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THE INSTITUTE OF GUARDIANSHIP AND CUSTODY IN UKRAINE AND EUROPEAN COUNTRIES

Abstract. Purpose. The study of the legal nature and peculiarities of establishing guardianship and custody for orphans, children deprived of parental care, disabled and legally incapable individuals in Ukraine, as well as the analysis of European legislation governing these social relations, is relevant today.

Guardianship and custody are the most common form of childcare in the world and Ukraine. The emergence of guardianship and care as an institution is due to the fact that children are violated of the rights, freedoms and legitimate interests of parents, families, families who perform improperly or do not perform their duties at all.

Guardianship and custody are an institution not only of civil but also of family, administrative, civil-procedural law, which regulates such categories of relations as incapacitated and partially incapacitated individuals, as well as orphans and children deprived of parental care.

The aim of the article is to analyze the legal regulation of the institution of guardianship and custudy in Ukraine and European countries, particularly, France, Germany and Great Britain; provide proposals for improving Ukrainian legislation, borrowing and implementing the experience of these countries.

Undoubtedly, bringing the legislation of Ukraine in line with international law is a positive result, but today, according to statistics, the situation in the field of guardianship is deteriorating every year, and therefore protection and restoration of rights, freedoms and legitimate interests of orphans, children, deprived of parental care, partially able-bodied and incapacitated individuals in Ukraine needs better regulation.

Purpose. Analyzing and comparing legislations and specific characteristics of the European countries mentioned is the aim of the study.

Research methods. The empirical basis of the original study is the modern civil legislation of Ukraine, as well as the legislation of European countries.

Analysis of recent research and publications. The theoretical basis of the study is the work of domestic and foreign experts in the field of Roman private law, civil law, general theory of law, and more. Among them, first of all, it is necessary to name contributions of jurists from Ukraine and Russia: D. Azarevych, S. Alekseeva, C. Azimov, D. Bobrov, V. Borisov, O, Dzera, A. Dowgert, N. Dyachkova, I. Zhilinkova, O. Ioffe, O. Nevzgodina, O. Krasavchikova, H. Kuznetsova, I. Novitsky, Z. Romovska, V. Ryzasantseva, O. Pidoprigora, N. Saniakhmetova, Y. Kharitonova, Y. Chervonyy, B. Cherepakhina, Y. Shevchenko, I. Shereshevsky, and others.

The empirical basis of the study of the original source is the modern civil legislation of Ukraine, as well as the legislation of European countries.

Results. Following the cases of such European countries like France, the Federative Republic of Germany, and the United Kingdom, the efforts of the article's authors result in highlighting, uncovering, and implementing some of their features into Ukrainian legislation to improve institute of guardianship and custody in our state.

Conclusions. The regulation of the institution of guardianship and care in European countries has many features, original legal rules that give grounds to conclude on the implementation of specific positive developments in France, Germany, Great Britain in civil law for Ukrainian science, as well as improving legislation and application in the Ukrainian legal space.

Key words: guardianship, care, European countries, France, Germany, the United Kingdom.

1. Introduction.

The development of family forms of education is a priority of the state for orphans and children deprived of parental care. At the end of 2020, almost 70,000 children were registered as orphans and children deprived of parental care. Last year, 9,634 children were orphaned. Thus, 10 074 children were arranged in a family of citizens of Ukraine during the year (guardianship - 6929, foster families, an orphanage of family type - 1906, adopted by Ukrainians - 992, foreigners - 247). In general, family forms of education cover about 64 thousand children, which is 92.2% of the total number of such children. As of December 31, 2020, there were 1,235 family-type orphanages and 3,172 foster families in Ukraine. It does not matter that the number of foster families is decreasing (compared to 2019 by 174 families), and orphanages are increasing (compared to 2019 by 82 families). The total number of children raised in these families is growing. At the end of 2020, the total number of children in the FF, orphanage of family type was 14,516, which, compared to 2019, more than 458 children (Kabinet Ministriv Ukrainy, 2021).

2. The legislation of Ukraine

Guardianship and custody are established in order to ensure the personal non-property and property rights and interests of minors, minors, as well as adults who, due to their health status, cannot independently realize their rights and execute their duties (Tsyvilnyi kodeks Ukrainy, 2003).

It should be noted that there is no specific definition of both guardianship and custody in the Civil Code of Ukraine (hereinafter - the CCU), the Family Code of Ukraine etc. However, Article 1 of the Rules of Guardianship and Custody, registered with the Ministry of Justice of Ukraine, states that guardianship (custody) is a special form of state care for minor children deprived of parental care and adults in need of assistance to ensure their rights and interests (Nakaz Derzhavnoho komitetu Ukrainy u spravakh simi ta molodi pro Pravyla opiky ta pikluvannia, 1999).

Comparing the legislation of Ukraine and European countries, we should pay attention to the most important, essential and special rules, that are, undoubtedly, available in each abovementioned Western European country.

Guardianship is established over minors who are orphans or deprived of parental care, and individuals whose civil capacity is limited. Regarding the appointment of a guardian or trustee, Art. 63 of the CCU defines cases, namely: a guardian or trustee is appointed by the body of guardianship and trusteeship, except in cases where the court establishes guardianship and trusteeship; a guardian or trustee can only be a natural person with full civil capacity; an individual may be appointed a guardian or trustee only upon his / her written application; guardian or trustee is appointed mainly from persons who are in a family relationship with the ward, taking into account the personal relationship between them, the ability of the person to perform the duties of guardian or trustee; when appointing a guardian for a minor and when appointing a guardian for a minor, the wishes of the ward shall be taken into account; an individual may be assigned one or more guardians or trustees.

It is equally important to point out that there are certain categories of individuals who cannot be guardians or trustees. These are individuals who are deprived of parental rights if these rights have not been restored; whose behavior and interests are contrary to the interests of an individual in need of guardianship or custody (Article 64 of the CCU).

If an individual who suits the above standards has decided to become a guardian, a person has certain rights and responsibilities: the obligation to take care of the ward, to create the necessary living conditions, care and treatment; to take care of the upbringing, education and development of a minor; the right to demand the return of a ward from persons holding him without legal grounds; makes transactions on behalf of and in the interests of the ward; take measures to protect the civil rights and interests of the ward (Article 67 of the CCU).

The guardian is not an exception to certain rights and responsibilities: he/she is obliged to take care of the creation of the necessary living conditions, education, training and development of a minor; to take care of treatment, creation of necessary living conditions for an individual whose civil capacity is limited; agrees to the commission of transactions in accordance with Articles 32 and 37 of the CCU; take measures to protect the civil rights and interests of the ward (Article 69 of the CCU).

The legislator has set restrictions on the performance of transactions by guardians and trustees. With regard to guardians, it is prohibited

to enter into contracts with the ward, except for the transfer of property to the ward in the property under the contract of gift or in gratuitous use under the loan agreement; may not make a donation on behalf of the ward, as well as undertake on his behalf a guarantee (Article 68 of the CCU). As for the guardian, it is prohibited to consent to the conclusion of agreements between the ward and his wife (husband) or close relatives, except for the transfer of property to the ward in the property under a gift agreement or free use under a loan agreement (Article 70 of the CCU).

The institute of guardianship and care also includes the relevant or special tutorship and guardianship agency. For example, educational institutions, health care institutions or social protection institutions, etc. If no guardianship or trusteeship has been established over an individual or a guardian or trustee has not been appointed, this institution shall provide guardianship or trusteeship over person.

Particular attention is paid to the issue of property in relation to the person under guardianship, namely: the obligation of the guardian to take care of the preservation and use of the ward's property in his interests; if a minor can independently determine his needs and interests, the guardian, when managing his property, have to take into account his wishes; and it is noted that the guardian independently incurs the costs necessary to meet the needs of the ward, through pensions, alimony, compensation for loss of a breadwinner, care allowance and other social benefits assigned to the ward in accordance with the laws of Ukraine, income from the ward's property, etc. (Article 72 of the CCU); if the person under guardianship or trusteeship has property located in another locality, guardianship over this property shall be established by the body of guardianship and trusteeship at the location of the property; guardianship over property is also established in other cases established by law (Article 74 of the CCU).

Article 76 of the CCU states that guardianship is terminated in such cases as: in the case of transfer of a minor to parents (adoptive parents); if the ward reaches the age of fourteen, i.e., the person who performed the duties of guardian, becomes a guardian without a special decision in this regard; in case of restoration of civil capacity of a natural person who has been declared incapable. Article 77 of the CCU stipulates that guardianship ceases when an individual reaches the age of majority; registration of a minor's marriage; granting a minor full civil capacity; restoration of civil capacity of a natural person whose civil capacity was limited.

3. The legislation of the French Republic

The issue of guardianship and custody in France is regulated by the Civil Code, namely Volume 1, Chapter 2, Title X of the French Civil Code [4]. According to Article 17 of Order № 2015-1288 as of 15 October 2015, the article entered into force on 1 January 2016 states that the legal administrator represents minors in all acts of civil life, except where the law or custom allows minors to act independently.

The French Civil Code (hereinafter - the FCC) distinguishes between acts-orders and administrative actions on the property of a minor. Acts of administrative (managerial) actions do not pose an unjustified risk to the heritage and do not change its nature. One or the other parent or both parents may perform administrative actions without the need for permission from the judge's guardianship authority. The permission of the guardianship court must be obtained in case of disagreement between the parents; for a number of acts of retirement established by law (Article 388-1-1 of the FCC). Among the acts of the provision that requires the permission of the guardianship authority: obtaining a loan on behalf of a minor, waiver of rights or real estate, etc.

Guardianship is established when the father and mother have died or are deprived of parental rights. In addition, it may be established in respect of a child whose origin has not been established. However, the code states that this should not affect specific laws governing the social assistance service for children (Article 390 FCC). If the child comes to be recognized as one of his parents after the establishment of guardianship, the guardianship judge may, at the request of the father, decide to replace the legal administration of guardianship (Article 392 FCC). Guardianship ends with the emancipation of a minor or by age. It also ends in the event of the death of a person (Article 393 of the FCC).

Certain requirements are provided for the person of the guardian and his activities in Articles 395, 396 of the FCC. In Art. 397 states that it is the family council that decides on the removal and replacement of guardians, and the court takes care of the family council itself, the issues that interest them. The judge may, if he deems it necessary, take precautionary measures in the interests of the juvenile.

In accordance with article 398 FCC, even if there is a testamentary guardian, guardianship is established by the family council. The Family Council consists of, at least, four members, including a guardian and a supervisory guardian, but not a judge (Part 2 of Article 399 of the FCC). The members of the family council may be the parents and relatives of the father

and mother of the minor and any person living in France or abroad and showing interest in the child.

The personal right to choose a guardian, from relatives or outsiders, belongs only to the parents who died last, if he exercised legal authority or guardianship before the day of his death. This right can be exercised only in the form of a will or special statement in the presence of a notary. A guardian appointed by the father or mother is not obliged to accept guardianship (Article 403 of the FCC).

Pursuant to Article 411 of the FCC, if guardianship remains vacant, the guardianship court have to apply to the relevant state body for social assistance to children. In this case, the supervisory board has no family or guardian-observer.

4. The legislation of the Federal Republic of Germany.

The civil law of modern Germany continues to differ in completeness and logical sequence of legal requirements. As for guardianship and care, both of these institutions are provided for in a separate part 3 of Book 4 of the Code (hereinafter - GCC) (German civil code, 1896; Aleksandra Matveevna Nechaeva, 2011).

Pursuant to § 1789, a guardian is appointed by the guardianship court with the obligation to execute guardianship honestly and conscientiously. Moreover, the imposition of this duty is confirmed in the form that replaces the oath. At the same time, the GCC draws attention to cases of custody by the court in matters of custody on one's own initiative (§ 1774), for example, when measures taken by the court to resolve family disputes proved ineffective.

Choosing a guardian, the guardianship court must select a person who, by his personal qualities and property, is able to perform the duties of a guardian (§ 1779 (2)). Another duty of the court is to hear the relatives or friends of the ward, "if it is possible without significant delay or inadequate expenses" (§1779 (3)). Every German is obliged to assume the guardianship duties for which he has been chosen by the guardianship court (§ 1786 GCC) if there are no reasons to justify his reluctance. A detailed list of such reasons is contained in § 1786, entitled " The right to refuse ". In case of unreasonable refusal to be a guardian, the person is still, but temporarily, obliged to be a guardian. In addition, the guardianship court has the right to the person chosen by the guardian, until the adoption of the duties of guardianship by imposing a fine. " It can be applied at intervals of at least one week. However, no more than three fines may be imposed.

The provisions of the German Civil Code provide for the appointment of several different guardians for joint guardianship, and in case of disagreement between them, the decision is made by the guardianship court; also gives parents the right to mention it in their will; allows parents to nominate their guardian. Moreover, this candidacy may be replaced without the consent of the person called to guardianship, only in certain cases listed in § 1778.

Another feature of the German Civil Code is the consultation of guardians by the guardianship court (§ 1837 (1)). The court may also compel the guardian and the supervising guardian to comply with court orders by imposing fines, but no fine should be imposed on the youth department or association. These include the duty of the guardian and the supervising guardian at any time, at the request of the guardianship court, to provide him with information "on the exercise of guardianship and on the personal relations of the ward".

