості надати Російській Федерації правового статусу відповідача в цивільному процесі.

Висновки. З метою забезпечення реального відшкодування майнової шкоди має бути визначено іншого суб'єкта, який за своєю згодою (за відсутності передбаченого законом обов'язку нести цивільно-правову відповідальність за дії іншого суб'єкта) буде надавати компенсацію за знищене та пошкоджене майно внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації. Тому з метою визначення правових та організаційних засад надання державою компенсації за пошкодження та знищення окремих категорій об'єктів нерухомого майна внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації, з дня набрання чинності Указом Президента України від 24 лютого 2022 р. № 64 «Про введення воєнного стану в Україні» до Верховної Ради України суб'єктами права законодавчої ініціативи було внесено проєкт Закону України «Про компенсацію за пошкодження та знищення окремих категорій об'єктів нерухомого майна внаслідок бойових дій, терористичних актів, диверсій, спричинених військовою агресією Російської Федерації агресії Російської Федерації», прийнятого Верховною Радою України в першому читанні за основу 01.04.2022 (далі – законопроєкт № 7198).

Ключові слова: військова агресія Російської Федерації, компенсація, відшкодування, активи, підстави цивільної відповідальності, майно, репарації, форс-мажорні обставини.

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DIGITALIZATION OF HEALTHCARE IN UKRAINE: LEGAL SUPPORT OF PUBLIC AND PRIVATE INTERESTS

Abstract. During 2017-2020, Ukraine underwent systemic changes and digital innovations in healthcare. An important tool for modernizing the medical, economic and managerial components of the health care system in Ukraine was the creation of the eHealth system based on the latest information technologies. Modern challenges and threats to public welfare give a powerful impetus for the full use of the potential of digital technologies. Due to the rapid spread of COVID-19, the advantages of digital technologies have worked, which enabled the remote interaction of participants in medical relationships without the risk of transmission. New challenges for the eHealth system were created by Russia's military aggression against Ukraine.

Purpose. The article examines the state of legal regulation of digital technologies in the health care system, keeping a balance between public and private interests, the protection of the rights of participants, some growing threats to public welfare, their impact on the sustainable functioning of eHealth.

Research methods. The research was conducted on the basis of analysis of the legal framework, literature sources, description and generalization of the range of existing achievements and problems in the eHealth sector. Using the dialectical method, the subject of research is considered not in a static one-sided form, but as one that is in the process of formation, development and permanent connection with other processes and phenomena of modern Ukrainian society. Through the use of formal and dialectical logic, objective causal links were established in the subject and conclusions were made on certain areas of improving the legal regulation of eHealth.

Results. The influence of eHealth and some electronic tools on ensuring the interests of the state, society, and the rights of individuals is analyzed. An objective causal link between the digitalization of the health sector and the indicators of quality and safety of health care has been established. Identified current threats to public welfare, their impact on the health care system and the use of digital technologies, analyzed possible ways to resolve them legally.

Conclusions. Based on the study, problems and gaps in the use of digital technologies in the health sector were identified, the need to improve the legal regime of electronic health care services, quality control and safety of their operation / use, integration and electronic interaction of electronic systems health care with other information and communication systems. Among the promising research tasks is the problem of ensuring the standardization of software systems and information security; finding adequate legal balances between ensuring publicity and transparency of open data and protection of private information from unauthorized access; technological and legal regulation of service provision through a modern telemedicine mechanism.

Key words: digitalization of health care, balance of public and private interests, threats to public welfare.

1. Introduction

The eHealth system is an information foundation and an important tool for medical reform in Ukraine, which ensures the rights and interests of all participants in the relationship: patients, doctors, medical institutions, and the state. The use of the latest communication and information technologies has a significant positive impact on overall efficiency and compliance with current public expecta-

tions in such a significant area as health care. In particular, this applies to the efficiency of administration, the accessibility of medical care, and the quality of services.

The combination of tools and services using information and communication technologies at all stages of healthcare management is expected to be a source of efficient use of resources, improving the quality of service, and increasing compliance with standards and overall efficiency of the health sector. The benefits of digitalization have become obvious to ensure the interests of both society as a whole and an individual; both the state and economic entities of service providers; and specific communities and individuals. However, positive shifts do not work automatically without proper legal support, risk management, and threat response.

Some problems of legal support of relations in the eHealth realm have been the subject of scientific analysis of the interrelation of the health sector's digitalization with indicators of medical care quality and safety (Ustymchuk O. V., 2020); the effectiveness and social role of medical institutions in the context of services' digitalization (Horoshko V. I., Hordiienko O. V., 2021; Popovycheva M., Belovycheva M., 2020); the benefits of electronic tools to ensure the interests of the state and the rights of individuals (Batsenko D., Brahinskyi P., Buchma M., 2018); risks and threats to the protection of personal data and privacy (Krytskyi O. 2020; Shcherbak V., 2020); the improvement of technological and legal mechanisms to overcome existing problems (Karpenko O., Osmak A., 2018; Pashkov V., 2018).

At the same time, the following tasks remain relevant: generalization of the current state and prospects of legal regulation of the use of digital technologies in the health care system of Ukraine; striking a balance between public and private interests; analysis of modern problems of protecting the rights of participants in relations, the impact of current threats to public welfare, in particular, new challenges for the eHealth system in the context of military aggression.

2. Legal principles of functioning of the electronic health care system in Ukraine

The latest information technologies have acted as a catalyst and an essential tool for modernizing the medical, economic, and managerial components of the health care system in Ukraine. The Concept of Healthcare Financing Reform approved by the Ordinance of the Cabinet of Ministers of Ukraine No. 1013-p dated 30.11. 2016 notes that the transition to a new system of procurement of healthcare services is accompanied by the creation and continuous improvement of a modern platform for collecting and exchanging medical and financial information in electronic form. From the very beginning, the Ukrainian government set the task of the phased introduction of e-health tools.

Legal issues of the functioning and implementation of eHealth in Ukraine are regulated by the basic normative legal acts: the Law of Ukraine "On State Financial Guarantees of Health Care Services" dated 19.10.2017 No. 2168-VIII and the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of the Electronic Health Care System" dated 25.04.2018 No. 411. These legal documents define fundamental concepts, subjects, tasks, functions, components, and introduction stages of new mechanisms for realizing state-guaranteed medical care in Ukraine.

The Law of Ukraine No. 2168-VIII introduced a new legal mechanism for providing patients with necessary medical services and medicines of adequate quality at the expense of the State Budget of Ukraine under the program of medical guarantees. The advanced principles of ensuring the implementation of the program of medical guarantees and payment for the provision of medical services and medicines are actualized based on the electronic interaction of participants via eHealth. The Resolution of the Cabinet of Ministers of Ukraine No. 411 determines the technical and managerial architecture of the selected two-component eHealth model, which comprises a central database and electronic medical information systems. There is an automated exchange of information, data and documents via an open software interface (API).

The system provides compatibility and electronic interaction of the central database with other information systems and state information resources, i.e., the Unified State Demographic Register; the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations; the State Register of Civil Status Acts; the State Register of Individual Taxpayers; information systems of the Ministry of Social Policy; the Unified State Electronic Database on Education; the Unified State Register of the Ministry of Internal Affairs; the Information and Analytical Platform of Electronic Verification and Monitoring.

Document circulation in the electronic health care system is carried out in accordance with the requirements of the Laws of Ukraine, in particular, "On electronic documents and electronic document circulation" dated 22.05.2003 No. 851-IV and "On Information" dated 02.10.1992 No. 2657-XII. The protection of information in the central database is guaranteed by the provisions of the Law of Ukraine

"On Information Protection in Information and Communication Systems" dated 05.07.1994 No. 80/94-VR, and the processing of personal data in the electronic health care system is carried out in compliance with the requirements of the Law of Ukraine "On Personal Data Protection" dated 01.06.2010 No. 2297-VI.

As of now, eHealth is one of the largest electronic systems in Ukraine. E-health functionality allows for a conclusion, amendment, and termination of public health contracts and contracts for reimbursement under the medical guarantees program; preparation and submission of electronic reports, primary, settlement, and other documents under contracts through the central database; registration of users in the central database; preparation, submission, and review of healthcare declarations, prescriptions, referrals, and medical records; exchange of information and documents through electronic offices following user access rights; giving patient (their legal representatives) consent to access their personal data; searching and reviewing information in the central database in accordance with user access rights. The available functionality is constantly updated.

Thus, the essence of medical reform in Ukraine is characterized by two main innovations: a change in financing principle and the introduction of an electronic health care system. E-health acquired its institutionalization precisely as a system of information relations among all participants in medical relations – the state, service providers, medical workers, and patients. The relevant relationships are based on the cost-effective and safe use of information and communication technologies designed to support the health care system, including health services, preventive health surveillance, health literature and health education, knowledge and research.

3. The impact of the digital transformation of health care in Ukraine on striking a balance between private rights and interests of the state

In the course of the actualization of the core elements of medical reform in Ukraine – legal, financial, managerial, technological, and information – important goals of solving existing urgent problems were achieved; the state interest in creating conditions for providing high-quality, affordable services and appropriate guarantees of citizens' rights to health care and medical care was guaranteed. Scholarly studies have established the objective causal relation of the digitalization of the health sector with the indicators of medical care quality and safety. A team of researchers from the University of Sydney prepared a report on behalf of the Australian Commission on Safety and Quality in Healthcare, "Impact of Digital Health on Safety and Quality of Health Care. The experts concluded the following: e-patient portals provide patients with the secure access to their health information and help consumers to become active participants in decision-making about their health care; introducing digital health initiatives into healthcare organisations can produce significant benefits to patients and healthcare providers, in particular, improvements to quality, safety and efficiency of patient care (Shaw T., Hines, M., Kielly-Carroll C., 2017, p. 4, 6).

O. V. Ustymchuk, in her dissertation research, summarized that healthcare management technologies based on digitalization come into action as factors "reducing the total costs of budgets at all levels to maintain the industry while simultaneously increasing the efficiency, availability, convenience, ubiquity, equality, and gratuitousness of its basic services for primary care, such as: collection, preservation and ensuring the systemic availability of patient data, his/her history; automatic queue management; software assistance to the patient regarding compliance with the treatment regimen; electronic prescription and ordering of drugs, electronic primary counseling" (Ustymchuk O. V., 2020, 4).

As proven by V. I. Horoshko and O. V. Hordiienko, the digitalization of services amid a backdrop of the digital economy improves the efficiency and social role of medical institutions by increasing the availability of services (Horoshko V. I., Hordiienko O. V. 2021, 74). Slovak researchers highlighted the social contribution of an electronization factor towards advancing medical care of patients and protecting their rights in the following areas: reducing the level of financial and pharmaceutical load driven by no duplication in prescriptions, supporting preventive programs and improving public health, home care for immobile patients, continuous monitoring of chronic conditions, etc. (Popovycheva M., Belovycheva M. 2020, pp. 25–26).

Particular electronic tools bring significant benefits to guarantee the interests of the state and the rights of private individuals. The digital format of the certificate of incapacity for work solves several problems in a single shot: control is strengthened, and abuse options are highly reduced; budget funds for the manufacture and procurement of paper forms are saved; time spent by the staff on paper work is cut. Maintaining a special Register of certificates of incapacity for work provides a wide range of opportunities for users, in particular, for entering, processing, searching and publishing information using handbooks and classifiers of state registers, the International Statistical Classification of Diseases and Related Health

Problems (ICD-10) and the International Classification of Primary Care (ICPC-2-E); publishing the registered data periodically. Such legitimate opportunities are available to information exchange entities, insured persons, and insurance carriers.

A crucial part of the central component of the database is the integrated electronic medical record of the patient (EMR), which is a systematic and standardized list of patient medical records in electronic form that can be created in different health care facilities or links to records that can be stored in other information and communication systems. Under its key concept, an EMR is a digital recording available in real-time and focused on the patient's which provides immediate and secure access to patient data for registered users. An EMR gathers patient information.

As clinicians note, "A personalized patient card, which includes specific features, of which the doctor identifies the necessary ones, allows for recording the concrete manifestations of diseases that are crucial for assessing the social adaptation of the patient and his need for medical, psychological, and pedagogical correction. An EMR is developed under a single scheme in the form of questions with alternative answers and text boxes to enter information about the individual characteristics of the disease. The coding of characteristics is carried out automatically when selecting characteristics on the display screen from built-in classifiers, which comprise not only diagnoses and functional changes but also the nature of changes in body organs and systems" (Azarkhov O. Yu., Zlepko S. M., Bielousova O. V., 2012, p.12-14).

The digital model of medical records is of paramount importance for realizing universal coverage of health care services, facilitating the processes of making a diagnosis and treatment of the patient by providing prompt, comprehensive and up-to-date data on the patient directly at the place of medical care (Batsenko D., Brahinskyi P., Buchma M., 2018, p. 14).

The advantage of maintaining an EMR compared to paper medical records is advanced patient privacy. The electronic personal account permits each patient to gain access to information about the results of medical services provided and all medical records, submit or cancel the declaration and review its status, download and print the necessary documents and take other actions under the legislation on the electronic health care system.

4. Modern threats to adequate protection of personal data processing and their legal elimination

The information and technological component of the healthcare sector has many problems related, in particular, to the compatibility of information and communication systems, the imperfection of information and network infrastructure and interaction between country-wide registers, the lack of automation and change management specialists, the lag of financial support and the development of effective international, interdepartmental and intersectoral interaction, etc.

Among the urgent problems that need to be legally resolved, a separate block involves settling issues regarding the proper protection of personal data processing. The issue of accessibility, proper storage, and access to data is global and triggers concern at the level of intergovernmental bodies. The European Parliament Resolution of 14 March 2017 on fundamental rights implications of big data: privacy, data protection, non-discrimination, security and law-enforcement (2016/2225(INI)) recognises the significant potential of data-driven technologies, services and big data as catalysts for economic growth, innovation and digitalisation in the EU. However, big data also pose considerable risks to personal data protection and privacy. O. Kritskyi noted that "one of the most dangerous ones is data leakage when confidential patient information may become publicly available" (Krytskyi O., 2020, pp. 88-89). V. Shcherbak also indicates the danger of data security vulnerability in electronic communication (Shcherbak V., 2020, p. 141).

The Ukrainian version of eHealth is built according to world standards of quality and security of information systems and considering the experience and mistakes of other states. In particular, the central database complies with the best world practices in data protection and with the involvement of international specialists, and the system architecture has undergone expert appraisal. Its construction relies on the advanced experience of organizing complex systems: access control, two-factor authentication, isolation of individual components and databases, and much more. The central database is protected against attacks and intrusions and, in addition, has a unique business logic that verifies data integrity to avoid any spoofing or unauthorized data interference. When developing components of the electronic healthcare system, cybersecurity specialists from several independent companies were involved and cybersecurity audits were conducted at each stage. As a result, it was found that the data center meets international standards (certificate of conformity ISO 27001:2013, certificate No. IND17.0398/U issued by Bureau Veritas) and Ukrainian standards (SSSCIPU certificate of conformity No. 14162 dated 22.07.2016) of data protection.

However, the threat of "cyber theft" of patient data remains acute in Ukraine, as well as in democratic European countries. When discussing the choice of technological and legal paths that can protect privacy and data, an expert environment increasingly raises the issues of the fundamental shortcomings of a centralized data storage system. Nevertheless, a blockchain, as a decentralized platform for operations between equal partners in a secure environment protected from unauthorized access, makes it possible to perform homogeneous transactions safely, helps simplify and accelerate the processes of collecting and sharing information, and protects them from many risks, including fraud and counterfeiting. Experts recommend using the healthcare blockchain in several areas: tracking drug supply chains, maintaining public registers (Klymenko I., Lozova H., Akimova L., 2017), storing patient data (Karpenko O., Osmak A., 2018, p. 60), and smart contracting.

According to the project "Digital Agenda of Ukraine – 2020", launched in 2016 on the initiative of the Ministry of Economic Development and Trade of Ukraine, blockchain, the technology of a distributed peer-to-peer public network that can store data about transactions permanently and without the possibility of changing it and which is protected by cryptographic means, is among the 10 key strategic technologies for Ukraine that can transform such public sectors of Ukraine as education, medicine, transport, and service (Tsyfrova adzhenda Ukrainy-2020, 2016, p. 55). However, as V. Pashkov rightly notes, "there is a problem with legal support of the relevant innovation, not only in the health care sector but in society as a whole" (Pashkov V., 2018, p. 33). The lack of proper imperative rules will make it impossible to guarantee the rights and interests of all stakeholders and hence, neutralize all the positive effects of the latest technologies in the health care system.

Some ways and means of solving the existing problems are proposed in the "Concept of the electronic healthcare system" approved by the Ordinance of the Cabinet of Ministers of Ukraine dated 28.12.2020. The document defines the priority areas of regulatory and legal support for the development of e-health by 2025. They involve the determination of requirements for elaborating e-health services and control over the quality of advanced functionality; improvement of approaches to electronic identification, authentication of e-health users and standards for the exchange of health care data, procedures for maintaining registers in the central database of the electronic health system, keeping forms of medical documentation, and the functioning of medical statistics, etc.; the regulation of access of subjects providing administrative and other services to the data about client health, considering legislative requirements for the protection of information and personal data; ensuring the integration and electronic interaction of the e-health system with other information and telecommunication systems; regulation of the processing of personal data, in particular, those that pose a specific risk to the rights and freedoms of data (health data) subjects, their repeated depersonalized use for statistics, scientific research, and other purposes different from providing medical care; harmonization of national standards with worldwide standards and classifiers, implementation of internationally accepted and common standards in Ukraine for further integration with the world information space.

5. New challenges to the eHealth system under military aggression

The military aggression of the Russian Federation launched on February 24, 2022, made adjustments to the functioning and development of eHealth in Ukraine. At present, dozens of health facilities and health workers have been attacked. And these numbers are growing every day. Internal displacement of Ukrainians caused an uneven distribution of the burden on the health care system: the number of users increased in the west of the country and decreased in the east. The above also affected the load on some medical information systems.

Due to new challenges, the development of some planned projects was shifted in time, and the launch of others was postponed. The tasks of stable functioning of the entire health care system under martial law became a priority. It is primarily about maintaining the stable operation of eHealth, safe entering of medical data into the system, providing and improving key services, and ensuring maximum protection of the entire eHealth cyberspace.

A set of innovations were initiated as the need of the hour. Given the necessities of martial law, nursing staff functionality was finalized "Nursing staff workplace". It allows users to register with the system and get the appropriate access rights; search for electronic medical records; form packages of diagnostic reports; record treatment procedures; check, process, and reject electronic referrals; enter vaccination data; view manipulation details, etc.

The work of nursing staff in the system makes it possible to redistribute the digital load of doctors and provide the necessary permanent access of nursing staff to patient medical data, treatment history, manipulations, etc., and therefore to be involved in the treatment process more effectively.

Nowadays, the MoH Order "On Amendments to the MoH Order dated 01.06.2021 No. 1066 and the Procedure for Issuing (Forming) Certificate of Incapacity for Work in the Electronic Register of Certificates of Incapacity for Work" dated 22.04.2022 No. 675 regulates the possibility of remote registration of a certificate of incapacity for work by the categories of pregnancy and childbirth, orthopedic prosthetics, systemic disease or injury, and care for a sick child. During martial law, consulting physicians controlling pregnancy under outpatient treatment are entitled to provide women with medical reports in the category "Pregnancy and childbirth" without a personal examination of such women but by relying on the results of remote interaction with them. Such an option is now available to those citizens who are abroad.

A new basis for the awarding a paper certificate of incapacity for work has been regulated: the patient's violation of the term of application for the prolongation of temporary disability due to force majeure in martial law, if the patient remains incapacitated at the date of application.

However, the current major challenge to the entire health care system of Ukraine is the ability to provide all those who need it with medical care regardless of the distance and request time. In the context of hostilities, the remote forms of interaction of medical care subjects become critically important. It especially applies to the implementation of medical interventions according to vital indications, which are urgent.

Modern technological solutions permit connecting experts from different countries in real-time, which contributes to receiving valuable professional recommendations specifically during operational interventions. Thus, *international humanitarian assistance to Ukraine includes a supply of medical equipment and IT services that provide constant access to medical care*.

Remote provision of medical care to the injured military and civilians, in particular, the treatment of blast and gunshot wounds, is an innovation of telemedicine. In the regions of active hostilities, a joint pilot project on teleconsultation in the treatment of blast and gunshot wounds is being implemented with international partners. Within the pilot framework, a telemedicine service will be available to doctors, and thus, they will obtain video advice from a specialist from a highly specialized healthcare institution. Starting from March this year, in Lviv doctors have been using a unique innovation for treating the wounded – a state-of-the-art augmented reality device. (1st generation device HMT-1 of the American company RealWear). Equipped with a powerful camera with a convergence function and two microphones, the device is attached to the doctor's head and controlled by voice. Such a technological solution is indispensable when helping injured and wounded patients due to military activities.

In today's circumstances, telemedicine is the most demanded mechanism capable of ensuring timely access of the population and the military to the necessary medical services. Telehealth services are an element of the global eHealth standard without which modern electronic health services are incomplete. Such alloy of the latest technologies, medical science, and medical skill generates a synergistic effect in the health care system, which will assist in achieving a new quality of medical services available to the country's entire population. At the same time, the widespread use of telemedicine tools that should take place in the short term requires simultaneous reformatting of several components: the readiness of medical care subjects; the availability of modern technological platforms; conformability of regulatory framework.

5. Conclusions

The application of modern information technologies is an essential tool of health care reform introduced in Ukraine, which has already improved the industry's efficiency and transparency. The chosen eHealth model combines safety, user-friendliness, and interoperability requirements for information exchange between different medical information systems. The system also ensures the compatibility and electronic interaction of the central database following the procedure established by law with other information systems and state information resources.

However, eHealth currently has many problems related, in particular, to the compatibility of information and communication systems, the imperfection of information and network infrastructure and interaction between national registers, the shortcoming of some registers, the lack of automation and change management specialists, etc. Among the urgent problems that need to be legally resolved, a separate block involves settling issues regarding the proper protection of personal data processing, incl., those that pose a specific risk to the rights of personal data subjects.

The immediate urgent tasks for legal research involve ensuring the standardization of software systems and data security; finding adequate legal balances between publicity and transparency of open data and protection of private information; technological and legal regulation of the provision of services via a modern mechanism of telemedicine.

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ЦИФРОВІЗАЦІЯ ОХОРОНИ ЗДОРОВ'Я В УКРАЇНІ: ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ПУБЛІЧНИХ ТА ПРИВАТНИХ ІНТЕРЕСІВ

Анотація. Протягом 2017–2020 років в Україні відбулися системні зрушення та цифрові нововведення в охороні здоров'я. Важливим інструментом модернізації медичної, економічної та управлінської складових частин системи охорони здоров'я в Україні стало створення системи eHealth на засадах новітніх інформаційних технологій. Потужного поштовху для широкого використання потенціалу цифрових технологій надають сучасні виклики та загрози суспільному благополуччю. Внаслідок стрімкого поширення COVID-19 спрацювали переваги цифрових технологій, які дали можливість дистанційної взаємодії учасників медичних правовідносин без ризику передачі інфекції. Нові виклики для системи eHealth було створено військовою агресією РФ проти України.

Мета. У статті досліджуються стан правового регулювання застосування цифрових технологій у системі охорони здоров'я, забезпечення балансу публічних та приватних інтересів, проблеми захисту прав учасників відносин, окремі зростаючі загрози суспільному благополуччю, їхній вплив на стале функціонування системи eHealth.

Методи дослідження. Дослідження проведено на засадах аналізу нормативно-правової бази, літературних джерел, опису та узагальнення спектра наявних досягнень та проблем у секторі eHealth. За допомогою діалектичного методу предмет дослідження розглядається не у статичному однобічному вигляді, а як такий, що перебуває у процесі становлення, розвитку та перманентної пов'язаності з іншими процесами та явищами сучасного українського суспільства. Завдяки застосуванню засобів формальної та діалектичної логіки було встановлено об'єктивні причинно-наслідкові зв'язки у предметі та зроблено висновки щодо окремих напрямів вдосконалення правового регулювання системою eHealth.

Результати. Проаналізовано вплив eHealth та окремих електронних інструментів на забезпечення інтересів держави, суспільства, прав приватних осіб. Встановлено об'єктивний причинний зв'язок цифровізації сектора охорони здоров'я з показниками якості та безпеки надання медичної допомоги. Виявлено сучасні загрози суспільному благополуччю, їх вплив на систему охорони здоров'я та на використання цифрових технологій, проаналізовано можливі шляхи для їх правового вирішення.

Висновки. На підставі проведеного дослідження виявлено проблеми та прогалини у застосуванні цифрових технологій у секторі охорони здоров'я, наголошено на необхідності вдосконалення правового режиму послуг електронної системи охорони здоров'я, порядку контролю якості та безпеки їх функціонування/використання, забезпечення інтеграції та електронної взаємодії електронної системи охорони здоров'я з іншими інформаційно-комунікативними системами. Серед перспективних дослідницьких завдань – проблема забезпечення стандартизації програмних систем та інформаційної безпеки даних; знаходження адекватних правових балансів між забезпеченням публічності і прозорості відкритих даних та захисту приватної інформації від несанкціонованого доступу; технологічне та правове врегулювання надання послуг через сучасний механізм телемедицини.

Ключові слова: цифровізація охорони здоров'я, баланс публічних та приватних інтересів, загрози суспільному благополуччю.

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PARTICULARITIES OF FUNCTIONING OF THE GENERAL MEETING OF A JOINT-STOCK COMPANY UNDER MARTIAL LAW

Abstract. ***Purpose.*** The article specifies the procedure for holding a remote general meeting of a joint-stock company under martial law, differentiates between remote and electronic general meetings of shareholders, and covers the ways to improve the current legislation on remote general meetings of shareholders in line with European standards.

Research methods. The work was carried out using general scientific and special methods of scientific cognition.

Results. In the course of scientific analysis of normative legal acts regulating the procedure for holding the general meeting of a joint-stock company, it was established that a remote general meeting of shareholders is assisted by electronic document circulation, which is actualized via electronic communication, and an option to sign basic documents with a qualified electronic signature. It was noted that remote general meetings are held according to special rules enshrined in the Temporary Procedure. The authors characterized prospective corporate legislation and its compliance with European standards.

Conclusions. As a result of the study, it was proved that the legislative regulation of corporate relations should be improved by adopting a new Law of Ukraine "On Joint-Stock Companies", which would specify the forms of shareholders' participation in the general meeting: in-person, remote, and electronic. It is expedient to state that remote general meetings can be held by absentee voting using electronic and mail services, and electronic general meetings can be held via videoconference that allows all shareholders to be seen and heard on-line with a defined electronic voting mechanism. The mentioned innovations will allow for the further implementation of several forms of participation in the general meeting of shareholders using an authorized electronic system meeting European standards.

Key words: remote general meeting, joint-stock company, draft agenda, electronic documents, qualified electronic signature, ballot paper.

1. Introduction

Joint-stock companies constitute a significant layer of the Ukrainian economy since the banking system, industrial, and other strategic components of the domestic economic sector operate within the specific business legal structure. Over the past years, corporate legislation has been advancing that finds expression in the introduction of numerous amendments to the Law of Ukraine "On Joint-Stock Companies", the national approval of the Corporate Governance Code, and the registration of the draft law "On Joint-Stock Companies" by the Verkhovna Rada of Ukraine. The draft Law of Ukraine "On Joint-Stock Companies" aims to improve the legal status of joint-stock com-

panies by implementing European approaches to managing the relevant companies given the recommendations presented in the European Union Directives and the practice of their application by the EU countries.

One of the significant directions of advancing corporate legislation should be the approach to corporate governance in joint-stock companies, as it is proposed to allow for an option of the management structure of a joint-stock company – one-level or two-level. In addition, it is proposed to introduce an option of holding a general meeting of shareholders by in-person voting (hereinafter referred to as "in-person general meeting") or by electronic voting (hereinafter referred to as "electronic general meeting"). It is worth mentioning that the current Law of Ukraine "On Joint-Stock Companies" does not provide for such a benefit, which is limited to the fact that the general meeting of shareholders can be held only through actual participation and in-person voting on the territory of Ukraine within the settlement at the company seat. In other words, the legislation does not envisage the holding of a general meeting of shareholders via remote communication.

However, external factors of influence on the social and economic environment, such as the Covid-19 pandemic, led to the adoption of thoroughgoing measures to regulate corporate relations without waiting for the legislative improvement of normative acts. The above is because joint-stock companies have faced the challenge of the internal organization of company management. Since the annual general meeting of shareholders is not only mandatory under the law but also addresses strategic and current issues of corporate activities, it is impossible to ignore the settlement of the procedure under consideration. Therefore, keeping in mind the strategic importance of the proper continuous functioning of joint-stock companies to the state, the National Securities and Stock Market Commission (hereinafter referred to as the NSSMC) decided to approve the Temporary Procedure for Convening and Remote Holding of the General Meeting of Shareholders and the General Meeting of Participants of the Corporate Investment Fund (Rishennia NKTsPFR "Pro Tymchasovyi poriadok sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu", 2020). It became the first document that enabled and specified a procedure for holding a remote general meeting of a joint-stock company. The temporary procedure is not mandatory for joint-stock companies, and thus, the company is entitled to decide to hold a general meeting as usual after the termination of quarantine restrictions.

At the same time, the introduction of martial law in Ukraine has become another limiting factor that makes it impossible to hold a general meeting of shareholders following the Law of Ukraine "On Joint-Stock Companies" in regions where hostilities are ongoing, or there is such a threat. In this regard, the NSSMS Decision No. 176 dated 16.03.2022 "On the procedure for holding a general meeting during martial law" was amended and supplemented with a new section XXIII "Particularities of holding a meeting during martial law". It states that a general meeting can be held remotely during martial law provided that the list of shareholders contains data on at least 95% of shareholders (owners of voting shares) of a particular issuer, without considering shares recorded on securities accounts of depository institutions that have ceased professional activities and shares redeemed by the joint-stock company. If the abovementioned is impossible, the general meeting of shareholders must be held within 90 days after the end of martial law (Rishennia NKTsPFR "Pro vnesennia zmin do Tymchasovoho poriadku sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu", 2022).

The purpose of the article is to analyze the procedure for convening and holding remote general meetings of shareholders under martial law, outline positive aspects of improving the procedure for holding general meetings of shareholders, differentiate between remote and electronic general meetings of shareholders, and determine further actions to hold remote general meetings in joint-stock companies.

Methodology. The study covers topical scientific and applied issues regarding the remote general meeting of a joint-stock company under martial law. Keeping in mind the purpose of the study, methods which allowed identifying the relevant areas were used: formal logic, analysis and synthesis, systems analysis, induction and deduction, etc. In particular, formal logic contributed to elucidating special rules for holding remote general meetings, which made it possible to determine the essence of such meetings and differentiate them from electronic general meetings. Systems analysis and synthesis allowed characterizing the procedure for holding remote general meetings, which is based on ensuring the proper exercise of the shareholders' right to participate in the general meeting using electronic document circulation and communication means.

2. The legal procedure for holding remote general meetings of shareholders under martial law

Amidst today's martial law, the traditional mode of operation of joint-stock companies, including the general meeting of shareholders, has become very complicated. First, in some regions of the country where hostilities are conducted or there is such a threat, the general meeting of shareholders is impossible due to the danger to life and health if the meeting is to take place at the company seat. Secondly, the NSSMS, the Central Securities Depository, and depository institutions operate in a special mode under a limited schedule and heavy workload.

The NSSMS Decision No. 176 dated 16.03.2022 "On the procedure for holding the general meeting during martial law" provides for the introduction of electronic document circulation between the Central Depository, depository institutions, and joint-stock companies; the option to sign basic documents with a qualified electronic signature (Protocol on registration results, Protocol on voting results, Minutes of the general meeting, etc.); optimization of the terms of approval and publication of basic documents (for example, publication no later than one day after making the decision) (Rishennia NKTsPFR "Pro vnesennia zmin do Tymchasovoho poriadku sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu", 2022).

Due to the introduction of martial law in Ukraine, the mentioned Decision dated 16.03.2022 No. 176 also allows for holding a remote general meeting of shareholders according to the Temporary Procedure (Rishennia NKTsPFR "Pro vnesennia zmin do Tymchasovoho poriadku sklykannia ta dystantsiinoho provedennia zahalnykh zboriv aktsioneriv ta zahalnykh zboriv uchasnykiv korporatyvnoho investytsiinoho fondu", 2022). The general meeting of shareholders may be held during the specific period subject to compliance with all the specified norms of the Procedure. As the general meeting can be remote, there are special rules for convening and holding them. Let us consider the peculiarities of holding the annual remote general meeting because their organization is a crucial component of the functioning of a joint-stock company.

Stages of the remote annual general meeting of shareholders:

1. Rendering a decision to convene the annual general meeting of shareholders. Only the supervisory board of the joint-stock company is authorized to take the relevant decision.

2. The supervisory board of the joint-stock company concludes with the Central Depository an agreement for the provision of services for holding a remote general meeting of shareholders. The agreement for the provision of services for holding a remote general meeting and amendments to it shall be published on the Central Depository's website. At the same time, the supervisory board appoints the person authorized to interact with the Central Depository during the general meeting, whose term of office expires 10 days after the date of the meeting, unless another (longer) term is established. One or more persons may be authorized.

3. Drawing up the list of shareholders via the depository system of Ukraine, according to which they are notified of the annual general meeting of the joint-stock company.

4. Approval and sending of the notice of the general meeting of shareholders and the draft agenda to the shareholders, the stock exchange where the company's securities are admitted to trading, the NSSMC, as well as publication on the NSSMC public information database and the website of the joint-stock company. A notice of the general meeting shall be sent through the depository system of Ukraine not earlier than 60 days and not later than 30 days before the date of the general meeting. The notice of the general meeting of shareholders shall indicate that it is held remotely. According to the Procedure for shareholders' notification via the depository system of Ukraine, approved by the NSSMC decision No. 148 as of March 7, 2017, professional participants of the depository system of Ukraine can send notifications via the depository system of Ukraine using e-mail, mobile communication, and in other ways specified by the agreement and/or internal documents of professional participants of the depository system of Ukraine (Rishennia NKTsPFR "Pro Poriadok napravlennia povidomlen aktsioneram cherez depozytarnu systemu Ukrainy", 2017).

5. Familiarization of shareholders with documents while preparing for the general meeting. From the moment of receipt of the notice of the general meeting until the date of its holding, the shareholders are entitled to familiarize themselves with the documents necessary for making decisions on the agenda. A shareholder is entitled to request specific and necessary information via e-mail specified in the notice of the general meeting. The shareholder shall sign his request by a qualified electronic signature or by other means ensuring identification and confirmation of document sending by the person. The person responsible for familiarization with information sends the relevant doc-

uments to the shareholder's e-mail, from which the request was sent with the attestation of documents by a qualified electronic signature. The shareholder is provided with the electronic documents or their copies on the agenda free of charge. In addition, the supervisory board may post all relevant information on the website of the joint-stock company, which should also be indicated in the notice of the general meeting. All documents posted on the website of the joint-stock company shall be signed by a qualified electronic signature of the authorized person of the company.

6. Amendments to the draft agenda of the general meeting of shareholders. The draft agenda of the general meeting is approved by the supervisory board of the joint-stock company. Each shareholder has the right to make proposals on the issues submitted for consideration. Proposals are made not later than 20 days before the date of the general meeting of shareholders, and for candidates to the agencies of the joint-stock company – not later than 7 days before the date of the general meeting of shareholders. Proposals for amendments to the draft agenda may entail new issues in the draft and contain relevant draft decisions on these issues. Proposals for amendments to the draft agenda may not exclude issues and draft decisions on the issues submitted for consideration. However, the supervisory board shall additionally introduce a draft decision, which differs from that specified on the relevant agenda item, in the draft agenda of the general meeting. The supervisory board of the joint-stock company decides on the inclusion of proposals and approves the updated agenda no later than 15 days before the date of the general meeting, and for candidates to the agencies of the joint-stock company – no later than 4 days before the date of the general meeting. The supervisory board shall send a notification with the updated agenda of the general meeting and proposals for its amendments to the shareholders through the depository system of Ukraine no later than 10 days before the date of the general meeting. It shall also be available on the stock exchange where the company's securities are admitted to trading and on the company website.

7. Registration of shareholders and their representatives, determination of the quorum of the general meeting of shareholders. The registration of shareholders (their representatives) is based on the list of shareholders entitled to participate in the general meeting drawn up via the depository system of Ukraine. The list of shareholders is compiled as of 24 hours, three working days before the day of such meeting. The general meeting has a quorum if the shareholders registered for participation and collectively own more than 50 percent of the shares. Shareholders or their representatives may participate in the general meeting. The shareholder has the right to appoint a representative permanently or for a certain time. The document certifying the right of a representative to participate in the general meeting of shareholders is a proxy notice relating to participation and voting at such the meeting. The proxy may authorize the representative to vote at the instruction of the shareholder or vote at the general meeting at own discretion.

To register shareholders for participation in the general meeting, shareholders (their representatives) submit voting ballots to the depository institution that services the securities account, where corporate securities belonging to the shareholder are recorded. The ballot for voting at the general meeting authenticated with a qualified electronic signature of the shareholder (his representative) shall be sent to the e-mail specified by the depository institution. The depository institution checks the validity of data about the shareholder (his representative), a status of the corporate depositor (a proxy notice), checks the reliability of the ballot paper for voting at the general meeting and the presence or absence of invalidity signs in it. The central securities depository shall, within one working day after receiving the necessary documents, consolidate the information into a single document – a list of the shareholders who have submitted ballots for participation in the remote general meeting, and send it to the supervisory board of the joint-stock company in electronic form. According to the results of the analysis of documents received from the Central Depository, the registration commission makes up a record of the registration of shareholders (their representatives). The registration of shareholders (their representatives) is carried out by comparing the list of shareholders entitled to participate in the general meeting with the list of shareholders who submitted ballots for participation in the remote general meeting.

Supervision involves observing and monitoring its object (Sierov S. L., 2019, p. 126). The procedure for holding a general meeting may be controlled by the NSSMS on the initiative of the supervisory board, which shall send such a notification to the Commission within three working days from the date of approval of the notice of the general meeting. The NSSMS is entitled to supervise the registration of shareholders, voting, and summing up the results of a general meeting. A joint-stock company informs about the supervision of the general meeting on its website, on

the page where a notice of the general meeting is posted, and sends it to the shareholders via the depository system.

8. Conducting remote general meetings and voting at general meetings. The date of a general meeting (the date of voting completion) may not be a date that is a public holiday or a day off. Voting at the general meeting begins at 9:00 a.m. on the day indicated as the date of placing the ballot papers. Voting at the general meeting shall end by 6:00 p.m. on the day specified in the notice of the general meeting. The supervisory board of the joint-stock company appoints the chairperson and secretary of the general meeting. Each shareholder, an owner of voting shares, is entitled to exercise its right to manage the company by participating in the general meeting and voting by submitting ballots to the depository institution servicing the securities account of such shareholder. The form and text of the voting ballot shall be approved by the supervisory board of the joint-stock company not later than 10 days and published not later than 9 days before the date of the general meeting of shareholders, and for election of candidates to the agencies of the joint-stock company – not later than 4 days, and published not later than 3 days before the date of the general meeting of shareholders.

A ballot for voting at a general meeting shall be certified by one of the following methods at the shareholder's option: 1) using a qualified electronic signature of the shareholder (his representative); 2) notarially, provided that the ballot is signed in the presence of a notary or an official who performs notarial acts; 3) by a depository institution servicing the securities account of such shareholder, provided that the ballot is signed in the presence of an authorized person of the depository institution. Vote counting at the general meeting is carried out by the counting commission, which draws up a protocol signed by all members of the company's counting commission. A voting protocol may be signed by a qualified electronic signature of each member of the counting commission. The decision of the general meeting of shareholders is considered to be made from the moment of drawing up the minutes of voting results. All minutes of voting results at the general meeting shall be notified to all shareholders along with the minutes of the general meeting by posting on the website of the joint-stock company.

9. Drawing up the minutes of the general meeting of shareholders. The minutes of the general meeting shall be drawn up within 10 days after the date of receipt from the Central Depository of documents containing information on the list of shareholders participating in the general meeting of the joint-stock company and original ballots for voting at the general meeting or their duly certified copies. The minutes of the general meeting shall be signed by the chairperson and secretary of the general meeting, bound, and authenticated by the chairperson of the executive body of the company (in the case of a collegial executive body) or the sole executive body. The minutes of the general meeting may be signed by a qualified electronic signature of the chairperson of the meeting, the secretary of the meeting and the executive body of the company. Minutes of the general meeting of shareholders shall be published on the website of the joint-stock company within one working day from the date of its compilation.