The German Civil Code has a fairly comprehensive coverage of issues related to the care of minors. As for caring for them, chap. 3 books 4 as a supplement provides for "special care" (§ 1909), which states: "A person who is subject to parental care or guardianship is appointed a guardian in matters that cause difficulty for the parents or guardian." In particular, a trustee is appointed to manage property that the person acquires in the event of someone's death or that will be provided free of charge by a third party under agreements between the living, if the testator has a testamentary disposition and the third-party property. Special guardianship "should also be established if there are conditions for the appointment of guardianship, but a guardian has not yet been appointed" (§ 1903). Custody is also assigned to a conceived child in order to respect his or her future rights to the extent that those rights require protection (§ 1912 (1)).

It should be noted that there is no similarity between the concepts of "guardianship" and "care" of minors between the German Civil Code and the Family Code of Ukraine.

5. The legislation of the United Kingdom

Guardianship issues are regulated in the United Kingdom by the Guardianship of Minors Act 1971, the Guardianship Act 1973, and the Child Care Act 1980 (Child Care Act, 1980; Guardianship Act, 1973; Guardianship of Minors Act, 1971).

Guardianship is defined in the Guardianship Act 1973 as an established system of measures aimed at protecting the personal and non-property rights of minors (Child Care Act, 1980).

Guardianship is established by a court decision in cases where a minor has lost his parents or they are deprived of parental authority. Upon reaching the age of majority (coming of age

when the child reaches the age of 18), guardianship is terminated, except in cases where an adult is declared incapacitated due to mental illness (Guardianship Act 1973).

The guardian is called to take care of the minor's personality, upbringing and education, manage his property and represent the interests of the ward.

In the UK, custody cases are handled by magistrates, but their decisions are subject to appeal in the Family Division of the High Court.

It should be noted that English law follows the recommendation of the European Court of Human Rights, which has repeatedly pointed out that the care of the child by public authorities should be considered a temporary measure until the family is restored. The United Kingdom is an example of a state that cares for the family, reasonably combining the principle of non-interference in the affairs of the family, and in case of violation of the rights of its members, uses effective means to protect the rights of both children and parents.

6. Conclusions

In addition to adoption, guardianship and custody, the most common legal forms of placement and upbringing of orphans and children deprived of parental care in Ukraine are family-type orphanages and foster families. Their creation and operation are aimed at ensuring the possibility of the child's right to grow up in a family environment are acceptable for the full development of orphans and are closest to raising a child in a biological family.

In accordance with the statistics mentioned above, problems in the field of guardianship and care exist and worsen every year. It is necessary to point out certain significant shortcomings, namely: the conceptual apparatus (for example, the concept of guardianship and care is not in the Civil, Family Codes of Ukraine); the delimitation of the competence of executive bodies and local self-government bodies in the exercise of guardianship and trusteeship in the current legal acts is not clear enough; public participation in solving issues and tasks of guardianship and care is not provided; also, the certainty of the legal status of the wards and the responsibility of guardians and trustees is not thoroughly spelled out, etc.

Specific proposals for improving Ukrainian legislation in the field of guardianship and custody may be the adoption of a separate law aimed at specifying and expanding the rules, powers and improving the position of guardians and trustees during the establishment, change and termination of these legal relations.

In particular, it will be useful to study the choice of guardian in France. The legislation of this country states that it is the family council that decides on the removal and replacement of guardians, and the court takes care of the family council itself. The judge may, if he deems it necessary, take precautionary measures in the interests of the juvenile. This is a very positive thing, because the family council can probably choose a guardian for the child better than anyone else. After all, members of the family council can be the child's parents and relatives or any other person.

It is worth noting the peculiarities of the establishment of care in Germany. The guardian is appointed in cases that cause difficulties for the parents or guardian. In particular, the trustee is appointed to manage the property that the ward has acquired. Perhaps, such a model of the division of guardianship and care could work well in our state. A guardian would be appointed for the child from birth to 18 years of age, and custody would be considered as an ancillary function to parents or guardians (Ianitska I. A., 2016, pp. 175-182).

In general, the state needs to encourage the creation of foster families, family-type orphanages, as well as the birth of children, borrowing the experience of Germany, by providing tax benefits that could significantly improve the situation in the field of guardianship and care.

The experience of Great Britain in the field of guardianship and care should be considered and applied, namely the regulatory Standards of child rearing in foster families, family-type orphanages, family institutions of children deprived of parental care.

Summarizing the above, the regulation of the institution of guardianship and care in European countries has many features, original legal rules that give grounds to conclude on the implementation of specific positive developments in France, Germany, Great Britain in civil law for Ukrainian science, as well as improving legislation and application in the Ukrainian legal space.

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ІНСТИТУТ ОПІКИ ТА ПІКЛУВАННЯ В УКРАЇНІ ТА ЄВРОПЕЙСЬКИХ КРАЇНАХ

Анотація. Актуальним сьогодні є дослідження правової природи та особливостей встановлення опіки та піклування над дітьми-сиротами, дітьми, позбавленими батьківського піклування, обмежено дієздатними та недієздатними фізичними особами в Україні. Опіка та піклування є найбільш поширеною формою турботи за дітьми як у світі, так і в Україні. Поява опіки та піклування як інституту зумовлена тим, що діти зазнають порушення прав, свобод та законних інтересів з боку батьків, родини, сім'ї, які виконують неналежним чином або зовсім не виконують покладені на них обов'язки. Опіка та піклування є інститутом не тільки цивільного, а й сімейного, адміністративного, цивільно-процесуального права, які регулюють категорію відносин недієздатних та обмежено дієздатних фізичних осіб, а також дітей-сиріт та дітей, позбавлених батьківського піклування. Безперечно, приведення законодавства України у відповідність до міжнародних норм права є позитивним результатом, але сьогодні, з огляду на статистику, ситуація у сфері опіки та піклування погіршується щорічно, а тому захист та відновлення прав, свобод та законних інтересів дітей-сиріт, дітей, позбавлених батьківського піклування, обмежено дієздатних та недієздатних фізичних осіб в Україні потребує кращого щодо нормативного забезпечення. Метою статті є аналіз правового регулювання інституту опіки та піклування в Україні та країнах Європи, зокрема Франції, Німеччини та Великобританії; пропозиції щодо вдосконалення українського законодавства, запозичення та впровадження досвіду цих країн.

Мета. Метою дослідження є аналіз та порівняння законодавства, особливостей зазначених європейських країн.

Аналіз останніх досліджень і публікацій. Теоретичною основою дослідження є праці вітчизняних та зарубіжних фахівців у галузі римського приватного права, цивільного права, загальної теорії права тощо. Серед них, передусім, треба назвати праці правознавців України та Росії: Д.І. Азаревича, С.С. Алексєєва,Ч.Н. Азімова, Д.В. Боброової, В.І. Борисової, О.В. Дзери, А.С. Довгерта, Н.А. Д'ячкової, І.В. Жилінкової, О.С. Іоффе, О.Л. Нєвзгодіної, О.О. Красавчикова, Н.С. Кузнєцової, І.Б. Новицького, З.В. Ромовської, В.О. Рясенцева, О.А. Підопригори, Н.О. Саніахметової, Є.О. Харитонова, Ю.С. Червоного, Б.Б. Черепахіна, Я.М. Шевченко, І.В. Шерешевського та ін. Емпіричним підґрунтям дослідження першоджерела є сучасне цивільне законодавство України, а також законодавство європейських країн.

Результати. Прагнення авторів статті на прикладах таких європейських країн, як Французька Республіка, Федеративна Республіка Німеччина, Велика Британія, висвітлити, розкрити та імпле-

ментувати деякі з цих особливостей в українське законодавство з метою вдосконалення інституту опіки та піклування в нашій державі.

Висновки. Регулювання інституту опіки та піклування в європейських країнах має багато особливостей, оригінальних правових норм, які дають підстави зробити висновок про впровадження конкретних позитивних для української науки напрацювань Франції, Німеччини, Великої Британії у цивільне право, а також удосконалення законодавства та застосування в українському правовому просторі.

Ключові слова: опіка, піклування, європейські країни, Франція, Німеччина, Велика Британія.

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GROUNDS FOR CLOSING PROCEEDINGS IN THE BANKRUPTCY (INSOLVENCY) CASE OF A LEGAL ENTITY UNDER THE UKRAINIAN AND GERMAN LEGISLATION

Abstract. ***The purpose*** *of the article* is to reveal the particularities of the application of grounds for closing proceedings in the case of bankruptcy (insolvency) of a legal entity under the laws of Ukraine and Germany.

Research methodology. During the research, dialectical, formal-logical, comparative-legal and logical-legal methods of cognition were used.

The results. The grounds for closing proceedings in the case of bankruptcy of a legal entity were analyzed and characterized, and their differentiation into two groups was carried out. Collisions in the legislation on bankruptcy in the part of closing proceedings in relation to a legal entity were identified, and ways of improving the legislation in this part were suggested. The grounds for closing insolvency proceedings under German law are described.

Conclusions. It was proposed to divide the grounds for closing the bankruptcy proceedings, which are enshrined in Art. 90 of the Bankruptcy Code of Ukraine, into two groups. Those groups are the following: 1) the grounds that counteract the progress of the bankruptcy case; 2) the grounds that are a result of a resolution of the debtor's insolvency.

It has been proven that the appliance of such grounds for closing proceedings as «in other cases provided by law» leads to a contradictory judicial practice and complicates the work of both law enforcement bodies and participants of the legal relations. In this regard, it is proposed that «such cases» should not be scattered in different laws, but conversely, should be found directly in the Bankruptcy Code of Ukraine, for instance, in its Final and Transitional Provisions. For this purpose, it is proposed to change Clause 9, Part 1 of Art. 90 of the Bankruptcy Code of Ukraine.

It was established that, unlike the Ukrainian legislation, in German legislation, the closure of insolvency proceedings does not release the debtor from all monetary claims of creditors. In this aspect, German insolvency law is mostly similar to the competitive process of the Ancient Rome, since in these two cases, the debtor's debts were not forgiven.

Key words: bankruptcy, debtor, closure of proceedings, creditors, insolvency.

1. Introduction

Changes in the legal regulation of the insolvency relations are a natural phenomenon, since the development of social relations objectively requires revision of the procedures and mechanisms laid down in the legislation. Ukraine is not an exception, having obtained the first codified bankruptcy act - the Code of Ukraine on Bankruptcy Procedures (hereinafter the Bankruptcy Code of Ukraine, The Code), which entered into force in 2019. Domestic scientists rightly note: «The dynamism of the development of Bankruptcy legislation is inherent not only in the national legislation of Ukraine. It serves as a characteristic feature of the genesis of national legislation of the dominant majority of countries in the world, including the European legal area» (Patsuriia, Radzyviliuk, Reznikova, Kravets & Orlova, 2018, p. 242).

The closure of bankruptcy (insolvency) proceedings is the final stage of the competitive process. The Bankruptcy Code of Ukraine devote the entire chapter VI of the Book Three, which solely consists of one article – 90, to the issue of closing proceedings in the case of bankruptcy of legal entities (Verkhovna Rada

of Ukraine, 2019). Along with this, the legislator divided the grounds into those on which the proceedings could be closed at all stages (before and after the debtor is declared bankrupt), could be closed only before the debtor is declared bankrupt, and could be closed only after the debtor is declared bankrupt. However, as the practice of applying the provisions of this article shows, there are currently inaccuracies in the legal constructions established by the legislator.

In this part, the insolvency legislation of Germany sparks a scientific interest since, in comparison with the Ukrainian legislation, it seems possible to identify more effective provisions for the further development of the normative regulation of insolvency relations in Ukraine.

With the due regard of the above-mentioned, the grounds for closing proceedings in the case of bankruptcy (insolvency) of a legal entity require thorough analysis and characterization.

The purpose of the article is to reveal the particularities of the application of grounds for closing proceedings in the case of bankruptcy (insolvency) of a legal entity under the laws of Ukraine and Germany.

Research methodology. During the research, dialectical, formal-logical, comparative-legal and logical-legal methods of cognition were used.

2. The groups of grounds for closing proceedings in the case of bankruptcy of a legal entity

The grounds for closing the bankruptcy proceedings, which are enshrined in Art. 90 of the Bankruptcy Code of Ukraine, can be differentiated into two groups. The first group includes the grounds that counteract the case progress and, thus, do not allow the debtor to apply the sanitation and liquidation procedure:

– the debtor is not entered in the Consolidated Register of Legal Entities, Individual Entrepreneurs and Public Organizations;

– the debtor ceased its activities in accordance with the procedure established by law;

– there is a bankruptcy case of the same debtor in the proceedings of the commercial court;

– the case is not subject to consideration in the commercial courts of Ukraine;

– the commercial court has not established the signs of the debtor's insolvency;

– in other cases provided by law.

It should be noted that the decision of the commercial court issued on these grounds will also apply to judicial acts that counteract the case progress. We come to such a conclusion by supporting the position of I. V. Andronov, who, distinguishing the types of decisions as judicial acts, points out those that prevent the emergence and progress of the case, among which he names final ones, that is, those that terminate the case consideration (Andronov, 2018, p. 247). Moreover, the scientist notes: «The court ruling has exclusively procedural significance and does not directly affect the material legal relations of the parties. A court ruling is not an act of justice» (Andronov, 2018, p. 239).

It is possible to attribute those grounds that are the outcome of resolving the debtor's insolvency to the second group:

– the debtor's solvency has been restored, or all creditors' claims have been repaid in accordance to the register of creditors' claims;

– the report of the sanitation trustee or liquidator is approved in compliance with the procedure provided by this Code;

– no demands have been made against the debtor after the official publication of the announcement of the opening of proceedings in the case of his bankruptcy.

3. Grounds for closure of bankruptcy proceedings counteracting the case progress

In the first group, only two grounds for closing bankruptcy proceedings present challenges in their application.

For example, it is about when the commercial court has not established signs of the debtor's insolvency. This ground remained from the Law of Ukraine «On restoring the debtor's solvency or declaring him bankrupt» as amended on January 19, 2013 (hereinafter the Bankruptcy Law, the Law) (Verkhovna Rada of Ukraine, 2013). At that time, the Law provided for initiating a bankruptcy case subject to such conditions as: the presence of undisputed monetary claims in the amount of 300 minimum wages, which were not satisfied within 3 months in the enforcement proceedings. And if, for example, in the property disposal procedure, the debtor partially repaid the creditors' claims and the balance of the debt was less than 300 minimum wages, then the court closed proceedings in accordance with Clause 11, Part 1, Art. 83 of the Bankruptcy Law due to the lack of signs of the debtor's insolvency.

According to the Bankruptcy Code of Ukraine, neither the incontestability or debt's size, nor its non-payment in enforcement proceedings are required to initiate proceedings in the case of bankruptcy of a legal entity. Only the monetary nature of the demands remained. The question arises: in what cases can the before-mentioned ground be applied?

Another reason for closing proceedings in the case of bankruptcy under Clause 7 Part 1 of Art. 90 of the Bankruptcy Code of Ukraine

(the case is not subject to consideration in the commercial courts of Ukraine) began to be applied by judicial practice based on Clause 7 Part 2 of Chapter III «Final and Transitional Provisions» of the Law of Ukraine «On Recognizing as Having Lost the Validity of the Law of Ukraine «On the List of state property rights that are not subject to privatization» dated from October 2, 2019 No. 145-IX (hereinafter - Law No. 145-IX) (Verkhovna Rada of Ukraine, 2019). The specified norm introduced a three-year moratorium on the application of sanitation and liquidation procedures for state-owned enterprises and enterprises in which the share of state ownership exceeds 50 percent of the share capital.

Initially, the Supreme Court interpreted this norm as a basis for closing bankruptcy cases that had been already initiated towards the specified subjects. Moreover, it is clear from the title of Law No. 145-IX that it is only about the fate of the legal entities that were on the list of the objects of state ownership that are not subject to privatization. According to the view of the Supreme Court, if the legislator established a three-year prohibition on the introduction of sanitation or liquidation, then old cases, where these procedures were introduced, cannot now progress and, therefore, are subject to closure (Supreme Court, 2020).

In this regard, we have already expressed the following opinion: «In procedural terms, this approach cannot be considered effective. Firstly, if sanitation and liquidation cannot be applied, then the property disposal procedure remains in reserve. Secondly, if the enterprise was in the sanitation procedure, the bankruptcy law continues to apply there. Therefore, another procedure takes place - an amicably agreement. Third, how can Law No. 145-IX be extended to the old bankruptcy cases if that is not mentioned in this law?! Finally, fourthly, there is no direct indication in Law No. 145-IX on the necessity to close old bankruptcy cases where the debtor is a subject to the sanitation and liquidation procedures» (Polyakov, Polyakov, 2021).

It should be noted that only a year later, the Supreme Court partially changed its position on a temporary basis, considering that the provisions of the Law No. 145-IX still cannot be applied to bankruptcy cases of those state-owned enterprises, for which the procedures of sanitation and liquidation were introduced prior to the entry into force of the specified law (Supreme Court, 2021). On the other hand, the Supreme Court considered that the provisions of Clause 2 of the Chapter III «Final and Transitional Provisions» of Law No. 145-IX are special in relation to the provisions of Art. 96 of the Bankruptcy Code of Ukraine, which are general (Clause 9.7) (Supreme Court, 2021).

This conclusion of the Supreme Court cannot be regarded as relevant. If we take such a position, then any law regulating the economic activity of a particular subject could be considered as special, and the Bankruptcy Code of Ukraine itself - as general. As a result, the need for the Bankruptcy Code of Ukraine as a special normative legal act that regulates bankruptcy relations will disappear.

The Clauses 1-1–1-5 of the Final and Transitional Provisions of the Bankruptcy Code of Ukraine, which contains all the restrictions not only regarding the opening of bankruptcy proceedings but also the application of court procedures in relation to some legal entities could be interpreted as a confirmation of a provided example of the correlation of the general and special in bankruptcy legal relations. The provisions of these norms are special in relation to the Art. 96 of the Bankruptcy Code of Ukraine, where the latter has a general nature. Concerning the provisions of Clause 2 of Chapter III «Final and Transitional Provisions» of Law No. 145-IX, in our opinion, until they are enshrined in the Bankruptcy Code of Ukraine, they should not be applied at all. Otherwise, we are dealing with a conflict of norms, the priority of which should be given to the Bankruptcy Code of Ukraine as a special normative legal act regulating the bankruptcy procedure.

Another ground that is enshrined in the Clause 9 Part 1 of Art. 90 of the Bankruptcy Code of Ukraine refers to cases provided by law. Consequently, a logical question arises: what are these cases? Foremost, this applies to the cases provided by the Code of Commercial Procedure of Ukraine, in particular, Art. 231. However, in analyzing the content of this norm, it is possible to settle that the conclusion of an amicable agreement by the parties is the only ground that can be applied to the bankruptcy cases of legal entities (Clause 7, Part 1, Article 231 of the Code of Commercial Procedure of Ukraine). Some of the grounds for closing proceedings in the case prescribed in the Art. 231 of the Code of Commercial Procedure of Ukraine are already covered by Art. 90 of the Bankruptcy Code of Ukraine, for example, the termination of the activity of a legal entity or when the case is not subject to consideration in the economic proceedings.

Another ground for closing bankruptcy proceedings is contained in Part 5 of Article 12 of the Law of Ukraine «On Privatization of State and Communal Property» (Verkhovna Rada of Ukraine, 2018). In accordance with the specified norm, bankruptcy cases of state-owned enterprises or economic entities,

where the share of state ownership is more than 50 percent and in respect of which a decision on privatization was made, are subject to termination, except for those, that are liquidated by the owner.

Concerning the judicial practice on the application of the above-mentioned norm, in the resolution as of November 12, 2019, in case № 10/1106, the Supreme Court indicated that commercial courts must take into account the mandatory requirement of the legislator and apply the imperative requirements of Part 5 of Art. 12 of the Law of Ukraine «On the Privatization of State and Communal Property» (separately or together with the norm of Clause 4-3 of Chapter X «Final and Transitional Provisions» of the Bankruptcy Law) regarding the termination (closing) of proceedings in such cases in the event that the competent body makes a decision on privatization of a state-owned enterprise (the debtor) at any stage of the proceedings in the case, regardless of which bankruptcy court procedure is applied to the debtor and at which stages of consideration this bankruptcy case is (disposal of property, sanitation, liquidation) (Supreme Court, 2019).

Nevertheless, it is worth noting that this norm is already «outdated» and has come into conflict with some provisions of the Bankruptcy Code of Ukraine, hence its application is undoubtedly questionable. Firstly, the bankruptcy of enterprises at the initiative of the owner is no longer provided by the Bankruptcy Code of Ukraine. Secondly, the Bankruptcy Code of Ukraine, from the moment of initiating the bankruptcy proceedings, contains restrictions on the exercise of the corporate rights of the founders (participants, shareholders), as well as on the reorganization and liquidation of the debtor - a legal entity. At the same time, the procedure for the exercise of these powers is established exclusively by the Bankruptcy Code of Ukraine itself (Part 14 of Article 39 of the Bankruptcy Code of Ukraine).

Thirdly, Art. 96 of the Bankruptcy Code of Ukraine, which establishes the peculiarity of bankruptcy of the state-owned enterprises and enterprises in which the share of state ownership exceeds 50 percent of the share capital, provides not only an exception for the exercise of the corporate rights of the state but also the possibility of closing the bankruptcy proceedings in cases where a decision on the privatization of the debtor is made.

Fourthly, in the contrary to the Bankruptcy Law, where Clauses 4-3 of the Final and Transitional Provisions provided the termination of the bankruptcy cases of the specified enterprises, there is no such provision at all in the Bankruptcy Code of Ukraine.

Fifthly, the Bankruptcy Code of Ukraine has a priority as a special normative legal act in the field of bankruptcy and as an act issued after the final version of Part 5 of Art. 12 of the Law of Ukraine «On Privatization of State and Communal Property» (Ministry of Justice of Ukraine, 2008).

Therefore, it is worth recognizing that the application of such ground for closing proceedings in a case as «in other cases provided by law» leads to a contradictory judicial practice and complicates the work of both law enforcement bodies and participants of the legal relations. In this regard, it is proposed that «such cases» should not be scattered in different laws, but vice versa should be found directly in the Bankruptcy Code of Ukraine, for example, in its Final and Transitional Provisions. For this purpose, in the Clause 9, Part 1 of Article 90 of the Bankruptcy Code of Ukraine, the words «by law» should be replaced by the words «by this Code».

4. Grounds for closing the bankruptcy proceedings which are the outcome of resolving the debtor's insolvency

The second group of grounds for closing the bankruptcy proceedings, which, as previously indicated, are the result of solving the debtor's insolvency problems, is related to the stage of their application.

Thereby, in accordance with Part 2 of Art. 90 of the Bankruptcy Code of Ukraine, the closure of bankruptcy proceedings in connection with the court approval of the report of the sanitation trustee and the liquidator can take place at all stages of the bankruptcy procedure, and in connection with the non-application of creditors - only after the debtor is recognized as a bankrupt. At the same time, the approval of the sanitation trustee's report can appear only after the introduction of the sanitation procedure, which has place after the final hearing in the property disposal procedure (Part 3 of Article 50 of the Bankruptcy Code of Ukraine).

The same can be said about the approval of the liquidator's report, which is possible no earlier than the final court hearing in the property disposal procedure (Part 3 of Article 49 of the Bankruptcy Code of Ukraine) or the sanitation procedure as an unsatisfactory result of a financial recovery (Part 3, 6, 11 Article 57 of the Bankruptcy Code of Ukraine) and only in the case if the debtor would be declared bankrupt.

Regarding the closure of proceedings in connection with the non-appearance of the creditors in the procedure, such a situation is possible in the property disposal procedure at the stage of the final court hearing (Part 3 of Article 49 of the Bankruptcy Code

of Ukraine). All the above proves that there is a mistake made by the legislator or a substantive conflict.

It should be noted that the closure of bankruptcy proceedings due to the first group of grounds does not entail any legal consequences for the debtor.

The state of affairs regarding the grounds of the second group is entirely different. It is worth noting that according to the Clause 6 of the first part of Article 90 of the Bankruptcy Code of Ukraine, the closure of bankruptcy (insolvency) case is vital important, since it entails the debtor receiving benefits in the form of repayment of the creditors' claims who did not appear in the case (part 4 of Article 90 of the Bankruptcy Code of Ukraine), which does not happen as a result of closing the case due to the absence of signs of the debtor's insolvency (Clause 8 of the first part of Article 90 of the Bankruptcy Code of Ukraine) (Polyakov, 2021, p. 27). In addition, pursuant to part 4 of Art. 90 of the Bankruptcy Code of Ukraine, there is a prescribed repayment of the claims of competitive creditors who submitted their applications, but their claims were rejected by the court. At the same time, in the case of closing proceedings due to the approval of the liquidator's report, the claims of creditors caused by the insufficiency of the debtor's property are also repaid (Part 7 of Article 64 of the Bankruptcy Code of Ukraine).

5. Closure of insolvency proceedings under German legislation

As far as German law is concerned, insolvency proceedings are covered by a special legal act – the Insolvenzordnung (hereinafter the Statute) (Deutscher Bundestag, 1994), in which Division 3 of a Part 5 of the Statute is devoted to the issue of a discontinuation of solvency proceedings. § 207 of the Statute states that if the debtor's assets are found to be insufficient to cover court costs, insolvency proceedings must be closed. An exception can only be as the granting of a postponement, which is prescribed in § 4 of the Statute, as well as the advance payment by the debtor of the required amount.

Besides the grounds for closing insolvency proceedings described above, the Statute provides another ground related to a lack of assets. Thus, in § 211 of the Statute could be found the necessity of closing the proceedings in case of receipt of a notification, which is provided for in § 209 of the Statute, namely: notification of the court by trustee about that the insufficiency of the debtor's assets to cover all the creditors' claims is established. In such case, an insolvency plan established in § 210a of the Statute will be drawn up.

§ 212 of the Statute provides another ground for closing proceedings in the case of insolvency - it is the closure of proceedings due to the lack of grounds for opening them. From the analysis of the specified norm, it can be seen that such closure of proceedings is possible only at the initiative of the debtor and in the case of its opening only due to non-payment (excess of liabilities over assets). Moreover, the debtor must prove that the state of insolvency, deferred insolvency or non-payment will not arise in the future (Deutscher Bundestag, 1994). It should be noted that such a provision confirms B. M. Polyakov's thesis that insolvency is a presumption of a non-payment: «... Ukraine has already had an imperfect law that equated insolvency with non-payment, i.e., presumption with reality» (Polyakov, 2011, p. 141). We explain our position by the fact that the German legislator provides for the possibility to close proceedings in the case of insolvency in the event of its opening due to non-payment, if the debtor provides evidence of his solvency. Thereby, it is the debtor who will be able to prove his solvency, since he, like no one else, knows his financial condition.