3. Prospects for further implementation of a remote general meeting in joint-stock companies in line with European standards

The temporary procedure specifies holding a remote general meeting of shareholders, which allows using electronic documents and electronic communications for mutual exchanging necessary information between authorized legal subjects (the supervisory board of the joint-stock company, shareholders (their representatives), the NSSMC, the Central Depository, and depository institutions servicing the securities account of the shareholder), as well as a qualified electronic signature that ensures the identification of persons who organize and participate in the general meeting of shareholders. The peculiarity of a remote general meeting of shareholders is that it takes place without the actual participation of shareholders in the discussion of agenda items and the format of a real-time meeting via video communication.

Leading corporate lawyer Shadi Saad notes that a remote general meeting makes it possible to vote by submitting ballots for voting remotely through the depository institution that serves the shareholder. And here lies the greatest threat of all remote general meetings – depriving a shareholder of the right to express own opinion on a specific issue and the right to ask questions. To date, there is as yet no practice of appealing against distance meetings, but there is such a risk (Shadi Saad, 2020).

If we refer to the Corporate Governance Code, which is recommendatory for application, it does not contain any progressive proposals on the issue concerned. It only states that companies shall hold a general meeting of shareholders at the place of incorporation or at a place readily accessible to the shareholders. At the same time, it is emphasized that in the future, the company should promote using electronic (absentee) voting, including electronic distribution of materials, as well as use its website to provide all information necessary for shareholders to facil-

itate their participation in a general meeting and inform shareholders about decisions made during the general meeting of shareholders (Kodeks korporatyvnoho upravlinnia, 2020).

If we refer to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, this document states that the company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting (Art. 4). In addition, it is provided that Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation: real-time transmission of the general meeting; real-time two-way communication enabling shareholders to address the general meeting from a remote location; a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting. (Part 1 of Art. 8) (Dyrektyva 2007/36/IeS, 2007).

It follows from the above provisions that Directive 2007/36/EC provides for holding an electronic general meeting of shareholders with the choice of several forms of participation, namely videoconferencing, which allows all shareholders to be seen and heard, or electronic voting without a joint presence in real-time.

If we refer to the draft Law of Ukraine "On Joint-Stock Companies", Part 2 of Art. 36 and Part 4 of Art. 40 allows for holding an electronic general meeting. At the same time, the normative act does not specify the forms of participation in an electronic general meeting and does not clarify the peculiarities of its holding. Only Art. 52 of the draft law states that shareholders participating in an in-person general meeting authenticate a ballot paper with a qualified electronic digital signature, and a ballot paper at an electronic general meeting is authenticated with a qualified electronic digital signature of the shareholder (Proiekt Zakonu Ukrainy "Pro aktsionerni tovarystva", 2019). In other words, following the above presentation of the norm, the option of holding a general meeting using various forms of participation is allowed, but nevertheless, it is about remote participation in an in-person general meeting, which also does not specify the ways remote and electronic general meetings can be held. As of today, a remote general meeting does not provide for the participation of shareholders in the general meeting in real-time via video communication. Moreover, both in-person and electronic general meetings of a joint-stock company will be held with the use of an authorized electronic system, which is a software and hardware complex of the Central Securities Depository, ensuring the identification and registration of shareholders (their representatives) for participation in the general meeting, obtaining documents shareholders can get acquainted with when preparing for the general meeting, ballot voting and taking part in the discussion on the agenda, summing up the voting results on the general meeting agenda, etc.

4. Conclusions

Thus, both the Temporary Procedure and the Draft Law of Ukraine "On Joint-Stock Companies" regulate the holding of a general meeting of shareholders using electronic document circulation and electronic means that meet European standards. In particular, we are talking about the possibility for shareholders to register for participation in the general meeting through the depository system by submitting voting ballots to the depository institution using a qualified electronic signature, to get acquainted with information on the agenda of the general meeting through a request using a qualified electronic signature sent to e-mail or other means of communication, and examine various documents relevant to the general meeting on the website of the joint-stock company, etc.

However, there is now no distinction between such concepts as remote and electronic general meetings of shareholders. Thus, when improving the draft Law of Ukraine "On Joint-Stock Companies", it is necessary to specify the forms of participation of shareholders in a general meeting as well as the peculiarities of holding in-person, distance, and electronic general meetings. In addition, it is appropriate to mark that an in-person general meeting is held at the place of incorporation with an option of participating in the general meeting of shareholders using video communication; remote general meetings can be held by absentee voting using electronic and postal communication means; electronic general meetings can be held via videoconference, which allows one to see and hear all shareholders in real-time with a specific electronic voting mechanism. These innovations will allow further implementation of remote general meetings according to the Temporary Procedure. The introduction of electronic general meetings in videoconferencing mode, which make it possible to see and hear all shareholders in real-time, will provide equal opportunities for participation in a general meeting for both residents and non-residents of the country under European standards, which is another incentive to promote the inflow of foreign investment into the economy of Ukraine.

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ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ЗАГАЛЬНИХ ЗБОРІВ АКЦІОНЕРНОГО ТОВАРИСТВА НА ПЕРІОД ВОЄННОГО СТАНУ

Анотація. ***Мета.*** У статті окреслено порядок дистанційного проведення загальних зборів акціонерного товариства в умовах воєнного стану, визначено відмінність дистанційних та електронних загальних зборів акціонерів, розкрито напрями вдосконалення чинного законодавства щодо впровадження дистанційного проведення загальних зборів акціонерів відповідно до європейських стандартів.

Методи дослідження. Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання.

Результати. У ході наукового аналізу нормативно-правових актів, що регламентують порядок проведення загальних зборів акціонерного товариства, встановлено, що дистанційне проведення загальних зборів акціонерів відбувається за допомогою електронного документообігу, що здійснюється засобами електронного зв'язку, а також можливості підписувати основні документи кваліфікованим електронним підписом. Визначено, що дистанційні загальні збори проводяться за спеціальними правилами, закріпленими у Тимчасовому порядку. Охарактеризовано перспективне акціонерне законодавство та його відповідність європейським стандартам.

Висновки. У результаті проведеного дослідження доведено, що законодавче регулювання акціонерних відносин має вдосконалюватися шляхом прийняття нового Закону України «Про акціонерні товариства», у якому більш детально необхідно окреслити форми участі акціонерів у загальних зборах: очних, дистанційних та електронних. Доцільно визначити, що дистанційні загальні збори можуть проводитися шляхом заочного голосування за допомогою засобів електронного та поштового зв'язку, а електронні загальні збори можуть проводитися у режимі відеоконференції, що дозволяє бачити і чути всіх акціонерів у реальному часі з визначеним електронним механізмом голосування. Вказані нововведення зможуть дозволити подальше впровадження декількох форм участі у загальних зборах акціонерів із застосуванням авторизованої електронної системи відповідно до європейських стандартів.

Ключові слова: дистанційні загальні збори, акціонерне товариство, проєкт порядку денного, електронні документи, кваліфікований електронний підпис, бюлетень для голосування.

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LEGAL REGULATION OF CRYPTOCURRENCY RELATIONS WITH IN UKRAINE: EU EXPERIENCE

Abstract. ***Purpose.*** The paper aims to study some aspects of the legal regulation of relations with cryptocurrency in Ukraine and the EU and suggest improvements for Ukrainian legislation on virtual assets.

Research methods. To achieve the goal, the following research methods were used: hermeneutic semantic, system-structural, comparative legal, and others. The hermeneutic semantic method was used to study the content of the "cryptocurrency" concept in Ukraine and the EU. The system-structural method was employed to determine areas for improving the Law of Ukraine On Virtual Assets. The comparative legal method was used to raise the question about the possibility of paying tax for owned virtual assets; to present a proposal to introduce taxation of cryptocurrency transactions, drawing attention to the experience of the EU; to submit a proposal to amend the Civil and Commercial Codes of Ukraine following the experience of the EU.

Results. The scientific novelty consists in the study of relations on the legal regulation of relations with cryptocurrency in Ukraine, including transactions involving cryptocurrency, as well as in determining ways to improve the Law of Ukraine On Virtual Assets and developing provisions for the payment of funds to the state budget by the owners of virtual assets. Proposals to the Tax Code, Commercial Code, and Civil Code of Ukraine following the EU experience have been suggested.

Conclusions. It is proposed to make various changes and additions to the Law of Ukraine On Virtual Assets. The question was raised about the possibility of taxing commercial transactions with cryptocurrency and taxing transactions to purchase virtual assets (cryptocurrency units) from owners. A proposal was submitted to the Tax Code of Ukraine on the possibility of applying such taxes to cryptocurrency owners: on profit and capital gains. It is proposed to amend the Commercial Code of Ukraine regarding the possibility of using cryptocurrency by business entities. A proposal was made to develop a database containing data on the acquisition of virtual assets and their use to obtain information on confirmation of ownership and any transactions with cryptocurrency. It is proposed to provide Fiscal Service authorities with access to such a database for taxation of transactions with virtual assets.

Key words: cryptocurrency, Bitcoin, virtual assets, electronic money, Tax Code of Ukraine, Civil Code of Ukraine, Commercial Code of Ukraine.

1. Introduction

In Ukraine, a considerable number of people already own cryptocurrency. The specified currency is convenient for performing various operations on the market. However, the availability of electronic funds is not yet taxed under the law. Thus, our state loses a significant amount of funds that could have been paid to the budget by the owners of the specified currency.

In wartime, it is essential to fill the budget of Ukraine and conduct activities for business entities to support the economy of our state. The world has been discussing cryptocurrencies for a long time, in particular, regarding its official use as a means of payment. EU states have adopted legislative which allow using cryptocurrency officially. Ukraine, in turn, has also adopted a corresponding legislative act on the legal regulation of cryptocurrency and the possibility of its official use on the territory of our state.

Literature review. Issues of legal support for the circulation of cryptocurrencies are relevant both in the legal science of Ukraine and the EU countries and in Asia and America. We can name some authors who studied these issues: Akiko (Akiko, 2018), Arias-Oliva et al. (Arias-Oliva et al., 2019), Barsan (Barsan, 2019), Carreira et al. (Carreira, Pinto P., Pinto A., 2020), Chiriță and Nica (Chiriță, Nica, 2020), Chornous (Chornous, 2019), Ćirić and Ivanišević (Ćirić, Ivanišević, 2018), Derevianko and Turkot (Derevianko, Turkot, 2018), Derevianko (Derevianko, 2017), Kolková (Kolková, 2018), Kshetri (Kshetri, 2017), Liu et al. (Liu et al., 2021), Miciuła (Miciuła, 2019), Miraz and Ali (Miraz and Ali, 2020), Mykhailovskyi and Kostiuk (Mykhailovskyi, Kostiuk, 2019), Novikov (Novikov, 2017), Solodan (Solodan, 2019), Vinnyk et al. (Vinnyk et al., 2021), (Yaneva, 2021), and others. However, constant changes in theory, practice, and legislation require new research, including in terms of studying and considering the positive aspects in the legislation of EU countries.

Research methods. To achieve the goal, the following research methods were used: hermeneutic semantic, system-structural, comparative legal, and others. The hermeneutic semantic method was used to study the content of the "cryptocurrency" concept in Ukraine and the EU. The system-structural method was employed to determine areas for improving the Law of Ukraine On Virtual Assets. The comparative legal method was used to develop regulation on paying tax for owned virtual assets; to present a proposal to introduce taxation of cryptocurrency transactions, drawing attention to the experience of the EU; to submit a proposal to amend the Civil and Commercial Codes of Ukraine following the experience of the EU.

Purpose. The paper aims to study some aspects of the legal regulation of relations with cryptocurrency in Ukraine and the EU and suggest improvements for Ukrainian legislation on virtual assets.

2. Determining the notion of cryptocurrency in Ukraine and the EU

There is no definition of "cryptocurrency" in the legislation of Ukraine. This term is given as a generalizing concept, and the term "virtual asset" is used. It is essential that Ukraine has adopted a regulatory document that will regulate legal relations with cryptocurrencies as part of innovative technologies. Otherwise, it could lead to an increase in the size of the "shadow" market (Chornous et al., 2019, p. 5). After this law enters into force, it will be possible to receive tax deductions to the budget from the taxation of transactions with virtual assets.

According to the Law of Ukraine On Virtual Assets, which has not yet entered into force, the term "virtual asset" means an intangible asset that is subject to civil rights, has value, and is expressed in a set of data in electronic form (On virtual assets, 2022).

V.I. Mykhailovskyi and O.V. Kostiuk refer to cryptocurrency by the term "virtual currency" and give it such a characteristic – it is a digital measurement of value. It is a means of payment when performing, in particular, business, and other operations. It is used with the help of computer systems (Mykhailovsky and Kostiuk, 2019, p. 230).

Mariya Yaneva notes that cryptocurrency is a financial resource developed to pay for various operations using the latest computer technologies (Yaneva, 2021).

Nora Chiriță and Ionuț Nica note that the cryptocurrency appeared due to people's distrust of banking institutions and the inability to return funds in the event of certain situations related to both the activities of banks and the economic situation in the country in particular. The depreciation of the national currency plays a significant role. In this regard, there is a demand for cryptocurrencies in the world. The authors mark that cryptocurrency is a digital asset. In Romania, as in other countries, electronic money is used; in particular, one of its types is Bitcoin (Chiriță, Nica, 2020).

3. Peculiarities of legal regulation of relations with cryptocurrency in Ukraine

On February 17, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine On Virtual Assets (On virtual assets, 2022). This law will come into force with the adoption and publication of a legislative act on the taxation of transactions with virtual assets. Thus, together with the entry into force of this law, it will be necessary to pay taxes on income received from transactions with cryptocurrency. The existing law regulates legal relations that arise with cryptocurrency and considers such types of virtual assets as secured (certifying property rights) and unsecured (not certifying rights). The state authorities that will regulate activities with virtual assets are the following: the National Securities and Stock Market Commission

(unsecured assets) and the National Bank of Ukraine (secured assets). The State Register of service providers related to the turnover of virtual assets will be created, where it will be possible to find information about the relevant service providers. Obtaining permission will be obligatory to provide the services (On virtual assets, 2022).

For proper control over transactions with cryptocurrencies in Ukraine, a database should be developed, indicating data on the purchase of virtual funds and their use. From this database, cryptocurrency owners will be able to obtain information about the confirmation of ownership and any transactions with the specified currency, following the experience of which scientists R. Carreira, P. Pinto, and A. Pinto (Carreira, Pinto P., Pinto A., 2020). The Fiscal Service authorities should access the specified database to tax virtual assets and operations with them. Such experience deserves to be studied and implemented in Ukrainian legislation. We also consider it urgently necessary to define in the Law of Ukraine On Virtual Assets a list of documents that can be used to confirm ownership of cryptocurrencies. We consider it urgently necessary to introduce amendments to the Law of Ukraine On Virtual Assets and additions to the Tax Code of Ukraine regarding the taxation of commercial transactions with cryptocurrency and the taxation of transactions involving the acquisition of virtual assets from owners. Owners of electronic funds must pay taxes for the presence of such assets.

4. Experience in legal support of transactions with cryptocurrencies in the EU

The EU countries regulate transactions with cryptocurrencies in diverse ways. Some countries have adopted a legislative act that regulates transactions with virtual assets, and in others, these legal relations remain unresolved. Many scientists study the relationship between participants in cryptocurrency transactions in different EU countries. In particular, Zoran Ćirić and Stojan Ivanišević investigate such transactions in Malta (Ćirić, Ivanišević, 2018); Ireneusz Miciuła Investigates legal relations related to electronic money in Poland (Miciuła, 2019); Kateryna Solodan investigates relations with cryptocurrency in Eastern Europe (Solodan, 2019); Andrei Novikov determines the specifics of virtual asset turnover in Estonia (Novikov, 2017); Mario Arias-Oliva, Jorge Pelegrin-Borondo, Gustavo Matias-Clavero consider the legal danger of cryptocurrency settlement operations in Spain (Arias-Oliva et al., 2019); Iris M. Barsan studies the legal regulation of relations with electronic money in France (Barsan, 2019); Andrea Kolková examines legal relations with cryptocurrency in the Czech Republic (Kolková, 2018), etc.

Zoran Ćirić and Stojan Ivanišević consider Maltese legislation to be one of the best for implementing and developing operations with so-called "electronic money" (Ćirić, Ivanišević, 2018, p. 565). Ireneusz Miciuła compares the use of virtual money in different countries and the development of operations with them and considers the use of cryptocurrencies by the Polish economy as a reserve for development (Miciuła, 2019).

R. Carreira, P. Pinto, and A. Pinto provide information that in some European countries, if required to confirm the right to use electronic money when making transactions with it, a document indicating the source of origin and the right to use, own, and dispose of the relevant currency can be provided through the system (Carreira, Pinto P., Pinto A., 2020). Thus, in many EU states, an essential feature of cryptocurrency transactions disappears – anonymity, which is crucial for many participants in such transactions (officials, deputies, senators, public figures, cult workers, etc.) (Derevianko, 2017). Therefore, the advantage of cryptocurrencies over traditional currencies remains only rapid growth in its cost in such countries. However, after the attack of the Russian Federation on Ukraine, the value of cryptocurrencies around the world has rapidly decreased. For the state, a register of cryptocurrency owners, unlike for such owners themselves, is an absolute positive because it is possible to prevent corruption manifestations and control the receipt of money from trading objects withdrawn from civil circulation.

Kateryna Solodan examines the procedure for taxation of income and assets resulting from changes in relations with virtual assets in Europe and notes that there is a difficulty in taxation due to the lack of data on the owners of such assets. One of the essential features of relations related to cryptocurrencies is anonymity. Persons who own, use, and manage electronic funds may be subject to the following taxes: income and capital gains. The scientist points out that tax rates on these assets are among the lowest in some Eastern European countries. Hence, users in these countries are more likely to try to make payments in cryptocurrency instead of payments in European and national currencies (Solodan, 2019). In our opinion, it is necessary to take into account the experience of some European countries and continue research in the area of determining the possibility of making additions to the Tax Code of Ukraine regarding the introduction of income tax on cryptocurrency transactions. We consider it appropriate to establish low tax rates compared to the general ones and develop

proposals to increase criminal liability for tax evasion (mandatory payments). Specialists in criminal law should conduct such studies. Ukraine has no capital gains tax (tax on withdrawn capital) yet. It is unlikely that it should be introduced in the nearest future. The possibility of introducing a new tax into the legal field of Ukraine should be considered by scientists and practitioners based on the experience of some Eastern European countries.

Andrey Novikov notes that the rules for conducting transactions with cryptocurrencies are established at the legislative level in Estonia. This country has adopted legislation according to which it is possible to make transactions and be the owner of electronic money officially. The scientist notes that virtual assets will occupy an increasingly important place in the financial market every year (Novikov, 2017). Mario Arias-Oliva, Jorge Pelegrin-Borondo, and Gustavo Matias-Clavero note that consumers are wary of cryptocurrencies in Spain, given the various risks. However, individuals and companies can use cryptocurrency as a means of payment. In general, virtual assets provide an opportunity to create innovative technologies when performing transactions (Arias-Oliva et al., 2019).

Iris M. Barsan studies the legal regulation of relations mediated by cryptocurrencies in France and notes that with the emergence and spread of electronic money in the world, the country could not stand aside and had to regulate the relations involving operations with virtual assets at the legislative level. In 2019, the relevant law was adopted, which provided for the implementation of registration procedures by intermediaries engaged in such activities and obtaining a license to carry out activities with cryptocurrency (Barsan, 2019). Czech researcher Andrea Kolková points out that the Czech Republic has a legislative act regulating cryptocurrency transactions. Businesses can use electronic currency when performing transactions in general and conducting trading activities in particular (Kolková, 2018). In our opinion, the research of the French and Czech experience requires amendments to the Law of Ukraine On Virtual Assets, the Law of Ukraine On Licensing Economic Activities, and the Commercial and Civil Codes of Ukraine in terms of the possibility of full legitimation of transactions involving cryptocurrency, the introduction of licensing of at least operations with mining, i.e., deduction, mining, generation of units of cryptocurrency, taxation of at least income or profits received from transactions involving cryptocurrency.

5. Conclusions. Shortly, cryptocurrency will become popular and necessary for making payments and other operations in most countries. Electronic money will likely displace cash from circulation and become, if not the only, then the leading payment system in the world.

The experience of legal support for cryptocurrencies in EU member states varies in terms of liberalism and tax rates. However, the general trend by the example of Malta, France, the Czech Republic, and Estonia indicates the application of preferential taxation compared to the taxation of income from activities in other areas and sectors of the economy and household taxation. In some European countries, information about the owners of cryptocurrency units is entered into computer registers, eliminating anonymity as one of the critical characteristics of cryptocurrency transactions since it is provided to the competent state authorities. It is unlikely that Ukraine needs this experience now. With all the convenience of functioning of such registers for the state, the latter will not technically always be able to obtain and process such information, eliminating its authority. This is without considering the potential refusal of many citizens and enterprises of Ukraine to acquire ownership of cryptocurrency units openly.

Today, it is advisable to amend the Civil Code and Commercial Code of Ukraine as general legal acts regarding the recognition of virtual assets as alternative means of payment since this is defined in the special Law of Ukraine On Virtual Assets. Even more critical will be the development and introduction of amendments to this law and the Tax Code of Ukraine regarding introducing a tax on income received from cryptocurrency transactions. The paper argues for the need to establish low compared to the general tax rates and disrupt the scientific discussion, in particular within the framework of the science of criminal law, regarding the advisability of establishing increased liability for tax evasion from such activities, as well as to start a discussion about the need to introduce in Ukraine capital gains tax (withdrawal tax).

The issue of the need to develop a database that will contain data on the acquisition of virtual funds and their use remains debatable. From this database, cryptocurrency owners will be able to obtain information about the confirmation of ownership and any transactions with cryptocurrency. It will be necessary to provide access to the specified database for the fiscal service to control the taxation of virtual assets and transactions with them.

Analysis of the debatable aspects of the functioning of cryptocurrency transactions, named in the two previous paragraphs, should be devoted to the following scientific research.

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ПРАВОВЕ РЕГУЛЮВАННЯ ВІДНОСИН ІЗ КРИПТОВАЛЮТОЮ В УКРАЇНІ: ДОСВІД ЄС

Анотація. ***Мета.*** Метою статті є дослідження окремих елементів правового регулювання відносин із криптовалютою в Україні та ЄС і надання пропозицій до українського законодавства про віртуальні активи.

Методи дослідження. Для досягнення мети було використано такі методи дослідження: герменевтично-семантичний, системно-структурний, порівняльно-правовий та інші. Герменевтично-семантичний метод використано під час дослідження змісту поняття «криптовалюта» в Україні та ЄС. За допомогою системно-структурного методу визначено напрями вдосконалення Закону України «Про віртуальні активи». Використавши порівняльно-правовий метод, було порушено питання стосовно можливості сплати податку за наявність віртуальних активів у власників; подано пропозицію щодо запровадження оподаткування операцій із криптовалютою, звернувши увагу на досвід ЄС; надано пропозицію щодо внесення змін до Цивільного і Господарського кодексів України відповідно до досвіду ЄС.

Результати. Наукова новизна полягає у дослідженні відносин із правового регулювання відносин із криптовалютою в Україні, зокрема й операцій за посередництва криптовалюти, а також у визначенні шляхів вдосконалення Закону України «Про віртуальні активи» та розробленні положень щодо сплати коштів до державного бюджету власниками віртуальних активів. Надано пропозиції до Податкового, Господарського та Цивільного кодексів України відповідно до досвіду ЄС.

Висновки. Запропоновано до Закону України «Про віртуальні активи» внести різні зміни і доповнення. Порушено питання про можливість оподаткування не лише комерційних операцій з криптовалютою, а й оподаткування операцій із купівлі віртуальних активів (одиниць криптовалюти) у власників. Надано пропозицію до Податкового кодексу України щодо можливості застосування до власників криптовалюти таких податків: на прибуток та на приріст капіталу. Запропоновано внести зміни до Господарського кодексу України щодо можливості використовувати криптовалюту суб'єктами господарювання. Надано пропозицію розробити базу, у якій повинні бути вказані дані про набуття віртуальних активів та їх використання для можливості одержання інформації про підтвердження права власності та про здійснення будь-яких операцій із криптовалютою. Запропоновано надати доступ до такої бази органам фіскальної служби для оподаткування операцій із віртуальними активами.

Ключові слова: криптовалюта, біткойн, віртуальні активи, електронні гроші, Податковий кодекс України, Цивільний кодекс України, Господарський кодекс України.

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SOME PROBLEM ISSUES OF LEGAL REGULATION OF APPEALS IN THE FIELD OF PUBLIC PROCUREMENT

Abstract. ***The purpose*** is to analyze the amendments to the powers of the Antimonopoly Committee of Ukraine in the field of appeals in public procurement and substantiate proposals to improve the appeal process.

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

Results. The content of amendments to the current legislation is analyzed, and proposals on improvement of the appeal process in the field of public procurements are put forward. Thus, it is determined that the legal status of the Commissioner for Complaints on Violations of Public Procurement Legislation is equal in many respects to the legal status of the State Commissioner of the Antimonopoly Committee of Ukraine: the Commissioner for Complaints is appointed for seven years. The official is subject to similar rules as in relation to the state commissioner and has the same level of remuneration. However, in addition to, of course, the various areas of competence of these officials, a significant difference in their legal status is the procedure for appointing and dismissing the Commissioner for Complaints on Violations of Public Procurement Legislation. The Commissioners for Complaints on Violations of Public Procurement Legislation are appointed and dismissed by the Chairman of the Antimonopoly Committee of Ukraine, while the State Commissioners of the Antimonopoly Committee are appointed and dismissed by the President of Ukraine.

Conclusions. The introduction of the position of the Commissioner for Complaints on Violations of Public Procurement Legislation is a positive step in the development of legal regulation of the appeal process in this area. However, it needs to improve and develop the legal status and procedure of appointment and dismissal of the relevant officials.

Key words: reforming the system of legal regulation, protection of economic competition, antitrust regulation, Commission for Complaints on Violations of Public Procurement Legislation, Commissioner for Complaints on Violations of Public Procurement Legislation.

1. Introduction

According to Art. 1 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine" (Law of Ukraine "On the Antimonopoly Committee of Ukraine", 1993), the Antimonopoly Committee of Ukraine is a state body with a special status, the purpose of which is to ensure state protection of competition in business and public procurement. At the same time, the provisions on public procurement (before 2016 – state procurement) were added in 2006 and hence extended the competence of the Antimonopoly Committee of Ukraine in this area of public relations. Since 2010, the Antimonopoly Committee of Ukraine has been the body of appeal in the field of public procurement. This activity is carried out directly by the permanent administrative board (boards) of the Antimonopoly Committee of Ukraine for the consideration of complaints of violations of public procurement legislation. The appeal procedure is defined by the Law of Ukraine "On Public Procurement" (Law of Ukraine "On Public Procurement", 2015) and is undergoing constant changes aimed at improving the appeal process, overcoming existing gaps in regulation.

The adoption of the Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Powers of the Antimonopoly Committee of Ukraine in the Field of Public Procurement" as of February 5, 2021, No. 1219-IX (Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Powers of the Antimonopoly Committee of Ukraine in the Field of Public Procurement", 2021) was a new step in reform, which introduced the position of Commissioner for Complaints on Violations of Public Procurement Legislation.

2. Novelties in the legislation on improvement of the appeal procedure in the field of public procurement

The Law of Ukraine "On the Antimonopoly Committee of Ukraine" was supplemented by Article 6-1 of the Antimonopoly Committee of Ukraine as a body of appeal in the field of public procurement, which states in particular:

"The Antimonopoly Committee of Ukraine, as the body of appeal in the field of public procurement, has the powers defined by the Law of Ukraine "On Public Procurement", as well as the following powers:

1) form a Commission (commissions) for Complaints on Violations of Public Procurement Legislation;

2) determine the number of commissions for reviewing complaints about violations of legislation in the field of public procurement;

3) approve and publish the generalized practice of reviewing complaints about violations of legislation in the field of public procurement;

4) approve and publish the Rules of Procedure of the Commission for Complaints on Violations of Public Procurement Legislation;

5) approve and publish methodological recommendations for the Commission for Complaints on Violations of Public Procurement Legislation on the specifics of the review of complaints by the commissions.

To ensure the consideration of complaints of violations of public procurement legislation, the Antimonopoly Committee of Ukraine shall establish a Commission (commissions) for Complaints on Violations of Public Procurement Legislation from among the persons authorized to review complaints in the field of public procurement consisting of three persons."

The Commissioner for Complaints on Violations of Public Procurement Legislation is a specially created position for work exclusively in the field of public procurement appeals, and accordingly in the future the State Commissioners of the Antimonopoly Committee of Ukraine will no longer serve as members of the Appeals Board. It is estimated that the number of commissioners dealing with complaints of violations of public procurement legislation is ten. These are really positive changes for the work of the Antimonopoly Committee of Ukraine, as currently the AMCU state commissioners in the number of nine people, including the chairman of the Committee, perform their main powers and the powers of members of the Appeals Board in the field of public procurement. The name of the appellate body has also been changed – instead of the existing boards, the law provides for the establishment of commissions. However, changing the name does not change the essence of the functions and scope of competence of existing boards.

It also provides:

"The term of office of the Commissioner for Complaints on Violations of Public Procurement Legislation is seven years. A person may not be appointed to the position of the Commissioner for Complaints on Violations of Public Procurement Legislation for more than two consecutive terms.

A person applying for the position of Commissioner for Complaints on Violations of Public Procurement Legislation must be a citizen of Ukraine, have a higher education of master's degree (specialist) (including legal and / or economic and / or technical), experience of at least five years in the last ten years, and be fluent in the state language.

The Commissioners for Complaints on Violations of Public Procurement Legislation are subject to the requirements and restrictions established by corruption prevention legislation and do not fall within the scope of the Law of Ukraine "On Civil Service".

Remuneration of commissioners for reviewing complaints about violations of public procurement legislation is set at the level of remuneration of state commissioners of the Antimonopoly Committee of Ukraine."

As can be seen from the above, there are similar features in the legal status of the Commissioner for Complaints on Violations of Public Procurement Legislation with the legal status of the State Commissioner of the Antimonopoly Committee of Ukraine. Thus, the Complaints Commissioner is appointed for seven years, is not a civil servant, he is subject to similar rules as in relation to the State Commissioner under anti-corruption legislation, and has the same level of remuneration.

It is also determined that the exclusive competence of the Commissioners for Complaints on Violations of Public Procurement Legislation is the consideration of complaints of violations of public procurement legislation.

In addition to different areas of competence of the relevant officials, a significant difference in their legal status is the procedure for appointing and dismissing the Commissioner

for Complaints on Violations of Public Procurement Legislation:

"Commissioners for Complaints on Violations of Public Procurement Legislation are appointed and dismissed by the Chairman of the Antimonopoly Committee of Ukraine. The procedure for competitive selection and appointment to the positions of Commissioners for Complaints on Violations of Public Procurement Legislation shall be determined by the Antimonopoly Committee of Ukraine. "

The above shows that the legal status and level of official independence of the Commissioners for Complaints on Violations of Public Procurement Legislation is much lower than the level of State Commissioners of the Antimonopoly Committee, who are appointed and are dismissed by the President of Ukraine and recommended for appointment by the Prime Minister of Ukraine on the basis of proposals of the Chairman of the Antimonopoly Committee of Ukraine.

This potentially has some shortcomings due to the direct dependence on the Chairman of the Antimonopoly Committee of Ukraine, because in relation to State Commissioners, the Chairman of the Committee is essentially the first among equals, and in this case, he is the head who has full authority over the employment of Commissioners for Complaints on Violations of Public Procurement Legislation.

3. Procedural particularities of the activities of the Commission for Complaints on Violations of Public Procurement Legislation

Article 6-1 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine" defines certain procedural features of the Commission for Complaints on Violations of Public Procurement Legislation in the field of public procurement:

"The form of work of the Commission for Complaints on Violations of Public Procurement Legislation is meetings held in accordance with the Regulations of the Commission for Complaints on Violations of Public Procurement Legislation in the field of public procurement approved by the Antimonopoly Committee of Ukraine.

Decisions of the Commission (commissions) for Complaints on Violations of Public Procurement Legislation in the field of public procurement are made by voting by a majority vote of the members present at its meetings.

Members of the Commission for Complaints on Violations of Public Procurement Legislation in the field of public procurement have equal rights to consider issues within the competence of the Commission for Complaints on Violations of Public Procurement Legislation in the field of public procurement, including in decision-making.

A member of the Commission for Complaints on Violations of Public Procurement Legislation in the field of public procurement may not abstain from voting."

These provisions were previously enshrined in the Regulations of the Permanent Administrative Board of the Antimonopoly Committee of Ukraine for Complaints on Violations of Public Procurement Legislation, which is a departmental document of the Antimonopoly Committee of Ukraine. Now some of them are enshrined in the law of Ukraine. We emphasize the prohibition of a member of the Commission for Complaints on Violations of Public Procurement Legislation to abstain from voting. Abstaining from voting will be essentially a waiver of office duty. There is only one case when the complaints Commissioner may not take part in the complaint review and decision-making:

"The Commissioner for Complaints on Violations of Public Procurement Legislation, who is a person related to the subject of the complaint or the customer, may not participate in the consideration and decision-making on such a complaint and at the time of consideration and decision-making on such a complaint must be replaced by another Commissioner for Complaints on Violations of Public Procurement Legislation, appointed by the Chairman of the Antimonopoly Committee of Ukraine, or such a complaint may be referred to another Commission for Complaints on Violations of Public Procurement Legislation."

It should be noted that these changes are a positive step to optimize the process of reviewing complaints about violations of legislation in the field of public procurement, but their implementation, as of today, should be better.

Please note that paragraph 5 of Section II of the Final and Transitional Provisions states:

«5. The Chairman of the Antimonopoly Committee of Ukraine within three months from the date of entry into force of this Law to prepare and submit to the Verkhovna Rada of Ukraine a report on the selection and appointment of Commissioners for Complaints on Violations of Public Procurement Legislation and the process of creation Commission (commissions) for Complaints on Violations of Public Procurement Legislation,"

Although the Law entered into force on March 4, 2021, as of today, the Commissions for Complaints on Violations of Public Procurement Legislation have not been established, and appeals continue to be carried out by panels composed of State Commissioners of the Antimonopoly Committee of Ukraine.

4. Conclusions

We hope that the selection of staff for the positions of the Commissioners for Complaints on Violations of Public Procurement Legislation will be carried out, and the Commissions for Complaints on Violations of Public Procurement Legislation will work in accordance with the requirements of current legislation.

With the onset of martial law under the resolution of the Cabinet of Ministers of Ukraine "Some issues of defense and public procurement of goods, works and services under martial law" as of February 28, 2022, № 169 (resolution of the Cabinet of Ministers of Ukraine "Some issues of defense and public procurement of goods, works and services under martial law", 2022), new features of public procurement were introduced that affected the process of appealing against violations of public procurement legislation. It was established that in martial law, defense and public procurement of goods, works and services are carried out without the use of procurement and simplified procurement procedures defined by the Laws of Ukraine "On Public Procurement" and "On Defense Procurement". Accordingly, the appeal process and the process of reforming the appeal body slowed down.

Of course, as of today, many processes related to public administration reform have slowed down, but with the end of martial law, the need for reform will become urgent again, and the need to implement the announced reforms will be inevitable.

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ОКРЕМІ ПРОБЛЕМНІ ПИТАННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ОСКАРЖЕННЯ У СФЕРІ ПУБЛІЧНИХ ЗАКУПІВЕЛЬ

Анотація. ***Мета*** – дослідження змісту внесених змін до повноважень Антимонопольного комітету України у сфері оскарження публічних закупівель та обґрунтування пропозицій щодо удосконалення процесу оскарження.

Методи дослідження. Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання.

Результати. Проаналізовано зміст новел до чинного законодавства та запропоновані пропозиції щодо удосконалення процесу оскарження у сфері публічних закупівель. Так, визначено, що правовий статус уповноваженого з розгляду скарг про порушення законодавства у сфері публічних закупівель прирівнюється за багатьма складниками до правового статусу державного уповноваженого Антимонопольного комітету України: уповноважений з розгляду скарг призначається на сім років, не є державним службовцем, відповідно до антикорупційного законодавства на нього поширюються аналогічні норми, що і стосовно державного уповноваженого, має той же рівень оплати праці. Проте окрім, звичайно, різних сфер компетенції вказаних посадових осіб, суттєвою відмінністю

їхнього правового статусу є порядок призначення і звільнення уповноваженого з розгляду скарг про порушення законодавства у сфері публічних закупівель. Уповноважені з розгляду скарг про порушення законодавства у сфері публічних закупівель призначаються на посаду та звільняються з посади Головою Антимонопольного комітету України, тоді як державні уповноважені Антимонопольного комітету призначаються на посади та звільняються з посад Президентом України.

Висновки. Запровадження посади уповноваженого з розгляду скарг про порушення законодавства у сфері публічних закупівель є позитивним кроком з розвитку правового регулювання процесу оскарження у цій сфері, проте потребують удосконалення та розвитку норми про правовий статус та порядок призначення та звільнення цих посадових осіб.

Ключові слова: реформування системи правового регулювання, захист економічної конкуренції, антимонопольне регулювання, Комісія з розгляду скарг про порушення законодавства у сфері публічних закупівель, Уповноважений з розгляду скарг про порушення законодавства у сфері публічних закупівель.

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ANALYSIS METHODOLOGY OF ADMINISTRATIVE AND LEGAL SUPPORT FOR INTELLECTUAL PROPERTY AND INVESTMENT PROTECTION

Abstract. ***Purpose.*** The purpose of the article is to identify methods of a comparative legal analysis of Ukraine, the EU Member States and North America regarding the administrative and legal support for intellectual property and investment protection.

Results. The article considers scientific perspectives on problematic issues of legal science methodology, definition and introduction of methodological analysis and methods of scientific knowledge in the process of research of support for intellectual property and investment protection. It is found that the study of the administrative and legal support for protection of intellectual property rights and investments requires scientific understanding, which is impossible without the analysis of the methodological basis of the study. To this end, the article analyses general philosophical, general scientific and special methods of knowledge of legal phenomena, enabling the assessment of the current status of administrative and legal support for protection of intellectual property and investments. It is determined that the content and structure of the scientific method can be represented variously by main stages as follows: the analysis of the problem situation, proposal concerning a problem design, substantiation and formulation of the problem, concretisation of the problem in tasks, proposal concerning a primary assumption, working and expanded hypothesis; justification of a hypothesis by establishing its empirical verifiability, theoretical validity, logical validity, accuracy and reliability; development of a pilot study programme; selection of procedures and technical means; conducting research, collecting and processing observation and measurement data; comparing empirical data with the contents of the proposed hypothesis, its acceptance, modification or rejection; formulating unsolved tasks and scientific problem. Evidently, the holistic structure of the scientific method includes the initial principles and ideas of management, material and ideal experimental operations, as well as the rules and norms of cognitive activity.

Conclusions. It is concluded that the methods are related and closely interact, as well as formulate the basis of the analysis methodology in the course of studying the administrative and legal support for intellectual property and investment protection. The combination of different research methods allows describing the public activity in the field of the administrative and legal support for intellectual property and investment protection, as well as the solution of specific problems in this field not only at the national, but also at the international level.

Key words: investments, intellectual property, method, methodology, protection, comparative legal analysis, subject matter.

1. Introduction

In democratic legal countries with market economies, intellectual property and investment occupy an important place in the State and civil society system. The former is the basis for social and economic progress, the latter supports this process. They are interrelated in many fields.

Accordingly, such an important aspect of social relations cannot remain outside law. The static scope of such regulatory mechanism is private law. However, in the evolution of legal protection of values in question, the provisions of public law, primarily administrative and financial law, are of importance.

However, as domestic experience shows, the protection of intellectual property rights and investment protection are at an inadequate level, which is a leading factor in the low standard of living of citizens, because good and sig-

nificant investments in the domestic economy almost do not come. Without them neither decent wages for workers, nor success for business, nor increase of gross domestic product of the Ukrainian economy are possible.

In other words, addressing the issue of intellectual property rights and investment protection will directly improve the well-being of citizens.

The comparative legal analysis of Ukraine, the EU Member States, and North America regarding the administrative and legal support for intellectual property and investment protection was under focus by domestic administrative law scholars, such as V. Halunko, P. Dikhtievskyi, A. Zamryha, A. Ivanyshchuk, O. Kuzmenko, M. Loshytskyi, D. Pavlov, O. Pravotorova, A. Chubenko, O. Yunin, and others. However, they did not directly address the issues that we proposed, analysing more general, special or related challenges.

2. Approaches to the definition of the concept "method"

The administrative and legal support for protection of intellectual property and investments in various forms of manifestation (scientific, law enforcement, law-making, etc.) is determined by a number of factors. The result depends not only on who acts (the actor) or what it is focused on (the object), but also on how this process occurs, what methods, techniques, means are used. That is, the basis for the further development of knowledge on the administrative and legal support for intellectual property and investment protection should be the methodology of jurisprudence, the gnoseological orientation of which concludes the methodological sense, defining the development and application of methodological tools to ensure the effectiveness of law.

Therefore, concepts "method" and "methodology" can be defined as follows. According to the dictionary of foreign words, method (from Greek *methodos*): 1. The way of understanding the phenomena of nature and social life; technique. 2. The practice or system of practices applied in any field of activity (science, production, etc.) (Bilodid, 1972). In other words, the method in the broadest meaning of the word is the manner of actor's performance in any form.

The main function of the method is to internally organise and regulate the process of cognition or practical transformation of any object. Therefore, the method (in one form or another) is reduced to a set of certain rules, techniques, ways, norms of cognition and action. It is a system of instructions, principles, requirements that should guide the solution of a specific task, achievement of a certain result in a particular field of activity. It disciplines the search for truth, enables (if correct) to save strength and time, to move to the goal in the shortest way. Sincere method serves as a compass by which the actor of knowledge and action makes his way, allows to avoid mistakes (Birta, Burhu, 2014, p. 19).

Therefore, the method of science is a balanced system of empirical and theoretical levels of research developed by the scientific community, enabling to receive and generalize gradually new scientific knowledge from facts to laws and theories.

In a more general form, the content and structure of the scientific method can be represented by main stages as follows: 1) the analysis of the problem situation, proposal concerning a problem design, substantiation and formulation of the problem, concretisation of the problem in tasks; 2) making an initial assumption, working and expanded hypothesis; 3) justification of a hypothesis by establishing its empirical verifiability, theoretical validity, logical validity, accuracy and reliability; 4) development of a pilot study programme; selection of procedures and technical means; 5) conducting research, collecting and processing observation and measurement data; comparing empirical data with the contents of the proposed hypothesis, its acceptance, modification or rejection; 7) formulating unsolved tasks and scientific problem. Evidently, the holistic structure of the scientific method includes the initial principles and ideas of management, material and ideal experimental operations, as well as the rules and norms of cognitive activity.

The main purpose of any method is on the basis of the relevant principles (requirements, regulations, etc.) to ensure the successful solution of certain cognitive and practical problems, the growth of knowledge, the optimal functioning and development of certain objects (Birta, Burhu, 2014, p. 20).

To sum up, the formulation of the scientific method adopts terms and concepts such as: the principle is the starting point of any scientific system, theory, ideological direction (Bilodid, 1972); the imperative is an unconditional, categorical requirement, concretising principle (Bilodid, 1972); operation is research action in solving the problem; procedure is a set of operations connected and ordered.

3. Approaches to the definition of "methodology"

Meanwhile, the methodology of scientific research means a set of principles, means, methods and forms of organisation and conducting scientific study of the problem. The methodology is endowed with a research apparatus, which includes: principles of organisation and conduct

of scientific research; different methods of scientific research and ways of its conduct; conceptual and categorical basis of scientific research, such as relevance, topicality, object, subject matter, purpose, tasks, scientific novelty, heuristic value, theoretical and practical significance (Yurynets, 2011, p. 14).

According to P.M. Rabinovych, the methodology should be understood as, on the one hand, a system of approaches and methods, ways and means of scientific research, and, on the other hand, a study (theory) on their use in the study of State legal phenomena (Rabinovych, 1995, p. 82).

S. Kalambet advocates this perspective, supplementing that the main purpose of the methodology of science is to study the means, methods and techniques of scientific research, thanks to which the actor of scientific study receives new knowledge about reality. Methods and techniques enable the actor to perform certain actions to achieve the goals set that can be both practical and theoretical. The methodology of science considers the most significant specificities and features of research methods, that is, reveals these methods by their generality and depth, as well as by levels of scientific knowledge (Kalambet, Ivanov, Pivniak, 2015, p. 38).

We agree with the statement that methodology is a type of rational-reflective consciousness, aimed at studying, improving and constructing methods, and the concept of "methodology" has two main meanings: first, it is a system of certain rules, principles and operations applied in a particular field of activity (in science, politics, art, etc.); second, it is a doctrine of this system, the general theory of the method (Konverskyi, 2010, p. 25).

Consequently, the study of the administrative and legal support for intellectual property and investment protection within the general theory of law is possible through the principles and methods of knowledge developed in science.

In his thesis, V. Senuta determines that the research methods of the legal aspects of intellectual property include: philosophical (dialectical, metaphysical), general scientific (system, structural, historical, sociological, ascent from concrete to abstract and from abstract to concrete, etc.), as well as special (comparative legal, legal hermeneutics, etc.) (Seniuta, 2018, pp. 34–35).

As noted above, dialectical and metaphysical methods are used among philosophical and ideological ones. For example, a dialectical method enables to study the essence of the administrative and legal support for intellectual property and investment protection, to clarify its nature, to establish the sequence of stages, interrelation of elements and their development.

General scientific methods, such as systemic methods, provide a holistic, consistent vision of the administrative and legal framework for the protection of intellectual property and investment.

With regard to special methods, the comparatively legal one enables to compare ways of setting the administrative and legal support for intellectual property and investment protection and to establish the peculiarities of their manifestation in different legal systems of the world.

That is, the dialectical method, system method, and comparative-legal method enable to understand the methodology in the field of the administrative and legal support for protection of intellectual property and investments as a comprehensive system category, covering a sufficient theoretical and practical level of law-making and law enforcement.

4. Conclusions

It is concluded that the methods are related and closely interact, as well as formulate the basis of the analysis methodology in the course of studying the administrative and legal support for intellectual property and investment protection. The combination of different research methods enables to describe the public activity in the field of the administrative and legal support for intellectual property and investment protection, as well as the solution of specific problems in this field not only at the national, but also at the international level.

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МЕТОДОЛОГІЯ АНАЛІЗУ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ОХОРОНИ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ ТА ІНВЕСТИЦІЙ

Анотація. ***Мета.*** Мета статті полягає у визначенні методів здійснення порівняльно-правового аналізу України, країн-учасниць ЄС та Північної Америки щодо адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій.

Результати. У статті розглядаються наукові погляди на проблемні питання методології юридичної науки, визначення та застосування методологічного аналізу та методів наукового пізнання у процесі дослідження адміністративно-правового забезпечення охорони права інтелектуальної власності та інвестицій. З'ясовано, що дослідження адміністративно-правового забезпечення охорони права інтелектуальної власності та інвестицій потребує наукового осмислення, яке неможливе без здійснення аналізу методологічної основи дослідження. З цією метою проаналізовано загальнофілософські, загальнонаукові та спеціальні методи пізнання правових явищ, за допомогою яких була здійснена оцінка сучасного стану адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій. Визначено, що зміст та структуру методу науки можна варіативно уявити такими основними етапами, як: аналіз проблемної ситуації, висування проблемного задуму, обґрунтування та формулювання проблеми, конкретизація проблеми у завданнях; висунення первинного припущення, робочої та розгорнутої гіпотези; обґрунтування гіпотези шляхом встановлення її емпіричної перевіряльності, теоретичної обґрунтованості, логічної спроможності, істинності та достовірності; розробка програми експериментального дослідження, вибір процедур та технічних засобів; проведення досліджень, збирання та обробка даних спостереження та вимірювань; порівняння емпіричних даних зі змістом запропонованої гіпотези, її прийняття, доопрацювання чи відкидання; формулювання невирішених завдань та нової наукової проблеми. Як бачимо, у цілісну структуру наукового методу включаються вихідні принципи та керівні ідеї, матеріальні та ідеальні дослідні операції, а також правила та норми пізнавальної діяльності.

Висновки. Зроблено висновок, що методи тісно взаємодіють та пов'язані між собою, а також становлять основу методології аналізу дослідження адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій. Поєднання різних методів дослідження дає змогу охарактеризувати публічну діяльність у сфері адміністративно-правового забезпечення охорони інтелектуальної власності та інвестицій, а також вирішення конкретних проблем у цій сфері не лише на національному рівні, але й міжнародному.

Ключові слова: інвестиції, інтелектуальна власність, метод, методологія, охорона, порівняльно-правовий аналіз, предмет.

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ACTORS OF PERSONNEL POLICY IN BODIES OF THE NATIONAL POLICE OF UKRAINE: CONCEPT, CHARACTERISTICS, CLASSIFICATION

Abstract. ***Purpose.*** The purpose of the article is to generally characterise the actors of personnel policy in the bodies of the National Police of Ukraine, to determine their general and special characteristics, to outline their system, to differentiate various criteria, as well as to reveal their place and role in the administrative and legal mechanism for making personnel policy in the bodies and units of the National Police of Ukraine.

Results. Various scientific definitions of "actors of personnel policy" are analysed, and their advantages and disadvantages are underlined. In addition, the characteristics inherent in all actors of the personnel policy of the National Police of Ukraine, without exception, and the characteristics of the system of such actors as a single and integral element are determined. The author formulates an original definition of the concept of "the system of actors involved in making personnel policy in the bodies of the National Police of Ukraine", as well as justifies the expediency of including individual constituent elements in such a system. Multilevel classification of actors involved in making personnel policy in bodies of the National Police of Ukraine, based on criteria, such as a place of personnel policy in the bodies of the National Police of Ukraine in the general political structure of the State, the scope of competence, nature and specificity of tasks and functions, the nature of the relationship between the actors of personnel policy and the objects of their impact. The analysis reveals conceptual shortcomings in the organisation of the system of personnel policy actors in the bodies of the National Police of Ukraine, which negatively affect the quality of personnel policy, and markedly reduce the effectiveness of its implementation.

Conclusions. Most heads of territorial and other structural bodies and subdivisions of the police make their own "adjustments" in the personnel policy, which, on the one hand, allow for the local and regional interests and needs of such bodies and units; on the other hand, they create unequal conditions for the recruitment and performance of police officers (including subjective appointments). Moreover, the situation is aggravated by the large turnover of senior staff and, consequently, the frequent change in the direct (local) conditions of service in a police body (unit).

Key words: State powers, general and special competence, personnel policy in the bodies of the National Police of Ukraine, legal and regulatory mechanism, organisational and functional independence, the system of personnel policy actors in the bodies of the National Police of Ukraine, actors of general and special competence, actors of personnel policy.

1. Introduction

Actors are one of the basic elements of personnel policy in the bodies of the National Police of Ukraine (hereinafter referred to as the NPU). They determine the effectiveness of the mechanism for making personnel policy in police bodies and units, as well as the completeness and quality of its administrative and legal regulatory framework. However, despite the position of the actors in the structure of personnel policy, the scientific literature has not yet developed a unified definition of the concept, the features of such actors have not been defined, nor has a universal classification of them been developed. To a greater extent, this situation is due to the fact that scientists tend to focus on the characteristic of the administrative and legal status, the scope of competence, rights and duties of individual actors of personnel policy, while ignoring the importance of their concerted action as a coherent system of interrelated elements.

In our view, this approach is wrong. Indeed, in today's environment, the effectiveness of personnel policies, rightly recognised as one of the main areas of the reform of the bodies of the NPU, depends on the coordination and coherence of all actors concerned, as well as the orientation of their activities towards the common goal such as formation, preservation, development and management of personnel capacity of the police.

Therefore, the purpose of the article is to generally characterise the actors of personnel policy in the bodies of the NPU, to determine their general and special characteristics, to outline their system, to differentiate various criteria, as well as to reveal their place and role in the administrative and legal mechanism for making personnel policy in the bodies and units of the NPU.

2. Actors of personnel policy in the bodies of the National Police of Ukraine

The literature review reveals that today scientists interpret the concept of "actors of personnel policy" in different ways. For example, in some cases such actors are considered as "bearers of certain (defined in the legal field) powers, rights and duties on development and implementation of personnel policy" (Koptiev, 2006, p. 37; Kovbasiuk, Vashchenko, Surmin, 2012, p. 65; Korolenko, Yurochko, 2018, p. 11); in others, as "bodies and officials that according to the legislation, are participants in management relations, are vested with certain powers and functions in the field of personnel management, are able to implement them and are legally liable" (Klochko, 2012, p. 140).

A word-for-word analysis of the above-mentioned definitions suggests that scientists identify the main features of the actors of personnel policy as follows: the granting of certain powers; certain rights and duties; the legal and regulatory mechanism for activities; capacity to assume legal liability. However, we do not advocate this approach, and we believe it is appropriate to make a few criticisms of it. First, these features do not reveal all the specifics of the legal status of the actors of personnel policy in the bodies of the NPU. Second, some of the above topics need to be clarified (in particular, in terms of specifying the nature of the powers) or unified (for example, the use of the category of "competence" instead of "rights and duties"). Third, highlighting some traits seems inappropriate at all (first of all, it concerns "legal liability"), while the really important traits are not mentioned.

Our research allows for concluding that it would be appropriate to identify **main features that are common** to all **personnel policy actors in the bodies of the NPU** without exception.

First, personnel policy actors in the NPU are vested with State powers to make such policies. Unfortunately, the limited scope of this article does not allow us to fully describe the nature of State powers. But this is not an urgent need, as the topic is sufficiently detailed in modern scientific publications. However, it should be noted that today most administrators characterise such powers as "executive-managerial" (Yevdokymov, 2020, p. 64), which, among other things, involve the application of "power influence of public administration on subordinate actors" (Levchenko, 2019, p. 50). This characteristic once again confirms the expediency of attributing activities in making personnel policy to public administration and its coverage by all its features.

Second, personnel policy actors in the NPU have clearly defined fields of competence for making such policies. These are the rights and duties vested to each of the personnel policy actors, which together constitute the content of their activities in this field. Each actor has its own competence in the field of making personnel policy, a unique set of rights and duties. Moreover, the nature of such competence allows to distinguish separately actors of "general and special" competence (Hlushchuk, 2019, p. 311).

Third, the powers, competencies, tasks and functions of personnel policy actors in the bodies of the NPU are enshrined in the relevant legal framework. The legal and regulatory mechanism is a common feature of personnel policy in general, which is manifested in the activities of the actors who make it. Vesting such actors with State powers provides for strict legal and regulatory framework for their activities, as well as the mandatory establishment of legal liability for failure to perform or improper performance of their duties, as well as abuse of authority or influence.

Fourth, personnel policy actors in the NPU are active participants in human resources processes. Making personnel policy is a complex, multi-stage, broad-based process. Therefore, the successful implementation of its tasks requires the active and focused action of all the actors involved. Moreover, the passivity of any actor significantly reduces the effectiveness of personnel policy in general, and sometimes can even undermine all the results achieved.

Above, we have analysed only the most significant features of the actors of personnel policy in the bodies of the NPU. However, we believe that this analysis is not sufficient to reveal their place and role in the mechanism for making such policies. It is also important to identify **the features that characterise the entire system of such actors** as a single and integral element.

Primarily, the actors involved in making personnel policies in the bodies of the NPU are not just a set of certain bodies and officials, but their holistic and comprehensive system. Therefore, it has all the features of system formations, including: the presence of separate elements; the integrity, unity and relative autonomy of such parts; the presence of an internal structure (separate subsystems); interlinkages between all parts of the system as well as with the environment.

The next feature of the system of actors in making personnel policy in the bodies of the NPU is that the activities of all actors aimed at achieving a common goal. While each actor has specific goals and objectives for human resources management, they are ultimately all combined for the sole purpose of shaping, maintaining, developing and managing the human resources capacity of the NPU.

The system of actors involved in making personnel policy in the NPU is hierarchical. As is known, personnel policy in the NPU, on the other hand, is directly implemented at several organisational levels, that is, at the State, regional and local levels, as well as at the level of the central police administration, territorial and interregional territorial bodies of the NPU; on the other hand, is directly implemented at several organisational levels, such as the State, regional and local levels, as well as at the level of the central police administration, territorial and interregional territorial bodies of the NPU bodies, individual bodies, units, institutions and organisations of the police. Therefore, the degree of participation of each actor in making personnel policy, as well as the list of its tasks and functions in this field should correspond to the place that it occupies in the appropriate hierarchical structure.

Moreover, two features of the system of actors in making personnel policy in the bodies of the NPU are closely related to the feature mentioned above. First, this is a clear managerial relationship between such actors. Traditionally, within such hierarchical structures, scholars distinguish relationship of power and subordination, as well as of subordination and coordination. In addition, they are common to the system of personnel policy actors in the NPU, which are closely linked and interlinked. Second, there is the organisational and functional separation of the actors involved in making personnel policy in the bodies of the NPU, both from each other and from other of public administrators. Despite clear subordination, all personnel policy actors in the NPU are relatively independent of each other. This allows them to decide independently questions and to choose the forms and methods of their tasks.

Another feature of the system of personnel policy actors in the NPU is the coordination of their activities. This feature is of particular importance because a significant number of actors that are not subordinate to each other have been involved in making personnel policy in the bodies of the NPU: from the President of Ukraine to an employee of the personnel support unit of the police body. They all have different scope of powers and perform different tasks and functions. Objectively, there can be no subordination relationship between them. Therefore, to successfully achieve the overall goal and objectives of the personnel policies of the NPU requires a well-coordinated approach.

Thus, relying on the identification of the features of actors involved in making personnel policy in the bodies of the NPU, as well as the analysis of the features that characterise the system of such actors, we can propose the author's definition as follows: The system of actors involved in making personnel policy in the bodies of the NPU is a coherent, hierarchical, complex and coordinated system of interrelated, subordinate and functionally separate actors, such as bodies and officials that are active participants in personnel processes, the State powers, competences, tasks and functions thereof in making personnel policy in the bodies of the NPU have appropriate legal and regulatory framework and activities thereof are aimed at achieving the overall goal and objectives of such policy.

In view of a large number of different legal statuses, powers and areas of competence of bodies and officials included in the system of actors for making personnel policy in the bodies of the NPU now, there is a need to classify them into separate groups according to different specificities. This approach will not only reveal the role of each actor in making personnel policy in the bodies of the NPU, as well as identify promising ways to increase the effectiveness of their activities in this field.

It is most appropriate to classify all actors involved in making personnel policies in the NPU according to several criteria.

First, **depending on the position of the personnel policy in the bodies of the NPU in the general political structure of the State**, the actors involved in making such a policy may be at different hierarchical levels: 1) Actors involved in making the State personnel policy (President of Ukraine, Verkhovna Rada of Ukraine); 2) Actors involved in making the personnel policy of executive authorities (Cabinet of Ministers of Ukraine, National Agency for Civil Service of Ukraine); 3) Actors involved in making the personnel policy of the Ministry of Internal Affairs (Minister

of Internal Affairs of Ukraine, Personnel Department of the MIA); 4) Actors involved in making personnel policy in the bodies of the NPU (Head of the NPU, Human Resource Department); 5) Actors involved in making the personnel policy of the bodies, enterprises, institutions, organisations belonging to the police system (heads of the relevant structural units, their personnel units).

Second, **depending on the competence,** all actors involved in making personnel policy in the NPU can be grouped into: 1) Actors whose competence extends to all bodies of the NPU (central level); 2) Actors whose competence is limited to a certain territory (regional and local level); 3) Actors whose competence extends to a specific body, a police unit (object level).

Third, **depending on the nature and specificity of the tasks and functions of the actors involved in making personnel policy in the bodies of the NPU,** they can be differentiated into actors of general and special competence. The former has wide-ranging powers to regulate personnel actions within the bodies and units of the NPU (Personnel Department of the MIA, Human Resources Department of the NPU). The latter, on the contrary, performs only separate, highly specialised tasks and functions (select candidates for police service, or are responsible for the training, retraining and advanced training of police officers, etc.).

Fourth, **depending on the nature of the relationship between personnel policy actors and the objects on which their influence is directed**, internal and external actors can be identified. The first group includes all actors within the NPU system. Consequently, their powers in making personnel policy are internal, and among the actors of personnel policy subordination relations prevail. For example, these actors are the heads of the police, heads of bodies, units, police institutions, the Human Resources Department of the NPU. In contrast, the actors in the second group are organisationally separate from the police, that is, they are not part of the NPU system. These are, for example, the President of Ukraine, the Cabinet of Ministers of Ukraine, the VRU and others.

The next issue to be addressed in this scientific article concerns the identification of the **system of actors involved in making personnel policies in the NPU.** The analysis of the current legislation and the practice of the bodies of the NPU enables to conclude that today the actors involved in making personnel policy in the bodies of the NPU are: 1) the President of Ukraine; 2) the VRU; 3) the Cabinet of Ministers of Ukraine; 4) the National Agency of Ukraine for Civil Service; 5) the MIA of Ukraine, in particular through the Minister of Internal Affairs of Ukraine, Personnel Department of the Ministry of Internal Affairs of Ukraine and other structural units of the MIA of Ukraine; 6) the NPU, inter alia, through the Head of the NPU, the Human Resources Department of the NPU and other units of the Central Police Administration; 7) heads of bodies, units and institutions of the NPU and their Human Resources Units; 8) educational institutions and research institutions of the MIA and NPU; 9) other specialised bodies and institutions of the NPU; 10) local government bodies, trade union organisations and other public actors.

3. Shortcomings of personnel policy in the bodies of the National Police of Ukraine

A review of the statistics, analytical references and practices of the above-mentioned actors enables to identify several **conceptual shortcomings in the organisation of their activities, which have a negative impact on the quality of personnel policy in the bodies of the NPU, as well as significantly reduce the effectiveness of its implementation.**

First, the dispersal of powers in the field of making personnel policy in the bodies of the NPU among a significant number of "external" actors that have not only different legal status, but also organisationally and functionally are not subordinate to each other. For example, the so-called "external" actors, such as bodies and officials that are not part of the NPU or the MIA of Ukraine, have a significant number of rights and duties in the field of personnel management in the NPU. This situation leads to several negative consequences, starting from the stalling of certain personnel policies (including due to the inability to provide them with adequate financial, logistical, resource and other support) and to the establishment and strengthening of police dependence on political decisions.

In order to eliminate or at least minimise the negative consequences of this situation, in our opinion, it is necessary to take a number of organisational and legal measures, such as: to review the content and nature of the powers vested in "external" actors involved in making personnel policy in the bodies of the NPU; to exclude from the list of such powers those, the implementation of which makes the police (or their leaders) dependent on certain political actors; to limit as much as possible the powers of "external" actors, focusing on monitoring and supervising making personnel policies in the NPU; all rights and powers granted to "external" actors should be provided with corresponding duties aimed at balancing influence and preventing undue pressure (primarily political) on police bodies, etc.

Second, the absence of a coherent logical structure of "internal" actors involved in making personnel policy in the bodies of the NPU. As can be seen from the system of actors involved in making personnel policies in the NPU bodies, a very wide range of bodies, units and officials of the NPU are involved in the implementation of certain policies. Of course, such "specialisation" of personnel work has a number of advantages, such as improving the quality, promptness, proficiency of its implementation. However, it has serious shortcomings, such as the lack of proper communication and interaction between the actors of "general" and "special" competence in making personnel policy in the bodies of the NPU that is a particular concern. That is why, even with high efficiency in the performance of individual tasks and functions in human resources management, the overall objective of the personnel policy may remain unfulfilled. This is because the NPU Human Resources Units are not yet ready to assume full responsibility for the effective implementation of personnel policies, that is, they cannot guarantee a high quality of selection and deployment of police personnel.

In our view, this shortcoming can be remedied only by a number of structural and organisational measures, in particular: to review the general system and structure of "internal" actors involved in making personnel policy in the bodies of the National Institute of Education, to take measures for its optimisation and unification, liquidation of actors, responsible for making only certain areas of personnel policy and not for ensuring the performance of other tasks and functions of the police (with the transfer of their powers to actors of "general competence"); to review unify the personnel powers of "internal" actors, exclusion of powers, duplicated or involving the application of different mechanisms of their implementation; to define and regulate clear responsibilities of actors for the effectiveness and quality of the implementation of various personnel policies.

Third, the lack of proper communication and interaction between the different actors involved in making personnel policies in the bodies of the NPU. As we have noted above, there are many subordination and coordination relations between such actors that should ensure that the core tasks and functions of the NPU bodies and units are carried out in a clear and uniform manner. However, due to a number of managerial and organisational factors, this is not the case. Most heads of territorial and other structural bodies and subdivisions of the police make their own "adjustments" in the personnel policy, which, on the one hand, allow for the local and regional interests and needs of such bodies and units; on the other hand, they create unequal conditions for the recruitment and performance of police officers (including subjective appointments). Moreover, the situation is aggravated by the large turnover of senior staff and, consequently, the frequent change in the direct (local) conditions of service in a police body (unit).

In order to address this shortcoming, we believe that a number of organisational and operational measures should be taken, including: to ensure the integrity and unity of personnel policies in all bodies and units of the NPU; to develop, implement and monitor rigorous adherence to standardised and harmonised personnel policies and programmes; to maximise personnel functions within the NPU Human Resources Management Units (at all stages of the personnel cycle: from career guidance to pensions for persons dismissed from police service); to limit the subjective powers of police heads in staffing of subordinate units; to expand the coordinating functions of the Personnel Department of the MIA of Ukraine in the implementation of the main areas of personnel policy in subordinate bodies and subdivisions of the police, etc.

Fourth, shifting the focus of the work of the actors responsible for implementing personnel policy in the bodies of the NPU to the performance of statistical, accounting, recording functions. If the review of the powers, rights and duties of the actors directly involved in the implementation of personnel policies in the bodies of the NPU reveals that most of them are limited to accounting, registration and monitoring tasks. However, back in 2002, N.P. Matiukhina in her dissertation research drew attention to the fact that "personnel departments... can only marginally claim the role of a staff management tool", as well as underlined the expediency of reorientation of their activities to the performance of "informative, analytical and organisational" functions (Matiukhina, 2002, p. 141). Almost 20 years have passed since then, but the situation has hardly changed. Nowadays, most of their working time, human resources employees, as before, process and registrate personnel documents, prepare draft orders on personnel, formulate and issue various certificates, prepare reports for managers. With this approach, it is unlikely that they will be able to achieve the main objective of personnel policy, which is to establish, maintain, develop and manage the human resources capacity of the police bodies and units.

The above points to the need to take a number of managerial measures to strengthen the activities of those responsible for

implementing personnel policies in the bodies of the NPU, such as: to review the powers of human resources officers to reduce the scope of reporting-registration and statistical powers; to abandon statistical and registration reports that are irrelevant in the current context; to place the main responsibility for the quality selection of police personnel on human resources units and their managers; as well as its efficient and effective use; to shift the focus of the work of human resources units to personnel policies such as career guidance, study and assessment of personal and professional qualities of employees, creation of a reserve of managerial personnel, organisation of mentoring, adaptation of new employees, socio-psychological support for official work, quality training, retraining and advanced training of employees; to improve personnel policy such as forecasting and planning in order to determine the prospects of staff development and to take necessary managerial measures in timely manner; constant monitoring of the situation in the field of personnel management of police bodies and units in order to determine the reasons for staff turnover and other shortcomings in this field, etc.

Fifth, a low level of proficiency among the heads and staff of the bodies and units responsible for making personnel policies in the bodies of the NPU. The problem of low proficiency is common not only to the specialised units involved in human resources work, but also to all the other actors responsible for implementing the main areas of personnel policy in the bodies of the NPU. As we have been able to ascertain, most of the human resources of the NPU do not have specialised training and do not have specific knowledge and skills in dealing with personnel. With regard to the heads of the relevant police bodies and units, who are actively involved in making personnel policy in their subordinate units, only a few have received training in personnel management. Under these circumstances, it is unlikely that good results can be expected in the staffing of the NPU.

In our view, it is not possible to remedy this situation solely by the organisational and functional measures described above. Measures aimed at professionalising all actors in personnel policy without exception are also urgently needed and relevant. The most appropriate and effective measures, however, may be to increase the number of specialists with specialised training among the personnel of the police bodies, as well as experience in areas such as staffing and personnel management; to practice periodic training courses and specialised training for the employees of these units (including on socio-psychological work, professional ethics and etiquette, conflictology, the latest methods and techniques of personnel work, etc.); to organise additional training courses for police heads at all levels in the most relevant and complex areas of human resources management (including on scientific organisation of labour, modern technologies of personnel management, long-term and operational planning of personnel requirements, etc.); to establish operational and efficient communication and interrelation between the actors of personnel support, at different hierarchical levels; to expand the scope of advisory, informational, organisational, reference, training, supervisory and other powers of the Personnel Department of the MIA of Ukraine and the Human Resources Department of the NPU; to intensify educational and scientific activities of higher educational institutions with specific conditions of training in the field of personnel work in the NPU, in particular, by introducing in the curricula (including on the training of specialists at the master's degree) specialised subjects and special courses in personnel management and staffing, to development and introduce special advanced courses for personnel (including unregistered); to organise and hold various scientific events (conferences, round tables, seminars) devoted to the discussion of the most pressing problems in the field of staffing of bodies and units of the NPU, positive foreign experience in the organisation of personnel work in the police and promising areas of its implementation in the national law enforcement system.

Sixth, a systematic increase in the number of persons responsible for the implementation of certain tasks of making personnel policies in the bodies of the NPU. It is well known, nowadays a large number of actors are responsible for implementing personnel policies in the bodies of the NPU. However, a negative trend exists not only towards the continuous expansion of the network of such actors, but also towards an increase in the number of staff in the human resources services. Usually, the administration of the MIA and NPU attributes this situation to the increasing complexity of the activities of the human resources services, as well as to the expansion of their assigned tasks and functions. However, given that the NPU staff ceiling has been enshrined at the legislative level and has remained unchanged for many years, this explanation does not seem entirely appropriate.

Indeed, human resources officers now perform a much greater number of tasks of making personnel policy in the NPU. This situation should not, however, be regarded as an absolute justification for the expansion of such units. In our view, there are other more rational ways of optimising their activities, in particular: to

streamline the structure and number of personnel units in order to determine their best balance with the headcount of the body (unit) of the police; to "audit" the functional powers of personnel units (cancellation of those duplicate tasks that are outdated or irrelevant); to improve the general level of professional training of personnel services; to introduce modern personnel methods and technologies into the practice of their activities; to computerise standard personnel procedures; to rationalise work with accounting, statistical, reporting and other documentation; to practice provision of individual personnel services by external "highly specialised" actors (various consulting, auditing, information, design, advisory and other firms), etc.

4. Conclusions

The above list does not exhaust all the problems of organising the activities of the system of actors involved in making personnel policy in the bodies of the NPU. However, unless the above-mentioned shortcomings are addressed, any other measures aimed at improving the quality and efficiency of the police force will be doomed to failure.

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СУБ'ЄКТИ КАДРОВОЇ ПОЛІТИКИ В ОРГАНАХ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ: ПОНЯТТЯ, ХАРАКТЕРНІ ОЗНАКИ, КЛАСИФІКАЦІЯ

Анотація. ***Мета.*** Метою статті є надання загальної характеристики суб'єктам кадрової політики в органах Національної поліції України, визначення їхніх загальних і спеціальних ознак, окреслення їхньої системи, проведення диференціації за різноманітними критеріями, а також з'ясування їхнього місця і ролі в адміністративно-правовому механізмі формування та реалізації кадрової політики в органах і підрозділах Національної поліції України.

Результати. Аналізуються різноманітні наукові дефініції поняття «суб'єкти кадрової політики», наголошується на їхніх перевагах і недоліках. Окремо визначаються ознаки, що притаманні всім без винятку суб'єктам кадрової політики в органах Національної поліції України, та ознаки, що характеризують систему таких суб'єктів загалом як єдиний і цілісний елемент. Формулюється

авторська дефініція поняття «система суб'єктів формування та реалізації кадрової політики в органах Національної поліції України», а також обґрунтовується доцільність включення до такої системи окремих складових елементів. Розроблено багаторівневу класифікацію суб'єктів формування та реалізації кадрової політики в органах Національної поліції України, в основу якої покладено такі критерії, як місце кадрової політики в органах Національної поліції України в загальній політичній структурі держави, сфера компетенції, характер та специфіка завдань і функцій, характер взаємозв'язку між суб'єктами кадрової політики та об'єктами, на які спрямовано їхній вплив. На підставі проведеного аналізу визначаються концептуальні недоліки в організації діяльності системи суб'єктів кадрової політики в органах Національної поліції України, які негативно впливають на якість кадрової політики, а також помітно знижують ефективність її реалізації.

Висновки. Більшість керівників територіальних та інших структурних органів і підрозділів поліції вносять власні «корективи» у кадрову політику, які, з одного боку, дозволяють врахувати локальні та регіональні інтереси й потреби таких органів і підрозділів, а з іншого боку, створюють нерівні умови прийняття на службу в поліцію і проходження такої служби (в тому числі призначення на відповідні посади осіб за суб'єктивними міркуваннями). Ситуація ускладнюється також і значним ступенем плинності керівних кадрів і у зв'язку з цим частою зміною безпосередніх (локальних) умов проходження служби в тому чи іншому органі (підрозділі) поліції.

Ключові слова: державно-владні повноваження, загальна та спеціальна компетенція, кадрова політика в органах Національної поліції України, нормативна урегульованість, організаційна і функціональна відокремленість, система суб'єктів кадрової політики в органах Національної поліції України, суб'єкти загальної та спеціальної компетенції, суб'єкти кадрової політики.

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ADMINISTRATIVE LEGAL PROVISIONS FOR CASES INVOLVING APPEALS AGAINST AUTHORISED ACTORS' DECISIONS ON ADMINISTRATIVE LIABILITY IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to define and study, by relying on the writings of legal scholars, the basic administrative legal provisions for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine.

Results. The law provisions for appeals against authorised actors' decisions on administrative liability in Ukraine are generally established rules of conduct approved by the State and aimed at regulating relations in the field of activities of public authorities and their officials in case of non-performance or violation of which, citizens may apply to the court for protection or restoration of their rights, freedoms and legitimate interests. The legal framework for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine is established by a number of legal regulations which are amended and supplemented every year as necessary in the event of new legislative requirements for administrative proceedings in this field, therefore it requires thorough scientific study. The subjective rights of citizens are necessarily characterized by publicity, which means the possibility of influencing managerial processes, participating in State and socio-political activities, and enjoying the rights and freedoms provided for in the Constitution, appealing acts, decisions or omissions of authorities and their officials in the court. In our opinion, the basic administrative legal provisions on cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are: the Constitution of Ukraine, the Code of Administrative Procedure of Ukraine, the Code of Administrative Offences.

Conclusions. It is concluded that the administrative legal provisions on cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are generally established rules of conduct, approved by the State, aimed at regulating relations in the field of activities of public authorities and their officials in case of non-performance or violation of which, citizens may apply to the court for protection or restoration of their rights, freedoms and legitimate interests and bring the perpetrators to justice.

Key words: administrative liability, administrative legal provisions, power, decision, actor, judicial appeal.

1. Introduction

One of the conditions for Ukraine's accession to the European Union is the establishment of a modern and impartial judicial system aimed at protecting the rights, freedoms and legitimate interests of citizens and foreigners residing in the territory of our State. This also applies to the harmonization of domestic legislation with EU standards.

However, frequently the authorised actors abuse their rights in respect of ordinary citizens, including by violating established rules of conduct, approved by the State, and in this case the latter have to appeal to the court to protect or restore them.

Currently, in Ukraine there are numerous legal regulations on appeals against authorised actors' decisions on administrative liability that have not been studied from a scientific perspective.

Therefore, the administrative legal provisions for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are the main remedies for citizens to counter violations.

The administrative and legal provisions cases involving appeals against authorised actors' decisions on administrative liability in Ukraine have been studied by such legal scholars as V. Averianov, O. Bandurka, O. Barintsev, V. Bevzenko, K. Beliakov, Y. Bytiak, E. Bolotina, V. Bryzhko, O. Vdovina, O. Voronov, V. Havlovskyi, V. Halunko, V. Harashchuk, Y. Harust, YE. Hetman, I. Hlobenko, M. Damirchyiev, O. Danylian, Y. Denysiuk, P. Dikhtiievskyi, O. Dzhafarova, V. Yeltsov, S. Yesimov, V. Zarosylo, R. Kaliuzhnyi, N. Kvasnevska, O. Kobzar, M. Kovalchuk, V. Kovalska, I. Koliushko, T. Kolomoyets, V. Kolpakov, A. Komziuk, V. Kopylov, O. Korchynskyi, T. Kravtsova, S. Kuznichenko, O. Kuzmenko, R. Kuibida, N. Kushakova-Kostytska, A. Manzhula, Z. Markus, R. Melnyk, A. Novytskyi, O. Paseniuk, A. Paskar, V. Pchelin, O. Riabchenko, O. Syniavska, R. Stanik, S. Stetsenko, V. Surnyk, R. Tarasenko, M. Tyshchenko, Y. Furmanchuk, Y. Kharytonov, O. Kharytonova, V. Tsymbaliuk, M. Tsvok, K. Chylinharian, O. Shamrai, R. Shapoval M. Shvets, Y. Shemshuchenko, K. Shkarupa, I. Shrub, O. Yakuba, and others. However, the issues concerned have been addressed only indirectly, exploring other more general, ad hoc or related challenges.

The purpose of the article is to define and study, by relying on the writings of legal scholars, the basic administrative legal provisions on cases involving appeals against authorised actors' decisions on administrative liability in Ukraine.

2. Definitions in the field of appealing decisions of authorised actors

Taking into account the opinions of leading scholars in the field of appeals against authorised actors' decisions on administrative liability in Ukraine, it is necessary to clarify definitions in series.

The Dictionary of the Ukrainian language defines the concept of the norm as the customary, legal, generally accepted, obligatory order, state, etc.; the standard, the rule of conduct of people in society. A norm (provision) of law is a generally binding rule of human conduct established, approved and enforced by the State (Bilodid, 1973).

The next concept to be understood for the study of our problem is to appeal, that it, to formally submit an action to the higher institution against a decision, someone's actions, etc. (Bilodid, 1973).

The authorised actors are the public authorities, the bodies of local self-government, their official, and other actors in the exercise of their power managerial functions on the basis of legislation, including in the exercise of delegated powers (N.d. 2021).

According to Professor V. Halunko, an administrative appeal is a procedure for the protection of violated rights of citizens in the field of public administration, defined at the legislative level, which provides for the submission of an action by a citizen against decisions, acts or omissions by authorized persons of public and local authorities in an administrative manner and these persons' obligation to resolve the issues raised in the action (Constitution of Ukraine, 1996).

Therefore, the legal provisions on cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are generally established rules of conduct, approved by the State, aimed at regulating relations in the field of activities of public authorities and their officials in case of non-performance or violation of which, citizens may apply to the court for protection or restoration of their rights, freedoms and legitimate interests.

The legal framework for cases involving appeals against authorised actors' decisions on administrative liability in Ukraine is established by a number of legal regulations which are amended and supplemented every year as necessary in the event of new legislative requirements for administrative proceedings in this field, therefore it requires thorough scientific study.

The subjective rights of citizens are necessarily characterized by publicity, which means the possibility of influencing managerial processes, participating in State and socio-political activities, and enjoying the rights and freedoms provided for in the Constitution, appealing acts, decisions or omissions of authorities and their officials in the court.

According to this, first it should be noted that according to the Basic Law of Ukraine: human and civil rights and freedoms are protected by the court. Everyone is guaranteed the right to appeal in court against decisions, acts or omissions of State or local self-government bodies, officials and officers (art. 55) (Halunko, Dikhtiievskyi, Kuzmenko, 2001).

In addition, under article 129 of the Code of Administrative Offences, judges who administer justice are independent and subject to the rule of law. The right to appeal and, in cases specified by law, the right to cassation is guaranteed (Code of Ukraine on Administrative Offenses, 2005).

The ways to ensure legality in the application of administrative actions for administrative offences are as follows. No one may be subject to measures in connection with an administrative offence other than on grounds and in the manner prescribed by law. Proceedings on administrative offences are conducted in strict compli-

ance with the law. The administrative actions taken by authorized bodies and officials are carried out within the scope of their competence in strict accordance with the law. Compliance with the requirements of law in the application of actions for administrative offences is ensured by systematic control by higher authorities and officials, by the right to appeal and other means established by law (article 7) (Code of Ukraine on Administrative Offenses, 2005).

3. Specificities of applying administrative and legal provisions in cases involving appeals against authorised actors' decisions on administrative liability in Ukraine

According to the Code of Administrative Procedure, the objective of administrative proceedings is the fair, impartial and timely settlement by a court of disputes in the field of public legal relations, with a view to the effective protection of the rights, freedoms and interests of natural persons, the rights and interests of legal persons against violations by authorised actors. In cases involving appeals against decisions, acts or omissions of authorised actors, the administrative courts verify whether they have been made: 1) on the grounds, within the scope of powers and in a manner determined by the Constitution and laws of Ukraine; 2) using powers for the purpose for which this power is granted; 3) on the basis of all the circumstances relevant to the decision-making (committing the act); 4) impartially (impartially); 5) in good faith; 6) soundly; 7) respecting the principle of equality before the law, preventing all forms of discrimination; 8) pro rata, in particular, to the necessary balance between any adverse effect on the rights, freedoms and interests of the individual and the objectives the decision (action) is intended to achieve; 9) considering the individual's right to participate in the decision-making process; 10) in a timely manner, that is, within a reasonable time frame (N.d., 2009).