Another ground for closing insolvency proceedings could be found in § 213 of the Statute, namely: the consent of all the debtor's creditors. In this case, the debtor's statement is necessary again, as well as the consent of all insolvency creditors. At the same time, the issue concerning the creditors whose claims are disputed and creditors with the right to separate satisfaction of their claims is decided by the court. The court decides the question of their consent and whether they need any security for their claims (Deutscher Bundestag, 1994).

In the event of occurrence of the above-described reasons provided in §§ 212 and 213 of the Statute, the court must publish a notice about this (Clause 1 of § 214 of the Statute), listen to the applicant, the trustee the committee of creditors, as well as the creditor who has objections in this regard (Clause 2 of § 214 of the Charter).

Clause 3 of § 214 of the Charter stipulates the necessity for the trustee to settle any existing claims regarding the insolvency mass, to which there were no objections, and for disputed claims – to provide security for their further fulfillment.

It should be noted that in accordance with the provisions of Clause 1 of § 200 of the Statute, proceedings in the insolvency case may be closed after the final distribution of the assets that were obtained as a result of the realization of the debtor's property.

The decision to close insolvency proceedings must be published in accordance with the provisions of Closure 2 of § 200 and Closure

1 of § 215 of the Statute (on the grounds provided for in §§ 207, 212 and 213 of the Statute).

In the case of closure of insolvency proceedings on the grounds that were set out in §§ 207, 212 and 213 of the Statute, in accordance with Clause 1 of § 216 of the Statute, the creditor may file an immediate appeal against such court decision, while the debtor has the right challenge the closure only on the grounds provided in § 207 of the Statute - for objective reasons. At the same time, Clause 2 of § 216 of the Statute gives the debtor the right to appeal the refusal to close insolvency proceedings on the grounds set forth in §§ 212 and 213 of the Charter.

After insolvency proceedings had been closed, the consequences specified in §§ 201 and 202 of the Statute will follow.

Closure 1 of § 201 of the Charter draws attention, according to which creditors who were participants in the insolvency procedure and whose claims were not fully repaid, will have the opportunity to apply to the debtor for the purpose of their fulfillment.

It is possible to state that in opposite to the Ukrainian legislation, in German, the closure of insolvency proceedings does not release the debtor from the full settlement with creditors.

We conclude that in Germany insolvency legislation is mostly similar to the competitive process of the Ancient Rome, since just as in ancient times, the debtor's debts are not forgiven.

6. Conclusions

According to the results of the conducted research, it is appropriate to indicate the following conclusions:

1. It was proposed to differentiate into two groups the grounds for closing the bankruptcy proceedings which are enshrined in Art. 90 of the Bankruptcy Code of Ukraine. Those groups are the following: 1) the grounds that counteract the movement of the bankruptcy; 2) the grounds that form a result of a resolution of the debtor's insolvency.

2. It has been proven that the appliance of such grounds for closing proceedings as «in other cases provided by law» leads to a contradictory judicial practice and complicates the work of both law enforcement bodies and participants of the legal relations. In this regard, it is put forward that «such cases» should not be scattered in different laws, but conversely, should be found directly in the Bankruptcy Code of Ukraine, for instance, in its Final and Transitional Provisions. For this purpose, it is expedient to change Clause 9, Part 1 of Art. 90 of the Bankruptcy Code of Ukraine.

3. It was established that, unlike the Ukrainian legislation, in German legislation, the closure of insolvency proceedings does not release the debtor from all monetary claims of creditors. In this aspect, German insolvency law is mostly similar to the competitive process of the Ancient Rome, since in these two cases, the debtor's debts were not forgiven.

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ПІДСТАВИ ЗАКРИТТЯ ПРОВАДЖЕННЯ У СПРАВІ ПРО БАНКРУТСТВО (НЕСПРОМОЖНІСТЬ) ЮРИДИЧНОЇ ОСОБИ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ ТА НІМЕЧЧИНИ

Анотація. ***Метою статті*** є розкриття особливостей застосування підстав для закриття провадження у справі про банкрутство (неспроможність) юридичної особи за законодавством України та Німеччини.

Методологія дослідження. Під час дослідження використано діалектичний, формально-логічний, порівняльно-правовий та логіко-юридичний методи пізнання.

Результати. Проаналізовано та надано характеристику підставам для закриття провадження у справі про банкрутство юридичної особи, а також здійснено їх диференціацію на дві групи. Виявлено колізії у законодавстві про банкрутство в частині закриття провадження у справі щодо юридичної особи та запропоновано шляхи удосконалення законодавства в цій частині. Охарактеризовано підстави для закриття провадження у справі про неспроможність за німецьким законодавством.

Висновки. Запропоновано підстави для закриття провадження у справі про банкрутство, закріплені у ст. 90 КзПБ, диференціювати на дві групи: 1) підстави, які перешкоджають руху справи про банкрутство; 2) підстави, які є результатом розв'язання проблем неплатоспроможності боржника.

Доведено, що застосування такої підстави для закриття провадження, як «в інших випадках, передбачених законом», призводить до суперечливої судової практики та ускладнює роботу як правозастосовним органам, так і учасникам правовідносин. У зв'язку із цим пропонується, щоб «такі випадки» були не розосереджені в різних законах, а знаходились безпосередньо у КзПБ, наприклад, у його Прикінцевих та перехідних положеннях. Для цього пропонується змінити п. 9 ч. 1 ст. 90 КзПБ.

Встановлено, що, на відміну від українського, в німецькому законодавстві саме по собі закриття провадження у справі про неспроможність не звільняє боржника від усіх грошових вимог кредиторів. У зазначеному аспекті німецьке конкурсне законодавство здебільшого є подібним до конкурсного процесу Стародавнього Риму, адже в цих двох випадках борги боржнику не пробачались.

Ключові слова: банкрутство, боржник, закриття провадження, кредитор, неспроможність.

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THE ESSENCE, CONTENT AND MEANING OF SOCIAL GUARANTEES FOR PERSONNEL OF THE STATE SERVICE OF SPECIAL COMMUNICATIONS AND INFORMATION PROTECTION OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyse the essence, content and meaning of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine. ***Results.*** The article characterises the essence, content and meaning of social guarantees in general meaning as an integral element of the legal status of man and of the citizen, as well as through the prism of serving in the State Service of Special Communications and Information Protection of Ukraine. Many gaps in the relevant segment of the legal regulatory framework are identified, which in turn requires a number of scientific investigations to fill them. The perspective on a key role of social guarantees in the functioning of a specific state authority in providing its officials with additional benefits and in ensuring the appropriate special social status is substantiated. The importance of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine is that the legal status of these employees and the model of its guarantee is hybrid, which provides for not only the accrual of financial support according to specially defined formulas, but also the possibility of receiving additional benefits from the state, in particular those of other persons on preferential terms. It is proven that the essence and content of the social guarantee of the status of personnel of the State Service of Special Communications and Information Protection of Ukraine are a set of provisions of national legislation that provide the opportunity and real access to such fundamental rights as the right to work, to rest, to housing, to free education, to free medical care, to financial support in old age, to support in case of incapacity for work, etc. ***Conclusions.*** It is concluded that the concept of social guarantees is considered as a set of provisions of the legislation of Ukraine that allow for access to certain tangible and intangible benefits aimed at improving the living situation, in particular, in the context of ensuring the benefits and needs of personnel of the State Service of Special Communications and Information Protection of Ukraine. The study of the structure and content of social guarantees for personnel of this service establishes that these legal provisions enable to effectively stimulate interest in military service by providing access to adequate financial and material support, as well as opportunities related to additional rest, treatment and housing.

Key words: *social guarantees, State Service of Special Communications and Information Protection, social rights.*

1. Introduction

As of today, rights and freedoms of man and of the citizen, in particular, special social statuses of certain categories of citizens, are among the most popular objects to be ensured, given the European integration processes, humanisation of the legal provisions and the need to raise the social standard of living of the population, including public officials.

It should be noted that the guarantee of rights and freedoms of man and citizen is one of the most common problems in the theory of law, which in our opinion, requires substantial elaboration depending on the details of the subject matter of the study.

For example, the State Service of Special Communications and Information Protection

of Ukraine is a specialised body of the central executive power in the field of special communication and information protection, 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).

The scope of competence of this body requires a thorough and comprehensive processing of issues connected with social guarantees for its personnel and gives new impetus to research.

The purpose of the article is to analyse the essence, content and meaning of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine. To achieve the goal set provides for fulfilment of a number of research tasks, such as: to characterise the concept of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine; to study the design and content of social guarantees for its personnel; relying on the importance of the relevant institute for ensuring the functioning of state authorities, in particular the State Service of Special Communications and Information Protection of Ukraine, to propose discussion of a number of problematic issues and 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 essence, content and meaning of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine.

2. Tasks and functions of social guarantees

At the present stage of democratic values formation in Ukraine, issues related to social security of employees-officials take a leading place. Therefore, the mentioned problem requires thorough study through the prism of scientific developments of other researchers.

It should be noted that O.Holovnia has analysed methods of examining social state of the country and prerequisites of modern social standardisation. According to the scientist, social analysis and diagnostics are the primary methods, which are the basic (starting) point in argumentation of processes of social guarantees for any person, as they define the need for a certain good. The process of diagnosis reveals social imbalances, their effect on the essential aspects of the functioning and development of the social system. In this context, diagnostics are a type of social analysis. Moreover, the analysis of problems of social reproduction is the research of the proportions of its functioning and development, the identification of disproportions, their influence on social life, and the search for opportunities for their elimination (Holovnia, 2009). In the general theoretical meaning, from this perspective, an idea that this is actually a social guarantee in the widest legal sense is formed. The above-mentioned structure allows not only to appeal to the need for proper legal mechanisms for rights of social character and content, but also to justify the socio-economic significance of functioning of this concept.

Other researchers also emphasise the need to analyse the current state of social security and the need to advance it from the perspective of further development of the theory of social management, namely its subject matter - substantiation of the regularities of forming proportions and rate of social development, relying on social analysis (Poburko, 2006). That is why in the context of social guarantee of the relevant rights for personnel of the State Service of Special Communications and Information Protection of Ukraine, it is important to determine the necessary social guarantee through the prism of the ratio of the general level of support for the relevant persons, the general social level in the state and the specific individual needs of each employee.

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). The above-mentioned further explains the issue of the correlation of the social security needs of specific persons with the fact that the general level of the social needs for any socio-economic (especially material) assistance is higher than the possibilities of this society to meet them.

However, the content and essence of the concept of social rights are determined by scientists differently. Since this category is a 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). The above-mentioned creates regulatory and legal, as well as immutable, conditions for the necessary mechanisms for the corresponding rights and freedoms of man and of the citizen and taking into account the specificity of some of them, creates the basis for forming a system of priority determination in providing different social benefits to persons of different strata of population and social status.

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). Thus, the duties are automatically imposed on the state in the field of ensuring the possibility of realisation of the relevant regulatory structures, as well as bringing the standard of living in conformity with the interests of the society.

Social guarantees, which are considered as material and legal means, which ensure social and economic rights of members of the society, are provided by social policy of the state, and their material basis is mostly served by state and enterprise funds as part of the national fund, aimed at social security and meeting social and priority needs of members of society free or on preferential principles (Batazhok, 2005). Therefore, the guarantee as a phenomenon, its direct content is considered in studies of scientists as a concrete means to increase the meeting of needs of specific groups of persons (vulnerable segments of society or public servants charged with more responsible functional duties, for example military personnel).

V. Palamarchuk argues that social guarantees are the monetary equivalent of the natural consumption of market and public goods, guaranteed by the state to citizens in view of their social expectations and economic opportunities. This allows to meet as fully as possible the social interests of the population and thus to achieve the proper level of social security in the country. Some scientists generally define social security policy through the creation of a system of social guarantees (Palamarchuk, 1996). However, in our opinion, the main instrument of ensuring social security of the state is a proper level of basic support, i.e. high wages of citizens who can carry out such activities, as well as social guarantees for vulnerable groups of the population. In no case can social security be equated with the need to ensure high standards in the field of labour remuneration for officials who perform dangerous work or have increased social responsibility.

3. The legal and regulatory framework for social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine

The Constitution of Ukraine defines several types of social security, as follows: mandatory social insurance, creation of a network of institutions caring for disabled persons; conditions, created by the state, enabling every citizen to build, purchase, or rent housing; state financing of health care, free provision of medical care and others (Tatsii, 2011). This list of social guarantees enables to provide opportunities for realisation of a wide range of citizens and persons who have a corresponding status or claim for it from the regulatory perspective. Thus, social guarantees in labour activity can be the principles regulated by the legislation of Ukraine, realisation thereof (and sometimes only their presence) includes granting advantages to a certain person, opens access to some benefit on the better terms than in general.

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 due to the range of functions and powers performed, since they determine the further country's territorial integrity and defence capacity.

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 pur-

pose, 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.

D. Makovskyi argues that personnel of the State Service of Special Communication and Information Protection of Ukraine are also covered by social guarantees. These persons, according to the official schedule and positions, are directly military personnel (Makovskyi, 2021).

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 legislation of Ukraine clearly defines the role and place of guarantees of social security in the structure of provisions and enables to implement them by a number of related institutions.

4. Conclusions

Therefore, the concept of social guarantees is considered as a set of provisions of the legislation of Ukraine that allow access to certain tangible and intangible benefits aimed at improving the living situation, in particular in the context of ensuring the benefits and needs of personnel of the State Service of Special Communications and Information Protection of Ukraine. The study of the structure and content of social guarantees for personnel of this service establishes that these legal provisions enable to effectively stimulate interest in military service by providing access to adequate financial and material support, as well as opportunities related to additional rest, treatment and housing.

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СУТНІСТЬ, ЗМІСТ І ЗНАЧЕННЯ СОЦІАЛЬНИХ ГАРАНТІЙ ОСОБОВОГО СКЛАДУ ДЕРЖАВНОЇ СЛУЖБИ СПЕЦІАЛЬНОГО ЗВ'ЯЗКУ ТА ЗАХИСТУ ІНФОРМАЦІЇ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є аналіз сутності, змісту й значення соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України. ***Результати.*** У статті надано характеристику сутності, змісту і значення соціальних гарантій у загальному значенні – як невід'ємного елементу правового статусу людини та громадянина, а також крізь призму проходження служби в Державній службі спеціального зв'язку та захисту інформації України. Констатовано низку прогалин у відповідному сегменті правового регулювання, що зумовлює необхідність здійснення низки наукових розвідок, спрямованих на їх урегулювання. Обґрунтовано позицію про те, що саме соціальні гарантії в умовах функціонування органу державної влади специфічного спрямування відіграють ключову роль у забезпеченні його посадових осіб додатковими благами та забезпечують відповідний соціальний статус, надаючи йому особливого становища. Значення соціальних гарантій для особового складу Державної служби спеціального зв'язку та захисту інформації України полягає в тому, що правовий статус відповідних службовців і модель його гарантування є гібридною, що передбачає не лише нарахування грошового забезпечення за спеціально визначеними формулами, а й можливість отримання додаткових благ від держави, зокрема тих, що й інші особи на пільгових умовах. Доведено, що сутність і зміст соціального гарантування статусу особового складу Державної служби спеціального зв'язку та захисту інформації України полягає в тому, що воно становить сукупність норм національного законодавства, котрі забезпечують можливість і надають реальний доступ до таких фундаментальних прав, як право на працю, на відпочинок, на житло, на безоплатну освіту, на безоплатну медичну допомогу, на матеріальне забезпечення в старості, на забезпечення в разі непрацездатності тощо. ***Висновки.*** Зроблено висновок, що поняття соціальних гарантій розглядається як комплекс норм законодавства України, що дозволяють отримувати доступ до певних матеріальних і нематеріальних благ, спрямованих на покращення життєвого становища, зокрема в контексті забезпечення благ і потреб особового складу Державної служби спеціального зв'язку та захисту інформації України. Дослідження конструкції та змісту соціальних гарантій особового складу цієї служби дає змогу встановити, що ці норми законодавства уможливлюють ефективне стимулювання зацікавленості проходження військової служби шляхом надання доступу до належного грошового й речового забезпечення, а також можливостей, пов'язаних з додатковим відпочинком, лікуванням та отриманням житла.

Ключові слова: гарантії, Держспецзв'язок, права, свободи, соціальні права.

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HISTORICAL AND LEGAL ANALYSIS OF THE NATIONAL POLICE STAFFING DEVELOPMENT

Abstract. ***Purpose.*** The purpose of the article is to implement historical and legal analysis of the formation and development of the staffing of the National Police of Ukraine. ***Results***. The article, relying on the review of scientific perspectives, describes the main historical stages of the formation and development of police bodies in the territory of Ukraine. The article analyses each stage of evolution of the police in the territory of our State and highlights specificities of work with personnel within each of them. It reveals specifics of development of the staffing of law enforcers at the modern historical stage. It is established that development of mechanisms for staffing the bodies of the National Police of Ukraine is generally incomplete. It is underlined that significant reforms have had an additional impact on the staffing of the police. For example, they have created the conditions for the formation of the principles of unified personnel policy, as well as qualification requirements for the police staff. Candidates for the police rank had the following requirements: to have Russian citizenship; to be at least 25 years old; "to have good physical health" (to have a strong physique, good eyesight and hearing, to observe a sober lifestyle). In addition, it was necessary to have a certificate of past military or public service. There were certain religious restrictions. ***Conclusions***. It is concluded that, despite a rather long historical path in the development of the staffing of the National Police of Ukraine, this process is still at an active stage of its evolution. For example, in 2015, a new law enforcement body – the National Police – was established in the territory of Ukraine as a radically new replacement of the militia, which existed for almost a century. The National Police has taken into account the most positive achievements in supporting and ensuring the performance of the law enforcement sector of our State. However, the reforms require the formulation of new approaches to managing police personnel and hence, the development of the staffing of this body is part of the next historical stage of evolution in which this issue is extremely relevant not only from the historical perspective, but also from the perspective of functional and legal specificities.

Key words: National Police of Ukraine, staffing, historical and legal analysis, historical stages.

1. Introduction

The deterioration of the social, economic and political situation in Ukraine in late 2013 – early 2014 revealed a rang of problems in the State's law enforcement sector. This led to the need to fundamentally reform the internal affairs bodies, which resulted in the establishment of the National Police of Ukraine, a new central executive body, which, in partnership with the public, was designed to significantly improve the level of security and safety of Ukrainian society. However, the establishment of the new institution has created a number of new problems, particularly with regard to the staffing of the police. This problem remains relevant despite the five-year history of the National Police. It should be noted that the solution to any problem requires a comprehensive historical analysis of the problem, which will enable to identify the errors of the past and prevent them in the future.

Specific issues related to the staffing of the National Police have been studied by N.M. Karamzin, A.V. Borysov, A.N. Dyhyn, A.Ya. Malyhin, A.Yu. Zakymatov, N.N. Beliavskyi, O.S. Filonov, V.V. Soloviev, D.S. Ryzhov, and others. However, despite numerous scientific developments, there is virtually no comprehensive research in the legal literature on the historical analysis of the development of the staffing the National Police of Ukraine.

The purpose of the article is to implement historical and legal analysis of the formation and development of the staffing of the National Police of Ukraine.

2. Formation and development of police personnel in the early 18th - mid-19th century

Law enforcement agencies have always existed in the territory of our State, as well as

the need to manage their personnel. The origins of police activity in the territory of Ukraine were laid in the times of Kyiv Rus. The intensification of law-making and law-enforcement activities is a legacy of this period, as evidenced by the fact that customary law was fixed in written sources. In the following centuries, our country's territory was fragmented and was under the authority of several States. The situation changed in the early 18th century, when Ukraine fell under the rule of the Russian Empire. The power of this monarchical state has always relied on an efficient system of special bodies, one of which was the police. The centralisation of power, as well as the identification of the police as an independent structure, required to staff it with professional employees able to effectively perform their functions for the "benefit of the Empire". Therefore, the historical and legal analysis of the topic raised should be considered at the following stages:

1) "Imperial stage" – a) the beginning of XVIII – the middle of XIX century; b) the end of XIX century – 1920s;

2) The Soviet stage – the 1920s - the 1990s;

3) The stage of independence of Ukraine – the end of the 90s - to date.

During the first stage, despite the rapid development of the police force in the early eighteenth century, in the course of its formation, an acute problem of training officers for the institution and the overall staffing of the latter arose. At that time, for various reasons, police officers had been appointed without the necessary knowledge and morals. In this regard, the report of the Chief Police Officer of the Chancellery, considered by the Senate in 1726, noted that the police were staffed with persons with very questionable moral qualities (Volynskii, 2001, p. 357). Thus, in 1735, the Chief Police Officer of the Chancellery was entrusted with the responsibility of issuing job descriptions for police representatives of all imperial territories (Kraminin, 2002). Another attempt to regularise the personnel work in the bodies of the imperial police was made under the rule of Catherine II. According to the provisions of the Order "On the principal police" of 1763, the recruitment into the system of these bodies was carried out with the expectation that the employees acted according to the "rules of fairness", and should "be exempt from any shortcomings that may negatively affect their conscience" (Borisov, Dygin, Malygin, 1995, pp. 78-79).

In 1775, the reform of the police bodies began, which subsequently led to a profound change in the legislative framework for their work, including personnel. The Police Force has been the subject of a number of reforms. For example, in 1782 *The Charter of the Deanery or the Police* was published. The Charter established a new administrative police body in provincial towns, the Deanery or Police, and created special posts for city police officers with clearer tasks and competencies. *The Charter of the Deanery* contained an extended list of requirements for police officers. The latter were to have: common sense; good will to carry out the task; humaneness; faithfulness in the service of the monarch; diligence for the common good; honesty and unselfishness. Police officials were warned of the danger of bribes that "blind the eyes and corrupt the mind and heart". In addition, much of *The Charter of the Deanery* was devoted to the police personnel. For each province, as well as the city, the document specified the manning table and composition. It should also be noted that the document, for the first time, defined the legal nature of the post of policeman (Zakimatova, 2006, pp. 82-83).

The next period of the staffing was related to the police reform in the late 19th century. For example, the implementation of bourgeois reforms in the 1960s and 1970s led to a change in traditional social relations. The new social and political realities predetermined the main trends in the development of the police system of Tsarist Russia. Under the influence of revolutionary activities, a serious reorganisation of the central police apparatus was carried out in 1880-1883: the Minister of the Internal Affairs became at the same time the chief of gendarmes; the Police Department of the Ministry of Internal Affairs was established instead of the Third Police Department, uniting the leadership of the general and political police. The Police Department consisted of the Director, Vice Directors, Special Assignments Officers, Clerks, their Assistants, Secretary, Journalist General, Executor, Treasurer, Assistant Treasurer, Chief of Archives with Assistants and Scribes (Code of laws of the Russian Empire: Establishment of ministries, 1982).

Significant reforms have had an additional impact on the staffing of the police. For example, they have created the conditions for the formation of the principles of unified personnel policy, as well as qualification requirements for the police staff. Candidates for the police rank had the following requirements: to have Russian citizenship; to be at least 25 years old; "to have good physical health" (to have a strong physique, good eyesight and hearing, to observe a sober lifestyle). In addition, it was necessary to have a certificate of past military or public service. There were certain religious restrictions (Judaism was not accepted into the police service, and there were also restrictions on

Catholics from the Kingdom of Poland, Western and Southwestern provinces of Russia). Other requirements prohibited the employment of persons who were themselves or members of their families engaged in commercial or entrepreneurial activities, as well as suspected of illegal entrepreneurship; persons deemed to be defective, were under investigation or trial, served a criminal sentence in the past, were dismissed from service by a court or have lost their class on the basis of a court sentence, insolvent debtors, lower military ranks disciplined. Each candidate passed the test and was sworn in. During the reforms of the 60-80s of the XIX century in the Russian Empire a detailed system of assigning police officers class ranks, ranks, their incentive through prizes and rewards, as well as disciplinary sanctions, etc. was created and applied in practice. In addition, at that time, the police pension system, which was an integral part of the police personnel support, was developed significantly. It is worth noting that even then a special differentiated approach to the assignment and calculation of pensions was developed. They took into account not only the length of service, injuries and illnesses during service, special merits, but also income, domestic behaviour, social position. Existence of various State funds and sources for receiving pensions and benefits (emeritus fund, chapters (supreme colleges) of orders, etc.) allowed retired officers and officials to have a relatively high pension (Filonov, 2013; Ryzhov, 2000).

3. Soviet stage of formation and development of police personnel

The next Soviet stage of formation and development of the staffing of police bodies in the territory of Ukraine began in the 1917-20s – after the revolutionary events that led to the liquidation of the Russian Empire as a state and the emergence of a new country – the Soviet Union.

Together with the managerial-organisational acts, which established the structure and functions of the Soviet militia, during the 1920s and 1930s the legislative basis for regulating the labour process of this body and the legal status of its personnel was formed. For example, in the Instruction "On the organisation of the Soviet Workers' and Peasants' Militia", the peculiarities of the recruitment of police officers were explained, which included officers who carried out the preliminary investigation of crimes. Only persons who were citizens of the Soviet Union could be appointed as members of the Soviet militia; had reached the age of 21; were literate; enjoyed active and passive suffrage; recognised the Soviet power, etc. (Soloviev, 2013).

The post-war crisis of the late 1940s led to a change in the vectors of police activity. The fight against crime, which had developed and changed its format as a result of the difficult economic situation in which the population of the Soviet Union found itself, came to the fore. The re-activation of the personnel work in the internal affairs agencies of the USSR falls in the 60s-80s, because it was during this period that the largest number of legal regulations on the staffing was issued. For example, these were the Order of the Ministry of Internal Affairs of the USSR "On the creation of departments (units) for political and educational work in the Ministry of Internal Affairs" of February 05, 1969; the Order of the Ministry of Internal Affairs of the USSR "On polite and attentive attitude of police officers to citizens" of June 03, 1969; the Decree of the Presidium of the Supreme Soviet of the USSR "On the Disciplinary Charter of Internal Affairs" of March 30, 1971; the Order of the Ministry of Internal Affairs of the USSR "On the service of psychophysiological and socio-psychological support for personnel of internal affairs" of August 15, 1989, etc.