Only in accordance with the rules of general procedure for appeal, disputes shall be considered in respect of: 1) appeals against legal regulations, except in the cases specified in the present Code; 2) appeals against the decisions, acts and omissions of authorised actors if the complainant also claims compensation for damage caused by such decisions, acts or omissions in an amount exceeding 500 times the minimum subsistence level for able-bodied persons; 3) the compulsory expropriation of land and other immovable property situated on it on grounds of public necessity; 4) appeals against the decision of authorised actors, on the basis of which he may demand the recovery of money in excess of the minimum subsistence level of able-bodied persons; 5) appeals against decisions of the National Commission for Rehabilitation in Legal Relations arising from the Law of Ukraine *On Rehabilitation of Victims of Repression of the Communist Totalitarian Regime of 1917–1991*; 6) appeals against individual acts of the National Bank of Ukraine, the Fund for Guaranteeing Deposits of Individuals, the Ministry of Finance of Ukraine, the National Commission on Securities and the Stock Market, decisions of the Cabinet of Ministers of Ukraine, as defined in article 266-1 of this Code (N.d., 2009).

Therefore, the above-mentioned standards, established and approved by the State, allow appeals against the decisions of the authorised actors and administrative liability of the officials responsible.

The court decides on administrative cases involving appeals against decisions (actions and omissions) of the executive authorities, local government bodies, the media, enterprises, institutions and organisations, their officials and officers, artists in the media who violate the law on elections and referendums within the time-limit prescribed in art. 172, part 11, of the CoAP of Ukraine. The general time limit for the consideration and resolution of an administrative case initiated under act. 172 of the CoAP of Ukraine, is 5 days after the submission of the claim to the court. However, if the claim is filed before election/referendum day, the case shall be settled no later than two hours before the start of voting. The period of these procedural deadlines begins to run on the day after the submission of the application to the court. The last day of these periods is up to: a) 24 hours (as a general rule); b) the end of the work of the administrative court (of course, if the court is not open 24 hours a day); c) the time that precedes two hours before the start of voting in the election/referendum (if the statement of claim was submitted less than five days before the beginning of voting). By the rules of art. 179 of the CoAP of Ukraine, which regulates the procedure for calculating the time limits for cases involving the electoral process or the referendum process, and the time limits for the filing of claims, as set out in articles 172–177 of the CoAP of Ukraine, not subject to renewal. Claims filed after the expiry of these time limits are dismissed by the court. At the same time, the violation by the court of the time limit for the consideration of an administrative case does not constitute grounds for filing an action, and, in the appellate instance, for the filing of an appeal without consideration. In such cases, an action or appeal may be dismissed only if the courts have not considered the case before a certain event,

after which the courts are prohibited from considering or continuing these cases (para. 11 of Resolution 2 of the Plenum of the Supreme Administrative Court of Ukraine on the practice of the administrative courts in applying the provisions of the CoAP of Ukraine in considering disputes concerning legal relations involving the electoral or referendum process of 2 April 2007) (N.d., 2009).

Therefore, in our opinion, the basic administrative legal provisions on cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are: the Constitution of Ukraine, the Code of Administrative Procedure of Ukraine, the Code of Administrative Offences.

4. Conclusions

Therefore, administrative legal provisions on cases involving appeals against authorised actors' decisions on administrative liability in Ukraine are generally established rules of conduct, approved by the State, aimed at regulating relations in the field of activities of public authorities and their officials in case of non-performance or violation of which, citizens may apply to the court for protection or restoration of their rights, freedoms and legitimate interests and bring the perpetrators to justice.

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АДМІНІСТРАТИВНО-ПРАВОВІ НОРМИ У СПРАВАХ СТОСОВНО ОСКАРЖЕННЯ РІШЕНЬ СУБ'ЄКТІВ ВЛАДНИХ ПОВНОВАЖЕНЬ ЩОДО ПРИТЯГНЕННЯ ОСІБ ДО АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає в тому, щоб на основі праць учених-юристів визначити та дослідити основні адміністративно-правові норми у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні.

Результати. Норми права у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні – це загальновстановлені, санкціоновані державою правила поведінки, що покликані на регулювання відносин у сфері діяльності органів державної влади та їх посадових осіб, у разі невиконання чи порушення яких громадяни можуть звернутися до суду за захистом або відновленням своїх прав, свобод та законних інтересів. Правові засади у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні визначені низкою нормативно-правових актів і щорічно редагуються та доповнюються залежно від нагальної потреби в разі виникнення нових законодавчих вимог до адміністративного судочинства у цій сфері, тому вона потребує детального наукового розгляду. Суб'єктивні права громадянина обов'язково характеризуються ознакою публічності, що означає можливість впливати на управлінські процеси, брати участь

у державній і суспільно-політичній діяльності, користуватися передбаченими Конституцією правами і свободами, оскаржувати дії, рішення чи бездіяльність органів влади та їх посадових осіб до суду. Основними адміністративно-правовими нормами у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні, на нашу думку, слід вважати: Конституцію України, Кодекс адміністративного судочинства України, Кодекс України про адміністративні правопорушення.

Висновки. Зроблено висновок, що адміністративно-правові норми у справах стосовно оскарження рішень суб'єктів владних повноважень щодо притягнення осіб до адміністративної відповідальності в Україні – це загальновстановлені, санкціоновані державою правила поведінки, що покликані на регулювання суспільних відносин у сфері діяльності органів державної влади та їх посадових осіб, у разі невиконання чи порушення яких громадяни можуть звернутися до суду за захистом або відновленням своїх прав, свобод та законних інтересів та притягнути винних до відповідальності.

Ключові слова: адміністративна відповідальність, адміністративно-правові норми, влада, рішення, суб'єкт, судове оскарження.

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POWERS OF THE STATE MIGRATION SERVICE OF UKRAINE FOR MAKING PUBLIC POLICY ON MIGRATION ACCORDING TO DOMESTIC LEGISLATION

Abstract. ***Purpose.*** The purpose of the article is to identify the powers of the State Migration Service of Ukraine in accordance with domestic legislation.

Results. The establishment of the State Migration Service of Ukraine as a central executive body implementing public policy on migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of natural persons, refugees and other categories of migrants defined by legislation became a significant milestone in the resolution of issues of State migration policy in Ukraine. The practical activities of the State Migration Service of Ukraine are functionally oriented towards public service, involving the provision of many administrative services in the field of citizenship, immigration, emigration, etc. The effectiveness of the State Migration Service depends on its perfect legal and regulatory framework. The article identifies the powers of the State Migration Service of Ukraine in the field of migration in accordance with domestic legislation. It is noted that the legal and regulatory framework for the activities of the State Migration Service of Ukraine in the field of migration policy is the law-making by the authorities within the scope of their competence, aimed at regulating the activities of the State Migration Service of Ukraine on the implementation of public policy on migration with a view to streamlining, ensuring and guaranteeing it. It is emphasised that the leading feature of the legal and regulatory framework for the implementation of State migration policy by the State Migration Service of Ukraine is a human-centric focus. The powers of the State Migration Service are defined in accordance with the laws and legal regulations of Ukraine.

Conclusions. It is concluded that legislation should regulate the issue of interaction between the State Migration Service of Ukraine and other central executive bodies on making State migration policy. To this end, it is proposed to establish an inter-ministerial coordinating body. Its activities shall be regulated on the basis of the relevant Regulations, which, inter alia, clearly delineate the powers of each body, which will contribute to the further development of State migration policy of Ukraine at the present stage.

Key words: State migration service, State migration policy, State authority, powers, legal and regulatory framework, interaction.

1. Introduction

The activities of any State authority, including in the field of migration policy, requires the existence of a certain regulatory framework for it, which the scientific literature defines as "legal framework", "regulatory framework", "legal and regulatory framework", etc. Establishment of the State Migration Service of Ukraine (hereinafter referred to as the SMS) as a central executive body implementing public policy on migration (immigration and emigration), including combating illegal (unlawful) migration, citizenship, registration of natural persons, refugees and other categories of migrants defined by legislation became a significant milestone in the resolution of issues of State migration policy in Ukraine. The practical activities of the SMS are functionally oriented towards public service, involving the provision of many administrative services in the field of citizen-

ship, immigration, emigration, etc. The effectiveness of the State Migration Service depends on its perfect legal and regulatory framework.

The issues of the legal and regulatory framework in general, and State migration policy in particular were under the focus in the studies by domestic and foreign scholars such as: S. Alyeksieiev, O. Bandurka, V. Batchaieva, Y. Bielousova, N. Blok, R. Voitovych, S. Husariev, M. Latynin, O. Lukashov, O. Malynovska, S. Mosondz, V. Olefir, O. Skakun, O. Tykhomyrov, M. Yavorskyi, and others.

The purpose of the article is to identify the powers of the State Migration Service of Ukraine in accordance with domestic legislation.

2. Specificities of the legal framework governing the activities of the State Migration Service of Ukraine

S.S. Alekseev argues that the legal regulatory framework is a system of legal remedies (legal provisions, legal relations, individual orders, etc.) effective, regulatory and organisational influence used to regulate, protect, develop social relations in accordance with social needs (Alekseev, 1995, p. 209). According to the authors of the teaching manual on the theory of State and law under the editorship of S.D. Husariev and E.D. Tykhomyrov, the legal regulatory framework is a purposeful and effective influence of law, used to regulate and improve specific social relations through legal remedies alone. The subject matter of the legal regulatory framework is specific social relations that require to be regulated by law rather than other social norms (Husariev, Tykhomyrov, 2017, p. 256). According to A.F. Skakun, the legal regulatory framework is the regularising of human behaviour through legal regulations designed for their repeated application under circumstances envisaged by them (Skakun, 2001). V.V. Kopieichykov argues that the legal regulatory framework is an effect of law on public relations through certain legal remedies, first of all, the rules of law (Kopieichykov, 1997, p. 217). In A.M. Bandurka's opinion, the legal regulatory framework is a purposeful, regulatory and organisational activity aimed at implementing regulatory possibilities of legal provisions and other special legal remedies into public relations with a view to their regularising and progressive development (Bandurka, 2018, p. 344).

Therefore, despite the absence of a single term in the scientific literature, all these definitions are synonymous and have common features, which include: first, the legal and regulatory framework is primarily an action, a process; second, it aims to regulate the conduct of the parties to certain social relations; third, the regulatory effect is made on the basis of the legal provisions that constitute the system; fourth, the legal regulatory framework has positive or negative legal effects; fifth, it is ensured by the State.

Thus, the legal regulatory framework for State migration policy is the activities of the State aimed at establishing provisions of law governing the conduct of parties to social relations in the field of migration policy, with a view to their regularisation, protection and security by certain legal remedies.

The legal and regulatory framework for the activities of the SMS of Ukraine in the field of migration policy is the law-making by the authorities within the scope of their competence, aimed at regulating the activities of the SMS of Ukraine on the implementation of public policy on migration with a view to streamlining, ensuring and guaranteeing it.

The legal basis for regulating the activities of the SMS of Ukraine is a system of provisions of law governing its activities. The leading feature of the legal and regulatory framework for the implementation of State migration policy by the SMS of Ukraine is its conformity with the needs of ensuring human and civil rights and freedoms, determined by the human-centric model of building a modern Ukrainian society (Kovbasiuk, Vashchenko, Surmin, 2012, p. 348). These provisions are enshrined in the Constitution of Ukraine, stipulating that human rights and freedoms and their guarantees determine the content and orientation of the State's activities; affirmation and safeguarding of human rights and freedoms is the main responsibility of the State (Constitution of Ukraine, 1996).

The issue of citizenship and the safeguarding and protection of their rights are regulated by the following provisions of the Constitution of Ukraine: "Citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics" (art. 24); "A citizen of Ukraine shall not be deprived of citizenship and of the right to change citizenship. A citizen of Ukraine shall not be expelled from Ukraine or extradited to another state. Ukraine guarantees care and protection to its citizens who stay beyond its borders" (art. 25); "Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons may be granted asylum by the procedure

established by law" (art. 26). The international treaties in force, to which the Verkhovna Rada of Ukraine consented to be bound, and which under article 9 of the Constitution of Ukraine is part of the national legislation of Ukraine, are of importance in regulating the activities of the SMS (Constitution of Ukraine, 1996).

Certain constitutional provisions are reflected in the legal regulations governing the activities of the SMS of Ukraine. In particular, Law of Ukraine 2235-III "On Citizenship of Ukraine" of January 18, 2001 defines the principles of equality before law of Ukrainian citizens regardless of the grounds, procedure and moment of acquiring Ukrainian citizenship; retention of Ukrainian citizenship regardless of the place of residence of the citizen of Ukraine (Law of Ukraine On Citizenship of Ukraine, 2001). Law of Ukraine 3671-VI "On refugees and persons in need of subsidiary or temporary protection" of 08 July 2011 establishes the legal status of persons, recognised as refugees or persons in need of subsidiary protection: persons who have been granted the status of a refugee or a person in need of subsidiary protection enjoy the same rights and liberties and are bound by the same obligations as the citizens of Ukraine, except for cases established by the Constitution and the Laws of Ukraine, as well as international treaties to which the Verkhovna Rada of Ukraine consented to be bound (art. 14). These include the rights to: movement, free choice of place of residence, free exit from the territory of Ukraine, except for restrictions established by law; work; entrepreneurship not prohibited by law; health care, medical care and health insurance; recreation; education; freedom of thought and religion; sending individual or collective written communications or personal communications to State and local authorities; officials and officers of these bodies; to own, use and dispose of their property, the results of their intellectual and creative activity; to appeal to the court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers; application for protection of their rights to the Human Rights Commissioner of the Verkhovna Rada of Ukraine; free legal assistance in accordance with the established procedure. A person recognised as a refugee or a person in need of subsidiary protection has the same rights as Ukrainian citizens in marriage and family relations (art. 15) (Law of Ukraine on Refugees and Persons in Need of Subsidiary or Temporary Protection, 2011).

According to Law of Ukraine 3773-VI "On the Legal Status of Foreigners and Stateless Persons" of September 22, 2011, "1. Foreigners and stateless persons who are legally present in Ukraine enjoy the same rights and freedoms, as well as and bear the same obligations as citizens of Ukraine, except as provided by the Constitution, laws or international treaties of Ukraine. 2. Foreigners and stateless persons under the jurisdiction of Ukraine, regardless of the legality of their stay, have the right to recognition of their legal personality and fundamental human rights and freedoms" (art. 3) (Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, 2011).

Therefore, the constitutional provisions regulate the human-centric orientation of the legislation governing the activities of the SMS in Ukraine. The latter is a system of legal regulations, that is, an interconnected set of legal regulations, hierarchically structured from legal regulations of supreme legal force to legal regulations of lower legal force and interdependent in case of legal regulations of equal legal force. The hierarchy of legal regulations shall be considered as a correlation, established by the Constitution of Ukraine, of legal regulations consisting in subordination of legal regulations of the lowest legal force to legal regulations of the highest legal force, in establishment of interrelationships and interdependence between these legal regulations, in determination of the place of each type of legal regulations in the system of legislation (Draft Law of Ukraine On Legal regulations, 2008).

Next, the focus should be on the legal regulations of Ukraine, which determine the powers of the SMS to make public policy on migration. It should be noted that the law that is the leading regulatory source, designed to normalise the main issues of life, to rank most stable rules of behaviour as general (Alekseev, 2019, p. 80). In the study, such laws are: Law of Ukraine 2235 "On citizenship of Ukraine" of January 18, 2001, Law 3671 "On refugees and persons in need of subsidiary or temporary protection" of July 08, 2011, Law 3773 "On the legal status of foreigners and stateless persons" of September 22, 2011, Law 2491 "On Immigration of June 07, 2001.

3. Powers of the State Migration Service of Ukraine

The Law of Ukraine "On Citizenship of Ukraine" defines the powers of the central executive body responsible for making public policy on citizenship, such as: implementation of the decisions of the President of Ukraine on citizenship; taking decisions on establishing or registration of Ukrainian citizenship in accordance with the Law; taking procedural steps to become a citizen or to renounce Ukrainian citizenship; submitting applications together with the opinion to the Commission under the President of Ukraine on issues

of citizenship; revocation, within the scope of powers, of the decisions taken to formalise the acquisition of Ukrainian citizenship in the cases provided for by law; once every six months, the Commission under the President of Ukraine on issues of citizenship on the implementation of the decisions of the President of Ukraine on citizenship, etc. (Law of Ukraine On Citizenship of Ukraine, 2001).

Following the Law of Ukraine "On Refugees and Persons in Need of Subsidiary or Temporary Protection", the powers of the central executive body implementing public policy on refugees and persons in need of subsidiary or temporary protection, are as follows: to decide on the recognition as a refugee or a person in need of subsidiary protection, on the loss, withdrawal of refugee status or subsidiary protection and on the annulment of the decision to recognise a refugee or a person in need of subsidiary protection; to submit proposals to the Cabinet of Ministers of Ukraine on the need to adopt a decision on temporary protection and on the termination of temporary protection; to make a decision on the withdrawal of temporary protection for a foreigner or stateless person; to coordinate cooperation between the executive authorities on issues relating to refugees and persons in need of subsidiary or temporary protection; to consider complaints about the decision on the refusal to accept an application for recognition as a refugee or a person in need of subsidiary protection, on the refusal to registrate documents for recognition as a refugee or a person in need of subsidiary protection, and on the revocation of these decisions, if they were taken in violation of the law, etc. (Law of Ukraine on Refugees and Persons in Need of Subsidiary or Temporary Protection, 2011).

The Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" does not contain a separate article on the powers of the central executive body implementing public policy on migration. The analysis of this legal regulation shows the following powers: to accept applications for the issuance or extension of temporary residence permits, to take measures to collect information from the place of birth of such a person, the countries or places of his/her previous and long-term residence, as well as the country of origin of his family members, to decide on the recognition of a stateless person, on the prohibition of entry into Ukraine for a period of three years, on the voluntary or forced return of foreigners and stateless persons, to decide on the issue of voluntary or forced expulsion, on reducing the period of temporary stay of a foreigner and a stateless person in the territory of Ukraine, to cancel the decision on recognition of a stateless person on the grounds stipulated by the law, to keep a register of persons who have applied for or refused to be recognised as stateless, to issue identity card refunds, etc. (Law of Ukraine on the Legal Status of Foreigners and Stateless Persons, 2011).

According to article 6 of the Law of Ukraine "On Immigration", the central executive body implementing public policy on immigration: receives applications on issuance of immigration permits, accompanied by documents, specified in this Law, from individuals, staying in Ukraine legally; checks, whether the documents, submitted for issuance of immigration permits are duly made, check compliance with the due requirements, necessary for issuance of these permits and absence of reasons to refuse issuance of these permits; makes decisions to issue immigration permits, to refuse to issue immigration permits, to withdraw immigration permits and issue copies of these decisions to the persons involved; issues and withdraws permanent residence permits in cases, stipulated by this Law; register persons, who submitted applications on issuance of immigration permits and persons, who have been issued these permits (Law of Ukraine on Immigration, 2001).

By-laws defining the powers of the SMS should include the Resolution 360 of the Cabinet of Ministers of Ukraine "On the approval of the Regulations on the State Migration Service of Ukraine" of 20 August 2014 (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulation on the State Migration Service of Ukraine, 2014), as well as Order 265 of the SMS "Service On approval of the Regulations of the State Migration Service" of October 14, 2014 (Order of the State Migration Service On approval of the Regulations of the State Migration Service, 2014).

The Regulations on the State Migration Service of Ukraine include the following established powers: analytical ones, which may include a review of the practice of applying the legislation on issues within the competence of the SMS; the analysis of the migration situation in Ukraine, problems of refugees and other categories of migrants; the collection and analysis of information on the conditions under which such protection is granted in the countries of origin of refugees and persons in need of subsidiary or temporary protection in Ukraine; prognostication, development of current and long-term forecasts on issues within the competence of the SMS; law-making, development of proposals for improving legal regulations, regulations of the President of Ukraine and the Cabinet of Ministers of Ukraine, legal regulations of the ministries and their submission to the Minister of Internal Affairs in

accordance with the established procedure; organisational ones, performance of the function of the customer for the production and delivery of forms of documents confirming the identity and citizenship of Ukraine, and documents confirming the identity and special status, as well as goods, works and services to ensure the establishment and functioning of the Unified State Demographic Register; monitoring and supervision, monitoring of compliance by the registration authorities with legislation on the registration of the residence of individuals; State control, in accordance with law, over compliance with legislation on migration (immigration and emigration), including combating illegal (unlawful) migration and citizenship, refugees and other categories of migrants defined by legislation in cases provided for by law, bringing violators to administrative liability; coordinating ones, providing methodological and technical assistance to registration authorities in ensuring interaction between registers of territorial communities; registration, keeping relevant records and registers; information, providing within the scope of the powers provided by law, formation of information resources (databases, data banks) on personal data of individuals (including their biometric data, parameters), other information resources, necessary for the fulfilment of the tasks assigned to the SMS; enforcement, the conduct of proceedings on matters within the competence of the SMS; the provision of administrative services; powers of international integration, the implementation of international cooperation, participation in the drafting and conclusion of international agreements on citizenship, migration, refugees, persons in need of other forms of protection, registration of natural persons and readmission; ensuring within its powers the implementation of the international treaties concluded by Ukraine.

Furthermore, the Regulations on the SMS regulate the interaction of the SMS with other State and local authorities, in particular with the Verkhovna Rada of Ukraine and its bodies, the President of Ukraine and the Administration of the President of Ukraine, the Cabinet of Ministers of Ukraine and the Secretariat of the Cabinet of Ministers of Ukraine, central and local executive authorities and local self-government bodies. Cooperation with the Verkhovna Rada of Ukraine consists in the consideration of deputy appeals and requests, preparation of materials for holding an hour of questions to the Government, as well as for parliamentary hearings, hearings in committees of the Verkhovna Rada of Ukraine. In cooperation with the Secretariat of the Cabinet of Ministers of Ukraine on issues arising in relations with the CMU, the SMS shall hold consultations on the procedure for the preparation of draft legal regulations and other documents submitted to the Cabinet of Ministers of Ukraine, monitoring the implementation of decisions of the Cabinet of Ministers of Ukraine, as well as other issues. Cooperation with other executive authorities includes consideration of appeals, proposals, other materials and documents submitted by central and local executive authorities, local self-government bodies, ensuring timely coordination of draft legal regulations, which are submitted for consideration by the Cabinet of Ministers of Ukraine.

In addition, regarding the issues of public policy on migration (immigration and emigration), including countering illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants defined by legislation, the SMS cooperates quite actively with the Ministry of Internal Affairs, the Security Service of Ukraine, the Ministry of Foreign Affairs of Ukraine, the Ministry of Social Policy of Ukraine, the Ministry for Temporarily Occupied Territories and Internally Displaced Persons of Ukraine and the State Customs Service of Ukraine. To date, the issue of interaction between the SMS of Ukraine and these bodies is still not regulated by law. To this end, in order to coordinate the performance and decision-making, within the competence of SMS, as well as to delineate their powers, an inter-ministerial coordinating body should be established. Its activities shall be regulated according to the Regulations on Inter-Ministerial Coordinating Body.

4. Conclusions

Consequently, nowadays it should be noted that there have been significant improvements in the legal and regulatory framework for the activities of the SMS regarding public policy on migration (immigration and emigration), including countering illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants defined by legislation. The amendments made to the laws of Ukraine on the powers of the SMS show the human-centric direction of migration legislation in general and the activities of the SMS in particular. The issue of interaction between the SMS of Ukraine and other central executive bodies on making State migration policy is still not regulated by law. To this end, it is proposed to establish an inter-ministerial coordinating body. Its activities shall be regulated according to the relevant Regulations, which, inter alia, clearly delineate the powers of each body, which will contribute to the further development of State migration policy of Ukraine at the present stage.

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ПОВНОВАЖЕННЯ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ УКРАЇНИ ЩОДО РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ МІГРАЦІЇ ВІДПОВІДНО ДО ВІТЧИЗНЯНОГО ЗАКОНОДАВСТВА

Анотація. ***Мета.*** Метою статті є визначення повноважень Державної міграційної служби України відповідно до вітчизняного законодавства.

Результати. Створення Державної міграційної служби України як центрального органу виконавчої влади, який реалізує державну політику у сферах міграції (імміграції та еміграції), у тому числі протидії нелегальній (незаконній) міграції, громадянства, реєстрації фізичних осіб, біженців та інших визначених законодавством категорій мігрантів, стало значною віхою у вирішенні питань державної міграційної політики в Україні. Практична діяльність Державної міграційної служби України характеризується публічно-сервісною функціональною спрямованістю, що полягає

у наданні багатьох адміністративних послуг у сфері громадянства, імміграції, еміграції тощо. Ефективність діяльності Державної міграційної служби України залежить від її досконалого нормативно-правового врегулювання. Стаття присвячена визначенню повноважень Державної міграційної служби України у сфері міграції відповідно до законодавства України. Зауважено, що нормативно-правове регулювання діяльності Державної міграційної служби України у сфері міграційної політики – це правотворча діяльність уповноважених органів влади у межах їхніх компетенцій, спрямована на регламентацію діяльності Державної міграційної служби України щодо реалізації державної політики у сфері міграції з метою її упорядкування, забезпечення та гарантування. Акцентовано, що провідною ознакою нормативно-правового регулювання діяльності Державної міграційної служби України щодо реалізації державної політики у сфері міграції є його людиноцентрична спрямованість. Визначено повноваження Державної міграційної служби України відповідно до законів та підзаконних нормативно-правових актів України.

Висновки. Зроблено висновок про необхідність законодавчого регламентування питання взаємодії Державної міграційної служби України з іншими центральними органами виконавчої влади з питань реалізації державної міграційної політики. З цією метою запропоновано створити міжвідомчий координаційний орган. Його діяльність слід регламентувати на підставі відповідного Положення, в якому, зокрема, чітко розмежувати повноваження кожного органу, що сприятиме подальшому розвиткові державної міграційної політики України на сучасному етапі.

Ключові слова: державна міграційна служба, державна міграційна політика, орган державної влади, повноваження, нормативно-правове регулювання, взаємодія.

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PUBLIC POLICY OF UKRAINE: CONCEPT AND ESSENCE

Abstract. ***Purpose.*** The purpose of the article is to identify conceptual aspects of public policy of Ukraine.

Results. The implementation of the State's strategic goals for the development of Ukraine as a legal, democratic and social State depends directly on the quality of public policies. Meanwhile, the quality of public policies depends only on a correct understanding of its essence and fundamentals. Therefore, this study is focused on the review of scientific opinions and legislative provisions, the analysis of the content thereof enables to identify conceptual aspects of modern public policy of Ukraine. This topic is not new to legal science. A significant number of scholars devote their scientific research to related topics, both directly and indirectly, to aspects of the theoretical and practical rethinking of Ukrainian public policy in different sectors. However, its dynamic nature and frequent changes in the legislative framework enable scholars to constantly improve the already existing theoretical constructions of the essence of this legal phenomenon. It is stated that public policy is a way of exercising power, that is, the authorised actor, performing its direct duties (analysis of the current status of a specific problem, assessment of future prospects and formation of an action plan, public discussion, etc.), forms (in specific cases, implements) the action plan necessary to solve problems of public importance. It is revealed that the essence of public policy of Ukraine is presented through its managerial nature. That is, the State responds to the problem, seeks the best ways to solve it and ensures the stability of social development. It is emphasised that, in the light of the reformation changes, effective and high-quality public policy of Ukraine is an indispensable tool for improving the socio-political, economic and cultural situation of the country.

Conclusions. To sum up, the transitional period that Ukraine undergoes is characterised by a systematic process of optimisation of all legal phenomena and processes. Public policy of Ukraine as a legal phenomenon is aimed at solving problems of public importance, therefore, the clarity of setting public priorities depends on the quality of meeting the needs of society and the establishment of a strong and effective authority oriented to the wishes of the majority of citizens.

Key words: administrative policy, power, state, state power, public policy, society.

1. Introduction

According to Aristotle, any State is a kind of communication organised for a certain good. The most important form of communication in society is political communication, as it includes all other types of communication (Aristotel, 1983; Vasyliev, 2014). He argues that communication through politics and equal rights of citizens makes a person a strong figure of politics (Klokun, 2018). That is, community life is all the time mediated by public policy, whether we realise it or not.

However, the term "policy", and even more so its use in the phrase "public policy" or "State policy", is ambiguous. This is noted by numerous scholars, for example, unlike English, in all Slavic languages there is only one term "politika", which is used to denote both fight for power (English equivalent of "politics") and its implementation at different social and administrative levels ("policy") (Demianchuk, 2000, p. 31).

It is important to understand that today the concept of policy loses its original meaning because the main activity of the State is not focused on the redistribution of power (although it is still the basis), but to the needs of citizens (Afonin, Berezhnyi, Valevskyi, 2010, p. 10; Andriiash, 2013). That is, the public authority should "serve" its community, to administer the main fields of its life (Danylenko, 2019, p. 224).

In Ukraine, five blocks of reform change have begun. The Government's systematic

and results-oriented work is focused on achieving strategic objectives such as: 1) further economic development of the country through an enabling environment for business development and attracting investment, reforming the energy sector, further industrial modernisation and infrastructure development; 2) improved efficiency of management and the quality of public services by attracting new professional personnel and introducing modern management practices into the work of public authorities; 3) an enabling environment for the development of human capital by improving the quality of medical services and ensuring equal access of citizens to them, adapting the education system to modern requirements, supporting Ukrainian culture and sports; 4) effective support for institutions responsible for combating corruption and ensuring the rule of law, making the framework for the effective protection of private property, and ensuring exclusive equality before law; 5) the security of every citizen, effective protection of the sovereignty and territorial integrity of the State by reforming the security and defence sector (Official website of the Cabinet of Ministers of Ukraine, 2018).

The implementation of this depends directly on the quality of public policies aimed at resolving these issues. In turn, the quality of public policies depends only on a correct understanding of its essence and fundamentals. Therefore, this study is focused on the review of scientific opinions and legislative provisions, the analysis of the content thereof enables to identify conceptual aspects of modern public policy of Ukraine.

This topic is not new to legal science. A significant number of scholars devote their scientific research to related topics, both directly and indirectly, to aspects of the theoretical and practical rethinking of Ukrainian public policy in different sectors. They are V. Andriiash, O. Vasyliev, A. Danylenko, O. Demianchuk, A. Klokun, Y. Krokhina, O. Kucherenko, I. Petrenko, and others. However, its dynamic nature and frequent changes in the legislative framework enable scholars to constantly improve the already existing theoretical constructions of the essence of this legal phenomenon.

The purpose of the article is to identify conceptual aspects of public policy of Ukraine.

2. Specificities of the understanding of the concept of public policy

According to I. Petrenko (2011), the review of the approaches to the definition of public policy by western scientists reveals that the interpretation of this concept by E. Yang and L. Quinn should be considered, in particular: 1) Public policy is actions, implemented by the authority with legislative, political and financial powers to do so; 2) Public policy is the State's response to real life needs or problems, i.e., it seeks to respond to specific needs or problems of society or social groups, such as citizens, non-State organisations or authorities; 3) Public policy is goal-oriented, i.e. seeks to achieve several defined objectives in an attempt to address or consider certain problems or needs in a particular society; 4) Public policy is a course of actions, i.e., not one specific decision, action or reaction, but a carefully designed approach or strategy; 5) Public policy is a decision to do something or a decision to do nothing, which means that a certain policy can lead to actions in an attempt to solve the problem or it can be based on the belief that the problem will be solved within the framework of the current policy, that is, lead to no action; 6) Public policy is carried out by one or a group of actors, that is, the policy can be implemented by one official or by an authority or by many players; 7) Public policy requires justification for action, that is, usually contains explanations of logic, on which it is based; 8) Public policy is a decision already made, not an intention or a promise (Yang, 2003, pp. 5–6].

Therefore, public policy is a way of exercising power, that is, the authorised actor, performing its direct duties (analysis of the current status of a specific problem, assessment of future prospects and formation of an action plan, public discussion, etc.), forms (in specific cases, implements) the action plan necessary to solve problems of public importance. It should be noted that V. Andriiash (2013) argues that A. Kucherenko has systematised different approaches to understanding public policy and believes that the modern social and political thought identifies three main concepts of public policy, such as: 1) pluralistic (focuses on the process of making public policy in a modern democratic society as a multi-level competition between influential socio-political groups and associations); 2) public choice (considers the socio-politically oriented individual as the main vehicle of social activity, and therefore the making of public policy is largely influenced by political and public figures at the highest levels of government, who act according to the choice of a rational social interest); 3) deterministic (the making of public policy is determined by economic relations and the corresponding mode of production). According to Kucherenko, these concepts, as a theoretical research tool, enable to define a certain logic of identifying the necessary conditions for the development of a conceptual framework for making public policy in Ukraine (Kucherenko, 1997, p. 279).

3. Definition of the essence of public policy of Ukraine

Correspondingly, public policy in Ukraine can be defined as a system of laws, regulatory measures, courses of action, and funding priorities concerning a given sector (Dean, 2000).

Notionally, it is a given strategy of making and implementing socially binding decisions on a particular issue. Since the State remains the central actor in political life, policy is aimed at defining the essence of the problem, the solution of which requires the intervention of public authorities (Afonin, Berezhnyi, Valevskyi, 2010, p. 10).

For example, public policy on education is the State's activities directing and regulating in the field of education for effective use of educational opportunities to achieve well-defined strategic goals and objectives of national or global importance. It is implemented through laws, State programmes, governmental decisions, international programmes and treaties and other instruments, and through the involvement of social organisations and movements, in a broad manner, to support it with the means at their disposal (media, public academies, trade associations, unions, etc.) (Model law on education, 1999). Meanwhile, public policy on culture is regulatory (administrative, economic, financial) and public activities of State authorities and local self-government bodies, aimed at meeting the cultural needs of citizens in accordance with the priorities of social development (Law of Ukraine on Culture, 2010).

Therefore, the essence of public policy of Ukraine is presented through its managerial nature. That is, the State responds to the problem, seeks the best ways to solve it and ensures the stability of social development.

The literature review reveals at least two characteristics that public policy should meet: on the one hand, it should reflect the interests of broad social groups and contribute to solving important social problems (for example, ensuring security, stability, sustainable growth, etc.), and on the other – to contribute to forming a strong and effective authority, making effective and just decisions (Krokhina, 2006, p. 3).

Accordingly, the efficiency and effectiveness of public policies is due to the quality of public administration, with the power to have progressive methods of regulating social processes that can prevent risks and threats to development, minimise multiple risks. From a procedural perspective, all relevant parameters of management methods and technologies are manifested in the process of making public decisions (Krokhina, 2006, p. 4). The systemic dialogue between the executive authorities and the public, and the improvement of the quality of making decisions on important issues of State and public life, taking into account public opinion, are extremely relevant today (Official site of the National Civil Service Agency, 2019). Therefore, both in Ukraine and in the world, there are noticeable tendencies of a somewhat renewed understanding of the significance of the State's responsibilities, the conditions and forms of their implementation, and in general the relations of the authorities with society. In this connection, the leading countries of the world are oriented towards the systematic re-profiling of public institutions on new models of functioning, in order to meet the wishes of the majority of citizens. This leads to appropriate administrative reforms aimed more at optimizing the system of exercise of public power (Danylenko, 2019, 224) in order to ensure: 1) the absence of corruption in public and private sectors; 2) a high level of legal education and legal awareness of actors vested with authority; 3) the absence of preconditions for professional deformation of representatives of delegated State functions; 4) systematised, harmonised, coordinated legislative framework of sectoral, sectoral spheres; 5) sufficient administrative, legal, organisational, technical, financial, information and other support for necessary resources for the activities of public authorities; 6) coherent communication and dialogue between the State and the community; 7) the absence of domestic pressure and interference in the activities of authorities; 8) coherent internal hierarchical interaction of power institutions; 9) the presence of a clearly defined administrative policy (Danylenko, 2019, p. 225).

Therefore, in the light of the reformation changes, effective and high-quality public policy of Ukraine is an indispensable tool for improving the socio-political, economic and cultural situation of the country.

4. Conclusions

The transitional period that Ukraine undergoes is characterised by a systematic process of optimisation of all legal phenomena and processes. Public policy of Ukraine as a legal phenomenon is aimed at solving problems of public importance, therefore, the clarity of setting public priorities depends on the quality of meeting the needs of society and the establishment of a strong and effective authority oriented to the wishes of the majority of citizens.

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ДЕРЖАВНА ПОЛІТИКА УКРАЇНИ: ПОНЯТТЯ ТА СУТНІСТЬ

Анотація. ***Мета.*** Метою статті є виявлення концептуальних аспектів сучасної державної політики України.

Результати. Реалізація стратегічних цілей держави щодо розвитку України як правової, демократичної, соціальної держави є прямо залежною від якості державних політик. Своєю чергою забезпечити якість державних політик можливо лише правильним розумінням її сутності та фундаментальних основ. Тому це дослідження присвячене вивченню наукових думок та окремих законодавчих норм, аналіз змісту яких допоможе виявити концептуальні аспекти сучасної державної політики України. Досліджувана тематика не є новою для юридичної науки. Значна кількість учених, присвячуючи свої наукові пошуки суміжним тематикам, як прямо, так і опосередковано зачіпають аспекти теоретичного та практичного переосмислення державної політики України в тій чи іншій сфері. Однак її динамічний характер та часта зміна законодавчих основ дають можливість ученим постійно удосконалювати вже наявні теоретичні конструкції юридичної природи цього правово-

го явища. Узагальнено, що державна політика є способом реалізації влади, тобто суб'єкт владних повноважень, виконуючи свої прямі обов'язки (аналіз сучасного стану конкретної проблеми, оцінка майбутніх перспектив та формування плану дій, публічне обговорення тощо) формує (у конкретних випадках і реалізовує) план дій, необхідний для вирішення проблем публічного значення. Виявлено, що сутність державної політики України репрезентується через її управлінську природу. Тобто держава реагує на проблему, шукає оптимальні шляхи її вирішення, чим і забезпечує стабільність суспільного розвитку. Акцентовано, що у світлі реформаційних змін дієва та якісна державна політика України є невід'ємним інструментом покращення соціально-політичного, економічного та культурного становища країни.

Висновки. Підсумовано, що перехідний період, в якому нині перебуває Україна, характеризується системним процесом оптимізації всіх правових явищ та процесів. Державна політика України як правове явище має на меті вирішення проблем публічного значення, а тому від чіткості встановлення публічних пріоритетів залежить якість задоволення потреб суспільства та становлення сильної й дієздатної влади, орієнтованої на врахування побажань більшості громадян.

Ключові слова: адміністративна політика, влада, держава, державна влада, державна політика, суспільство.

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ADMINISTRATIVE PROCEDURES FOR FAIR AND EFFECTIVE JUSTICE IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyse administrative procedures for ensuring fair and effective justice in Ukraine.

Results. The article analyses administrative procedures for ensuring fair and effective justice in Ukraine. The role of the judiciary is to provide justice in the State and to ensure that citizens have access to it. In Ukraine, the judicial system does not meet the requirements of the European level, as citizens apply to the European Court of Justice for the restoration of human and civil rights, freedoms and legitimate interests. The ongoing reform of the judicial system is not making a positive difference, indicating a low level of confidence in the court and the entire judicial system. Therefore, the justice sector requires special attention and research on problematic issues. It is found that administrative procedures are not clearly defined. We may argue that they are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration and control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice. It is underlined that any information, not only regarding the judge but also concerning the proceedings, should be entered in the relevant register, which should be accessible to the parties to the proceedings or other persons concerned. The obligatory condition, related to the issue under study, is the procedure for ensuring the protection of information, especially with regard to the personal data of the above persons. That is, the relevant technical equipment should be with appropriate software.

Conclusions. Administrative procedures for ensuring fair and effective justice in Ukraine are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration and control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice.

Key words: administrative and legal framework, efficiency, fairness, justice, procedures, administrative law, courts

1. Introduction

The role of the judiciary is to provide justice in the State and to ensure that citizens have access to it. In Ukraine, the judicial system does not meet the requirements of the European level, as citizens apply to the European Court of Justice for the restoration of human and civil rights, freedoms and legitimate interests. The ongoing reform of the judicial system is not making a positive difference, indicating a low level of confidence in the court and the entire judicial system. Therefore, the justice sector requires special attention and research on problematic issues.