4. Establishment and development of the staffing of the police in independent Ukraine

The third stage began in the 1990s, when our country adopted Declaration 55-XXI on the State Sovereignty of Ukraine of July 16, 1990 that proclaimed the supremacy, completeness, autonomy and indivisibility of State power (The Constitution of Ukraine, 1996). Subsequently, the Constitution of Ukraine 254k/96-VR of 28 June 1996 was adopted, which became the basis of the entire legal system of the State, as well as a model for building legal mechanisms in all sectors of Ukrainian society, including law enforcement (The Constitution of Ukraine, 1996). During the independence of Ukraine, the staffing of the militia changed, first of all, in terms of regulatory and legal framework. The emphasis was placed on the development of obsolete "soviet" approaches to personnel management in internal affairs bodies. Therefore, in 1990 new Law 565-XXI of Ukraine "On Militia" of December 20, 1990 was adopted (Laws of Ukraine About the police, 1990).

The articles of the Law were detailed in Regulations on the performance of service by members of the rank-and-file and command staff of Internal Affairs bodies, approved in 1991 by the Resolution of the Cabinet of Ministers of Ukraine, which set out the procedure for the service and the rights and duties of police officers (Subtelnyi, 1991).

A significant number of issues related to the staffing of the police were regulated by the by-laws of the Ministry of Internal Affairs,

such as: Order 552 of the Ministry of Internal Affairs of Ukraine "On measures to strengthen the legality of the activities of the Internal Affairs Bodies" of December 06, 1991; Order 204 of the Ministry of Internal Affairs "On approval of the Regulations on the procedure of preparation, examination of textbooks, teaching and methodological aids used in the system of the Ministry of Internal Affairs of Ukraine" of March 16, 2001; Order 535 of the Ministry of Internal Affairs of Ukraine "On approval of the Rules of wearing uniforms and insignia by the members of the rank-and-file and command staff of internal affairs bodies, servicemen of special motorised military units, militia, internal troops of the Ministry of Internal Affairs of Ukraine" of May 24, 2002; Order 530 of the Ministry of Internal Affairs of Ukraine "On approval of the composition of the Personnel Commission of the Ministry of Internal Affairs of Ukraine and its Regulations" of May 18, 2004; Order 181 of the Ministry of Internal Affairs of Ukraine "On approval of the Regulations on the Procedure for Certification of the Personnel of Internal Affairs Bodies of Ukraine" of March 22, 2005; Order 301 of the Ministry of Internal Affairs of Ukraine "On approval of the Handbook of Standard Vocational Qualification Characteristics of Employees of the Ministry of Internal Affairs of Ukraine and the Sectoral Classification of Main Positions of Employees of the Ministry of Internal Affairs of Ukraine" of March 24, 2006, etc.

5. Conclusions

To sum up, despite a rather long historical path in the development of the staffing of the National Police of Ukraine, this process is still at an active stage of its development. For example, in 2015, a new law enforcement body – the National Police – was established in the territory of Ukraine, which became a radically new replacement of the militia, which existed for almost a century. The National Police has taken into account the most positive achievements in supporting and ensuring the performance of the law enforcement sector of our State. However, the reforms require the formation of new approaches to managing police personnel, in this connection, the development of the staffing of this body is part of the next historical stage of evolution in which this issue is extremely relevant not only from the historical perspective, but also from the perspective of functional and legal specificities.

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ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ СТАНОВЛЕННЯ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ ОРГАНІВ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

Анотація. ***Мета.*** Мета статті полягає у здійсненні історико-правового аналізу становлення і розвитку кадрового забезпечення Національної поліції України. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених, охарактеризовано основні історичні етапи становлення та розвитку поліцейських органів на території України. Проаналізовано кожний етап еволюції поліції на землях нашої держави та виділено особливості роботи з кадрами в межах кожного з них. Розкрито специфіку розвитку кадрового забезпечення правоохоронців на сучасному історичному етапі. Констатовано загальну незавершеність становлення механізмів кадрового забезпечення в органах Національної поліції України. Наголошено, що проведені масштабні реформи мали свій вплив і на питання кадрового забезпечення поліцейських органів. Зокрема, вони створили передумови для формування засад єдиної кадрової політики, а також кваліфікаційних вимог до кадрів поліції. До кандидатів у поліцейський чин висували такі вимоги: мати російське підданство; бути не молодше 25 років; «мати повне фізичне здоров'я» (мати міцну статуру, гарні зір та слух, дотримуватися тверезого способу життя). Крім указаного, треба було мати свідоцтво про перебування в минулому на військовій або державній службі. Існували певні обмеження з точки зору віросповідання. ***Висновки.*** Зроблено висновок, що, незважаючи на досить довгий історичний шлях становлення кадрового забезпечення Національної поліції України, даний процес все ще знаходиться на активній стадії свого розвитку. Так, у 2015 році на території України було створено новий правоохоронний орган – Національну поліцію, яка стала кардинально новою заміною міліції, яка існувала майже століття. Національна поліція увібрала в себе найбільш позитивні досягнення щодо підтримки та забезпечення роботи правоохоронного сектору нашої держави. Водночас реформаційні зміни викликали необхідність формування нових підходів до роботи з персоналом поліції, у зв'язку із чим розвиток кадрового забезпечення цього органу входить у черговий історичний етап еволюції, в межах якого дане питання є вкрай актуальним не тільки з боку історії, але й функціонально-юридичних особливостей.

Ключові слова: Національна поліція України, кадрове забезпечення, історико-правовий аналіз, історичні етапи.

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LOSS ADJUSTING FOR BREACH OF THE OBJECT SAFEGUARDING AGREEMENT (ON THE EXAMPLE OF THE PROTECTION POLICE OF UKRAINE)

Abstract. ***Purpose.*** The aim of the Article is provide a comprehensive analysis of the issue of loss adjusting for breach of the Object Safeguarding Agreement by the Protection Police of Ukraine. For this purpose, a set of legal acts of Ukraine regulating this issue have been processed, as well as scientific works of Ukrainian and foreign scholars concerning this problem have been studied. ***Research methods.*** The research used general scientific and special methods of legal science, in particular, dialectical method, analysis and synthesis method, logical and semantic method, hermeneutic method, normative and dogmatic method, statistical method. ***Results.*** As the result of the study, it has been established that currently the Ukrainian legislation does not provide for standard Object Safeguarding Agreement. Thus, in order to properly protect the rights and interests of the parties to this agreement, we have analyzed the current legislation of Ukraine and the case law to determine what types of harm and to what extent are they subject to compensation. It has been substantiated that the Protection Police of Ukraine is responsible only for damages caused in certain ways (theft, robbery, etc.) and compensate only direct damage; the loss of profit and non-pecuniary damage are not subject to compensation. By relying on the research, it has been proved that full responsibility on the Protection Police would be an obstacle to the conclusion of the Object Safeguarding Agreement. ***Conclusions.*** As Ukrainian law does not enshrine a standard contract for the protection of the object, the parties are entitled to specify its terms on their own, including the features of bringing the parties to responsibility in case of non-performance or improper performance of the contract. The magnitude of the damage to be reimbursed is limited by the amount of direct damage caused to the owner of the protected property. The limited liability of the Protection Police is due to the impossibility of establishing full control over the protected property, the risky nature of the contract, the transfer of the object under protection without prior inspection of the property.

Key words: Object Safeguarding Agreement, Protection Police of Ukraine, improper performance, damage, compensation, direct damage, non-pecuniary damage, loss of profit.

1. Introduction

According to Article 41 of the Constitution of Ukraine (Law of Ukraine 1996), everyone has the right to own, use and dispose his (her) property, the results of his (her) intellectual, creative activities. No one can be unlawfully deprived of property rights. The right to private property is inviolable.

Thus, the protection of material values of individuals and legal entities is one of the priority tasks of the State, which is implemented within its competence by all its agencies, including law enforcement ones. Indeed, according to paragraph 20, Part 1, Article 23 of the Law of Ukraine "On the National Police of Ukraine" (Law of Ukraine 2015), the police protect indi-

viduals and objects of private and communal property on a contractual basis. To perform this task, the Protection Police began its activities, which, following Article 13 of the above Law, operates as part of the National Police of Ukraine.

Therefore, the Protection Police is a territorial body of the National Police of Ukraine, which, in accordance with its tasks, protects objects of State property, individuals and objects of private law and communal property in cases and in the manner prescribed by law.

Today, the Protection Police guard individuals and objects of the State, communal and private property on a contractual basis. The powers most inherent in the Protection Police in the area of contractual relations can be highlighted by referring to Article 23 of the Law of Ukraine "On the National Police of Ukraine":

1) protection of objects of State property in cases and in the manner prescribed by law and other regulations, as well as participation in the implementation of State protection (Paragraph 19);

2) protection of individuals and the objects of private and communal property on a contractual basis (Paragraph 20).

The Protection Police guard the property of citizens and individuals on the basis of an agreement concluded in accordance with the requirements of the Civil Code of Ukraine (Law of Ukraine 2003). Accordingly, the Protection Police will be held liable for breach of contract. As the law does not currently provide for standard contracts for the protection of objects, the parties have the right to determine its terms, including the conditions of bringing the parties to civil liability in case of non-performance or improper performance of the Object Safeguarding Agreement. Thus, the parties to the contract establish the grounds for civil liability, the amount of damages to be reimbursed, the conditions of release from liability, etc. However, in order to prevent abuses by either party and to properly protect the property, it is necessary to determine the conditions and the procedure for compensation of damage caused by the Protection Police of Ukraine.

A set of foreign and domestic scholars have devoted significant attention to the issues of safeguarding agreement in their research papers.

In particular, S. P. Dovbii (2013) carries out in his work the legal analysis of theoretical and practical issues that arise in connection with the paid provision of property protection services. The study defines the scope of the contractual form of regulation of the relations under investigation, comprehensively examines the civil law contract for the protection of property as a legal model of behavior of participants in these relations, which reflects their specifics and characteristics. The author investigates the essence of the safeguarding agreement, its legal nature, its place in the system of contract law and proposes his own concept of the Safeguarding Agreement. Attention is paid to the peculiarities of concluding and executing this contract, as well as the grounds and conditions of liability under the agreement.

The aim of the study by M. A. Lytvynova (2007) is to determine the legal nature of the Safeguarding Agreement and clarify the features of its conclusion, its content, the peculiarities of execution and liability of the parties to the contract. In addition, the author analyses the issues of the legal status of the organizations engaged in protection activities.

The purpose of the research by A. M. Liniev (2009) is to solve civil law problems arising from the conclusion of the safeguarding agreement, to create and justify a scientific basis for the legitimate application of legal norms relating to the obligation to protect property.

O. V. Milkov (2007) carries out scientific substantiation of the civil law nature of the Safeguarding Agreement, a scientific analysis of theoretical and practical problems that arise in the performance of the agreement, develops the proposals for the regulation of security relations, generalizes regulatory and doctrinal provisions with regard to the safeguarding agreement.

However, the issue of loss adjusting for breach of Safeguarding Agreement received little attention in the scientific literature, so this problem will be the subject matter of our study.

The methodological basis of the study is the dialectical method and other methods and techniques of scientific knowledge. With the help of the logical and semantic method the conceptual apparatus was expanded (in particular, the concepts of Safeguarding Agreement, losses, direct damage, loss of profit, non-pecuniary damage, etc.). Using the method of analysis and synthesis, the characteristics of the Safeguarding Agreement were determined and the grounds and conditions for compensation of damages caused by the Protection Police for non-performance or improper performance of the contract were established. Using the hermeneutic method and normative and dogmatic method, the provisions of the regulations governing compensation for damages for non-performance or improper performance of the Safeguarding Agreement (Civil Code of Ukraine, Law of Ukraine "On Security Activities", etc.) were studied. The statistical method

was used in considering the Ukrainian jurisprudence on the issue under consideration, as well as the case law of the European Court of Human Rights.

2. Contracts for the provision of protection services

The contracts for the provision of services for the protection of property and individuals are concluded following the provisions of the Civil Code of Ukraine (Law of Ukraine 2003). According to Article 978 of this legal act under the contract of protection, the security guard, which is a business entity, undertakes to ensure the integrity of persons or property, which are protected. Thus, based on the content of this article, there are two types of Safeguarding Agreement: the agreement on protection of an individual and the agreement on the protection of property (Object Safeguarding Agreement).

In accordance with paragraph 4, Article 1 of the Law "On the Security Activity" (Law of Ukraine, 2012) protection of property is the activity on establishment and practical implementation of security measures aimed at ensuring the inviolability, integrity of the owner and his (her) buildings, structures, territories, waters, vehicles, currency values, securities and other movable and immovable property, in order to prevent and / or stop illegal actions against this property, to preserve its physical condition, to terminate unauthorized access to it.

Protection of an individual is the activity on establishment and practical implementation of protection measures aimed at ensuring the personal safety, life and health of an individual (group of individuals) by preventing the negative direct impact of factors (acts and omissions) of illegal nature.