The study is based on the work of academic theorists on administrative law, such as: B. Averianov, O. Bandurka, O. Bezpalova, Y. Bytiak, M. Havryltsiv, V. Halunko, I. Holosnichenko, S. Kivalov, M. Kovaliv, V. Kolpakov, A. Komziuk, O. Kuzmenko, A. Kravtsov, R. Melnyk, I. Stakhura, A. Shcherbliuk, V. Felyk, K. Fuhlevych, and others.

The purpose of the article is to analyse administrative procedures for ensuring fair and effective justice in Ukraine.

2. Administrative procedures as an administrative and legal instrument regulating public relations

The main task of the State is to clearly define the provision of rights, freedoms and legitimate interests for its citizens. All this is done through administrative procedures. The word *procedure* comes from Latin *procedo*, which means "proceed" or "advance", *process* (from Latin *processus* "proceeding", "moving forward") (Melnychuk, 1974). V. Averianov believes that administrative procedures can significantly contribute to improving the efficiency of management, clear

performance of functions and powers of bodies and officials. Most importantly, these procedures should ensure the necessary consistency of citizens' exercise of their rights and freedoms and become an effective obstacle to subjectivity and arbitrariness of officials of the executive authorities (Averianov, 2002). S. Ovcharuk considers that the institution of administrative procedure is the only multifunctional organisational and legal instrument in the administrative law, contributing to the realisation of the rights and freedoms of citizens under the formation of the legal State (Ovcharuk, 2015). Some legal scholars in administrative law note that administrative procedures are: a) external expression of the exercise by public administrators of their powers granted to them to ensure (facilitate) the exercise of rights, freedoms, interests of individuals, performance of subjective duties, tasks of the State; b) the manifestation of managerial and executive activities of State authorities, local self-government bodies, their officials and officers; c) the institution of administrative law, inherent in and objectively interconnected with it, characterized by the staging and presence of special proceedings (Kolomoiets, Kolpakov, 2014: 9). In addition, the administrative procedure is the procedure defined by the legislation for consideration and decision by public administrators of a specific administrative case, as well as the procedure for the adoption and execution of the administrative act to ensure the rights and legitimate interests of the individual and the performance of duties prescribed by law, protection of rights, freedoms and legitimate interests (Halunko, Dikhtiievskyi, Kuzmenko, 2001). S. Savchenko's study of the registration procedures in the activities of the internal affairs agencies has allowed concluding that the registration procedure is regulated by the administrative and procedural rules of the activities of the public administration bodies, carried out with the aim of: official recognition of the legality of regulations; actions of legal persons; actions of natural persons; confirmation by the State of the legal status of actors; granting of rights or obligations to actors; recording of legal facts; establishing a certain legal relationship (Savchenko, 2012). In the study of administrative procedures for ensuring the right of citizens to access public information, S. Taradai concludes that administrative procedures, established by law, are the manner in which the information managers carry out the actions and ensure the right of everyone to access the information that is created, collected, used, disseminated and maintained by authorised actors and other managers of public information of public interest. Their specificity is that they are official, enshrined in the relevant legal regulations and are the main instrument in the system of ensuring the exercise by actors of their rights, freedoms, legitimate interests and powers. Observance by information managers of certain procedures while ensuring the right of citizens to access public information is a guarantee of their legality (Taradai 2012). According to V. Halunko, administrative procedures for administrative and legal support for investigative activities are specific administrative activities of public administrators, carried out on the basis of the substantive provisions of constitutional law, implemented in the procedural provisions of administrative law and consisting of stages, phases and actions related to the activities of pre-trial investigation bodies (Halunko, 2017). We advocate the scholar's perspective, since the activities of the courts are also specific, and in the performance of their direct functional duties in administration of justice in cases, they are guided by a number of procedural codes, such as: Criminal Procedure, Administrative Proceedings, Civil and Economic Codes, which include procedures for the consideration of cases.

Therefore, there is no clear definition of administrative procedures. We may argue that they are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration, control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice.

3. Specificities of administrative procedures in the justice sector in Ukraine

Next, some administrative procedures for ensuring fair and effective justice in Ukraine are considered. For example, the law clearly stipulates that justice in Ukraine is administered exclusively by the courts and in accordance with the procedures established by law (Law of Ukraine on the Judiciary and the Status of Judges, 2016).

The first procedure is the election of a judge. It is quite extensive and specific. The person applying for the post shall go through certain stages. Thus, the applicant shall submit documents only after the High Qualification Commission of Judges of Ukraine has placed an announcement of the selection of candidates for the post of judge on its official website. After the relevant check, carried out by the High Qualification Commission of Judges of Ukraine, a person is allowed to take a qualifying examination, the results of which shall be published on the official website of the High Qualification Commission of Judges of Ukraine. Then the person shall receive special training and a certificate of special training. According

to the results the candidate passes a qualifying exam, after the successful passing of which the High Qualification Commission of Judges of Ukraine appoints candidates for the post of judge in the reserve for filling vacant positions of judges, determining their rating, promulgates the list of candidates for the post of judge included in the reserve and rating list on the official website of the High Qualification Commission of Judges of Ukraine. Further competition is held on the basis of the rating of candidates and the consideration by the High Council of Justice and the recommendation of the High Qualification Commission of Judges of Ukraine and the adoption of a decision on the candidate for the post of judge. The documents are submitted for adoption to the President of Ukraine, and only after the issuance of the decree of the President of Ukraine on appointment to the post of judge the candidate is appointed to the post.

Moreover, specificities in the selection of candidates for the post of judge are at least three-year experience as an assistant judge, determined by the decision of the High Qualification Commission of Judges of Ukraine.

The next procedure is the special training of a candidate for the post of judge for a period of one year, which takes place at the National School of Judges of Ukraine on a budgetary basis. The Higher Qualification Commission for Judges of Ukraine, on the recommendation of the National School of Judges of Ukraine, approves the programme, the curriculum and the procedure for special training for judges. While the candidate is in office, he or she retains his or her main job and is paid a stipend equivalent to the salary of an assistant judge of a local court. The period of special training at the National School of Judges is included in the length of professional activity in law and, upon completion, a certificate is issued. The materials for candidates who have passed special training by the National School of Judges of Ukraine are sent to the High Qualification Commission of Judges of Ukraine for passing the qualification exam. In the event of a violation of the procedure for special training, which has led to the unsuccessful implementation of the special training programme, failure to attend the exam, expulsion from or termination of training on his or her own initiative, the candidate shall reimburse the funds, spent on his or her training. A candidate for the post of judge shall reimburse the funds spent on his or her special training.

These procedures and the obligatory promulgation of the results make information and registration procedures important for our research. Any information, not only regarding the judge but also concerning the proceedings, should be entered in the relevant register, which should be accessible to the parties to the proceedings or other persons concerned. The obligatory condition, related in our case, is the procedure for ensuring the protection of information, especially with regard to the personal data of the above persons. That is, the relevant technical equipment should be with appropriate software. Nowadays, the judicial information and communication system is served by the State Court Administration of Ukraine and the State Enterprise Information Judicial Systems.

The next procedure is the funding procedure. The Constitution of Ukraine provides for that the State shall ensure the financing and an enabling environment for the functioning of courts and the activities of judges. The State Budget of Ukraine separately determines the expenses for the maintenance of courts, taking into account the proposals of the High Council of Justice (Constitution of Ukraine, 1996). This reveals the special funding arrangements and a constitutional guarantee of their independence. Financial support for the activities of the courts of Ukraine is included in the State Budget of Ukraine.

4. Conclusions

Therefore, administrative procedures for ensuring fair and effective justice in Ukraine are a certain administrative and legal instrument regulating different public relations to ensure the rights and duties of citizens in the field of administration, control procedures, moreover, in the event of a violation, action shall be taken to reinstate them and to bring the perpetrators to justice.

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ДЕЯКІ АДМІНІСТРАТИВНІ ПРОЦЕДУРИ СТОСОВНО ЗАБЕЗПЕЧЕННЯ СПРАВЕДЛИВОГО ТА ЕФЕКТИВНОГО ПРАВОСУДДЯ В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає в тому, щоб проаналізувати адміністративні процедури стосовно забезпечення справедливого та ефективного правосуддя в Україні.

Результати. У статті проаналізовані адміністративні процедури стосовно забезпечення справедливого та ефективного правосуддя в Україні. Роль судової системи полягає у здійсненні в державі правосуддя та забезпеченні належного до нього доступу громадян. В Україні судова система не відповідає вимогам європейського рівня, оскільки громадяни звертаються за відновленням своїх прав до Європейського суду, що свідчить про неналежний рівень захисту прав, свобод та законних інтересів людини і громадянина. Започатковане реформування судової системи не дає тих позитивних зрушень, що свідчить про низький рівень довіри до суду та всієї судової системи. Саме тому сфера правосуддя потребує особливої уваги та дослідження проблемних питань. З'ясовано, що чіткого визначення щодо поняття адміністративних процедур немає. Можемо зазначити, що вони є певним адміністративно-правовим інструментом, який регулює суспільні відносини різних сфер для забезпечення прав і обов'язків громадян у сфері управління, процедури контрольної діяльності, а в разі порушення вживаються заходи щодо їх відновлення та притягнення винних до відповідальності. Наголошено, що будь-яка інформація не тільки стосовно судді, а така, що стосується питань судочинства, повинна бути внесена до відповідного реєстру, доступ до якої повинні мати учасники процесу або інші особи, що зацікавлені у ній. Обов'язковою умовою, що переплітається у нашому випадку, є процедура забезпеченням захисту інформації, особливо що стосується персональних даних вищевказаних осіб. Тобто відповідне технічне обладнання повинно бути забезпечене відповідним програмним забезпеченням.

Висновки. Адміністративні процедури стосовно забезпечення справедливого та ефективного правосуддя в Україні є певним адміністративно-правовим інструментом, який регулює суспільні відносини різних сфер для забезпечення прав і обов'язків громадян у сфері управління, процедури контрольної діяльності, а в разі порушення уживаються заходи щодо їх відновлення та притягнення винних до відповідальності.

Ключові слова: адміністративно-правове забезпечення, ефективність, справедливість, правосуддя, процедури, адміністративне право, суди.

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THEORETICAL AND METHODOLOGICAL FOUNDATIONS FOR DETERMINING LEGAL PRINCIPLES OF MAKING PUBLIC POLICY ON ENSURING RIGHTS AND FREEDOMS OF PERSONS WITH DISABILITIES

Abstract. ***Purpose.*** The purpose of the article is to determine, relying on modern scientific developments and the current regulatory framework, legal principles of making public policy on ensuring the rights and freedoms of persons with disabilities and, if necessary, to systematise them.

Results. The article analyses the legal principles of public policy on ensuring the rights and freedoms of persons with disabilities. The study suggests grouping the principles of public policy on ensuring rights and freedoms of persons with disabilities into universal (general) and sectoral (special). It is determined that universal (general) principles, inherent in public policy as a whole, are applied in all its types (sub-types). These include, inter alia: the rule of law; conformity with international law and international treaties; humanism, expediency and reasonableness; effectiveness; legality; humanistic value; scientific character; planning; priority of national interests; predictability; equality of all actors; systematic character; declaration and ensuring of human rights and freedoms; professionalism and competence of actors and other general principles.

Conclusions. It is noted that sectoral (special) principles are original ones, which, as a rule, are inherent in a particular type (sub-type) of public policy. Therefore, they are classified into: a) ordinary – internal principles of public policy on ensuring the rights and freedoms of persons with disabilities, which are general and significant (basic). These include: the Government's responsibility to establish a system that eliminates conditions leading to disability; accessibility; involvement and inclusion; non-discrimination; respect for the rights and talents of children with disabilities; full participation; equality of opportunities; equality of men and women; freedom of choice; equal conditions; an enabling environment for independent life; b) immanent – internal principles of public policy on ensuring the rights and freedoms of persons with disabilities, which are exclusive and specific, that is, inherent (characteristic) only in this sub-policy. These include: meeting the needs and interests of persons with disabilities; comprehensive support for persons with disabilities; application and implementation of the universal design framework; cross-cutting barrier-free environments; raising awareness of persons with disabilities and regarding them; promotion of sustainable urban mobility.

Key words: persons with disabilities, public policy on ensuring the rights and freedoms of persons with disabilities, principles, administrative and legal framework**.**

1. Introduction

The making of public policy on ensuring the rights and freedoms of persons with disabilities has always been a complex, multi-vector and targeted process, which necessarily has a goal, tasks and trends. Moreover, each of the components of such public policy should comply with the principles, governing the public authorities' activities in the implementation of this policy. In such context, the relevant principles should be considered for making such policy in the proper manner.

The study of the principles of making public policy in various sectors of public life has repeatedly been under the focus of scientific research by scientists, such as B. Averianov, O. Bandurka, O. Bezpalova, Yu. Bytiak, O. Valevskyi, V. Halunko, I. Hrytsenko, V. Harashchuk,

O. Dzhafarova, T. Drakokhrust, O. Drozd, H. Zubko, V. Komziuk, V. Nastiuk, D. Pryimachenko, S. Stetsenko, and others. Furthermore, it should be noted that the principles of making public policy on ensuring the rights and freedoms of persons with disabilities have just been reviewed in scientific works by V. Kondratenko, K. Mishchenko, V. Petrusevych, Ye. Sobol and others, which makes the study relevant.

The purpose of the article is to determine, relying on modern scientific developments and the current regulatory framework, legal principles of making public policy on ensuring the rights and freedoms of persons with disabilities and, if necessary, to systematise them.

2. Determination of the principles of public policy on ensuring the rights and freedoms of persons with disabilities

The principle (from Latin *principium* – "the basis," "the beginning") is the basic, initial position of any scientific system, theory, ideological trend, political arrangement, etc.; the specificity underlying the creation or implementation of something (Ivchenko, 2002, p. 366); the main, most general, starting position, the tool, the rule that determines the nature and social essence of the phenomenon, its orientation and essential properties (Malynovskyi, 2003, p. 190); the starting idea, the fundamental that determines the content and trend of the regulatory mechanism (Koziubra, 2015, p. 66).

Logically, with regard to public policy, the principles are a fundamental element, the basis of the corresponding public activity, which determine the basis of its making, reveal its essence.

According to I. Chekhovska, the principle is a central concept, a fundamental idea applicable to any system of knowledge and subordinates it. Within the theoretical knowledge of public policy, the principle determines the requirement to deploy the very knowledge into a system where all theoretical provisions are closely related and affect each other in a certain way (Chekhovska, 2013, p. 111). That is, the author focuses on the system-forming aspect of the principles, their substantiality for something or someone.

Moreover, the principles are the result of people's generalisation of objectively valid laws and regularities, common features inherent in them, characteristic facts and features that become the common beginning of their activities (Malynovskyi, 2003, p. 190). Therefore, in the context of public policy, the principles set the key rules, guidelines and fundamentals for the proper activities of actors of public authority in its making.

Given the managerial component of the process of making public policy, it is natural that their respective principles are similar and correlate with the principles of public administration. In this context, researchers note that the principles are the fundamental rules of the activities of bodies, institutions and people in the management of social processes, based on knowledge of the laws of functioning and development of society [6, p. 16]. According to V. Malynovskyi, the principles of public administration define the requirements for the system, structure, organisation and process of management, trends and limits of managerial decision-making. They interact with each other within a holistic system, balancing or reinforcing each other, allow for revelation of their nature, individuality and regulatory capabilities. In addition, the author underlines that the principles of public administration should be based on the laws of development of society, meet the goals of management, take into account the temporal and territorial aspects of the relevant processes, have a legal form (Malynovskyi, 2003, p. 193).

Therefore, the principles of public policy on ensuring the rights and freedoms of persons with disabilities can be defined as guiding ideas, fundamental rules, norms and standards, enshrined in the legal form, that reveal its essence, determine the basis for its making in order to ensure the full exercise by the persons concerned of their rights and freedoms, as well as their declaration and protection.

3. The importance of principles in the implementation of public policy

Principles of public policy, including its implementation and formation, are traditionally grouped into universal (general) and sectoral (special) (Chekhovska, 2013, p. 111; Kovbasiuk, 2014, p. 16; Honiukova, Kozakov, Rebkalo, 2018, p. 276). Universal (general) principles are inherent in the entire public policy and operate in all its types (sub-types). In turn, sectoral (special) principles are original, they are usually inherent in a particular type (sub-type) of public policy.

Scientists argue that the universal (general) principles include: objectivity; specificity; optimality; feedback; compliance with legal provisions, etc. (Kovbasiuk, 2014, p. 16; Honiukova, Kozakov, Rebkalo, 2018, p. 276); rule of law, legality, respect for human rights, publicity, systemic nature, comprehensiveness, scientific nature, planning, efficiency, timeliness, control, flexibility (Koshykov, 2021, pp. 74–81) and others. These principles have previously been enshrined in the Constitution of Ukraine, specified in a number of laws and regulations and used in all political and administrative activities of the State.

In this context, N. Korshunova identifies universal (general) principles of making public

policy as constitutional and, in particular, includes the principles of democracy, the rule of law, legality; peoples' and State sovereignty; declaration and protection of human rights and freedoms; ensuring of human and civil rights and freedoms; conformity of public policy with international law and treaties; political diversity (Korshunova, 2017, pp. 160–166).

Furthermore, a legitimate list of universal (general) principles of public policy is provided by the legislator in Article 2, Part 2 of Law of Ukraine 2411-VI "On the Principles of Domestic and Foreign Policy" of July 1, 2010. Such principles are: 1) the priority of national interest protection; 2) the rule of law, ensuring human and civil rights and freedoms, respect for the dignity of each person, ensuring special care for the child and the realisation of his/her rights; 3) the equality of all actors of property rights before law, protection of competition in economic activities; 4) the exercise of State power on the grounds of its division into legislative, executive and judicial; 5) openness and transparency in the processes of decision-making by State and local authorities; 6) the sustainable development of the market economy and its social dimension; 7) the balance of national, regional and local interests; 8) freedom, social justice and creative self-realisation; the participation of people in the management of State and public affairs; 9) social partnership and civic solidarity (Law of Ukraine On Principles of Domestic and Foreign Policy, 2010).

In addition, the above list of universal (general) principles of making public policy should be supplemented by the principles of humanism, expediency and reasonableness, coherence, comprehensive interaction of actors, human-centrism, multi-subjectivity, predictability, transparency, professionalism and competence of actors.

Furthermore, it should be noted that sectoral (special) principles of making public policy on ensuring the rights and freedoms of persons with disabilities are specific due to implying both adapted general principles of public policy and exceptional, specific principles.

The general principles of sub-policy under study are identical to some universal (general) principles of public policy as a whole but they are essential for ensuring the rights and freedoms of persons with disabilities and are adapted to its content. We propose to understand such principles as ordinary.

The ordinary (general) principles of making of public policy on ensuring the rights and freedoms of persons with disabilities have been elaborated by the international community and, according to Ye. Sobol, are, firstly, the responsibility of the Government responsibility to establish a system that eliminates conditions leading to disability and to address issues related to the consequences of disability; secondly, the provision by the State of the equal standard of living for persons with disabilities and other citizens, including income, education, employment, health care and participation in social life; thirdly, an enabling environment by the State for the independent life of persons with disabilities (self-reliance, self-sufficiency); fourthly, the recognition of the equality of persons with disabilities with other citizens in the exercise of constitutional rights and the observance of duties; fifthly, equal conditions for persons with disabilities throughout the country, regardless of their place of residence; sixth, consideration of the specific characteristics of persons with disabilities in making public policy on persons with disabilities; seventh, involvement of persons with disabilities in the development and application of legislation and strategies affecting their health, economic and socio-political situation (Sobol, 2015, pp. 94–95).

The Convention on the Rights of Persons with Disabilities provides ordinary principles of the sub-policy under study. These include the principles of the freedom to make one's own choices, independence of persons, non-discrimination, participation and inclusion in society, respect for difference of persons with disabilities, accessibility, equality of opportunity, equality between men and women, respect for the right and capacities of children with disabilities (UN Convention on the Rights of Persons with Disabilities, 2006). Furthermore, the Council of Europe Disability Strategy 2017–2023 provides for an almost similar list of principles. These principles are defined as fundamental and include independence, freedom of choice, full participation, equality, human dignity (The Council of Europe Disability Strategy 2017–2023).

In addition, immanent principles are internal principles of making public policy on ensuring the rights and freedoms of persons with disabilities include, as above-noted, exclusive and specific. These principles should be considered as immanent, because they are internal, that is, inherent (characteristic) only in this sub-policy.

Immanent principles of public policy on ensuring the rights and freedoms of persons with disabilities are principles of meeting the needs and interests of persons with disabilities; comprehensive support for persons with disabilities; application and implementation of the principles of reasonable accommodation; application and implementation of the universal design framework; cross-cutting barrier-free environments; raising awareness of persons with disabilities and regarding them; development of princi-

ples of participation and cohesion in relation to persons with disabilities; promotion of sustainable urban mobility. However, the list of immanent principles is not exhaustive and may be expanded and/or detailed, as appropriate.

4. The classification of principles of making public policy on ensuring the rights and freedoms of persons with disabilities

Therefore, the principles of public policy on ensuring the rights and freedoms of persons with disabilities are grouped into:

1. Universal (general) principles, inherent in public policy as a whole, are applied in all its types (sub-types). These include, inter alia: the rule of law; conformity with international law and international treaties; humanism, expediency and reasonableness; effectiveness; legality; humanistic value; scientific character; planning; priority of national interests; predictability; equality of all actors; systematic character; declaration and ensuring of human rights and freedoms; professionalism and competence of actors.

2. Sectoral (special) principles are original ones, which, as a rule, are inherent in a particular type (sub-type) of public policy. Therefore, they are classified into:

a) Ordinary – internal principles of public policy on ensuring the rights and freedoms of persons with disabilities, which are general and significant (basic). They are identical to some universal (general) principles of public policy as a whole, but adapted to the content of public policy on persons with disabilities. These include: the Government's responsibility to establish a system that eliminates conditions leading to disability and addressing disability issues; accessibility; involvement and inclusion; non-discrimination; respect for the rights and talents of children with disabilities; full participation; equality of opportunities; equality of men and women; freedom of choice; equal conditions; an enabling environment for independent life; consideration of specificities;

b) Immanent – internal principles of public policy on ensuring the rights and freedoms of persons with disabilities, which are exclusive and specific, that is, are inherent (inherent) only to this sub-policy. These include: meeting the needs and interests of persons with disabilities; comprehensive support for persons with disabilities; application and implementation of the principles of reasonable accommodation; application and implementation of the universal design framework; cross-cutting barrier-free environments; raising awareness of persons with disabilities and regarding them; development of principles of participation and cohesion in relation to persons with disabilities; promotion of sustainable urban mobility.

5. Conclusions

Thus, it can be concluded that the principles of public policy on ensuring the rights and freedoms of persons with disabilities are guiding ideas, fundamental rules, norms and standards, enshrined in the legal form, that reveal its essence, determine the basis for its making in order to ensure the full exercise by the persons concerned of their rights and freedoms, as well as their declaration and protection.

In addition, the principles of public policy on ensuring the rights and freedoms of persons with disabilities are grouped into: 1) Universal (general) principles, inherent in public policy as a whole, are applied in all its types (sub-types); 2) Sectoral (special) principles are original ones, which, as a rule, are inherent in a particular type (sub-type) of public policy. Therefore, sectoral (special) principles are classified into: a) Ordinary – internal principles of public policy on ensuring the rights and freedoms of persons with disabilities, which are general and significant (basic). They are identical to some universal (general) principles of public policy as a whole, but are adapted to the content of public policy on persons with disabilities; b) Immanent – internal principles of public policy on ensuring the rights and freedoms of persons with disabilities, which are exclusive and specific, that is, inherent (characteristic) only in this sub-policy.

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ТЕОРЕТИКО-МЕТОДОЛОГІЧНІ ОСНОВИ ВИЗНАЧЕННЯ ПРАВОВИХ ЗАСАД ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ ЩОДО ЗАБЕЗПЕЧЕННЯ ПРАВ І СВОБОД ОСІБ З ІНВАЛІДНІСТЮ

Анотація. ***Мета.*** Мета статті полягає у тому, щоб на основі сучасних наукових розробок, чинної нормативно-правової бази визначити правові засади (принципи) формування та реалізації державної політики щодо забезпечення прав і свобод осіб з інвалідністю та у разі необхідності здійснити їх систематизацію.

Результати. Статтю присвячено аналізу правових засад (принципів) державної політики щодо забезпечення прав і свобод осіб з інвалідністю. На основі проведеного дослідження запропоновано принципи державної політики щодо забезпечення прав і свобод осіб з інвалідністю поділяти на універсальні (загальні) та галузеві (спеціальні). Визначено, що універсальні (загальні) – принципи, що притаманні державній політиці загалом, застосовуються у всіх її видах (підвидах). До них, зокрема, належать: верховенства права; відповідності нормам міжнародного права та положенням міжнародних договорів; гуманізму, доцільності та обґрунтованості; ефективності; законності; людиноцентризму; науковості; плановості; пріоритетності захисту національних інтересів; прогнозованості; рівності всіх суб'єктів; системності; утвердження та забезпечення прав і свобод людини; фаховості та компетентності суб'єктів та інші загальні принципи.

Висновки. Зазначено, що галузеві (спеціальні) – оригінальні принципи, що, як правило, притаманні конкретному виду (підвиду) державної політики. Своєю чергою вони диференціюються на: а) ординарні – внутрішні принципи державної політики щодо забезпечення прав і свобод осіб з інвалідністю, які мають загальний характер та суттєве (базове) значення. До них належать: відповідальності уряду за створення системи, спрямованої на усунення умов, що призводять до інвалідності; доступності; залучення та включення до суспільства; недискримінації; поваги до прав і здібностей дітей з інвалідністю; повної участі; рівності можливостей; рівності чоловіків і жінок; свободи вибору; створення рівних умов; створення умов для незалежного життя; б) іманентні – внутрішні принципи державної політики щодо забезпечення прав і свобод осіб з інвалідністю, які є виключними та специфічними, тобто притаманні (властиві) лише цій субполітиці. До них належать: врахування потреб та інтересів осіб з інвалідністю; всебічної підтримки осіб з інвалідністю; застосування та впровадження засад універсального дизайну; наскрізної безбар'єрності; підвищення рівня обізнаності осіб з інвалідністю та щодо них; сприяння розвитку сталої міської мобільності.

Ключові слова: особи з інвалідністю, державна політика щодо забезпечення прав і свобод осіб з інвалідністю, принципи, адміністративно-правові засади.

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ADMINISTRATIVE AND LEGAL FRAMEWORK FOR THE NATIONAL SECURITY OF THE UNITED STATES AND ITS IMPACT ON THE ASEAN SOCIAL AND ECONOMIC SECTOR

Abstract. ***Purpose.*** The purpose of this article is the study of the administrative and legal framework for the U.S. national security and its impact on the ASEAN socio-economic sector.

Results. In the article, the historical and legal analysis makes it possible to formulate, reveal and review the administrative and legal framework for the U.S. national security and its impact on the ASEAN socio-economic sector. In the second half of the XX century, this sector was under the focus by the international community due to dynamic changes in the political, financial and economic sectors, which had logical impact on the development of their concepts of national security. Free trade and open markets are key elements for stability and security in the Asia-Pacific region and long-term prosperity. The use of bilateral and multilateral free trade treaties ensures high levels of interdependence and economic growth in Asian countries and the USA. It is revealed that the U.S. national security relations with ASEAN are aimed at promoting the development of the socio-economic sector of U.S. influence. The United States focus economically on increasing investment and trade, intervening actively in education, disaster management, etc. The likelihood of the United States becoming the only world State with a huge impact on this sector in ASEAN countries, includes certain risks that make other countries nervous. Therefore, the issue has been very acute, both for the United States and for ASEAN and for countries interested in domination.

Conclusions. A historical and legal analysis of the administrative and legal framework for U.S. national security and its impact on the ASEAN socio-economic sector reveals that the APAC has recently played an increasingly important role in the economic and political life of the USA, and therefore has a significant impact on her national security. Leading and influential representatives of the U.S. ruling elite continue to further support strengthening of the power component in American SEA policy. By participating directly in decision-making, they advocate the use of force to achieve U.S. strategic goals in the world. The analysis reveals that the appropriate administrative and legal framework for the U.S. national security is being formed, which is further transferred to the APAC in various sectors of interaction on the basis of bilateral and multilateral treaties.

Key words: administrative and legal framework, Asia-Pacific region (APAC), Association of Southeast Asian Nations (ASEAN), foreign economic policy, investment climate, national security, South-East Asia (SEA), socio-economic sector, United States of America (USA).

1. Introduction

The U.S. partnership with the Association of South-east Asian Nations (hereinafter referred to as ASEAN) is now at the stage of finding new ways to build relations, including through the conclusion of ASEAN - China, ASEAN - Republic of Korea, ASEAN - Japan, ASEAN - India ASEAN - Australia and New Zealand free trade agreements, etc.

In bilateral economic dialogue with ASEAN countries, the U.S. considers its interest in: expansion of trade, investment, production and technology links between the USA and ASEAN, deepening of cooperation in the fields of energy, infrastructure, health care, education, use of information and communication technologies, disaster management, protection and rational use of natural resources and other sectors in the context of globalisation and regional integration, which have a multifaceted impact on the scale, forms and mechanisms of trade and economic relations among

the actors of the world economy. It should be noted that such activities are strategic from the perspective of their national security. After all, some dependence of these countries on the U.S. investment cannot but affect the national security of ASEAN.

General theoretical issues of the administrative and legal regulatory mechanism for security have been studied by legal experts in administrative law. Our considerations are based on the scientific works by scientists such as O.M. Bandurka, A.I. Berlach, Y.P. Biytiak, I.P. Holosnichenko, V.V. Verkhohliad, R.A. Kaliuzhnyi, V.H. Komziuk, O.V. Kuzmenko, V.Y. Nastiuk, A.V. Nosach, V.I. Olefir, A.A. Starodubtsev, V.V. Sokurenko, M.M. Tyshchenko, M.V. Tsvik and others.

In the article, we propose to dwell on the coverage and analysis of the problems of socio-economic mechanisms of political stability in South-East Asia (hereinafter referred to as SEA), which can have both general theoretical and practical significance for the formation of the foreign policy of the USA, in particular, on a national security strategy for the development of closer socio-economic relations with the countries of South-East Asia.

The purpose of this article is the study of the administrative and legal framework for the U.S. national security and its impact on the ASEAN socio-economic sector.

2. U.S. National Security Fundamentals

It is believed that in the classical research model, national security is an integral characteristic of human security, public security and State security, and its desired level depends on the observance in the process of public administration of some combination of variables in the triangle: "national interests" – "the danger of their realisation" – "the capabilities of the State" (Sytnyk, 2011, p. 82).

In the course of our research, the historical and chronological method was used, which allowed studying the stages of formation of the concept of political stability in the SEA and to find out the dynamics of the development of institutional mechanisms for ensuring the national security of its countries.

The Asia-Pacific region (hereinafter referred to as APAC) has fundamentally changed its strategy in recent decades, with four major factors contributing to these changes. The first is to create own national security concepts by increasing the region's economic and political role. Proof of this is that the region produces 30% of world exports and its bilateral trade with the U.S. exceeds $1 trillion per year.

A second, somewhat alarming factor is China's growing political and economic power as a component of its national security. But this trend poses a dilemma: China's growing military power has impeded the economic growth of its neighbours.

The third factor is the emergence of an increasing number of nuclear-weapon States, which threatens to spread illicit weapons on a massive scale among Asian countries. The regional security situation in the field of nuclear weapons has been revitalised over the last decade. A global arms control regime is implemented. In particular, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the decision on a comprehensive ban on testing have gained more strength. From 1990 to 1998, no nuclear weapon was seen in the shadow economy. Nowadays, however, the nuclear shadow economy is gaining momentum. For example, India and Pakistan have conducted nuclear tests, as has North Korea. China continues to modernise its nuclear and ballistic missile capabilities. There is a threat of an arms race. Moreover, there are significant concerns about the proliferation of weapons of mass destruction, technologies, materials and know-how for States and non-State actors. The threat to U.S. internal security is reflected in the excessive proliferation of weapons of mass destruction. Therefore, efforts to address this issue should include pursuing strategic treaties with Russia, China, India, Japan, and South Korea.

Proliferation of weapons of mass destruction, expansion of cooperation, climate change, energy security and other non-traditional regional and global security challenges, combating terrorism and extremism requires a more effective combination of hard political power and public diplomacy. That is why the USA is seeking to review military engagement in the region while expanding its security and free-trade order.

The fourth factor is the growing interest in multilateral cooperation. Recently, in APAC, interest in multilateral cooperation has been growing. This trend included 10 countries in South-East Asia, including ASEAN States, which have contributed to the maintenance of peace and stability in the SEA through cooperation and mutual understanding. APAC is not alone in following this trend. In particular, South Asia has eight member countries of the Association for Regional Cooperation (SAARC), and most of the Central Asian countries, together with China and Russia, are members of the Shanghai Cooperation Organisation (SCO). The economic integration of the subregion has worsened despite periods of tension. Other aspects of globalisation, such as the spread of culture, regional tourism and subregional communications, have created a new situation in which cooperative approaches to

a wide range of economic, communication, social and cultural issues are best suited to address common interests, such as energy security, maritime security and pollution abatement. The political environment is particularly conducive to subregional security cooperation.

To historical lessons of previous periods, as reflected in conflicts between States of the region enable to understand the importance of modern South-East Asia. More specifically, these lessons relate to the problems associated with complex security measures that may arise in repeated crises. Assessing how these factors have contributed to the rising tensions and ultimately to the outbreak of war in Europe a century ago, it is possible to intensify efforts to understand and manage tensions in the SEA today (Chong, Hall, 2014). Therefore, the U.S. intervention in the social and economic sector is considered as a national security measure, a factor that is indispensable in the region.

Maintaining the United States' policy of "deep engagement," scholars Stephen Brooks, John Ikenberry, and William Wohlforth hypothesise that the U.S. security commitment to states in Europe, the Middle East, and East Asia, together with the American dominance, suppresses regional rivalries and hinders the resurgence of a dangerous era of multipolar power politics (Campbell, Friedman, 2013). Scientists conclude that the U.S. national security policy can restore global security, reduce conflicts between Eurasian states.

American interaction and commitment to Asia are not new, as the United States has been involved in Asia since ancient times. For example, in February 1784, the Empress of China sent a shipment of Chinese goods to New York and received an income of $30,000. In 1835, the USA created a squadron for the East Indies Navy. This was the beginning of the continuation of U.S. military action in the western Pacific. In 1844, China granted trade rights to the United States in the Treaty of Wangxia. In 1846, the USA first tried to negotiate trade agreements with Japan. However, this attempt was futile. It was only 10 years after the signing of the Treaty of Kanagawa on 31 March 1854 between the United States represented by Commodore Matthew Perry and Japan, which opened Japanese markets to the United States and included provisions for a coal station for the United States. The Zhujiang River Delta became the first American-Asian base. In 1898, Guam and the Philippines were ceded to the United States as granted territories in the Spanish-American War. In the 21st century, diplomatic and trade relations and U.S. strategic national security interests continue to expand. The USA has demonstrated its commitment to regional peace and security. This trend underlies the U.S. policy of strengthening and modernising its partnerships. They use all the instruments in their arsenal to support their interrelationships: diplomatic, political, military, economic, cultural, etc.

U.S. Secretary of Defense Robert Gates described the USA as a "resident power" in the region and noted in his address on May 31, 2008 that the American territory in the Pacific was from the Aleutian Islands to Guam. Consequently, the Minister's statement underlines the U.S. commitment to a stable regional environment for economic, political, and cultural development in the APAC. The bilateral structure of the U.S. alliance remains the basis for regional stable prosperity and the starting point for U.S. and regional national security support. Alliances allow the USA to provide a significant regional presence advantage, and the Japan-South Korea enhanced access structure makes the U.S. an active partner in the field. As instruments of national policy, alliances are dynamic elements that are constantly evolving. Therefore, alliances remain the necessary foundation on which any future national security strategy is built.

3. Areas of USA – ASEAN cooperation

Both ASEAN and the USA use the 2006 Trade and Investment Framework Agreement between the United States and ASEAN to facilitate trade and investment flows between ASEAN and the USA, exchange views on a wide range of economic issues (ASEAN-US Dialogue-The Economic and Trade Cooperation, n.d.). The Joint Council was established with the aim of ensuring the direction of trade and investment agreements between ASEAN and the USA, to be responsible for monitoring and evaluating the progress of countries.

It should be noted that cooperation between ASEAN and the USA focuses on the simplification of trade procedures, standards and conformity of goods, intellectual property rights, public-private sector interaction.

The USA is a key partner of ASEAN in advancing and providing technical assistance to standards and compliance in priority industries, including electrical, electronic, medical, and automotive.

In 2010, ASEAN Trade Minister for Public and Private Affairs visited the USA. The U.S. Reverse Trade Mission was organised in July 2012, thanks to the ASEAN-USA Business Forum, which established a regular dialogue on security policy with ASEAN member states.

According to United States statistics, total merchandise trade between ASEAN and the USA increased by 9.2% in 2011, that is, from $178 billion to $194 billion, compared to

2010. The geographical composition of ASEAN imports from the USA increased by 8.6% (up to $76400 million) and ASEAN exports increased by 9.8% (up to $118.2 billion) in 2011. The USA is the fourth largest trading partner, while ASEAN together are the fifth largest trading partner of goods for the USA (ASEAN-US Dialogue-The Socio-culture cooperation-Disaster Management, n.d.).

Given these indicators, the USA has significantly deepened its relationship with ASEAN, especially in a number of countries, helping with disaster management (ASEAN-US Dialogue-The Socio-culture cooperation-Disaster Management, n.d.), education (ASEAN-US Dialogue-The Socio-culture cooperation-Education, n.d.), promotion, protection of the rights of women and children (ASEAN-US Dialogue-The Socio-culture cooperation-Right of Women and Children, n.d.) and support of youth (ASEAN-US Dialogue-The Socio-culture-Cooperation Youth Development, n.d.). With regard to disaster management, the U.S. Agency for Trade and Development sponsored an ASEAN workshop on disaster management and mitigation, as well as expanding the capacity for adequate preparation and effective response in emergencies related to natural disasters (ASEAN-US Dialogue-The Socio-culture cooperation-Disaster Management, n.d.).

Furthermore, it should be noted that US-ASEAN cooperation in education continues. For example, on November 18, 2011 in Bali, Indonesia, at the 3rd ASEAN Leaders Meeting, a Partnership on English-language Education was announced. This partnership is a long-term commitment to improving English language capacity in the region and to supporting the ASEAN Integration Initiative. In May 2012, U.S. support helped to complete the development of the video modules for bachelor's degrees from ASEAN universities. The United States also organised two workshops to finalise the content of ASEAN training programmes.

South-East Asia, of course, is ethnically diverse region with equally diverse groups, languages and traditions. And the cultural interaction of these establishments with the USA is manifested even more directly when the inhabitants of these territories are forced to emigrate to the United States. The cultural and humanitarian cooperation of the USA with the SEA countries is now reaching a new level, due to manifestations within the United States, where cultural clashes between Asians and Americans increasingly emerge, thanks to infiltration of the former into American society as refugees and through the media.

It should be noted that the U.S. national security relations with ASEAN are aimed at promoting the development of the socio-economic sector of U.S. influence. The United States focus economically on increasing investment and trade, intervening actively in education, disaster management, etc. The likelihood of the United States becoming the only world State with a huge impact on this sector in ASEAN countries, includes certain risks that make other countries nervous. Therefore, the issue has been very acute, both for the United States and for ASEAN and for countries interested in domination.

The rise of the APAC economies has contributed to Asia's re-emergence as the central political and economic engine of the world economy. East and South-East Asian countries hold nearly one third of the world's population, generate about a quarter of world output, and produce about a quarter of world exports. Asian producers have captured much of the world's production chains. Before the recent financial crisis, growth in many parts of Asia over the past decade has approached or surpassed two-digit numbers boosting the region's economy and social improvement. Asia's market policies and its successful interaction with the world economy have become a prime example of other regions in the field of globalisation. Asia's growing demand for energy and other resources has strained relations between countries and led to environmental problems and new threats. For example, Chinese and Indian demand for energy and other commodities has been a major factor in setting energy and commodity prices in 2006 and 2007. Ten years ago, Asia was an important economic region, and today the U.S. prosperity depends on it. Trade between the United States and Asia is almost $1 trillion a year, accounting for 27% of total U.S. trade with the world's leading economies and 19% of trade with the European Union. Asia is surrounded by important sea lines of communication for the United States, its allies and partners. The world's six largest ports are in Asia. Despite the severity of the Asian financial crisis in 1997-1998, Asia is enriching relatively quickly and is growing at a steady rate. This growing economic interdependence coincides with the growing interest in regional free trade and the establishment of bilateral and regional trade agreements, which are the geopolitical expression of peaceful relations among States, as well as the manifestation of a commercial instrument.

4. Conclusions

A historical and legal analysis of the administrative and legal framework for U.S. national security and its impact on the ASEAN socio-

economic sector reveals that the APAC has recently played an increasingly important role in the economic and political life of the USA, and therefore has a significant impact on her national security. Leading and influential representatives of the U.S. ruling elite continue to further support strengthening of the power component in American SEA policy. By participating directly in decision-making, they advocate the use of force to achieve U.S. strategic goals in the world. The analysis reveals that the appropriate administrative and legal framework for the U.S. national security is being formed, which is further transferred to the APAC in various sectors of interaction on the basis of bilateral and multilateral treaties.

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АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ США ТА ЇЇ ВПЛИВ НА СОЦІАЛЬНО-ЕКОНОМІЧНИЙ СЕКТОР АСЕАН

Анотація. ***Мета.*** Метою статті є дослідження адміністративно-правового забезпечення національної безпеки США та її вплив на соціально-економічний сектор АСЕАН.

Результати. У статті на основі історико-правового аналізу сформовано, висвітлено та проаналізовано адміністративно-правове забезпечення національної безпеки США та її вплив на соціально-економічний сектор АСЕАН. Цей сектор ще у другій половині XX ст. привернув увагу міжнародної спільноти завдяки динамічним змінам у політичній та фінансово-економічній сфері, що логічним чином вплинуло на становлення їх концепцій національної безпеки. Вільна торгівля та відкриті ринки є ключовими елементами для стабільності і безпеки в Азійсько-Тихоокеанському регіоні та її довгострокового процвітання. Використання дво- та багатосторонніх угод про вільну торгівлю забезпечують високий рівень взаємозалежності та економічного зростання в азійських країнах та США. З'ясовано, що відносини національної безпеки США щодо АСЕАН спрямовані на заохочення розвитку соціально-економічного сектора впливу США. Сполучені Штати зосереджені в економічному плані на збільшення інвестицій та розширення торгівлі, активно втручаються в питання освіти, поведінки у разі стихійних лих тощо. Ймовірність перетворення США на єдину світову державу, що має величезний вплив на цю сферу в країнах АСЕАН, включає у собі певні ризики, що змушують інші країни нервуватися. Отже, поки що це питання стоїть надзвичайно гостро як перед самими Сполученими Штатами та АСЕАН, так і перед зацікавленими у своєму домінуванні країнами.

Висновки. Проведений історико-правовий аналіз щодо адміністративно-правового забезпечення національної безпеки США та її впливу на соціально-економічний сектор АСЕАН свідчить, що останнім часом АТР відіграє все більшу роль в економічному та політичному житті США, а тому має значний вплив на стан її національної безпеки. Провідні й найвпливовіші представники правлячої

еліти США залишаються прибічниками подальшого нарощування силового складника в американській політиці щодо ПСА. Безпосередньо беручи участь в ухваленні рішень, вони відстоюють силові методи досягнення стратегічних цілей США у світі. Тож, як видно з аналізу, формується відповідне адміністративно-правове забезпечення національної безпеки США, яке у майбутньому переходить на АТР у різних секторах взаємодії на підставі дво- та багатосторонніх договорів.

Ключові слова: адміністративно-правове забезпечення, Азійсько-Тихоокеанський регіон (АТР), Асоціація держав Південно-Східної Азії (АСЕАН), зовнішньоекономічна політика, інвестиційний клімат, національна безпека, Південно-Східна Азія (ПСА), соціально-економічний сектор, Сполучені Штати Америки (США).

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GENERAL LEGAL PRINCIPLES FOR MAKING PUBLIC POLICY ON FIREARM CIRCULATION IN UKRAINE

Abstract. ***Purpose.*** The aim of the article is to form an up-to-date scientific perspective on the essence and system of general legal principles for making public policy on firearm circulation in Ukraine.

Results. The article forms an up-to-date scientific perspective on the essence and system of general legal principles for making public policy on firearm circulation in Ukraine. The principles under study are considered as a set of basic (fundamental) ideas that contribute to the legitimate, optimal and effective making of public policy on firearm circulation in Ukraine, as a democratic and social State governed by the rule of law. The system of general legal principles for making public policy in this field comprises such principles as the rule of law; humanitarianism; justice and legal equality (non-discrimination); legality; and the inevitability of liability. The analysis of the requirements deriving from these general legal principles allows proving that these principles provide a legal basis for the legalization of civil (non-special) firearm circulation in Ukraine.

Conclusions. The general legal principles governing making public policy on firearm circulation in Ukraine, in accordance with their social and legal significance, are aimed at an efficient (effective, rational, intended, desirable) conduct of processes and relations in the field of firearm circulation in the State, the conduct of the managerial activity of public policy makers in this field, in the course of which the tasks are carried out and the objective of the phenomenon under study is achieved. The observance of the principles outlined in this scientific article by the actors cooperating in firearm circulation contributes to Ukraine's development without let or hindrance as a democratic and social State governed by the rule of law, capable to realize own Euro-integration and Euro-Atlantic objectives. The State bodies operating in the field of firearm circulation, as a consolidating and systemically controlling determinant of the conceptual and ideological, regulatory and legal, institutional and actual development of relations and processes in this field, require to constantly focus on the general legal principles of making public policy on firearm circulation. The failure of these entities to respect the relevant principles will preclude the achievement of the objective of the relevant public policy, call into question the authority of these State bodies and the existence of the State as a modern State governed by the rule of law, able in the future to become a member of the EU and the North Atlantic Treaty Organization.

Key words: public policy on firearm circulation, general legal principles, weapons, firearm circulation, principles, implementation of public policy, formation of public policy.

1. Introduction

Objectively, the principles of public policy on firearm circulation form a solid conceptual perspective for making this policy in a State governed by the rule of law due to well-known fact that: 1) The principle "is a central concept, a fundamental idea that underlies the system of any knowledge and subordinates it" (Lopushniak, 2010, p. 75); 2) The principle is objectified in "close relationship between objectively existing defined rules having a basic, starting meaning and subjective properties such as internal conviction, views" (Pochtovyi, 2009, p. 6); 3) Making public policy is a managerial activity, and any activity is always based on certain leadership principles, has its own foundation and, so to speak, basic orientations, embodied in the respective areas of such activity" (Ahanina, 2014, p. 60). The principles of making public policy on firearm circulation in Ukraine nec-

essarily include general legal principles. This is due to the fact that: 1) Making this type of public policy is a legal phenomenon, objectivised in a State governed by the rule of law; consequently, the relevant basic principles of law necessarily underline or generally permeate it; 2) The conformity of the legal models of the various mechanisms (above all public policy) with the general principles of law is an indicator of the conformity of the State with the criteria of a modern State governed by the rule of law; 3) The incompatibility of a certain legal model with general legal principles results in it acting in the national legal system as an alien phenomenon with which phenomena built on general legal principles cannot interact. The result is an automatic decline in the effective functioning of the State in a certain sector, while public policy, which is not based on general legal principles, becomes non-binding and ineffective. This demonstrates the practical need for scientific perspective on the general legal principles of making public policy on firearm circulation.

Despite the importance of the general principles of law in making public policy on firearm circulation in Ukraine, it should be noted that this issue has not yet been studied by domestic legal experts in administrative law. However, the essence of the general legal principles of various types of State politics have already been under focus by S.V. Ivanov, D.O. Koshykov, V.V. Mushenok, V.O. Nehodchenko, and other scientists. The scientific findings of these and other scientists testify to the actual possibilities of identifying and defining theoretically the essence of the general legal principles of making public policy on firearm circulation in Ukraine, taking into account the legal nature and legal content of this type of public policy, as well as the specificities of making this policy.

Therefore, the aim of the article is to form an up-to-date scientific perspective on the essence and system of general legal principles for making public policy on firearm circulation in Ukraine. This aim will be achieved by fulfilling *tasks,* such as: 1) to define the concept of "general legal principles for making public policy on firearm circulation in Ukraine"; 2) to outline the structure of the principles being studied and to analyse the requirements set by these principles for making of public policy in this field to be proper; 3) to sum up the results of the study.

2. The principle of the rule of law and anthropocentrism in the field of arms circulation in Ukraine

The general legal principles of making public policy on firearm circulation in Ukraine are a set of basic (fundamental) ideas that contribute to the legitimate, optimal and effective making of public policy in this field in the State, which is a democratic and social State governed by the rule of law. These principles should include:

1) The rule of law. This principle, "formed under the influence of globalizing, international and European integration processes" (Ivaniuta, 2017, 79), is the basis on which the legal and democratic State is built. This meaning of the principle under study is due to the fact that the very phenomenon of "the rule of law" is, first, "the primacy of human rights over the duty of the State to ensure all human rights and freedoms"; second, it is "the primacy of natural human rights over the rights of the State, the rights of social groups, the rights of society" (Malyshev, 2012, p. 14). Consequently, we may consider that this principle, in the context of the issue under consideration, requires the following: a) legal regulations and law application instruments in the context of making public policy on firearm circulation should be developed and adopted considering the provisions of the Constitution of Ukraine and the principles of law; b) in the course of making public policy on firearm circulation, the actors concerned should take into account that the right to human security is a basic human right, which every person has the right to provide for oneself, through the ownership and use of firearms in a lawful manner and under conditions prescribed by law;

2) Anthropocentrism. According to the scientist T. Tarakhonych, first, humanitarianism is "a vivid manifestation of personal human rights, namely the right to life, health, inviolability, security, freedom, honour, dignity, namely the right to life, health, inviolability, security, liberty, honour, dignity, based on the vital needs and human interests" (Tarakhonych, 2017, p. 281). This is due to the fact that humanitarianism is a "mainstreaming of humanistic trends in the modern era, a departure from rationalized pragmatic imperatives" (Nevmerzhytska, 2015, p. 293), as well as "not only the personal requirement 'to serve' for the State, but also its duty (Melnyk, 2017, p. 8). Therefore, the principle under consideration, in the context the study, requires that making public policy on firearm circulation should take into account the rights and legitimate interests of the individual and the fact that the individual (one's life, health) in Ukraine is understood as the highest social value. Accordingly, State bodies that, through their actions (decisions), form and/or implement public policy in question should not enable firearm circulation in Ukraine to lead to a decrease in the level of human security, an increase in the risks of various kinds of threats to human life and health. In addition, humanitarianism of making this public policy

provides a legal basis for the legalization of civil (non-special) firearm circulation in Ukraine;

3) The principle of justice and legal equality (non-discrimination). Equity as a principle is "an ethical-legal phenomenon valued in the process of applying the law, achieving an optimal balance between private and universal values (Kostiuk, 2016, p. 7). Furthermore, the principle of equality is conceptually related to justice as the idea expressed in basic provisions such as: the establishment and application of uniform legal means forming the basis of a legal regulatory mechanism, i.e. the rules of law, legal facts and acts for the exercise of rights and obligations of all participants in public relations; anticipation of a system of exceptions to the general legal regime for individual participants in public relations; provision of a system of organizational means necessary for the realization of the rights and obligations of participants in public relations; equal rights and obligations of participants in public relations, including constitutional rights and obligations" (Zhuravlova, 2016, 46). Consequently, in the context of our study, these two principles come together in one fundamental idea, which objectively requires the following: a) In the course of formulating public policy on firearm circulation in Ukraine, the regulatory and legal basis for the operation of the corresponding administrative and legal mechanism, which may not unjustly violate rights, freedoms and legitimate interests of entities having the same legal status, as well as determine other discriminatory practices in public administration; b) The implementation of public policy on firearm circulation in Ukraine as an administrative activity cannot be characterized as creating a discriminatory regime for firearm circulation (however, this does not mean that there can be no exceptions to this rule, namely, when the discrimination in question is justified by the real common good of society and the State; but the continuing limitation of the human right to protect one's life and health through the use of firearms is not fully justified); b) The State should have a mechanism for monitoring and supervising the making of public policy on firearm circulation, which will constantly monitor compliance with the requirements of justice and equality in this field and influence those who violate the principle under consideration;

3. The principle of legality, the principle of justice and legal equality and the principle of inevitability of legal responsibility in the field of firearm circulation in Ukraine

4) The principle of legality. Legality in its form and content actually is "an abstract idea, expressing the principle of general binding law corresponding to the rule of law" (Muravenko, 2012, pp. 383). At the same time, I. Polonka argues that the principle of legality is "the systems of guidelines and ideas, which are a means of creating motives for lawful conduct and persuading actors about necessity of compliance with laws" (Polonka, 2016, p. 40). Consequently, in this context, "the principle of legality is the most important criterion of lawful conduct" (Polonka, 2016, 40), which is indirectly derived from the provisions of the Basic Law of Ukraine, namely from the content of art. 6, part 2 of art. 19, articles 24 and 43 of the Constitution of Ukraine and yet, in fact, is one of the most frequently violated principles (Pochtovyi, 2009, p. 7).

Furthermore, a national scientist M. Pochtovyi defines the broader manifestation of this principle, pointing out that the underlying idea, in fact, "affirms the universality of the requirements for compliance with laws and by-laws adopted in accordance with them, the unity of legality, the equality of citizens before the law and the court and, as a consequence, the inevitability of liability of any person for an offence committed" (Pochtovyi, 2009, p. 7). In this context, we argue that the principle of legality requires the following: a) The process of making public policy on firearm circulation should be carried out by State bodies authorized to do so in accordance with their competence and powers (with regard to the participation of civil society actors in the process, it should be considered that they should exercise their rights to participate in good faith, without hindering the proper functioning of the State); b) The makers of public policy on firearm circulation should act only on the grounds provided for in the Constitution and laws of Ukraine, each time acting (taking decisions) in the manner provided for in the Constitution and laws of Ukraine in specific cases; c) In the course of making public policy on firearm circulation, these makers shall amend and repeal provisions of law relating to firearm circulation, taking into account the principles of law and the hierarchy of legislation, as well as the provisions of the Constitution of Ukraine; d) Public policy makers in the field of firearm circulation should not make this type of public policy so that their actions (decisions) will damage the legal certainty of the law;

5) The principle of the inevitability of liability. Freedom, as we know, is not unlimited, and a person shall be responsible for the exercise one's freedom. This is directly related to the issue under study, because: a) The principle of legality is a constitutional principle that is most violated by the State and private individuals, revealing, first, a low level of legal culture, tolerance to unlawful conduct and a high level of legal nihilism in the State; secondly,

the dangerous consequences of such practices in firearm circulation; b) On the one hand, the improper implementation of policy on firearm circulation in Ukraine, as well as the failure to comply with obligations in this field, on the other hand, the unfair exercise of rights in this field, may pose a real danger to the individual, society and the State. Consequently, among the general legal principles for making public policy on firearm circulation in Ukraine, the principle of the inevitability of liability requires the following: a) In the course of making public policy on firearm circulation, regulatory restrictions should be provided as to whether the violation of obligations and the improper exercise of rights in the field of firearm circulation constitute a factual ground for liability of the type concerned; b) In implementing public policy on firearm circulation, the actors concerned should understand that their actions (decisions) give rise to certain legal effects, including negative ones, for example, bringing them to justice; c) The process of making public policy on firearm circulation may not create biased exceptions or otherwise impede liability of certain persons (groups of persons), who have committed unlawful acts in this field and are liable to legal prosecution.

4. Conclusions

The general legal principles governing making public policy on firearm circulation in Ukraine, in accordance with their social and legal significance, are aimed at an efficient (effective, rational, intended, desirable) conduct of processes and relations in the field of firearm circulation in the State, the conduct of the managerial activity of public policy makers in this field, in the course of which the tasks are carried out and the objective of the phenomenon under study is achieved. The observance of the principles outlined in this scientific article by the actors cooperating in firearm circulation contributes to Ukraine's development without let or hindrance as a democratic and social State governed by the rule of law, capable to realize own Euro-integration and Euro-Atlantic objectives. Therefore, from a scientific perspective on the legal and administrative framework for making public policy on firearm circulation in Ukraine, it should be borne in mind that the State bodies operating in the field of firearm circulation, as a consolidating and systemically controlling determinant of the conceptual and ideological, regulatory and legal, institutional and actual development of relations and processes in this field, require to constantly focus on the general legal principles of making public policy on firearm circulation. The failure of these entities to respect the relevant principles will preclude the achievement of the objective of the relevant public policy, call into question the authority of these State bodies and the existence of the State as a modern State governed by the rule of law, able in the future to become a member of the EU and the North Atlantic Treaty Organization.

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

Анотація. ***Метою статті*** є формування актуальної наукової думки про сутність і систему загальноправових принципів формування та реалізації державної політики у сфері обігу зброї в Україні.

Результати. Стаття присвячена формуванню актуальної наукової думки про сутність і систему загальноправових принципів формування та реалізації державної політики у сфері обігу зброї в Україні. Досліджені принципи тлумачаться як комплекс базових (засадничих) ідей, що сукупно сприяють законному, оптимальному й ефективному формуванню та реалізації державної політики у сфері обігу зброї в Україні як у правовій, демократичній та соціальній державі. Систему загальноправових принципів формування та реалізації державної політики у вказаній сфері становлять принципи: верховенства права; людиноцентризму; справедливості та правової рівності (недискримінації); законності; невідворотності юридичної відповідальності. Аналізуючи вимоги, які випливають із зазначених загальноправових принципів, обґрунтовується, що ці принципи створюють правове підґрунтя для легалізації цивільного (неспеціального) обігу вогнепальної зброї в Україні.

Висновки. Загальноправові принципи формування та реалізації державної політики у сфері обігу зброї в Україні за своєю соціально-правовою значимістю цілісно спрямовані на забезпечення якісного (ефективного, раціонального, передбачуваного, бажаного) перебігу процесів та відносин у сфері обігу зброї в державі, здійснення управлінської діяльності суб'єктів формування та/або реалізації державної політики в зазначеній сфері, в процесі чого забезпечується вирішення завдань і досягається мета досліджуваного явища. Саме дотримання суб'єктами, що взаємодіють у сфері обігу зброї, окреслених у цій науковій статті принципів сприяє тому, щоби Україна безперешкодно продовжувала розвиватись як правова, демократична та соціальна держава, мала змогу реалізувати власні євроінтеграційні та євроатлантичні прагнення. Державним органам, які функціонують у сфері обігу зброї, постаючи консолідуючим і системно-керівним детермінантом концептуально-ідеологічного, нормативно-правового, інституційного та фактичного розвитку відносин і процесів у зазначеній сфері, необхідно повсякчас орієнтуватись на загальноправові принципи формування та реалізації державної політики у сфері обігу зброї. Ігнорування цими суб'єктами відповідних принципів унеможливлюватиме досягнення мети відповідного виду державної політики, ставитиме під сумнів авторитет вказаних державних органів, існування держави як сучасної правової, спроможної в перспективі набути членства в ЄС та в Організації Північноатлантичного договору.

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

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THE PROSPECTIVE EFFECT OF A PLEA AGREEMENT AT THE JUDGE'S DISCRETION AND OF AN ARBITRATION AGREEMENT AT THE ARBITRATOR'S DISCRETION: COMPARATIVE LEGAL ASPECT

Abstract. ***Purpose***. The purpose of the article is to confirm the hypothesis of the existence of a prospective effect of the plea agreement at the discretion of the judge and the arbitration agreement at the discretion of the arbitrator.

Research methods. The methodological basis of the study is the comparative method. Along with it, the author used historical method and general scientific methods: analysis, synthesis, induction, and deduction.

Results. It is established that the main category that influences whether the analyzed agreements will be concluded is the common will of the parties. However, the agreement of the alternative judgment of the parties in a single procedural agreement is inextricably linked to the consensus of such an agreement. Both agreements affect the further discretion of the parties to the agreement and to the related parties. Based on the range of powers, the prosecutor's discretion has the most remarkable influence on the judge's discretion. At the same time, the judge's discretion may also take precedence over the prosecutor's discretion. However, the judge's discretion may be limited by law in the context of a plea agreement. On the contrary, the functions of the arbitration agreement directly affect the arbitrators' discretion because, without the existence of this agreement, the arbitrators' discretion is impossible to resolve a dispute in international commercial arbitration. It is established that arbitration discretion acts as a generalizing, generic concept that includes two forms – the parties' discretion and the arbitrators' discretion.

Conclusions. The hypothesis of the existence of a prospective effect of the plea agreement at the judge's discretion and the impact of the arbitration agreement at the discretion of the arbitrator is proved. It is established that the impact of the arbitration agreement is much more significant than the impact of the plea agreement, primarily due to the peculiarities of the arbitration procedure, which in turn corresponds to the fact that these procedures are provided by private law. The fact is revealed that there is a much greater possibility for discretion in private law, especially in international commercial arbitration. There is no reason to deny the existence of discretion under public law. However, such discretion is more limited than discretion in private law, as the leading method of regulation is imperative. That is why the task of arbitration experts is to study arbitration as the most favorable environment for discretion. It is necessary to derive the general laws of discretion and extend them to all other areas, including public law.

Key words: plea agreement, arbitration agreement, judge, arbitrator, discretion, consensus.

1. Introduction

It would be fair to mention that an opinion of Anthony E. Davis prompted this study: "The reduction or dismissal of charges as part of a plea agreement is merely a less direct way of affecting the sentence ..." (Davis, 1971, as cited in Alschuler, 1976, p. 1074), as well as the position of the United States Court of Appeals for the District of Columbia Circuit set out in the United States of America v. Robert Louis Ammidown (497 F.2d 615): "The most frequent motive behind [a plea agreement involving

a plea to a lesser included offense] is to circumscribe the judge's discretion in pronouncing sentence" (D.C. Circuit, 1973, p. 621).

Therefore, the purpose of the article is to confirm the hypothesis of the existence of a prospective effect of the plea agreement at the discretion of the judge and the arbitration agreement at the discretion of the arbitrator.

The methodological basis of the study is the comparative method. The historical method and such general scientific methods as analysis, synthesis, induction, and deduction were used.

In the study, we resort to a particular analogy using the term "prospection" in a sense adopted in philology – "grammatical category that combines different linguistic forms of attribution of semantic and factual information to what will be discussed in subsequent parts of the text" (Shelkovnikova, 2017, p. 127). However, we should not forget the term's etymology, which comes from the Latin *prospectus* "distant view, look out; sight, faculty of sight" (Harper, n.d.). Therefore, the term "prospective influence" means the impact of these agreements on the discretion of judges and arbitrators, precisely in terms of future impact, correcting, procedural decisions, and decisions on the merits of the case that they may make.

Before proceeding to the analysis of modern aspects of the arbitration agreement and the plea agreement, in our opinion, it is worth giving a little historical background.

It is known that the precondition for arbitration in ancient Rome was the fact of concluding two treaties, thanks to the preserved monuments of Roman law. According to the first compromise agreement concluded between the parties, they undertook to refer the dispute to one or more arbitrators. This is the primary image of the arbitration agreement. Under another agreement, the parties entered into an agreement with a third party, who assumed the duties of an arbitrator (Prytyka, 2005, p. 16). Through the coordination of a common position on the choice of alternative jurisdiction for the dispute, we can talk about the implementation of the parties' discretion at the stage of the arbitration agreement. Nowadays, the reasons for alternative dispute resolution are not very different from those of that time.

Symbolic is that Digest 4.8.1 Corpus iuris civilis begins with a fragment of Paul: "A compromise is similar to judgments in court, and it establishes the end of a dispute (*Compromissum ad similitudinem iudiciorum redigitur et ad finiendas lites pertinet*)". It can be interpreted as the primary goal of arbitration – the final conclusion of the dispute. The authors supported this opinion (Milotić, 2013).

It is worth noting that in the references to the arbitration practice of the Roman Empire, there is no information about the agreements that directly define the general rules of arbitration procedure or procedural methods that the arbitrator had to follow. Scholars believe that the choice of procedural rules is possible, but the procedure and procedure were modeled similarly to a standard trial (Milotić, 2013).

If we talk about the historical origins of the institution of a plea agreement, we can find evidence that there was a concept of the reconciliation agreement in Roman times. The perpetrator had to repent, and the victim apologized and received monetary compensation (Sayenko, 2017, p. 20). Under the influence of evolutionary changes, this most straightforward form of reconciliation agreement was transformed into a plea agreement over time. It is believed that the institution of plea agreements, in their modern sense, was formed in the United States in the early XIX century.

The authors point out that the emergence of the institution of an agreement in the United States is not only the result of a complex legal procedure for criminal proceedings. According to the scientist, the essential task of litigation should be to resolve social conflicts. Establishing a criminal case's circumstances is of secondary importance, as it is only a means to achieve the final main result. If the conflict can be resolved satisfactorily for both parties, the need to establish all the circumstances of the criminal proceedings disappears" (Novak, 2013, p. 146). This view deserves to be considered close enough to the purpose of the plea agreement from a procedural point of view.

Currently, Ukrainian legislation criminal proceedings based on agreements, including plea agreements, are regulated by Chapter 35 of the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine). Furthermore, the Law of Ukraine "On International Commercial Arbitration" establishes the requirements for the arbitration agreement and procedural and substantive aspects of the international commercial court in Ukraine.

2. Consensus

As the well-known German lawyer Rudolf von Jhering noted: "A lawyer defines a contract as a combination of wills (consensus) of two people. From a legal point of view, this is correct because the will is the connecting element of the contract" (Jhering, 1881, p.56). This maxim has been repeatedly questioned by researchers. However, in the context of this work, it should be recognized that the main category influencing whether the analyzed agreements will be concluded is the parties' common will.

This view is confirmed by scholars who consider the basis for the conclusion of a plea

agreement "mutual consent of the suspect / accused and the prosecutor to apply this compromise procedure" (Globa, 2021, p. 112). Following Part 2 of Art. 469 of the CPC of Ukraine, the plea agreement may be concluded upon the initiative of the public prosecutor or the suspect or accused (The Criminal Procedural Code of Ukraine, 2012). Scholars rightly emphasize the crucial role of the prosecutor in concluding a plea agreement (Trekke, 2018, p. 93) because it is due to the prosecutor's own discretion that the process of concluding a plea agreement may be further continued.

We will also turn to foreign law at the conclusion of plea agreements. Thus, under paragraph 11 (c) (1) of the Federal Rules of Criminal Procedure in the United States, "An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions". The rules do not provide for the victim's participation in the process of concluding a plea agreement. Therefore, the parties to the contract are, de facto, the prosecutor and the defendant's lawyer (except in cases where the accused refuses counsel), while, de jure, the parties are the prosecutor and the accused (18 U.S.C.).

According to Article 9.4 of the Code for Crown Prosecutors in the United Kingdom, "prosecutors must never accept a guilty plea just because it is convenient" (The Code for Crown Prosecutors, n.d.). It limits the possibility of agreeing contrary to morality and public order. Such a narrowing of the possibility of finding a consensual way to reconcile the will of the prosecutor and the accused differs somewhat from the opinion we have already quoted about the purpose of the criminal proceedings. In the classical sense, such state intervention in a possible consensus of the parties is inherent in public law. However, in our opinion, in this case, morality is still more important than reducing the time for litigation, and such interference is justified.

On the contrary, consider how consensus manifests itself in the conclusion of an arbitration agreement.

The legal definition of an arbitration agreement in the legislation of Ukraine is defined in Article 7 of the Law of Ukraine "On International Commercial Arbitration." According to it, "Arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or of any defined legal relationships, whether contractual or not. An arbitration agreement may be concluded in the form of an arbitration clause in a contract or in the form of a separate agreement" (On International Commercial Arbitration, 1994).

Researchers quite rightly emphasize that "parties to arbitration enjoy certain degrees of freedom given that the arbitration agreement, which is the foundation of any arbitral process, is the product of the parties" consensual agreement" (Fagbemi, 2015, p. 239). This thesis also confirms our assumption of reconciling the alternative judgment of the parties in a single procedural agreement.

Given the historical origins of the arbitration agreement, it is not surprising that it is sometimes called a "compromise" (Malskyi, 2013, p. 60). In addition to reconstructing the historical name, such a designation also indicates that this agreement results from a joint compromise between the parties. Of course, not on the substance of a future dispute, which may not arise, namely the procedure for resolving such a dispute. Given that the arbitration agreement is concluded, it is often possible to negotiate between the parties so that the parties are aware of the "advantages and disadvantages of their negotiating positions" when concluding an arbitration agreement (Malskyi, 2013, p. 60).

We believe that the concept of "arbitration agreement" as a generic or wider, means both the actual procedural agreement in the form of a separate agreement of the parties, and the arbitration clause, which in its form is part of the main contract between the parties. This is also evidenced by the principle of autonomy of the arbitration agreement under which the validity of the arbitration clause remains unchanged in the event of loss of the main contract, part of which it is, in fact, such parity provides a common notion of the existence of a fiction of separation of this agreement from the substantive contract between the parties (Malskyi, 2013, pp. 29-31).

Thus, the conclusion of both agreements is inextricably linked to their consensus and depends on the subject composition. However, both agreements affect the further discretion of both the parties to the agreement and the parties to such agreements. In particular, by consensual creation of discretionary norms, "for themselves by the subjects of legal relations" (Haydulin, 2020, p. 563), especially when concluding an arbitration agreement.

3. Implementation

The hypothesis of limiting the powers of the judge and arbitrator, which is considered in this study, is confirmed by the views of other authors. In particular, "...the discretion of an adjudicator is typically constrained by the discretion exercised by others, which in turn shapes the observer's perceptions of how discretion is exercised" (Lempert, 1989, p. 24). This highlights an essential aspect of the influence of the judgment of one subject on the judgment

of another. In addition, the author focuses on the study of judgment that cannot exist in pure, crystallized form due to its dependence on some factors influencing its implementation. One such factor is internal and external boundaries and limitations of discretion.

Significantly, only the prosecutor is entitled to change the charges, file additional charges, and drop them (Torbas, 2020, p. 150). It is logical that due to this range of powers, the prosecutor's discretion has the most significant influence on the judge's discretion. At the same time, the judge's discretion may also take precedence over the prosecutor's discretion.

For example, in accordance with paragraph 1 of Part 3 of Art. 314 of the CPC of Ukraine, the court, refusing to approve the agreement, which was submitted to the court together with the indictment, may return criminal proceedings to the public prosecutor for a continuation of pre-trial investigation (The Criminal Procedural Code of Ukraine, 2012). Thus, it can be observed that a judge, in a way, has the opportunity to exercise his own discretion "higher" than the discretion of the prosecutor, of course, due to the powers of the court.

In some ways, the judge's discretion may be limited by law in the context of a plea agreement, such as in the United Kingdom Sentencing Act 2020, section 73, which stipulates, inter alia, that a judge must impose a penalty "which is not less than 80 per cent of the term which would otherwise be required" (this rule applies to certain categories of serious crimes) (c.17 UK).

With regard to the arbitration agreement, it should be emphasized that it performs a number of different functions. First, it proves the agreement of the parties to submit their disputes to arbitration. Second, it establishes the jurisdiction and powers of arbitration over state courts. Third, it is the main source of power for arbitrators. In their arbitration agreement, the parties may extend or limit the powers normally conferred on arbitral tribunals under applicable national law. In addition, the arbitration agreement establishes the obligation of the parties to conduct the arbitration. Thus, the arbitration agreement is both contractual and jurisdictional. That is, the arbitration agreement is contractual on the basis of the good faith agreement of the parties. Nevertheless, it is also jurisdictional due to the arbitral tribunal's jurisdiction. However, all these functions directly affect the discretion of the arbitral tribunal. In fact, without the existence of this agreement, the discretion of the arbitral tribunal is impossible to resolve a dispute in international commercial arbitration.

Thus, there is a prospective effect of the plea agreement and the arbitration agreement on the exercise of the discretion of the judges and arbitrators, respectively.

4. Impact

The search for manifestations of the impact of plea agreements and arbitration agreements on the discretion of judges and arbitrators leads us to believe that there are significant differences between how these agreements affect the discretion of the parties concerned.

Relationships formed within the process of concluding a plea agreement have a more formalized order, probably because such an agreement is regulated within the framework of public law. The discretion of the accused and the prosecutor does not interact in that close controversial synergy as strongly as it does when concluding an arbitration agreement. And the result of concluding a plea agreement can still be rejected by the court on the grounds of non-compliance with the terms of the agreement with the interests of society (paragraph 2, part 7 of Article 474 of the CPC of Ukraine). Even more important is the ground for refusing to approve the agreement, the terms of which violate the rights, freedoms, or interests of the parties or other persons (paragraph 3 of Part 7 of Article 474 of the CPC of Ukraine).

Thus, the parties' discretion regarding the plea agreement does not have such a strong, unavoidable prospective effect on the judge's discretion, in contrast to the parties' discretion regarding the arbitration agreement.

It turns out that although a compromise in the conclusion of the investigated agreements is an integral part of them, at the same time, there may be cases in which such a compromise in the conclusion of a plea agreement will not occur.

In conclusion, we assume that the discretion initiated during the conclusion and approval of the plea agreement is approved by society, as it must be in its interests. Thus, such an exciting feature of reason as its morality and integrity is revealed.

In our opinion, the arbitration agreement is less limited by legislation and more effective in influencing the discretion of another entity.

In arbitration, where two categories of persons (parties and arbitrators) are endowed with discretionary powers, "arbitration discretion" acts as a generalization, a generic concept that encompasses two forms – the parties' discretion and the arbitrators' discretion.

The concept of "autonomy of the will" is close to the discretion of the parties. This category has become commonplace due to the autonomous theory of arbitration (Koch, 2021, p. 48). The idea of conditional autonomy of arbitration is complemented by the theory of "excess of authority" according to this theory, arbitrators are not entitled to take any action

without the sanction of the parties, and the arbitral award rendered in violation of the interests of the parties should not be executed (Koch, 2021, p. 56).

5. Conclusions

The study gives us reason to draw the following conclusions:

1) we consider proven the hypothesis of the existence of a prospective effect of the plea agreement on the discretion of the judge and the impact of the arbitration agreement on the discretion of the arbitrators.

2) the impact of the arbitration agreement is much more significant than the impact of the plea agreement, primarily due to the peculiarities of the arbitration procedure, which, as a result, corresponds to the fact that these procedures are provided by private law.

3) there is a much greater possibility for discretion in private law, especially in international commercial arbitration.

4) there are no grounds to deny the existence of discretion under public law. However, such discretion is more limited than discretion in private law, as the leading method of regulation is imperative.

Consequently, the task of arbitration experts is to study arbitration as the most favorable environment for discretion. It is necessary to derive the general laws of discretion and extend them to all other areas, including public law.

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ПРОСПЕКТИВНИЙ ВПЛИВ УГОДИ ПРО ВИЗНАННЯ ВИНУВАТОСТІ НА РОЗСУД СУДДІ ТА АРБІТРАЖНОЇ УГОДИ НА РОЗСУД АРБІТРА: ПОРІВНЯЛЬНО-ПРАВОВИЙ АСПЕКТ

Анотація. ***Мета.*** Метою статті є підтвердження гіпотези про існування проспективного впливу угоди про визнання винуватості на розсуд судді та арбітражної угоди на розсуд арбітра.

Методи дослідження. Методологічною основою дослідження є компаративний метод. Поряд з ним застосовані історичний метод, а також такі загальнонаукові методи, як аналіз, синтез, індукція та дедукція.

Результати. Встановлено, що основною категорією, яка впливає на те, чи будуть укладені аналізовані угоди, є саме спільна воля сторін. При цьому узгодження альтерверсивного розсуду сторін в єдиній процесуальній угоді нерозривно пов'язане з консенсуальністю такої угоди. Обидві угоди впливають на подальший розсуд як сторін угоди, так і пов'язаних осіб. Виходячи зі спектра повноважень, розсуд прокурора має найбільший вплив на розсуд судді. Водночас розсуд судді також може мати перевагу над розсудом прокурора. Однак розсуд судді може бути обмежений законодавством у контексті угоди про визнання винуватості. На противагу, функції арбітражної угоди прямо впливають на розсуд арбітра, адже без існування цієї угоди неможливий розсуд арбітра у разі вирішення спору у міжнародному комерційному арбітражі. Встановлено, що арбітражна дискреція виступає як узагальнююче, родове поняття, яке включає у себе дві форми – розсуд сторін та розсуд арбітрів.

Висновки. Доведено гіпотезу про наявність проспективного впливу угоди про визнання винуватості на розсуд судді, і вплив арбітражної угоди на розсуд арбітра. Встановлено, що вплив арбітражної угоди є значно більшим, аніж вплив угоди про визнання винуватості, насамперед через особливості процедури арбітражного розгляду, що своєю чергою співвідноситься з тим, що ці процедури передбачені нормами приватного права. Виявлено той факт, що у приватному праві значно більша можливість для існування дискреції, особливо у міжнародному комерційному арбітражі. Відсутні підстави заперечувати наявність розсуду у рамках публічного права. Однак такий розсуд є більш обмеженим порівняно з розсудом у приватному праві, оскільки провідним методом регулювання є імперативний. Саме тому завдання фахівців у сфері арбітражу – дослідити арбітраж як найбільш сприятливе середовище для дискреції. Необхідно вивести загальні закономірності дискреції і поширити її на всі інші сфери, в тому числі і публічно-правові.

Ключові слова: угода про визнання винуватості, арбітражна угода, суддя, арбітр, розсуд, консенсус.

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MODUS OPERANDI OF LUCRATIVE VIOLENT CRIMES AGAINST FOREIGNERS

Abstract. ***Purpose.*** The purpose of the article is to reveal the modus operandi as an element of the criminal description of lucrative violent crimes committed against foreigners.

Results. Lucrative violent crimes committed against foreigners (lucrative murders, assassinations on order, robberies, robberies with extreme violence, extortion, etc.) has a special public resonance. One of the conditions for the effective investigation of lucrative violent crimes against foreigners is the establishment of their modus operandi. The modus operandi of committing these crimes involves preparation, accomplishment, concealment. According to the results of the study (including the review of 120 criminal proceedings), the preparation for committing lucrative crimes against foreigners has been expressed in the following actions: the choice of the target of assault (person); the study of the target of assault and the environment in which the offender(s) will have to act; selection of the most effective manner of direct stealing of property, injury to life and health of the person; preparation of the necessary means and tools, by which the criminal intent will be committed; the choice how to conceal the traces of the crime, concealment and sale of the stolen; the preliminary distribution of roles among the accomplices.

Conclusions. The modus operandi of criminal lucrative violent acts against foreigners varies depending on the type of crime. Despite their diversity, they share a number of common features. This is a lucrative motive, expressed in the orientation of the criminal assault and a violent manner in which it is realised through physical or mental violence. Concealment of lucrative violent crimes committed against foreigners takes the form as follows: concealment of the fact of the crime (destruction and coverup of material sources of information on the crime, destruction of electronic traces of the crime, staging of the crime); concealment of material objects (targets of criminal assault and physical evidence), distortion of ideal traces) (threats to the victim and witnesses, blackmail, intimidation of the victim and his/her family). Frequently, these ways of concealing lucrative violent crimes committed against foreigners are combined.

Key words: criminal description, modus operandi, trace evidence, foreigner, victim.

1. Introduction

Lucrative violent crimes committed against foreigners (lucrative murders, assassinations on order, robberies, robberies with extreme violence, extortion, etc.) has a special public resonance. A number of factors are involved in the causes of these crimes. These are the economic crisis, the impoverishment of the population and the moral degradation of part of society. Under such circumstances, victimised foreigners attract the attention of persons with criminal experience, willing to make an easy profit and willing to achieve their goals, ignoring the rule of law, using illegal and immoral means, methods and techniques. This situation requires law enforcement bodies to apply a range of measures to ensure the security, rights and freedoms of foreigners, as well as to exercise preventive and human rights functions.

One of the conditions for the effective investigation of lucrative violent crimes against foreigners is the establishment of criminal characteristics of this group of crimes, the key component thereof is their modus operandi.

Theoretical framework for investigation of lucrative violent crimes are reflected in the works by V.Ya. Horbachevskyi, V.A. Zhuravlia, A.V. Ishchenko, V.O. Konovalova, O.S. Sainchyn, V.V. Tishchenko, K.O. Chaplynskyi, and B.V. Shchur.

Some aspects of criminal proceedings involving foreigners have been revealed in the works by A.A. Kalganova, P.H. Nazarenko, Yu.M. Chornous, and M.M. Shykoriak.

However, the criminalistic characteristics and modus operandi of committing lucrative violent crimes against foreigners remain

unknown in the scientific literature. Nowadays, comprehensive coverage of topics, taking into account the social, legal realities and features of the implementation of criminal activities are required.