3. Specifics of the responsibility of the Protection Police

The specifics of the responsibility of the Protection Police is manifested in the fact that they are not responsible for all damages caused by improper performance of the terms of the Object Safeguarding Agreement, but only for those caused in certain ways: theft by hacking locks, windows , shop windows and fences; in other ways as a result of failure to provide proper protection or as a result of non-compliance the procedure for export (import) of inventory kept at the protected object; thefts committed as a result of robbery or burglary; by destruction or damage caused to property by third parties who broke into the protected object, or because of other reasons due to the fault of the officers of the Protection Police (Abramov, 2001, p. 90).

In N. P. Voloshin's opinion "the guard is liable only for stolen property; if the thieves damaged the property as a result of theft, the guard is not responsible for these damages" (Voloshin, 1962, p.55).

Their views are shared by S. P. Dovbiy, who believes that the mechanism of compensation for damages under the Object Safeguarding Agreement would be fairer to design not on the principle of liability for the offense, but on the principle of risk- sharing. In this case, it is possible to expand the responsibility of the guard for the accident, i.e. without taking into account the guilt, but only in the case of property damage caused by criminal encroachment (Dovbii, 2013, p. 88).

This point of view is criticized by E. D. Sheshenin, who believes that such a statement is contrary to the principles of civil liability. The guard should be held accountable for all damages caused by burglary. Establishment of this rule will allow to use the civil and legal form of protection of property in full (Sheshenin, 1964, p. 320).

Yu. P. Kosmin adheres to the opposite point of view: "the failure to receive income has a negative effect on the planned and financial indicators of the owner, on the amount of contributions to premiums and other funds of the enterprise. Therefore, the Object Safeguarding Agreement should be supplemented with an indication that the losses to be reimbursed also include the income not received by the owner. Full property liability, the potential possibility of its application will be an important incentive for the proper organization and implementation of protection of objects (Pidopryhora & Bobrova, 1997, p. 324).

In his turn, O. V. Milkov argues that liability in any case arises only in the event of non-performance or improper performance of the obligation to protect. The form of expression of non-performance or improper performance depends on the characteristics of the subject of a particular contract, the content and specifics of the security service provided under the contract. Based on this, the specific method of inflicting damages under the Object Safeguarding Agreement does not matter. The main thing is that the damages are in causal relationship with the non-performance or improper performance the obligations under the agreement (Milkov, 2007, pp. 21 – 22).

We share the first point of view of scientists and believe that the Protection Police should compensate only for damage caused by the theft of inventory items and other property transferred to protection, during the protection of the object, committed by theft, robbery, robbery, as a result of failure to ensure proper protection. After all, Article 978 of the Civil Code of Ukraine states that under a security

contract, a security guard, which is a business entity, undertakes to ensure the integrity of an individual or property, which is protected. The inviolability of property can be violated by strangers entering the premises where it is kept during the protection period by breaking, opening or destroying windows, doors and other structures blocked by technical means of alarm and committing the above illegal acts as a result of improper performance of the Protection Police of their contractual obligations (Panchenko 2017, 100).

4. Compensation for damages in case of breach of the contractual obligation

In case of breach of the contractual obligation, there are legal consequences established by the contract, including compensation for damages. According to the legislation of Ukraine, losses are: direct damage and loss of profit (Article 22 of the Civil Code of Ukraine). It should be noted that only direct damage is subject to compensation under the Object Safeguarding Agreement; loss of profit, as a component of losses, is not reimbursed.

This rule is universal and is of imperative nature. Two views are expressed in the scientific legal literature in this regard: some scholars argue for limiting the amount of liability of the Protection Police, while the others propose to proceed from the general rule on the full compensation of damages, i. e. not only direct damage but also loss of profit should be compensated. Thus, G. P. Chub understands under the concept of loss the damage caused by theft of property. In her opinion, the Protection Police is not liable for damage or destruction of property inside the guarded apartment, and for losses caused to the owner by damage to the premises. According to the author, the methods used to protect apartments do not prevent the intrusion of outsiders. Therefore, the Protection Police cannot be blamed for damage to property. Security alarms, by reporting the violation of the integrity of the protected object, contribute to the detention of persons who entered the object, and consequently – the theft of property. Timely identification of these persons provides an opportunity for the owner, in case of damage to the apartment and property, to sue the direct perpetrators of damage (Chub, 1973, pp. 13 – 14).

V. I. Smirnov does not agree with her statement, because then the issue remains unresolved: whom to sue in case of damage or destruction of property, if the direct perpetrators of the damage are not detained due to the fault of the guard? The scientist believes that the Protection Police should compensate the owner not only for damage caused by theft due to their fault, but also for damage caused by damage or destruction of property in the apartment, except for damaged doors and windows blocked by alarm, because the operation of the burglar alarm is connected with their damage (Smirnov, 2001, pp. 139 – 140).

In practice, there is also a dual approach to addressing this issue: some customers of security services restrict the guard's liability for damages by a certain amount, including the value of stolen or damaged property, damaged inventory, as well as the costs spent on the restoration of damaged property, i.e. only by direct losses. The others insist on the full financial liability of the security guard.

However, according to S. P. Dovbiy, the imposition of responsibility on the guard in full will not contribute to the development of this socially necessary sphere of services. This will lead to the fact that when agreeing on the terms of the contract, the security guard will have to choose the most effective, but also the most expensive method of protection to minimize the level of risk. One way or another, the guard has to form a kind of fund or to insure their civil liability. In this case, the high cost of the service may be an obstacle to the conclusion of the agreement. Secondly, it should be borne in mind that the security service is provided in respect of property that remains in the possession of the owner (i.e. without transferring it into the possession of the guard), and therefore the guard is unable to establish full control over it, and, consequently, to guarantee a positive result. Thirdly, the protection of property is carried out, as a rule, without prior inspection, description and assessment of its value. The guard does not always have information about the changes that have occurred in the composition of the protected property, although these changes can significantly increase the risk of illegal encroachment, and hence the need for additional protection measures (Dovbii, 2004, p. 42).

In our opinion, in resolving this issue, it will be sufficient to provide the parties with the opportunity to envisage the penalty or otherwise to define the limits of liability in case of breach of an obligation in a particular Object Safeguarding Agreement. In so doing, the rules set out in Article 6 of the Civil Code of Ukraine regarding the correlation of the acts of civil law and the contract must be taken into account.

This point of view is also supported by M. Litvinova, who believes that, as a general rule, this type of contract is characterized by limited liability of the security organization, which is due to the following circumstances: the inability to establish full control over the protected property; risky nature of the contract; transfer of the object under protection

without prior inspection of the property kept on the protected object. In connection with the above, the full liability of the security organization under the contract is possible only if such liability is established in the agreement itself (Litvinova, 2007, p. 16).

It should be noted that there is also a tendency to deviate from the principle of full compensation for damage towards the establishment of maximum limits of property liability in the legislation of Western European countries. The main reason for this trend is that today many economic activities are associated with the danger of causing severe losses, which far exceed the financial capabilities of the entrepreneur.

5. Proving the amount of damage caused to the customer of security services

Proving the amount of damage caused to the customer of security services due to improper performance of the terms of the Object Safeguarding Agreement is another problematic issue. If the customer is a legal entity, the establishment of the amount of damages can be carried out on the basis of the following documents: the act of inventory of property signed by the authorized representatives of the parties; information on the book value of the stolen property at the time of the accident; copies of the description of the property kept in the premises, which was taken under protection; an act on the opening of the protected premises, signed by the authorized representatives of the parties; act from the relevant police department on the initiation of a criminal case on the fact of theft; set-off act (compensation for damages at the expense of the cost for security services provided).

But how to find out the magnitude of the damage, if the customer of security services is an individual, who cannot prove the value of stolen or damaged property, which was in the guarded apartment (private house)? After all, only a few people keep checks and receipts for all purchases, and some valuables can be donated or bequeathed, so the victim does not even imagine their approximate value.

Civil law enshrines the principle according to which the burden of proving damages caused by breach of obligation rests with the creditor (Part 2, Article 623 of the Civil Code of Ukraine). Therefore, the magnitude of the damages caused by improper performance of the Safeguarding Agreement is proved by the customer of security services. If he (she) has no evidence to support the scope of the claims, the court has the right to deny the claim. There is a situation when the fact of inflicting damages is not in doubt, but there is no proper evidence to confirm their magnitude, and therefore, it is impossible to obtain adequate compensation for these losses.

One of the options for resolving this issue is found in paragraph 3, Article 7.4.3 of the "Principles of International Commercial Contracts", which states that where the magnitude of the damage cannot be established with a sufficient degree of certainty then, rather than refuse any compensation or award nominal damages, the court is empowered to make an equitable quantification of the harm sustained (UNIDROIT, 2016).

According to most researchers, the guard is liable to the customer for damages within the value of the property assessed by the customer at the conclusion of the contract. In this case, the magnitude of the damage should be confirmed by the relevant documents drawn up involving the guard (Bychkova, 2014, p. 272).

A. Linev emphasizes that it is not a specific property but a certain room in which this property is located is transferred under protection. Depending on its overall monetary value and the percentage of the value of the stolen (destroyed or damaged) the amount of compensation should be determined. In other words, compensation must be made in the amount of the direct actual damage caused as a result of improper performance of the contractual obligations. Thus, the value of the property, which is kept in the guarded objects, can vary significantly in each case. In this regard, the content of contracts concluded often includes a condition regarding the total value of the property placed under protection, according to which the amount of payments for protection services may vary (Liniev, 2009, p. 18).

The value of stolen property from the premises of citizens is determined based on current retail prices, taking into account depreciation and amortization. Losses to be reimbursed include the value of stolen or destroyed property, the amount of reduction in the price of damaged inventory, the costs incurred to restore damaged property, the amount of stolen money, as well as jewelry. At the same time, the guard's liability for stolen cash and jewelry made of precious metal or stone is usually limited to ten and, respectively, twenty times the minimum wage, which should encourage the customer to store valuables in specially adapted places (such as bank or safes). The guard is also responsible for the stolen antiques, but provided that the customer gave him a notarized, compiled by competent specialists, description and assessment of the value of antiques at the time of concluding the contract.

In our opinion, the customer of security services should independently or with the help of third parties assess the property that will be transferred for storage, and indicate its price in the Object Safeguarding Agreement. The Pro-

tection Police will be liable for non-performance or improper performance of the agreement within this amount. This approach is the most applicable in practice, because it allows the owner to cover all or a part of direct losses and the amount of loss profits in the event of damage.

However, as Ye. A. Kharytonov correctly notes, the rule that the guard's liability is limited by the value of the deposited property specified in the relevant document does not waive the right of the customer of security services to insist on reimbursement of the value of the guarded property above the assessment specified in the document, if he (she) is able to prove higher value of lost, missing or damaged property (Kharytonov, 2007, p. 872).

It has been suggested in the scientific literature that when concluding an Object Safeguarding Agreement, in which the owner of the property is an individual, the latter is a weak party to the contract. In order to protect his (her) property interests, it is necessary to establish the rule, by which in case of non-performance or improper performance of security obligations and the fact of causing damage to an individual, the amount of damage may be determined by the court taking into account the facts of the case (Litvinova, 2007, p. 16).

We believe that such a practice may exist in the relevant legal relationship between an individual and the Protection Police, as in some cases the intangible value of the property to the owner significantly exceeds its real value and damage resulting from its theft or damage. For example, a stolen painting that has been passed down from generation to generation may not have significant material value, but it can be extremely pricey for its owner.

However, this rule should not apply to legal entities, as the establishment of a legal entity should be subject to the presumption of proper training of its staff to participate in civil turnover. Therefore, conscientious legal entities should independently calculate the amount of their losses, while the absence of such a calculation should be classified as dishonesty.

6. The issue of compensation for non-pecuniary damage

The issue of compensation for non-pecuniary damage caused to the customer by the Protection Police under the Safeguarding Agreement is also important. As a general rule, a person has the right to compensation for non-pecuniary damage caused as a result of a violation of his (her) rights. A case-law study shows that breach of any contractual obligation may give rise to non-pecuniary damage in proceedings before a court of first or appellate instance.

Unfortunately, the courts of cassation have come to the opposite opinion: in case, in which compensation for non-pecuniary damage is not directly enshrined in the agreement, and there is no law providing for compensation of non-pecuniary damage in the legal relationship between the parties, the claim for compensation for non-pecuniary damage should be denied. The view of the Supreme Court of Ukraine on the possibility of compensation for non-pecuniary damage caused by non-performance of an obligation arising from the contract is similar (Supreme Court of Ukraine 2008).

At the same time, the possibility of compensation for non-pecuniary damage for violations of the terms of the contract are enshrined in articles 611, 700, 1076 of the Civil Code of Ukraine. Based on the content of Article 611 of the Civil Code of Ukraine in case of breach of obligation there are legal consequences established by contract or law, including compensation for damages and non-pecuniary damage. Thus, today there is a difference in opinions, both in the literature and in practice on compensation for non-pecuniary damage in cases of breach of contract.

The case law of the European Court of Human Rights significantly differs from the Ukrainian one regarding this issue. As an example, let us cite the Judgement of the European Court of Human Rights in the case of "Novoseletsky v. Ukraine" of 22 February 2005 (paragraphs 22, 76). According to this decision the ECHR was "particularly struck by the fact that the court rejected the applicant's claim for damages, on the ground that the law made no provision for compensation in respect of non-pecuniary damage in landlord-tenant disputes". The indicated determines the conditions of application of Articles 23, 1167 of the Civil Code of Ukraine and recognizes compensation for non-pecuniary damage as a general method of protection, regardless of the predictability of this right in special laws.