The purpose of the article is to reveal the modus operandi as an element of the criminal description of lucrative violent crimes committed against foreigners. This purpose requires to generally describe the modus operandi of committing lucrative violent crimes against foreigners, to determine its qualitative and quantitative features on the basis of the conducted theoretical and empirical studies.

2. Elements of the modus operandi of criminal activity

The first structural element of the criminal manner is preparation. Preparation for lucrative violent crimes against foreigners are subject to planning. The target of the assault is selected (intelligence is used, victimisation of the future victim plays a significant role at this stage), after which the target of the future violation is examined; the means and instruments for committing a crime are selected and adapted, a plan of criminal activities is drawn up, the roles of accomplices are defined and measures are taken to provide alibis for the persons involved in the crime. Therefore, the stage of preparation implies a choice and specification of the way of taking property, causing harm to life and health of the person, as well as preparation of the necessary technical means, means and tools with which the criminal intention will be realised. Moreover, at the stage of preparation, preliminary steps are taken to determine the way of concealing the traces of the crime, in particular the concealment or sale of the stolen.

According to the results of the study (including the review of 120 criminal proceedings), the preparation for committing lucrative crimes against foreigners has been expressed in the actions as follows:

– The choice of the target of assault (person). This refers to intelligence activities, direct or indirect information from other persons (90.8% of criminal proceedings). This situation was established in 93.5% of criminal proceedings for premeditated murder with lucrative motives, 100% for assassinations on order, 75.9% for robberies, 95.2% for robberies with extreme violence, 100% for extortion, 100% for gang attacks assault, etc.

– The study of the target of assault and the environment in which the offender(s) will have to act. To this end, various reasons are used to visit the premises, to study the way of life of the person. During such "visit" sometimes the necessary conditions are created for the realisation of criminal intent (closed CCTV cameras, damaged alarm system). This was a sign of preparation for the crime on 85% of cases, namely in 83.9% of criminal proceedings related to premeditated murder with lucrative motives, 100% of assassinations on order, 75.9% of robberies, 85.7% of robberies with extreme violence, 100% of extortion, 66.7% of gang attacks, etc.

– The selection of the most effective ways of direct stealing of property, injury to life and health of the person can be realised, as well as preparation of the necessary means and tools, by which the criminal intent will be committed. This is characteristic of 95% of criminal proceedings, including: 96.8% of premeditated murder with lucrative motives, 100% of assassinations on order; 89.7% of robberies, 95.2% of robberies with extreme violence, 100% of extortion; 100% of gang attacks, etc.

– The choice of ways of concealing the traces of the crime, including in which the stolen will be concealed and sold (86.7% of criminal proceedings). This is characteristic of 90.3% of premeditated murder with lucrative motives; 100% of assassinations on order; 89.7% of robberies, 85.7% of robberies with extreme violence, 90.9% of extortion; and 85.7% of gang attacks.

– The preliminary conspiracy between the accomplices of the crime, distribution of roles among the accomplices. A review of criminal proceedings has revealed such characteristic in 48.4% of premeditated murders, 66.7% of assassinations on order, 44.8% of robberies, 47.6% of robberies with extreme violence, 54.5% of extortion, 100% of gang attacks, etc.

Therefore, the structural element of the modus operandi of the crime such as preparation is a prerequisite for lucrative violent crimes against foreigners.

The modus operandi of committing lucrative violent crimes against foreigners is diverse and depends, above all, on the type of crime in question. For example:

1. The modus operandi of committing lucrative violent crimes against the life and health of foreigners (lucrative murder and assassinations on order) is the way of conducts (acts or omissions), assaults on the life of another person; consequences, such as the physical death of the victim; causation between said conducts and consequences. The motive and purpose of the crime shall be ascertained, as they are qualifying elements in the commission of lucrative violent crimes.

According to article 115, part 2, para. 6 of the CC of Ukraine, lucrative murder is when the perpetrator, by taking the victim's life, sought to obtain material benefits for himself or others, to obtain or retain certain property rights, to avoid material costs or responsibilities

or to achieve other material benefit (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Life and Health of a Person, 2003).

Article 115, part. 2, para. 11 of the Criminal Code of Ukraine defines an assassination on order. It should be understood as the intentional deprivation of life of the victim committed by a person (the perpetrator) on behalf of another person (the developer). Such commission may take the form of an order, command or agreement (Savchenko, Kisiliuk, Protsiuk, 2019).

2. The modus operandi of committing lucrative violent crimes against the property of foreigners (robberies, robberies with extreme violence, extortion) is the way of taking of illegal possession of the property of others by the use or threat of violence.

Extortion occurs when a person induces another person to part with property or right to property or to perform any property-related act through threats of violence against the victim or his or her close relatives, restriction of the rights, freedoms or legitimate interests of these persons, damage to or destruction of their property or property under their control or protection or disclosure of information that the victim or his or her close relatives wish to keep secret (Savchenko, Kisiliuk, Protsiuk, 2019).

3. The modus operandi of committing lucrative violent crimes against public security (gang attacks) is (art. 257 of the CC), if they are committed against foreigners, is seen in the fact that a gang attack is a separate form of joint criminal activity, whose specific manifestations are, in this case, the organisation of an armed gang and participation in it or in its attack.

A gang is an armed and organised group or criminal organisation previously established to commit several attacks on enterprises, institutions, organisations or individuals, requiring careful long-term preparation (Resolution of the Plenum of the Supreme Court of Ukraine On the Practice of Consideration by Courts of Criminal Cases on Crimes Committed by Sustainable Criminal Associations, 2005).

The gang attacks shall be characterised by features of a sustained criminal association such as: the presence of several (three or more) perpetrators of crime; resilience; armament; the common goal of the participants, that is, the perpetration of attacks on enterprises, institutions, organisations or individuals; the manner in which the offence is committed is an attack on enterprises, institutions, organisations or individuals.

Importantly, gang armament means that at least one gang member is armed (and the rest of the gang know that such weapons are available and can be used during an attack) (Savchenko, Kisiliuk, Protsiuk, 2019).

4. The modus operandi of committing other lucrative violent crimes against foreigners, in particular the taking of illegal possession of a vehicle, unlawful deprivation of liberty or the kidnapping, is intentional acts, aimed at taking illegal possession of a vehicle and a person, respectively, by force and with lucrative motive. The commission of the crime with lucrative motive occurs when the perpetrator, in committing such acts, seeks to achieve any material benefit for himself or herself or for others (Savchenko, Kisiliuk, Protsiuk, 2019).

3. Common characteristics of the modus operandi of lucrative violent crimes against foreigners

Above, we have considered the modus operandi of lucrative violent crimes are committed against foreigners, based on the review of the relevant articles of the CC of Ukraine. Despite their diversity, they share a number of common elements in the modus operandi of these crimes are committed.

1. The lucrative motive is expressed in the orientation of the criminal assault and a violent manner, in which it is realised, through physical or mental violence. The lucrative motive in the case of conditional murders is interpreted as the desire to obtain, in connection with the commission of the crime, material benefits for himself or herself or for others (to take possession of money, jewels, property), to receive or retain certain property rights, avoid material costs or obligations (inherit, get rid of debt, or payment) or achieve other material benefit (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Life and Health of a Person, 2003).

2. The violent manner through physical or mental violence. It should be emphasised that lucrative violent crimes are crimes in which the realisation of a lucrative goal is carried out only in a violent manner. This category of crime is increasingly dangerous to society, since the taking of material goods is carried out only through the infliction of harm to the physical status and bodily integrity of the person. Coercive influence on the victim is a necessary condition for the realisation of the lucrative purpose of the assault (Holovkin, 2011, pp. 14–17).

Therefore, we argue that violence is a purposeful form of behaviour such as physical and mental influence on the physical and mental sphere of the foreign victim.

Violence in the commission of lucrative crimes against foreigners takes the forms as follows:

a) No danger to the life or health of the victim. Such violence implies the intentional inflic-

tion of slight bodily harm, which has not caused a short-term impairment of health or a slight disability, as well as committing other violent acts (striking, beating, unlawful deprivation of liberty) provided that they are not dangerous to life or health at the time of infliction (para. 5 of Resolution 10 of the PSCU "On Judicial Practice in Cases of Crimes against Property" of 6 November 2009 (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Property, 2009)).

Likewise, the violence may be in the form of a threat of violence. The assessment of the risk of violence, as expressed in the threat, should not be based so much on the subjective perception of the risk to the victims as on objective criteria;

b) Danger to the life and health of the victim.

Life- or health-threatening violence is the intentional infliction of slight bodily injury on the victim, resulting in a short-term impairment of health or a minor disability, moderate severity or serious bodily injury, as well as other violent acts that have not caused the above consequences, but are dangerous to life or health at the time of their commission.

For example, these include violence resulting in loss of consciousness or which has the character of causing physical pain, neck-crushing, drop from a height, the use of electric current, weapons, special tools, etc. (para. 9 of Resolution 10 of the PSCU "On Judicial Practice in Cases of Crimes against Property" of 6 November 2009) (Resolution of the Plenum of the Supreme Court of Ukraine on Judicial Practice in Cases of Crimes against Property, 2009).

The threat of violence means intimidation by the immediate use of physical violence that endangers the life and health of the victim (the threat to kill, injure or perform certain acts that in a particular situation may result in such consequences).

The violent manner is the external manifestation of the lucrative motive in projecting on the final result of the action. The target-setting and instrumental uniqueness of motivation of lucrative violent crimes enable to speak of their increased social danger (Holovkin, 2011, pp. 15–20).

Predominantly, the commission of lucrative violent crimes against foreigners include physical violence. According to a study of criminal proceedings, in 93.3% of cases, it was physical violence in various forms of expression. Mental violence was detected in 6.7% of cases. This is due to the fact that criminals are determined to overcome the opposition of potential victims as soon as possible, act with the aim of removing objects of lucrative assault (money, things). By threatening, foreign victims were made aware of their desperate situation, often displaying the instruments of crime, including weapons. The threats (i.e. mental violence) are expressed selectively, mainly to victims who, at the time of the assault, cannot defend themselves properly, so are exemplary humiliating, exaggerating the self-worth of the assaulters. They are used when offenders are confident that the criminal intent will be realised without the use of physical violence, usually due to the personal characteristics of the potential victim. In most cases, physical and mental violence are combined to achieve unlawful objectives.

3. The use of means and instruments in the commission of a crime.

According to studies of criminal proceedings, the means and tools used for lucrative crimes against foreigners are: firearms (48.3%), steel arms (15.8%), household items (knives, axes, hammers (20%)), procured, manufactured and specially adapted items (bits, rebar pieces, handcuffs, electric stun guns (22.5%)), pneumatic, traumatic, gas weapons (17.5%).

Under these circumstances, during intentional murders of foreigners for lucrative motives, firearms (45.2%), steel arms (22.6%), household items (22.6%), procured, manufactured and specially adapted items (bits, rebar pieces, electric stun guns, etc. (25.8%)) were predominantly used. In the case of assassinations on order, preference was given to the use of firearms (66.7%).

In cases of robberies with violence against foreigners, the most common means and instruments of the crime are: household goods (26.9%), pneumatic, traumatic, gas weapons (26.9%), procured, manufactured and specially adapted items (bits, rebar pieces, electric stun guns (30.8%). The commission of the robberies with extreme violence takes place with the use of firearms by criminals (38%), as well as pneumatic, traumatic, gas weapons (28.6%). The means and instruments of the crime were used less frequently when the extortion was committed. In committing gang attacks, criminals use firearms (100%), what is more the use of pneumatic, traumatic and gas weapons (42.9%) is widespread.

Consequently, in the commission of lucrative violent crimes, physical violence is predominantly used against foreigners. In some cases, mental violence is used. This is because criminals rely on the temporary stay of foreigners in the territory of Ukraine, and the victim will not have time and the opportunity to apply to law enforcement bodies on the fact of the crime committed against him/her. Potential victims' resistance and counteraction is overcome as quickly as possible.

For example, on the July night of 2020, the police of Kyiv received a report from a doctor that two 20-year-old foreign students asked for medical help with gunshot wounds of the lower limbs. In the course of processing this information, the police determined that the victims had been injured at 21:30 in Konovaltsa Street in the Pechersk district of the capital. During the conflict, the stranger fired several shots at the men, injuring the legs of two foreigners. They subsequently contacted a medical facility and asked for medical help. At the crime scene, the police carried out a number of priority investigative actions. Information gathered on this fact was entered in the Unified Register of Pre-trial Investigations (Ofitsiinyi sait Natsionalnoi politsii, npu.gov.ua).

The next structural element of the modus operandi is the concealment of criminal consequences.

According to V.O. Ovechkin, the ways of concealing crimes are conventionally grouped into:

a) Ways aimed at preventing the acquisition of information about a crime (movement of material sources of information about a crime; concealment of material sources of information; destruction of material, and in some cases ideal (persons) sources of information on a crime; failure to appear before an investigative body; refusal to testify; failure to report);

b) Ways that prevent the acquisition of information about a crime and are aimed at providing knowingly false information (falsification; staging; knowingly false report to conceal a crime; knowingly false testimony) (Ovechkin, 1975, p. 67).

According to Yu.B. Komarynska, concealment activities are material (related to physical influence on material objects) and verbal (spoken) (Komarynska, Halahan, 2013, p. 15).

A review of criminal proceedings has revealed that the way of concealing lucrative violent crimes committed against foreigners consists in actions aimed at:

1) Concealment of the crime (destruction of material and electronic sources of information on the crime (71.7%), coverup of material sources of information (30.8%), staging of the crime (16.7%), hiding from the pre-trial investigation authorities (74) 2%), refusal to testify and perjury (84.2%), alibi (35%), casting suspicion on a stranger (15.8%)).

2) Concealment of material objects: concealment of targets of criminal assault (stolen objects, money, personal belongings of victim and perpetrator (62.5%), concealment of physical evidence (means and instruments of crime, personal belongings of victim and perpetrator (76.7%)).

3) Distortion of ideal traces (threats to victims (close to the victim) and witnesses (41.7%), blackmail, intimidation (36.7%)).

There are specificities of concealing criminal activity depending on the type of crime. For example, the commission of premeditated murder with lucrative motives mainly apply the destruction of material sources of information about the crime (67.7%), concealment of information from pre-trial investigation bodies (64.5%), refusal to testify and perjury (74.2%), concealment of targets of criminal assault (61.3%) and concealment of physical evidence, means and instruments (71%). In the case of assassinations on order, criminals are prepared more carefully, and thus concealment of criminal consequences is characterised by the use of actions with similar rates being higher.

In case of lucrative violent crimes against property, in particular robberies, the main ways of concealment are as follows: destruction of material sources of information on the crime (55.2%), hiding from pre-trial investigation bodies (69%), refusal to testify and perjury (79.3%), concealment of targets of criminal assault (stolen objects, money, property of the victim and the offender (65.5%)), concealment of physical evidence (means and instruments of crime (75.9%)). In addition, in the case of robberies with extreme violence, ways of concealment are distortion of ideal traces, such as threats to the victim and witnesses (47.6%), blackmail and intimidation of the victim and his or her family (52.4%). In the case of extortion, specificity is the ways of concealment, such as simulation of the events of the crime (36.7%), provision of an alibi (72.7%), incrimination of an outsider (45.5%), as well as ones traditionally aimed at distorting ideal traces: threats to victims and witnesses (100%), blackmail, intimidation (72.7%).

In the case of gang attacks, the ways of concealment are the destruction of material sources of information about the crime (100%); the destruction of ideal (human) sources of information about the crime (14.3%); hiding from pre-trial investigation bodies (85.7%), refusal to testify and perjury (100%), as well as distortion of ideal traces (57.1%).

Lucrative crimes against foreigners are characterised by specificities of concealment of criminal activities. Refusal to testify and perjury are common. This is the case if the suspect is a foreigner (about 30% of criminal proceedings). For example, arguing that they misunderstand legislation and implementation practice (and the use of an interpreter), foreigners refuse to cooperate with the pre-trial investigation authorities, essentially speculating their special status.

We advocate V.P. Bakhin's perspective that in connection with the qualitative change in crime and the conditions under which criminal activity is carried out and developed, the importance, place and role of the modus operandi of the crime require rethinking and development of this criminal category. At the same time with the term "the modus operandi of committing the crime" in forensics "the modus operandi of committing and concealing the crime" is used. Based on this, the modus operandi of committing crimes is grouped into "full-scale structure" and "incomplete structure". From a forensic perspective, preparatory acts are included in a manner where, firstly, they are naturally available, and secondly, they leave specific traces, characterizing the behaviour of the perpetrator and distinguishing between different methods. Acts of concealment of a crime can be classified as a modus operandi of a crime if they are covered by the offender's intention and plan of action at the time the crime was committed (Bakhin, 2002, pp. 198–199).

According to H.A. Matusovskyi, the modus operandi of committing a crime by their structure can be of three types: one-element, that is, acts without preparation and concealment of a crime; complex (two-element), that is, in addition to the main element, there are acts of preparation or concealment of the crime; full-fledged (three-element), including preparation, commission and concealment of the crime (Matusovskiĭ, 1999, p. 213).

It is natural to conclude that most lucrative violent crimes committed against foreigners demonstrate a full-fledged modus operandi of committing crimes.

4. Conclusions

The method is a key element of the criminal characterisation of lucrative violent crimes committed against foreigners. The theoretical and practical studies have made it possible to formulate qualitative and quantitative features of the modus operandi of lucrative crimes against foreigners. The modus operandi of committing these crimes involves preparation, accomplishment, concealment.

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СПОСІБ ВЧИНЕННЯ КОРИСЛИВО-НАСИЛЬНИЦЬКИХ ЗЛОЧИНІВ, ВЧИНЕНИХ ЩОДО ІНОЗЕМЦІВ

Анотація. ***Мета.*** Метою статті є висвітлення способу як елементу криміналістичної характеристики корисливо-насильницьких злочинів, вчинених щодо іноземців.

Результати. Вчинення корисливо-насильницьких злочинів стосовно іноземців (убивств з корисливих мотивів, убивств на замовлення, грабежів, розбоїв, вимагань та ін.) викликає особливий суспільний резонанс. Однією з умов ефективного розслідування корисливо-насильницьких злочинів, вчинених щодо іноземців, є з'ясування способу їх вчинення. Спосіб вчинення таких злочинів складається із підготовки, безпосереднього вчинення, приховування. За результатами проведених досліджень (у тому числі вивчених 120 кримінальних проваджень) з'ясовано, що підготовка до вчинення корисливо-насильницьких злочинів стосовно іноземців виражалася у таких діях, як: вибір об'єкта посягання (особи); вивчення об'єкта посягання й обстановки, в якій злочинцю (злочинцям) доведеться діяти; вибір найбільш ефективного способу безпосереднього заволодіння майном, заподіяння шкоди життю і здоров'ю особи; підготовка необхідних засобів та знарядь, за допомогою яких буде здійснений злочинний намір; вибір способу приховання слідів злочину, приховання та збут викраденого; попередній розподіл ролей між співучасниками.

Висновки. Способи безпосередньої реалізації злочинних корисливо-насильницьких дій стосовно іноземців є різноманітними і залежать від виду конкретного злочину. Попри їх різноманітність, їм притаманна низка спільних ознак. Це корисливий мотив, що знаходить свій вираз у спрямованості злочинного посягання, та насильницький спосіб реалізації у вигляді фізичного чи психічного насилля. Приховування вчинених стосовно іноземців корисливо-насильницьких злочинів виражається у таких діях: приховування факту вчинення злочину (знищення та маскування матеріальних джерел інформації про злочин, знищення електронних слідів злочину, інсценування події злочину); приховування матеріальних об'єктів (предметів злочинного посягання та речових доказів), спотворення ідеальних слідів (погрози потерпілому та свідкам, шантаж, залякування потерпілого та його близьких). Найчастіше відбувається поєднання перелічених способів приховання вчинення корисливо-насильницьких злочинів, вчинених щодо іноземців.

Ключові слова: криміналістична характеристика, спосіб вчинення злочину, слідова картина, іноземець, потерпілий.

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SPECIFICITIES OF PROCEDURE FOR CONDUCTING AN INVESTIGATIVE EXPERIMENT WITH THE PARTICIPATION OF A JUVENILE DURING THE INQUIRY

Abstract. ***Purpose.*** The purpose of the article is to analyse the specificities of the investigative experiment with the participation of a juvenile suspect during the inquiry. To achieve this goal, it is necessary to solve the following tasks: to determine the procedure for involving a legal representative, defender, psychologist and teacher of a minor to conduct an investigative action; identify the stages of the investigative experiment and tactics used in its process; analyze the tactics of manipulation and its impact on the child offender.

Research methods. The work is performed using general scientific and special methods of scientific knowledge: dialectical, historical and legal, formal and logical, methods of hermeneutics, generalization, comparison, etc.

Results. Any investigative (search) action is aimed at obtaining the necessary information for criminal proceedings, using legal techniques and methods. The purpose of the investigative experiment is to establish similar or different circumstances that occurred during the commission of an illegal act with the help of correct and lawful actions of the inquiry officer, investigator. In criminal proceedings involving juveniles who conflict with law, the inquiry officer, investigator shall correctly apply tactics and take into account the best interests of the child, including during investigative (search) actions.

Conclusions. In view of current trends to protect the rights and legitimate interests of children involved in criminal proceedings, the tools of such protection are improved increasingly. When conducting investigative (search) actions with juveniles, it is necessary to take into account, first of all, the principles of justice friendly to a child in conflict with law. Specificities of conducting an investigative experiment with a juvenile suspect during the inquiry are: involvement of the legal representative (guardian, tutor), pedagogue, psychologist, and defence counsel in the proceeding; application of tactics aimed at achieving the goal of this investigative action; consideration of the best interests of the child.

Key words: criminal offense, pre-trial investigation, defence counsel, psychological contact, manipulation, tactics.

1. Introduction

During proceedings with juveniles who have committed offences, inquiry officers and investigators often conclude that each of them has its own characteristics. These are the need to apply special knowledge of psychology and the use of psychological tactics to the child. These methods enable law enforcement officers to establish psychological contact with the teenager and properly carry out an investigative (search) action.

Specific aspects of investigative experiment with the participation of juveniles were under the focus in the works by: V.P. Bakhin, R.S. Bielkin, P.D. Bilenchuk, O.M. Vasiliev, V.L. Vasiliev, V.S. Kuzmichov, Y.D. Lukianchykov, V.M. Saltevskyi, V.M. Tertyshnyk, K.O. Chaplynskyi, V.Y. Shepitko, and others. Nevertheless, at present, existing studies do not pay sufficient attention to the specificities of investigative (search) actions during an inquiry, pre-trial investigation of criminal offences, in particular those committed by juveniles.

The purpose of the article is to analyse the specificities of the investigative experiment with the participation of a juvenile

suspect during the inquiry. The purpose set requires to solve the following tasks: to determine the procedure for engaging the legal representative, the defence counsel, the psychologist and the pedagogue of the juvenile for the conduct of an investigative action; to identify the stages of the investigative experiment and tactics, applied in the process; to analyse the tactic of manipulation and their impact on the juvenile offender.

Methodological tools are selected in accordance with the purpose set, the specificity of the object and the subject matter of the study. The study includes the use of general scientific and special methods of scientific knowledge: dialectical, historical-legal, formal-logical, hermeneutic method, generalization, comparison, etc.

The scientific novelty of the article is the study of procedural specificities of conducting an investigative experiment with a juvenile suspect, considering tactical methods and ensuring the best interests of the child.

2. Regulatory features of the investigative experiment

During pre-trial investigation of criminal offences, all investigative (search) actions provided for in the CPC of Ukraine (art. 300) are permitted, and the procedure for criminal proceedings involving juveniles is governed by the general rules of the CPC, taking into account chapter 38 (Criminal Procedure Code of Ukraine, 2011). In other words, during the inquiry, the inquiry officer is authorised to carry out investigative (search) actions with the participation of juveniles, including the investigative experiment.

As is known, the investigative experiment is an investigative (search) action aimed at checking and clarifying information that is relevant to establishing the circumstances of a criminal offence by way of reconstructing actions, situation, circumstances of a certain event, and conducting required experiments or tests (art. 240) (Criminal Procedure Code of Ukraine).

Therefore, the purpose of investigative experiment is to check and clarify information of evidentiary value for a criminal offence. O.K. Chernetskyi argues that the positive result of the investigative experiment enables to establish the possibile existence of one or another fact only by examination, and the negative result eliminates such a possibility (Chernetskyi, 2015, p. 216).

A ruling by an investigator is not required for the conduct of an investigative experiment. In exceptional cases, when an investigative experiment is carried out in a person's home or other property, the person's voluntary consent is required. If there is no voluntary consent, the investigative experiment is carried out on the basis of a ruling by the investigating judge at the request of the inquiry officer, as agreed with the prosecutor or at the request of the prosecutor.

A legal representative of the juvenile suspect shall be involved in the investigative experiment. The CPC of Ukraine classifies the following as legal representatives: parents (adoptive parents), guardians, tutors, other close adult relatives or members of family, representatives of the guardianship and custody authorities (art. 44) (Criminal Procedure Code of Ukraine, 2011).

In cases when legal representative's participation may be detrimental to the interests of a juvenile suspect or accused, the court shall, upon his or her plea, at the request of the prosecutor or proprio motu, may, by its ruling, limit the participation of the legal representative in certain procedural or judicial actions or to exclude him/her from participation in the criminal proceedings and to involve in his or her place another legal representative (art. 488) (Criminal Procedure Code of Ukraine, 2011). In this way, procedural guarantees are provided for juvenile participants in criminal proceedings.

The legal representative shall enjoy the procedural rights of the person whose interests he or she represents. The inquiry officer, investigator, prosecutor shall issue a ruling, and the investigating judge or court shall adopt a determination on the involvement of a legal representative a copy of which shall be handed to the legal representative (art. 44) (Criminal Procedure Code of Ukraine, 2011). According to H.M. Minkovskyi, the participation of a legal representative in criminal proceedings is not only his or her right, but also his or her duty (Minkovskyi, 1987, p. 86).

If the juvenile suspect has a defence counsel at the time of the investigative experiment, he or she shall be present. A defence counsel is a lawyer who provides defence of the suspect, accused, convicted or acquitted person as well as of the person who is going to be subjected to compulsory medical or educational measures or against whom the issue of applying such measures has been considered, as well as of the person considered to be extradited to a foreign state (art. 45) (Criminal Procedure Code of Ukraine).

It should be noted that the compulsory participation of the defence counsel is ensured in criminal proceedings in respect of persons under the age of 18 years and who are suspected or charged of the commission of a criminal offence – upon establishing that the person concerned is an underage or when in any doubt as to his or her majority (art. 52) (Criminal Procedure Code of Ukraine, 2011).

The next feature is the involvement of a pedagogue or psychologist in an investigative experiment involving a child in conflict with law. This is provided for in article 227 of the CPC of Ukraine, which states that the participation of the legal representative, pedagogue, or psychologist and a medical practitioner, if necessary, should be ensured in investigative (search) actions conducted with involvement of a child or an underage (Criminal Procedure Code of Ukraine).

According to I.V. Buchaka, the pedagogue and psychologist in the course of any investigative (search) action with a juvenile offender pursues an educational and preventive role. They are assistants of the investigator to establish moral and psychological contact with the juvenile (Buchaka, 2020). In addition, the pedagogue and psychologist help to safeguard the legitimate rights and interests of the juvenile during the pre-trial investigation.

It should be noted that in the scientific community there are controversial questions about the correctness and expediency of involving a pedagogue than psychologist in investigative (search) action, since there are no clearly defined rules of his or her procedural status. Can the inquiry officer bring in any pedagogue or psychologist? Or is it still necessary to involve those who have previously met and worked with a juvenile offender? We believe that it is advisable to establish this at the legislative level.

Prior to the beginning of the investigative (search) action, the legal representative, pedagogue, psychologist or doctor is informed of their right to ask clarifying questions to a child or an underage. In exceptional cases, when legal representative's participation can jeopardize interests of the underage witness, suspect, the prosecutor upon underaged person's plea, or proprio motu, may limit the participation of the legal representative in certain investigative (search) actions, or remove him/her from participation in criminal proceedings and invite another legal representative in his or her stead (Ukrainian Criminal Procedure Code, 2011).

Moreover, the focus should be on the tactics used in the preparation and conduct of the investigative experiment concerning a juvenile suspect during the initial inquiry.

A tactical technique is part of forensic tactics. Its definition is still controversial – some authors consider it as a scientific recommendation (Vasiliev), others as a way of action or a line of behaviour (Shepitko, 2004, p.183). We advocate the second perspective, because the tactical technique is the most rational and effective way to carry out procedural action, freely chosen by the investigator, inquiry officer.

The use of the tactical technique in the conduct of an investigative experiment is one of the main factors in achieving the objectives set by this investigative (search) action: check and clarification of information important for pre-trial investigation. The requirements for tactical techniques are as follows:

– Compliance with the legislation in force (tactical techniques shall be in accordance with the principles of legality and the rule of law, and must not violate the rights and legitimate interests of participants, including juveniles);

– Effectiveness (tactical techniques should be used correctly in the process of an investigative action and produce the necessary results);

– Compliance of a tactical technique to a scientific and practical component (different methods and ways used by the investigator or inquiry officer should be based on well-known patterns);

– Ethics and humanity (deception, intimidation, physical and mental violence, etc. are not allowed);

– Psychological, logical and organizational tactical techniques (Chaplynska, 2013, p. 45–46).

3. Features of the investigation of offenses committed by minors

In criminal proceedings involving juveniles, the tactical techniques used by the inquiry officer, investigator during are particularly important. According to the National Strategy for the Juvenile Justice System Reform up to 2023, the best interest of the child is a priority for the development and implementation of child-friendly justice (On approval of the National Strategy for the Juvenile Justice System Reform up to 2023). Therefore, in order to ensure the rights and best interests of the child, whatever the procedural status of the child (offender, victim, witness), the investigator or inquiry officer shall use various types of psychological tactics in their activities. Investigative (search) actions are not excluded.

Therefore, under the current circumstances, the psychological training of police officers is increasingly important, including the choice of the most effective techniques and ways of investigation. First of all, these are tactical techniques of establishing psychological contact, psychological interaction of participants in criminal proceedings, study of the offender's personality, etc. We suggest analysing them.

When investigating offences committed by juveniles, the inquiry officer, investigator rely on the laws of the psychology of communication, such as feeling, perception, thinking, imagination, memory, emotions, will, character, etc. That is, psychological techniques in their totality should be aimed at establishing

psychological contact with its participants. V.L. Vasiliev emphasises that, first of all, it is necessary to study the person with whom you conduct the investigative action, and then to prepare for the process. In his opinion, this enables to establish contact, avoid conflicts and get the necessary evidence (Vasiliev, 2010, p. 470).

The process of conducting the investigative experiment with a juvenile consists of three stages: preparatory (initial), experimental (main) and final (Kaminska, 2021, p. 343). The tactical techniques used by the investigator during these stages include:

1) Establishing the purpose of the investigative experiment;

2) Determination of the place, time and other conditions;

3) Determination of participants in the investigative (search) action, in addition to police officers and juvenile suspects, it is necessary to involve a legal representative, a pedagogue, a psychologist (if necessary, a doctor) to ensure the best interests of the child;

4) Drawing up a plan of investigative experiment;

5) Preparation of exhibits, items, objects necessary for the demonstration of actions;

6) The use of technical means of fixing;

7) Informing participants of the date, place and time of the investigative action;

8) Clarification of the rights and duties of each person present, including the juvenile;

9) Avoiding the humiliation and degrading treatment of participants;

10) Staggering of the investigation;

11) Recording of the investigation experience (photo-video recording);

12) Recording (Lukashevych, Stratonov, 2002, pp. 87–88).

It is also important to avoid manipulation. Police officers often allow themselves to use speech manipulation against juvenile suspects by secretly forcing a person to perform in a manner that do not coincide with his or her real wishes and opinions (Kaminska, 2021, p.185). These may include: provocation (words or movements); involvement of the suspect in a dispute or conflict, as well as pressure on his or her legal representative; acts of disrespect and contempt for both the adolescent and his or her parents and representatives; wilful prolongation of the investigative action; blackmail and threats. Such ways of communicating with a child are unacceptable and may have a negative impact on his or her mental or psychological state. We advise the inquiry officer, investigator to first give the child the word in order to tell everything and show, and then ask questions.

4. Conclusion

Therefore, the investigative experiment establishes the circumstances of a criminal offence by checking and clarifying information. This procedure is often used in pre-trial investigations of criminal offences committed by juveniles. This category of persons, due to their age and unformed psyche is a special category, involvement thereof in investigative (search) actions is specific. For example, the correct use of tactical techniques during this investigative action enables the juvenile suspect to reveal the circumstances of the commission of the offence in detail, and the investigator to establish psychological contact with the child, to ensure his or her best interests and conduct investigative (search) action qualitatively and legally.

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ПРОЦЕСУАЛЬНІ ОСОБЛИВОСТІ ПРОВЕДЕННЯ СЛІДЧОГО ЕКСПЕРИМЕНТУ ЗА УЧАСТЮ НЕПОВНОЛІТНЬОГО ПІДОЗРЮВАНОГО ПІД ЧАС ДІЗНАННЯ

Анотація. ***Метою*** статті є аналіз особливостей проведення слідчого експерименту за участю неповнолітнього підозрюваного під час дізнання. Для досягнення мети необхідно вирішити такі завдання: визначити порядок залучення законного представника, захисника, психолога та педагога неповнолітнього для проведення слідчої дії; виокремити етапи слідчого експерименту та тактичні прийоми, які застосовуються в його процесі; проаналізувати тактичний прийом маніпулювання та його вплив на дитину-правопорушника.

Методи дослідження. Робота виконана з використанням загальнонаукових та спеціальних методів наукового пізнання, таких як: діалектичний, історико-правовий, формально-логічний, методи герменевтики, узагальнення, порівняння тощо.

Результати. Будь-яка слідча (розшукова) дія має на меті отримання необхідної для кримінального провадження інформації шляхом застосування законних прийомів та методів. Ціль слідчого експерименту полягає в тому, що за допомогою правильних та законних дій дізнавача, слідчого встановлюються схожі або відмінні між собою обставини, що мали місце під час вчинення протиправного діяння. У кримінальних провадженнях щодо неповнолітніх, які перебувають у конфлікті із законом, слідчому, дізнавачу необхідно правильно застосовувати тактичні прийоми та враховувати найкращі інтереси дитини, зокрема і під час проведення слідчих (розшукових) дій.

Висновки. З огляду на сучасні тенденції, спрямовані на захист прав та законних інтересів дітей, що є суб'єктами кримінального судочинства, необхідно зазначити, що способи такого захисту постійно удосконалюються. Під час проведення слідчих (розшукових) дій з неповнолітніми необхідно враховувати насамперед принципи правосуддя, дружнього до дитини, яка перебуває у конфлікті із законом. Особливостями проведення слідчого експерименту з неповнолітнім підозрюваним під час дізнання є: залучення до процесуальної дії законного представника (опікуна, піклувальника), педагога, психолога, а також захисника; застосування тактичних прийомів, спрямованих на досягнення мети такої слідчої дії; врахування найкращих інтересів дитини.

Ключові слова: кримінальний проступок, досудове розслідування, захисник, психологічний контакт, маніпуляція, тактичний прийом.

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EXAMINATION OF SCENT TRACES DURING INSPECTION OF THE SCENE AND OTHER INVESTIGATIVE (SEARCH) ACTIONS

Abstract. ***Purpose.*** The aim of the article is to reveal the specificities of examining scent traces during the investigation of the crime scene and other investigative (search) actions.

Results. Scent traces are used in law enforcement to detect, investigate, and prevent criminal offences. At present, it is necessary to improve the legal and regulatory framework for the procedure for detection, examination and use of scent traces, development of practical recommendations for processing scent traces. These and other circumstances have led to a broad approach to the methodology of studying the specificities of the use of scent traces in the investigation of criminal offences and the actual crime scene investigation and other investigative (search) actions. Processing of scent traces covers actions related to their detection, recording, collection and examination within the scope of investigative (search) actions, search operations in order to achieve the objectives of criminal proceedings. According to empirical data, frequently scent traces are processed when investigating the crime scene, in some cases, scent traces are found during the search, crime scene reconstruction. In order to identify possible scent traces and scent carriers, it is essential to reproduce the behaviour of the perpetrators at the scene, paying attention to their long-term stay. Sources of scent at the scene are material objects or parts thereof connected with actions or contacts with the offender. These are mainly personal belongings, clothing of a person, biological traces of a person, instruments of crime, stolen things. The scent is often found in the places where the perpetrator or in the vehicles in which he or she was travelling. When searching for objects with scent information on the scene, it should be taken into account that soft, porous surfaces, such as fabrics, wood, paper, snow, grass, relatively well absorb and retain the scent information.

Conclusions. Odorological examination is identified as a means of identifying persons, facilitates the rapid and effective investigation of criminal offences and the search for criminals and missing persons. The key to the successful introduction of modern techniques of odorology (branch of forensic technology that studies scent traces) into the practice of combating crime is qualified actions by the actor of the investigation to detect and collect of scent information at the crime scene, its subsequent examination and use to clarify the objectives of criminal proceedings, as well as an understanding of the importance of such activities.

Key words: scent traces, forensics, crime scene investigation, odorology, examination.

1. Introduction

The investigation of criminal offences in modern conditions requires the use of a wide range of sources of trace information, the use of the results of their examination to furnish proof in criminal proceedings. These are new sources of trace information: scent traces, sound traces, electronic traces, molecular-genetic traces, etc. These and other circumstances lead to new tasks of forensic science, using the latest achievements of natural and technical sciences, adapting them to the solution of individual tasks of investigation of criminal offenses, transforms them into criminal practice.

Scent traces have been known for a long time but have not been investigated enough. Nowadays, scent traces are used in law enforcement to detect, investigate and prevent criminal offences. However, it should be noted that a number of problematic issues hinder their effective use during criminal proceedings: flaws in the legal framework for the detection, investigation and use of scent traces (according to 90.6% of investigators, 86.6% of experts), lack

of forensic examination of scent traces (according to 88.8% of investigators, 84.4% of experts), lack of practical recommendations for processing scent traces during investigative (search) actions (according to 80.3% of investigators, 76.8% of experts).

The topic is comprehensive, because scent traces during the investigation of criminal offences, using a variety of methods, tools, techniques, are processed by a wide range of actors: investigators conducting criminal proceedings; specialists involved in solving individual tasks (employees of the Canine Service and forensic inspectors of the National Police of Ukraine, experts of the Expert Service of the MIA of Ukraine, conducting forensic examination, the conclusion of which is an important source of evidence in criminal proceedings). In addition, scent traces are subject to laboratory (instrumental) study, and odorological sampling, which is carried out with the help of dog detectors, deserves special attention.

The study of the topic determines a broad approach to the research methodology of using scent traces in the investigation of criminal offences, the crime scene investigation and other investigative (search) actions.

The use of scent traces is widely practiced worldwide. Recently, forensic odorology as a science on the collection, preservation and use of scent information in the detection, investigation and prevention of criminal offences has become the focus of Ukrainian scientists and practitioners. However, modern forensic literature pays little attention to scent traces. As well as the lack of technical and forensic support, the lack of sufficient experience in processing scent traces, the circumstances listed create serious difficulties for the effective implementation of odorological means, methods, techniques in the daily practice of law enforcement bodies, and testify to the relevance of the topic of the scientific article.

Describing the state of art in scientific research on the use of scent traces in criminal proceedings, the monographic study by V.D. Basai *Fundamentals of Forensic Odorology* (Ivano-Frankivsk, 2003) should be noted (Basai, 2003).

Groups of scientists and practitioners have prepared methodical recommendations on the treatment of odorological objects during investigative (search) actions. For example, *Crime Scene Investigation: Detection and Collection of Biological Objects* (Kharkov, 2009) (Perlin, Shevtsov, Kosmina, Ionova, 2009), *Forensic Examination of Human Biological Traces* (Kyiv, 2010) (Kofanov, Kobylianskyi, Davydova, 2010), *Application of Special Knowledge and Forensic Tools during the Investigation* (Lviv, 2019) (Blahuta, Zakharova, Kovalska, 2019).

However, the detection, collection, examination, use of scents during the crime scene investigation and other investigative (search) actions are accompanied with the problematic issues and the need to address them at the theoretical and scientific levels.

The aim of the article is to reveal the specificities of the examination of scent traces during the crime scene investigation and other investigative (search) actions.

2. Trends of the examination of scent traces

The early detection and examination of traces of a criminal offence helps establish the circumstances and mechanism of its commission, as well as the person to whom they belong.

Processing of scent traces comprises actions to detect, record, collect and examine them within the scope of investigative (search) actions, search operations in order to achieve the objectives of criminal proceedings.

According to empirical data, frequently scent traces are processed when investigating the crime scene, in some cases, scent traces are found during the search, crime scene reconstruction.

For example, the purpose of the investigative (search) action such as scene investigation is: to detect traces of a criminal offence and material evidence; to clarify the circumstances of the incident; to develop theories as to how the criminal offence was committed and who its participants are; to obtain data on persons, who may have seen the commission of a criminal offence, with the purpose of organising operational and investigative measures and carrying out further investigative (search) actions. However, despite the fact that the main information is collected during the crime scene investigation and other types of examination, it can be detected as a result of other investigative (search) actions. This information is illustrated by practical data.

In addition, processing of scent traces can have a psychological impact on the person involved in the commission of a criminal offence and thus contribute to its detection and investigation. As is known, psychological influence is objectively inherent in the activity of investigation, prevention of criminal offences and judicial consideration of criminal proceedings (cases). It is reflected in practice in the application of tactical techniques in the process of fulfilling the tasks of criminal proceedings. In such circumstances, the use of tactics implies thorough training of the investigator, prosecutor, judge, which includes verification of their compliance with

legal and moral norms; assessment of possible tactical risk and their justification; anticipation of the behaviour of participants; identification of measures in case of urgency and out-of-control; use the results obtained. The psychological mechanism of a tactical technique implies: direct or indirect interaction between the person conducting criminal proceedings and his or her respondents; its psychological orientation connected with the reproduction of the event, updating the forgotten, revealing lies, searching for the hidden; psychological effect of the use of a tactical technique (connected with the need to obtain truthful testimony, revealing traces of criminal offense) (Chornous, 2020, p. 17).

Empirical studies can illustrate the psychological impact of scent processing in criminal proceedings. For example, at the scene of the murder, the perpetrator left his clothes. The suspect, identified from his fingerprints, denied involvement in the crime, despite other evidence of the crime. The investigator decided to use odorological information, believing that the result of sampling with the help of a police dog encourages the suspect to give truthful testimony. He was taken to the house where the murder took place, and then wet cleaning and ventilation were conducted in the presence of him and the witnesses. Then the suspect and two invited citizens were asked to put one of their clothes on the floor. After that, a cynologist and a dog were invited, a sealed plastic bag with the object extracted from the crime scene was presented to the attendees, open and handed to a cynologist. The dog sniffed the object and selected one belonging to the suspect from items laid out on the floor. The suspect was told that, if he wished, the sampling could be repeated with other objects and persons involved. But he refused and gave details not only of the crime but also of the attempted murder elsewhere, while his involvement in the crime had not yet been known to the investigation (Kuzmichov, 2000, p. 338).

An important area of the study of scent traces is laboratory. For example, during investigative (search) actions, scent traces subject to laboratory research may be removed. An interesting case from the investigative practice is when air samples were collected in the room where the crime was committed. Gas chromatography identified the brand of cigarettes that were smoked there. The same cigarettes were found during a personal search of the suspect (Kuzmichov, 2000, p. 337).

Therefore, in the light of current developments in science and technology, the attitude of law enforcement practitioners to the importance of scent traces in pre-trial investigations should be reviewed. For example, handprints are most often of interest to the investigator from the position of identification of the person by the papillary pattern, while blurred ones are always unsuitable for identification and are usually ignored by the investigator. However, it is possible to identify the group membership of a person by sweat-fat composition and by extracting scent traces for the purpose of subsequent identification of the perpetrators by a service dog (Kuzmichov, 2000, p. 332).

Thus, working with scent (odorological) traces at the crime scene includes detection, fixation, examination and their direct use for organising the search for people and things in "hot pursuit." Odorological traces can also be used in further pre-trial investigations by forensic and odorological examination to obtain evidence.

In order to identify possible scent traces and scent carriers, it is necessary to reproduce the behaviour of the perpetrators at the scene, paying attention to their long-term stay.

3. Use of scent traces in criminal investigations

Sources of scent at the scene are material objects or parts thereof connected with actions or contacts with the offender. These are mainly personal belongings, clothing of a person, biological traces of a person, instruments of crime, stolen things. The scent is often found in the places where the perpetrator was or in the vehicles in which he or she was travelling.

When searching for objects with scent information on the scene, it should be taken into account that soft, porous surfaces, such as fabrics, wood, paper, snow, grass, relatively well absorb and retain the scent information. Smooth surfaces such as glass, asphalt, plastics, lacquered or polished metal products can less absorb and retain scent.

Having determined the possible locations of scent traces, the specialist covers with the sorbent (sterile gauze or flannel napkin) each place or item. After that, the fabric is pressed with foil fastened with adhesive tape and remains for the time necessary to absorb the scent trace. But if there may be other traces at the place of scent, then sorbent insertion and pressing is carried out in such a way as not to break these traces. As a rule, the sorbent absorbs the scent throughout the inspection of the scene. After that, the foil is removed, and the sorbent is gently removed from the object with tweezers and placed in a hermetically sealed (canned) jar. For example, if liquid blood stains are left at the scene, samples are taken for a 4–5 layer of sterile bandage by soaking the blood. Gauze or clothes with traces of blood must be dried at room temperature, as the rotting blood is not suitable for odorological

examination. In the future, all traces collected in the presence of comparative material are sent for odorological examination to solve identification and non-identification tasks (Mazur, Antoniuk, 2020, p. 210).

In addition, the use of specially trained dogs when investigating the scene of an incident and correctly detecting the location of scent footprints allows for a rapid search arrest of persons involved in the commission of criminal offences in "hot pursuit."

Furthermore, that is not all possibilities of using scent traces in criminal investigations. For example, Vinnytsia RFC of the MIA conducts unique research using detection dogs. A specificity of odorological research is the identification of scent information collected from the crime weapon. The adjacent territory of the laboratory is equipped with modern enclosures with a walking area, which provides a comfortable stay of "four-legged" experts at different times of the year. Experts take care of the health of detection dogs (maintaining immunity, vaccination, current minimally invasive manipulation). One alternative method of odorological research is the use of a universal non-contact vector complex with video fixation and light process identification (Official site of Vinnytsia Research Forensic Centre of the Ministry of Internal Affairs of Ukraine, 2019).

The units of the National Police of Ukraine have own Canine Service. It is also noteworthy that, according to the National Police, there are currently 929 dogs working in the Canine Police Service. 646 cynologists across the country, along with their four-legged assistants, search for criminals, patrol cities, find explosives, weapons, and drugs. In total, there are 929 service dogs in the Canine Service of the Police, most of them search dogs (390). The service dogs are located in the centres of the National Police General Directorates, and they assist the bomb squad personnel, patrol officers, rapid action corps and security police. Over the past year, cynologists have found 325 firearms, 303 kilograms of drugs and 1,500 explosive devices. In addition, canine police with service dogs made more than 26,000 visits to the scene and helped solve almost 13,000 crimes (Website of the Multimedia Platform of Foreign Broadcasting in Ukraine "Ukrinform", 2019).

Therefore, odorological examination is identified as a means of identifying persons, facilitates the rapid and effective investigation of criminal offences and the search for criminals and missing persons. The key to the successful introduction of modern techniques of odorology (branch of forensic technology that studies scent traces) into the practice of combating crime is qualified actions by the actor of the investigation to detect and collect of scent information at the crime scene, its subsequent examination and use to clarify the objectives of criminal proceedings, as well as an understanding of the importance of such activities.

When working with items that are trace sources of the human scent, it is necessary to comply with rules as follows:

– The item should be processed for the presence of traces of papillary patterns; foreign micro- and macroscopic traces, such as overlays; biological human traces (blood, saliva, sperm, etc.);

– Small items shall be inspected with tweezers and large ones should be examined only in gloves;

– After inspection, the scent source should be preserved, that is, placed in a hermetically sealed container. For small items or things (cap, glove, scarf, handkerchief, glasses, pen, etc.) glass jars with studded lids are used. If the latter are absent, the jar can be closed with food foil, and covered with a polyethylene lid. Large objects and things are placed in polyethylene bags and tied, creating a tightness of the package.

Material items processing, such as trace sources of scent and scent traces, from the procedural perspective, does not have any exceptions from the general procedure and is carried out most often during urgent investigative (search) actions to identify and fix the traces of a criminal offence. Therefore, any actions by the investigator to detect, fix, collect and preserve odorological traces should be reflected in the record of the relevant investigative (search) action under the CPC of Ukraine. Manipulations to select, preserve and pack traces should be carried out in the presence of attesting witnesses, besides this action should be specially paid their attention, they shall see the location and method of trace detection, and sometimes be aware of the nature of the action and the purpose of collecting items with scent traces (Ruvina, 2019).

When collecting scent traces, the records of the crime scene investigation or other investigative (search) action should include information about: the name and location of the item with scent traces; accurate localisation of the surface from which the scent is taken; the type, condition and material of the surface from which the scent adsorption is collected; method of extraction of scent; material, dimensions, quantity and colour of adsorbent; contact time of adsorbent with surface; ambient temperature and weather conditions; method of packaging of scent traces, type and capacity of packaging; method of sealing, explanatory inscriptions on the package; method of packing scent carriers.

4. Conclusions

Therefore, we can now state a qualitatively new development of examination and use of scent traces in the investigation of criminal offences. Scientists have developed some innovative provisions regarding the effective study of scent traces in modern conditions during the crime scene investigation and other investigative (search) actions. However, many issues need to be addressed urgently and, in particular, the legal and regulatory framework for the use of scent information in criminal investigations should be improved, as well as guidelines for practitioners on these issues should be developed.

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ДОСЛІДЖЕННЯ ЗАПАХОВИХ СЛІДІВ ПІД ЧАС ПРОВЕДЕННЯ ОГЛЯДУ МІСЦЯ ПОДІЇ ТА ІНШИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ

Анотація. ***Мета.*** Мета статті – розкрити особливості дослідження запахових слідів під час проведення огляду місця події та інших слідчих (розшукових) дій.

Результати. Сліди запаху використовуються у правоохоронній діяльності для розкриття, розслідування та попередження кримінальних правопорушень. Нині необхідним є удосконалення нормативно-правової регламентації порядку виявлення, дослідження та використання запахових слідів, розробка практичних рекомендацій щодо роботи із запаховими слідами. Вказані та інші обставини зумовили широкий підхід до методології дослідження особливостей використання запахових слідів під час розслідування кримінальних правопорушень і безпосередньо – проведення огляду місця події та інших слідчих (розшукових) дій. Робота із запаховими слідами охоплює дії з їх виявлення, фіксації, вилучення та дослідження у межах проведення слідчих (розшукових) дій, оперативно-розшукових заходів з метою досягнення завдань кримінального провадження. Як засвідчили емпіричні дані, робота із запаховими слідами найчастіше відбувається під час огляду місця події, у окремих випадках запахові сліди виявляють під час обшуку, слідчого експерименту. Для визначення можливих місць перебування запахових слідів і з'ясування об'єктів – носіїв запаху – необхідно моделювати поведінку злочинців на місці події, звертаючи увагу на місця їх тривалого перебування. Джерелами запаху на місці події є матеріальні об'єкти або їх частини, які пов'язані

з діями або контактували зі злочинцем. Переважно йдеться про: особисті речі, одяг людини; біологічні сліди людини; знаряддя вчинення злочину, викрадені речі. Нерідко сліди запаху знаходять на місцях, де перебував злочинець, чи транспортних засобах, у яких він пересувався. – У разі пошуку предметів на місці події, які несуть на собі запахову інформацію, слід врахувати, що відносно добре вбирають у себе та зберігають запахову інформацію м'які, пористі поверхні: тканини, дерево, папір, сніг, трава.

Висновки. Встановлено, що одорологічні дослідження є одним зі способів ідентифікації осіб, сприяють швидкому та ефективному розслідуванню кримінальних правопорушень, розшуку злочинців та осіб, зниклих безвісти. Запорукою успішного запровадження в практику боротьби зі злочинністю сучасних напрацювань одорології (галузі криміналістичної техніки, що вивчає сліди запаху) є кваліфіковані – дії суб'єкта розслідування з виявлення до вилучення запахової інформації на місці події, її наступного дослідження і використання з метою з'ясування завдань кримінального провадження, – а також розуміння великого значення такої діяльності.

Ключові слова: запахові сліди, криміналістика, огляд місця події, одорологія, дослідження.

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REASONS FOR OPPOSITION TO THE INVESTIGATION OF CRIMINAL OFFENCES RELATED TO DOMESTIC VIOLENCE

Abstract. ***Purpose***. The purpose of the article is to analyse the practice of investigating criminal offences related to domestic violence, to identify and systematize problematic aspects that create opposition to the establishment of all circumstances of the incident and obtaining evidence. To achieve this, general scientific methods of cognition, such as analysis, induction, synthesis, deduction and modelling, were used. They made it possible to highlight problematic aspects arising at different stages of pre-trial investigation, to determine causal relationships, the causes of their advent and ways to overcome them. The use of the induction method enables establishing the recurrent nature of events that complicate the investigation and hence building up the areas of counteraction to opposition. The use of the historical method allows studying the process of developing opposition and creating problematic aspects during the pre-trial investigation of criminal offences related to domestic violence.

Results. The process of investigating criminal offences related to domestic violence is not limited to the investigation of only one type of crime, usually it is a certain chain of violent actions, which usually begin with psychological or economic violence and, over time, develop into more serious violent crimes manifested in physical and sexual violence. The focus is on a lack of communication and cooperation both between the National Police units and between the police and social organisations, such as guardianship and custody agencies, social service centres for families, children and young people, and social rehabilitation centres, medical-social rehabilitation centres, etc. The scientific novelty is in combining the scientific achievements and practical results of the investigation and prevention of domestic violence, which will contribute to the construction of a methodology for the investigation of criminal offences related to domestic violence.

Conclusions. The groups of the main problematic issues arising in the pre-trial investigation of criminal offences related to domestic violence enable the author to identify the risks of opposition to investigation the investigation, to determine the best tactics of investigative (search) actions.

Key words: domestic violence, investigation, criminal offence, opposition to investigation.

1. Introduction

Domestic violence is a widespread problem in many families around the world. A review of global sample studies from 48 countries revealed that 10–69% of women reported experiencing physical violence at the hands of an intimate partner or spouse, with the lowest rates recorded in Paraguay and the Philippines, and the highest rates recorded in Nicaragua. In the United States, approximately 22% of women over the age of 18 report experiencing stalking behaviour by an intimate partner during their lifetime. In addition, most women who are physically victimized also report sexual or psychological abuse by an intimate partner.

In Ukraine, violence among family members is unfortunately also common. For a long time, the issue of domestic violence was considered a matter of custom and tradition and remained outside the scope of legal regulation. Any interference in family relations by the State and society was considered a gross violation of privacy and was not allowed. This situation has led to some arbitrariness in family relations and to their becoming a domain of latent offences, which have been neglected by the competent public authorities.

It should be noted that a number of public organisations have taken measures in Ukraine since the adoption of legal regulations governing relations in the family environment, thanks to the efforts of State and local authorities, which have contributed to significant changes in the formation of society to the problem of domestic violence, the establishment of a system for the rehabilitation of victims, the strengthening of the protection of children from domestic violence, etc. (Zaporozhtsev, Labun, Zabroda, Basystva, Drozdova, Bryzhyk, 2021, p. 9; Komarynska, 2021, p. 180).

However, the number of cases of domestic violence is not decreasing. This can also be explained by the fact that an increasing number of people, thanks to government programmes, information coverage and public concern, are aware of the dangers of such violence, not only for themselves, but also for other family members, due to their age or physical features.

For example, Deputy Minister of Internal Affairs of Ukraine Kateryna Pavlichenko noted that for 8 months of 2021, the National Police of Ukraine received more than 203,000 appeals on cases of domestic violence. For comparison, for the whole 2020 such appeals in Ukraine were more than 208 thousand. She stressed, however, that the data did not show that the incidence of domestic violence had increased or decreased. This is evidence that people have become more aware of this phenomenon, know how to recognize it and where to go for help (Official website of the Ministry of Internal Affairs, mvs.gov.ua).

These activities of both State and public organisations show how victims and witnesses of domestic violence can report it. The consequences of domestic violence are also widely exposed, that is, the murder of someone by the party to the conflict, such as human trafficking, deprivation of housing and other material goods, bodily harm of varying degrees of severity, which in turn causes disability and consequently deprives a person of access to basic needs, such as food, etc.

That is why, today, the issue of establishing a methodology for the investigation of criminal offences related to domestic violence is topical in the forensic science. However, as with most investigations of new criminal offences, there are a number of problematic aspects that lead to errors not only by the investigator, but also prevent the court from sentencing the perpetrator fairly.

At all stages of criminal proceedings, from the moment of obtaining information about a criminal offence to the adoption of a final procedural decision, the investigator uses the prosecutor's probable knowledge and assumptions about the event reflected in the versions. V.M. Hlibko, A.L. Dudnikov and V.A. Zhuravel claim that mental and procedural activity of the investigator takes place in conditions of unknown natural causal ties, traces destroyed or disguised, the perverted link between things and events, the distorted nature of the phenomena in some cases (Hlibko, Dudnikov, Zhuravel, 2001, p. 209). Considering this, scientific developments are of importance for optimizing the activities on construction and verification of versions. Theoretical developments on versions and their role in the implementation of criminal proceedings were presented in the works by prominent forensic scientists: R.S. Bielkin, V.O. Konovalova, A.A. Korchahin, I.M. Luzhin, A.R. Ratynov, V.F. Robozerov and others (Dufeniuk, Kuntii, 2015, p. 206).

2. Specificities of the methodology for the investigation of criminal offences related to domestic violence

The study of the materials of criminal proceedings for criminal offences related to domestic violence and consideration of the opinion of the employees of the National Police of Ukraine reveal that silence, concealment, omission, that is, both conscious and unconscious opposition to an investigation occurs at the first steps of the investigation. Unfortunately, according to the results of the survey of the National Police (92%), such resistance continues throughout the investigation. That is, even the victims, after providing seemingly complete information at the initial stage of the investigation, become alienated and refuse to cooperate with the investigator. Such circumstances demonstrate the need to consolidate, study and analyse problematic aspects of the identification and investigation of criminal offences related to domestic violence and to address ways of overcoming such opposition.

In order to establish an effective methodology for the investigation of criminal offences related to domestic violence, it is important to identify the problematic aspects of the investigation, that is, a thorough analysis of the problematic issues, arrising before the investigator in the detection of signs of unlawful conduct, in the collection and processing of evidence and forensic-relevant information in the planning and organisation of pre-trial investigation, as well as in the conduct of investigative (search) actions, is required. Moreover, this systematic approach shall enable to establish the causal links between these offences and to determine the most appropriate lines of investigation (Komarynska, p. 180).

The success of investigative actions is due to a set of actions that are components (aspects, elements) inherent in each investigative action.

A significant number of forensic scientists identify the following elements of investigative action: criminal procedure; moral and ethical; psychological; organisational and tactical. The organisational part includes actions that contribute to the most rational conduct of the investigation, its planning, preparation and conduct of investigative actions aimed at achieving the goals, the use of technical means, participants in investigation. The tactical part deals with actions aimed at solving the immediate tasks of the investigation, making tactical decisions and determining the timeliness of the investigative actions, assessment of the need to implement the planned activities in the light of the current investigation situation (Semenov, 2015, p. 246).

In order to achieve these goals, the investigator should understand the depth of the problem and its historical development.

For example, since the mid-1990s, measures to combat domestic violence have been actively introduced worldwide. In the post-Soviet area, the problem of domestic violence has been of interest since the late 1990s. Special legislation to counter it was adopted in Kyrgyzstan, Georgia, Moldova and Ukraine. Of course, there were reasons for the lack of development of ways to combat domestic violence in Soviet society: 1) The hidden nature of domestic violence was linked to the idealisation of the Soviet family; 2) The limited research on the range of domestic violence offences was due to the prevention of interference with the privacy identified with the family institute; 3) The Soviet family was subject to control and education and the State did not need to apply additional coercive measures of legal liability for violence, which did not fall under the elements of the crime; 4) For the Soviet legal ideology the development of the State was a priority, and the development of group cells, which included the family, was secondary; 5) The issue of family relations in the Slavic mentality was alienated to public supervision and interference (Topchii, Kyfliuk, 2019, p. 32).

In addition, T. Havronska, I. Krasnolobova, V. Bortniak, D. Bondar and A. Boiko conclude on the influence of political and religious traditions of the country that the level of violence against women and girls depends on the religion of the majority of the population in a given country. The highest levels of domestic violence are found in regions of the world where the majority of the population is Muslim, such as East Asia, South-East Asia, Africa (Havronska, Krasnolobova, Bortniak, Bondar, Boiko, 2021, p. 399).

According to V.V. Topchii and R.V. Kyfliuk, such circumstances are fundamental for the formation of family ideology in Ukrainian society as well. The stigmatisation of victims of domestic violence leads to their closure, to a feeling of being guilty of provoking criminal acts against themselves. Accordingly, in the course of an investigation, the person unknowingly opposes the investigation when the investigator attempts to ascertain, at a minimum, the systematic nature of the violent acts, etc.

3. Obstacles in the pre-trial investigation of criminal offences involving domestic violence

The results of the study of criminal proceedings and the survey of the investigators of the NPU reveal that the reasons for the obstacles encountered in the pre-trial investigation of criminal offences involving domestic violence can be grouped into:

The process of investigating criminal offences related to domestic violence is not limited to the investigation of only one type of crime, usually it is a certain chain of violent actions, which usually begin with psychological or economic violence and, over time, develop into more serious violent crimes manifested in physical and sexual violence (98% of respondents).

Alienation in communication between victims and the investigator. The victim's shame and the established perception that violence is a family matter and does not concern outsiders; the guilt; the hope of improving relationships; the fear of the loss of family and children hinder communication.

T.V. Ishchenko argues that 22% of respondents (56 people) said that one of the reasons why they did not report domestic violence to the police was threats and fear of retaliation from the offender (Ishchenko, 2020, p. 94).

3. Lack of awareness of victims about ways to avoid violence, about how to escape from the abuser.

Nowadays, this problem occurs mainly in small towns and villages (18%), where the victims are elderly and disabled (16%) and therefore cannot access the Internet or social services, to the police, or have a negative experience when they were denied help.

4. Lack of evidence. Generally, despite the prolongation of the violence, the victims are not aware of the ways how to record both the violent acts and their traces; fear that the perpetrator will notice or find photographs and videos of their actions.

Many scholars and the case law reveal that the lack of evidence of systematic domestic violence is a significant obstacle to justice.

The Association of Women Lawyers JurFem notes that it seems that one of the mandatory grounds for classifying actions under

article 126-1 of the Code is their systematic nature. However, article 126-1 of the Criminal Code of Ukraine does not contain a note that would explain the phrase "systematic commission of physical, psychological or economic violence", which leads to that the questions during application of this rule as to the classification of an act under article 126-1 of the CC of Ukraine in the context of "systematic commission". In particular, in the ruling of the Supreme Court of February 25, 2021, in case 583/3295/19, the court drew attention to the following: "The phrase "systematic commission of physical, psychological or economic violence" describes the actions. A criminal offence is considered completed from the moment of committing of one of three forms of violence (physical, psychological or economic) for the third time, resulting in at least one of the consequences specified in the law. It does not matter whether the first two acts of violence were reflected in the police administrative report, the restraining order or in another document. The fact of documentation is important for proof of systematisation, but not more than other legally provided proofs" (Zmysla, 2021).

5. Failure of the victim to recognize psychological or economic pressure as domestic violence. Usually, victims of psychological or economic violence consider themselves to be poorly educated, stupid, etc., so they are sure that the physical or sexual violence was started unexpectedly and had reasons.

For example, according to a study of criminal proceedings, 76% of the victims (mostly women) claimed that the men had married them and provided housing, so they were "demanding"; 22% lived after marriage in the husband and his family's house, so "had no right" to comment on the domestic situation; 57% of such women had no higher education.

In Ukraine, for a long time, economic violence was not considered as violence at all, and therefore was not discussed or investigated (either from the standpoint of impact assessment or from the standpoint of prevention and counteraction). Moreover, when voicing the problem of domestic violence, instead of receiving support, compassion and understanding of the situation, victims often hear: "This is their personal business". The situation is further complicated by the fact that significant part of the youth, according to the study (Molchan, 2016, p. 14), do not consider the deliberate deprivation of housing, food, clothing, other property or money as violence, consequently, there are prerequisites for the further spread of economic discrimination. However, it is the problem of money and its distribution in the family that causes 42% of misunderstandings between the partners (Shakhrai, 2006, p. 30; Botnarenko, 2021, p. 43).

6. Lack of adequate communication and cooperation between units of the National Police and between the police and social organisations such as guardianship and custody agencies, social service centres for families, children and young people, and social rehabilitation centres, medical and social rehabilitation centres, etc.

According to the survey of employees of pretrial investigation and the prevention units of the National Police, 74% of respondents indicated a low level of such cooperation.

7. Lack of investigation techniques for investigating the general and individual types of domestic violence and for the investigation of criminal offences involving domestic violence. 56% of employees of pre-trial investigation and the prevention units of the National Police say so.

8. Gender stereotypes among law enforcement officials.

O. V. Davydova notes that according to the results of the study by the Ukrainian Centre for Social Reforms on behalf of the UN Population Fund (UNFPA), with the assistance of the Department for International Development of the Government of the United Kingdom of Great Britain and Northern Ireland (UK DFID) revealed a fairly high male tolerance for domestic violence (for example, 18% of respondents justify physical violence in cases of adultery) and their bias against victims of sexual violence, often accused of provoking crimes by their behaviour or way of life (Davydova, 2021:80).

4. Conclusions

The above-mentioned problematic aspects determine the areas of improvement of existing and development of new methods of investigation of criminal offences, such as murder, rape, defilement, etc., but in case if they are committed as a result of domestic violence. After all, the completeness of the available evidence affects the investigator's success in modelling and understanding of the full picture of the event, that is, what happened and what the reasons of the criminal offence occurred were, what contributed to the formation of criminal intentions.

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ПРИЧИНИ ВИНИКНЕННЯ ПРОТИДІЇ РОЗСЛІДУВАННЮ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ ІЗ ДОМАШНІМ НАСИЛЬСТВОМ

Анотація. ***Мета***. Мета статті – проаналізувати практику розслідування кримінальних правопорушень, пов'язаних із домашнім насильством, визначити та систематизувати проблемні аспекти, що створюють протидію у встановленні всіх обставин події та отриманні доказової інформації.

Методологія. Для досягнення мети використано загальнонаукові методи пізнання, такі як аналіз, індукція, синтез, дедукція та моделювання, що своєю чергою дозволило виокремити проблемні

аспекти, що виникають на різних стадіях досудового розслідування, визначити причинно-наслідкові зв'язки, причини їх виникнення та шляхи їх подолання. Використання індукційного методу дозволило встановити повторювальний характер подій, що ускладнюють розслідування і на цій підставі в майбутньому вибудовувати напрями подолання протидії. Використання історичного методу дало можливість дослідження процесу формування протидії та створення проблемних аспектів під час досудового розслідування кримінальних правопорушень, пов'язаних із домашнім насильством.

Результати. Процес розслідування кримінальних правопорушень, пов'язаних із домашнім насильством, не обмежений розслідуванням лише одного виду злочину, зазвичай це певний ланцюг насильницьких дій, які зазвичай починаються з психологічного або економічного насильства і протягом певного часу переростають у більш тяжкі насильницькі злочини, що проявляються у фізичному та сексуальному насильстві. Наголошено на відсутності належної комунікації та взаємодії як між підрозділами Національної поліції, так і між поліцією та громадськими організаціями, такими як органи опіки та піклування, центри соціальних служб для сім'ї, дітей та молоді, соціально-реабілітаційні центри, центри медико-соціальної реабілітації тощо. Наукова новизна полягає в об'єднанні наукових досягнень та результатів практичної діяльності з питань розслідування та попередження домашнього насильства, яке буде слугувати основою в побудові методики розслідування кримінальних правопорушень, пов'язаних із домашнім насильством.

Висновки. Визначені групи основних проблемних питань, що виникають під час досудового розслідування кримінальних правопорушень, пов'язаних із домашнім насильством, дозволяють слідчому визначити ризики виникнення протидії розслідуванню, визначити найбільш оптимальну тактику слідчих (розшукових) дій.

Ключові слова: домашнє насильство, розслідування, кримінальне правопорушення, протидія розслідуванню.

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THEORETICAL AND LEGAL ASPECTS OF CLASSIFICATION OF SOCIAL GUARANTEES FOR PERSONNEL OF THE STATE SERVICE OF SPECIAL COMMUNICATION AND INFORMATION PROTECTION OF UKRAINE

Abstract. ***Purpose***. The purpose of the article is to classify social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine. Results. The article classifies comprehensively the institution of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine. The essence of the main conceptual-categorical elements of the relevant scientific issues is defined, and a meaningful and comprehensive analysis of the term "classification" in the context of the research subject, as well as its main elements and characteristics, is provided. It is proven that the institution of social guarantees in the structure of social providing of rights and freedoms of a person and a citizen, both public officials and civilians who are employed in state authorities, as well as persons with a special legal status (military personnel or in the presence of special ranks), holds a prominent place, enables to make work processes more effective by increasing the number of social benefits that a person receives while in employment. The statement that classification of social guarantees of personnel of the State Service of Special Communication and Information Protection of Ukraine from the theoretical and practical perspective enables their effective practical implementation and comprehensive characterisation of the existing problem with the purpose of establishing the basic principles of legal realisation is justified. It is noted that further research should consider in detail and substantially the basic characteristics and components of the range classified according to certain criteria of types of social guarantees of personnel of the State Service of Special Communication and Information Protection of Ukraine. Conclusions. It is revealed that the issues related to the classification of social guarantees are considered by scientists differently, given that they require additional scientific substantiation. Therefore, the existing researcher's perspectives and interpretation of individual types of these social guarantees enable to form an idea of the process of social guarantees classification as planned and thoughtful, objectively determined process of distribution of all available types (forms) of social guarantee (security) according to the set of certain criteria, the nature of influence on social relations and other group factors.

Keywords: guarantees, State Service of Special Communications and Information Protection, rights and freedoms, implementation, social rights, classification.

1. Introduction

The study of the institution of social security of persons employed is very relevant, because it is one of the democratic and most effective tools of support in the structure of benefits. A significant part of the expenses of a person can be reduced precisely by receiving certain privileges or reduction of the basic cost of a certain service/product or in the usual way, by increase of the share of the received remuneration by a certain percentage, allowing for a number of factors.

Today, the system of social guarantees in the structure of social security of personnel

of the State Service for Special Communication and Information Protection of Ukraine should become one of the priority areas of research. This issue needs to be optimised in accordance with time requirements and with consideration of suggestions for its improvement.

The importance of social security for personnel of the State Service of Special Communications and Information Protection of Ukraine should be underlined due to a number of specific duties in the field of special communication and information protection, as it is an actor of the defence and security sector, a principal actor of the national cyber security system, which coordinates the activities of cyber security entities in the cyber defence sector, and a communications administrator (Law of Ukraine On the State Service of Special Communications and Information Protection of Ukraine, 2006). Considering the current operating conditions of the security and defence sector, the urgency of the need to increase social status in general, especially by guaranteeing, in particular for certain categories of employees, the topic is timely and relevant.

The above-mentioned, in our deep conviction, forms a number of theoretical and legal, practically oriented foundations of social guarantee of personnel of the State Service of Special Communication and Information Protection of Ukraine, determining the necessity to substantiate approaches to its classification.

The purpose of the article is to classify social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine. The goal set requires fulfilment of a number of research tasks, such as: 1. To characterise the content and essence the concept of classification in law, including from the perspective of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine; 2. To classify the current theoretical constructions providing a short legal characteristic of the types included; 3. Relying on the formed idea about the structure of classification of these social guarantees and main problematic aspects of their implementation, to propose possible ways of their solution.

The object of the article is public relations in the field of guaranteeing rights and freedoms of man and of the citizen to employees (officials) of the state authorities of Ukraine.

The subject matter of the study is the approaches to classification of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine.

2. The essence and content of social rights

Classification as a process of grouping a number of social and legal phenomena according to certain group criteria implies understanding of its deep processes and requires short legal characteristics allowing for the provisions of Ukrainian legislation.

Relying on the analysis of the issues related to the guarantee of social rights and considering the provisions of studies by authoritative theorists of law, L. Tereshchenko emphasises that they are rights of the second generation, which began to form in the process of struggle of people for improvement of their socio-economic situation and cultural level. These requirements were legislated after World War I, though they affected the democratisation and socialisation of the constitutional law of the countries of the world and international law after World War II, when the rapid development of production created real preconditions for meeting the social needs of citizens (Tereshchenko, 2011). Accordingly, such broad and complex support creates the actual conditions for typology and specification of all likely forms of social security, in particular guarantee.

However, the content and essence of the concept of social rights are determined by scientists differently. In addition, this category is a substantial and "substantive" element in the system of social security. It should be noted that social rights are the possibilities of a citizen to be a full-fledged participant in social relations and to be provided with the necessary conditions for development and existence (Bolotina, 2005). According to the Constitution, the right to work, strike, rest, social protection, housing, adequate living standards, health care, medical care and health insurance are among the most common types of social rights, which in turn are guaranteed by a number of regulations of Ukrainian legislation, along with the Constitution (without any doubt relying on its basic provisions) (Constitution of Ukraine, 1996). Such pluralism of rights and freedoms of social orientation, first of all, creates grounds for their classification into several types by a combination of characteristic features that can affect the degree and their influence on social relations in general, the kind of welfare.

Therefore, social guarantees are an integral element of the institution of rights and freedoms of man and of the citizen, which, according to the researchers, is an objective essential element of the system of social welfare. They are a material implementation of the state's duties to support human welfare at a level that allows for economic opportunities and is

minimal from the point of view of society (Golovinov, Horozhankina, Dmytrychenko, 2004). Since the welfare system in the country is rather scattered, and the issues of social security are complex and meaningful, we believe that one of the most important criteria of this process is the regulatory mechanism, i.e., the clear definition of these guarantees in the structure of the Ukrainian legislation (also covers observance of legitimacy) and the rule of law as a basic pillar of any social comprehensive process.

The legitimacy and rule of law in this context are related to the fact that this social phenomenon inherent in our society is in line with its traditions and is reflected in the legislation of Ukraine, that is, a specific legal regulation, which derives from law as a form of streamlining of social relations (Kurakin, Romanov, 2015).

In addition, the social guarantees of military personnel, as well as their social security in general, differ significantly from other types of social guarantees, primarily because of the specific legal status, which allows to justify the position on their uniqueness in the given research vector, as well as the need for deeper regulatory mechanism through the prism of classification and fragmentary strengthening of individual elements of the corresponding system of providing servicemen with various benefits.

According to S. Sytniakivska, social and legal security of military personnel is the activity of the state aimed at establishing a system of legal and social guarantees that ensure the realisation of constitutional rights and freedoms, meet material and spiritual needs of military personnel according to their special service activity, status in society, maintain social stability in the military environment (Sytniakivska, Khlyvniuk, 2014). In addition, scientists frequently identify, within the framework of the institution of social security, areas by purpose, as follows: those aimed at improving social security of existing military personnel, allowing for responsibilities of their position, as well as those aimed at covering the basic expenses, in particular treatment – in case of complete, partial or temporary loss of working capacity, as well as in other cases provided by law.

3. The content of state social guarantees

Describing state social guarantees, N. Baranova emphasises their comprehensiveness and meaningfulness, because they are material and legal means that ensure the realisation of constitutional socio-economic and social-political rights of members of society (an enabling environment for their life, interests, various links and relations, functioning and development of the social system in general) (Baranova, Novikova, 2010).

The essence of the category "State social guarantees" can be understood as the minimum wages, incomes of citizens, pension provision, social assistance, other types of social payments, established by laws and other legal regulations, which ensure the standard of living not lower than the subsistence level (Vasylyk, 2000). Therefore, one of the classification criteria of this process is the type of social security, literally, what kind of benefit is given to the person, what its nature and content are.

D. Makovskyi argues that personnel of the State Service of Special Communication and Information Protection of Ukraine are also covered by social guarantees. Moreover, these persons, according to the official schedule and positions, are directly military personnel (Makovskyi, 2021). The complexity and specificity of the relevant legal status requires to classify the types of social guarantees, in particular for their effective provision and legal realisation of the opportunities provided by the legislation by the specified subjects.

For example, according to the Law of Ukraine "On the State Service of Special Communication and Information Protection of Ukraine", social and legal security of public officials and other employees of the State Service of Special Communication and Information Protection of Ukraine is provided on general grounds in accordance with the legislation on labour and public service. The social and legal security of military officers of the State Service for Special Communication and Information Protection of Ukraine and members of their families is carried out in accordance with the Law of Ukraine "On social and legal security of military personnel and members of their families" (Decree of the President of Ukraine On the Concept of Reforming the State Service of Special Communications and Information Protection of Ukraine, 2021) and other laws. In particular, the state guarantees them financial and other support in the amount that stimulate interest in the military service (pecuniary, material support). This Law also provides for the procedure for the right of military personnel to rest, the procedure for basic and additional holidays, free medical care and sanatorium treatment and rest, as well as the procedure for housing (Makovskyi, 2021). Therefore, the positions of domestic researchers and scientists allow to assert that the classification in the system of social guarantee takes a key place, determining the main trends in legal realisation of the relevant regulatory

provisions, relying on a number of typical categories grouped according to the set of characteristic features of.

4. Conclusions

Therefore, relying on the perspectives of the researchers through the prism of the characteristics of the concept and content of the institution of social guarantee, in particular, the guarantee of social rights for personnel of the State Service for Special Communication and Information Protection of Ukraine, as well as the approaches to typology and specification of the relevant social guarantees, it is established that the latter plays a key role in the legal realisation processes, due to greatly simplified access to relevant social benefits.

Moreover, the issues related to the classification of social guarantees are considered by scientists differently, given that they require additional scientific substantiation. Therefore, the existing researcher's perspectives and interpretation of individual types of these social guarantees enable to form an idea of the process of social guarantees classification as planned and thoughtful, objectively determined process of distribution of all available types (forms) of social guarantee (security) according to the set of certain criteria, the nature of influence on social relations and other group factors.

It is proved that social guarantees of personnel of the State Service for Special Communication and Information Protection of Ukraine can be classified by: the actor of their realisation; the object, on which they are targeted; the type of the benefit (monetary, material) received; the type of object of provision (state official, military service, a freely hired person).

Further research should consider substantially the approach to the classification of these social and legal processes, as well as well as the main problematic issues related to the legal realisation of the relevant institution.

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ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ КЛАСИФІКАЦІЇ СОЦІАЛЬНИХ ГАРАНТІЙ ОСОБОВОГО СКЛАДУ ДЕРЖАВНОЇ СЛУЖБИ СПЕЦІАЛЬНОГО ЗВ'ЯЗКУ ТА ЗАХИСТУ ІНФОРМАЦІЇ УКРАЇНИ

Анотація. ***Мета***. Метою статті є класифікація соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України. Results. Статтю присвячено комплексній характеристиці інституту соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України. Визначено сутність основних понятійно-категоріальних елементів відповідної наукової проблематики, надано змістовний та вичерпний аналіз терміна «класифікація» в контексті предмета дослідження, а також його основні елементи й характеристики. Доведено, що інститут соціальних гарантій у структурі соціального забезпечення правами і свободами людини та громадянина як державних службовців і цивільних осіб, що перебувають у трудових відносинах з органами державної влади, так й осіб зі спеціальним правовим статусом (військовослужбовців чи за наявності спеціальних звань), посідає чільне місце, уможливлює ефективізацію процесів у праці шляхом збільшення кількості соціальних благ, які отримує особа під час перебування в трудових відносинах. Обґрунтовано положення, згідно з яким класифікація соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України з теоретико-прикладної точки зору уможливлює їх ефективнішу практичну реалізацію та дозволяє комплексно схарактеризувати наявну проблематику з метою встановлення основних закономірностей правореалізації. Зауважено, що перспектива подальших наукових пошуків полягає в необхідності більш фрагментарного та суттєвого опрацювання основних характеристик і складових кола класифікованих за певними критеріями видів соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України. Conclusions. З'ясовано, що питання, пов'язані з класифікацією соціальних гарантій, вчені розглядають неоднозначно, з огляду на що вони потребують додаткового наукового обґрунтування. Водночас наявні позиції і тлумачення дослідників окремих видів відповідних соціальних гарантій дозволяють сформувати уявлення про процес класифікації соціальних гарантій як планомірний і зважений, об'єктивно зумовлений процес розподілу всіх наявних видів (форм) соціального гарантування (забезпечення) за сукупністю певних критеріїв, характером впливу на соціальні відносини й інші групові фактори.

Ключові слова: гарантії, держспецзв'язку, права і свободи, реалізація, соціальні права, класифікація.