However, nowadays non-pecuniary damage caused by improper performance of the Object Safeguarding Agreement by the Protection Police is not compensated.

Finally, it should be noted that the damages caused by improper performance of the obligations under the concluded civil law contracts by the Protection Police of Ukraine are compensated at the expense of the funds received from the performance of these contracts.

7. Conclusions

Thus, currently the Ukrainian legislation does not provide for standard Object Safeguarding Agreement, and therefore the parties have the right to determine its terms on their own, including the grounds for bringing the parties to responsibility in case of non-performance or improper performance of this agreement, the amount of compensation for damage caused

by improper performance of contractual obligations, etc. In order to properly protect the rights and interests of the parties to the Object Safeguarding Agreement, we have analyzed the current legislation and case law in order to determine what types of harm and to what extent are subject to compensation.

Besides, it has been substantiated that the specifics of the responsibility of the Protection Police of Ukraine is that they are not responsible for all damages caused by improper performance of the terms of the Object Safeguarding Agreement, but only for those caused in certain ways (theft, robbery, etc.).

It has been proved that the magnitude of the damage to be reimbursed is limited by the amount of direct damage caused to the owner of the protected property; the loss of profit and non-pecuniary damage are not subject to compensation, unless specifically provided by contract or law. If, in addition to compensation for damages, the parties to the contract stipulate the payment of a penalty, it is subject to recovery in full.

The limited liability of the Protection Police is due to the impossibility of establishing full control over the protected property, the risky nature of the contract, the transfer of the object under protection without prior inspection of the property. Imposing full responsibility on the Protection Police will lead to the choice of the most effective but also the most expensive method of protection in order to minimize the risk of incurring the damages. In this case, the high cost of the service may be an obstacle to the conclusion of the agreement.

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ВІДШКОДУВАННЯ ШКОДИ ЗА ПОРУШЕННЯ ДОГОВОРУ ОХОРОНИ ОБ'ЄКТА (НА ПРИКЛАДІ ПОЛІЦІЇ ОХОРОНИ УКРАЇНИ)

Анотація. ***Мета.*** Метою статті є комплексний аналіз питання відшкодування збитків за порушення договору охорони об'єкта поліцією охорони України. Із цією метою опрацьовано низку нормативно-правових актів України, що регулюють це питання, а також досліджено наукові праці українських та зарубіжних вчених з цієї проблематики. ***Методи дослідження.*** У дослідженні використовуються загальнонаукові та спеціальні методи юридичної науки, зокрема: діалектичний метод, метод аналізу і синтезу, логіко-семантичний метод, герменевтичний метод, нормативно-догматичний метод, статистичний метод. ***Результати.*** У результаті дослідження встановлено, що наразі законодавством України не передбачено типового договору про охорону об'єкта, тому з метою належного захисту прав та інтересів сторін цього договору ми проаналізували чинне законодавство України та судову практику з тим, аби визначити, які збитки та в якому обсязі підлягають відшкодуванню. Обґрунтовано, що поліція охорони України несе відповідальність лише за збитки, завдані певним чином та відшкодовує лише пряму шкоду; втрачена вигода та моральна шкода відшкодуванню не підлягають. На основі проведеного дослідження доведено, що повна відповідальність поліції охорони була б перешкодою для укладення договору охорони об'єкта. ***Висновки.*** Оскільки українське законодавство не передбачає типового договору про охорону об'єкта, сторони мають право самостійно визначати його умови, в тому числі особливості притягнення сторін до відповідальності у разі невиконання або неналежного виконання цього договору. Розмір шкоди, що підлягає відшкодуванню, обмежується розміром прямої шкоди, заподіяної власнику майна, що охороняється. Обмежена відповідальність поліції охорони пов'язана з неможливістю встановлення повного контролю за охоронюваним майном, ризикованим характером договору, передачею об'єкта під охорону без попереднього огляду майна.

Ключові слова: договір охорони об'єкта, поліція охорони України, неналежне виконання, шкода, відшкодування, пряма шкода, моральна шкода, упущена вигода.

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ADAPTATION OF THE PRINCIPLE OF SUBSIDIARITY IN WESTERN AND EASTERN LEGAL SYSTEMS

Abstract. ***Purpose.*** The article is devoted to covering the essence and adaptation of the principle of subsidiarity in socio-economic relations and administrative legal relations of subjects of various levels, which were formed during the XX and XXI centuries, and how the gradual change in the role of the principle of subsidiarity affected its further adaptation in various legal systems. ***Research methods.*** The work was carried out on the basis of general scientific and special methods of scientific knowledge, including the comparative legal method and analysis. ***Results.*** For a reasonable analysis of the possibility of adaption of the subsidiarity principle in Western European and Eastern European legal systems, the main theoretical and legal approaches to the definition of the concept of "principles of law" were generally considered through pre-grouping researchers and members of the scientific community by territorial affiliation and political-legal systems, namely by dividing them conventionally into "Western European" and "Eastern European". In addition, taking into account that the scientific approaches were considered starting from the XX century, the global formation of the opinion on the principles of law in the totalitarian (Soviet) system, in comparison with the Western European opinion, was analyzed as well. Based on the coverage of approaches to the definition of "principles of law", approaches to the definition of the principle of subsidiarity were highlighted, but also in the present time, namely, within the post-Soviet and European scientific space. ***Conclusions.*** Having familiarized with the theoretical and legal approaches to the principles of law of the above-mentioned groups of scientists in the Soviet and European scientific communities, it was possible to conclude that the adaptation of the principle of subsidiarity, as a modern principle of law (administrative), to totalitarian regimes or systems with a high level of centralization of powers would be challenging, if not impossible. After all, the content of the principle of subsidiarity, without distorting its genesis and high social orientation which was formed by the Catholic Church, is directed precisely to decentralization and expansion of powers and independence of subordinate subjects of the system, which is difficult to allow under totalitarian power. Bringing up the relevant issue, the article emphasizes the importance of understanding historically determined processes and their impact on socio-economic relations in society and, as a result, the possibility of adapting certain principles in modern legal systems.

Key words: principle of subsidiarity, principles of law, content of principle, legal approaches, historical aspect, adaptation.

1. Introduction

The study of the role and character of a certain principle within a specific field or institution of law requires a preliminary understanding of theoretical and legal approaches to the category of "principles of law", which can significantly help in revealing its essence and application or existence in particular states, political regimes, or other systems. Based on the above, we consider it appropriate to analyze the concept of the principle of subsidiarity and its definition by highlighting the main theoretical and legal approaches to it, and then identifying the main approaches to the definition of the "principle of law" available in Western European and Eastern European legal doctrines of the last century. The latter will help to assume the possibility of application and further development of the principle of subsidiarity in the Western European and post-Soviet space. To this date, the principle of subsidiarity is still poorly analyzed from different points by domestic legal researchers and lawyers. The principle of subsidiarity was a subject of analysis of such research-

ers as Hrytsiak I.A., Matseliuh I.A., Pukhtetska A.A., and others. However, most of attention was paid to the history of the principle or its use within separate modern systems. Thus, it can be said that its functional features or the basic reasons of its functioning within different legal systems remain uncovered. For the above-mentioned purpose, different scientific methods were used. The induction method was used to generalize the main characteristics that could unite the positions of the representatives of the legal doctrines that we study in the research. Among the specialized legal methods, the comparative legal analysis of Western European and Eastern European legal doctrines was used to find some common and distinctive features to identify the different approaches to the principle within the mentioned doctrines. In addition, the retrospective method was used to analyze the genesis and the evolution of the principle of subsidiarity which has been forming during the XX and XXI centuries in western and eastern Europe.

2. Basic provisions of the principle of subsidiarity.

By applying a comprehensive approach to solving the problem, we consider it necessary to preliminarily highlight the approaches to defining the principle of subsidiarity itself, taking into account the work of Western European and Eastern European scientists. Moreover, it is worth noting the non-legal genesis of the principle of subsidiarity.

Thus, speaking about the previous and non-legal origin of the principle of subsidiarity, it is essential to mention the Catholic Church. For the first time, the idea of subsidiarity was elucidated in the doctrine of the Catholic Church at the end of the XIX century, which was formulated by the German politician Wilhelm Immanuel von Kettler. After Kettler, the importance of the principle of subsidiarity as a component of the social state was developed and emphasized by the Popes. For example, Pope Pius XII in his Decree of 1946 criticized the totalitarian regime, including communism, and emphasized that the studied principle should eliminate the possibility of arbitrary intervention of the state in the private sphere of a person's life without necessity, and therefore, be an integral part of any kind of social activity of a person. Later, in the second half of the XX century, Pope John XXIII developed the idea of applying the principle of subsidiarity in public administration. In this case, according to the principle, it was assumed that the political leadership or the state power would provide greater freedom for independent activity, decision-making by institutions, groups, and associations with the aim of achieving the public good (Matseliuh, 2020, pp.7-8).

Speaking about modern approaches to understanding the principle of subsidiarity, developed by representatives of Western and Eastern legal doctrine, it is important to pay attention to several main approaches.

The principle of subsidiarity can be seen as an "ethical principle" related to the social doctrine of the Catholic Church mentioned above. It provides that the main purpose of the principle is to allow smaller groups of people to be recognized by larger, more powerful groups (Linnan, 1989, p. 403).

The principle of subsidiarity is also actively used in modern international systems, including the system of protection of human rights and freedoms of the Council of Europe. The so-called "judicial subsidiarity" determines the relations of the national and supranational levels and is related to the process of "indirect regulation" or "indirect influence" of a higher subject on a lower one within the scope of the European Convention on Human Rights, which takes place between the contracting parties, signatories of the Convention, and the force of the decisions of the Strasbourg Court regarding them that combines the principle's legal judicial nature (Cassese, 2015, p. 14). Within the same approach, the principle of subsidiarity acts as an integral part of argumentation and proof when considering conflicts regarding human rights violations before international or regional supranational courts, namely, in terms of gathering evidence and preliminary settlement of the issue at the national level (Besson, 2016, p. 69).

In addition, there is another so-called "sociological" approach to the principle of subsidiarity. According to this approach, the principle harmonizes the interests of subjects and combines natural human rights with public interests, and also helps establish authority between institutions, private individuals or other subjects within a particular state (Kondratiene, 2012, p. 53). Following the principle, each social and political group should help smaller groups or more local groups, so that the latter have the opportunity to achieve their respective goals, but not transfer these tasks to themselves by usurping the full power (Carozza, 2003, p. 38).

Modern Ukrainian scientists mark a "political-legal" approach, which distinguishes between two dimensions - positive and negative. In a negative sense, the state or public institution is prohibited from interfering in the relations of institutions or groups of a lower level or other subjects, where they can independently solve a problem using economic and effective methods. If we refer to the positive aspect, in vertical or horizontal relations,

a higher-level institution supports lower-level subjects and helps to solve their problems, as it is common for the system of the European Union and the system of the European Convention on Human Rights (Karabin, 2014, p. 61).

It should be mentioned that within Ukrainian legal doctrine, attention is also paid to the principle in the system of international organizations and regional supranational entities, for example, in the system of the European Union. Currently, there is a tendency to consider the principle of subsidiarity in the list of such principles as decentralization and deconcentration, which aims to regulate competences between regional and local levels of administration in the European Community, setting the goals and functions of institutions as a defining feature of the principle. Such an approach to the principle can be defined as "functional"; it focuses exclusively on the regulatory influence on the distribution of competences between subjects of different levels (Hrytsiak, 2006, p. 16).

In addition to the approach, which regards the principle of subsidiarity in the same manner as the principles of decentralization and deconcentration, Nepomnyachchy O. M., together with his colleagues, determines that the processes of decentralization are aimed not only at financial or any support of local initiatives and projects but, first of all, at the formation of a liability system of the communities for ensuring their own socio-economic development. (Nepomnyashchyy, Marusheva, Medvedchuk, Lahunova, Kislov, 2021, p. 91). Thus, decentralization complements subsidiarity in terms of the responsibility of the subordinate entities for solving their local issues independently, which should be an integral part of the autonomy granted to them in solving such issues. Subsidiarity complements decentralization in the aspect of the possibility of applying for financial or resource support to superior subjects only in the case when their local problems or issues cannot be solved by them independently, efficiently and with sufficient saving of resources.

Thus, in the Western legal doctrine, the principle of subsidiarity has been actively developing for half a century and finds its practical application in the work of institutions within the states and also at the international level, as evidenced by the bulk of approaches and opinions considered. Within Ukrainian scientific space, interest in the principle is still at its initial stage, as far as there are only few relevant scientific works, although the prospects for its conceptual understanding and practical application, as demonstrated by Western lawyers, are quite broad. On the other hand, the principles of decentralization and deconcentration, which are inextricably linked with administrative reform in Ukraine, attract considerable attention in modern domestic science. The study of the latter, in turn, opens the door to the gradual understanding of the principle of subsidiarity.

3. Approaches to the definition of the concept of "principles of law" among Western and Eastern European scientists.

Since in the modern scientific community the principle of subsidiarity, according to the "functional" and "political-legal" approaches, is related to the implementation of administrative regulation of social relations between the competences of subjects of different levels, it will be fully justified to attribute the principle of subsidiarity to the principles of administrative law, and therefore, to the principles of law.

Further to this topic, we propose to consider more comprehensively the approaches to the definition of the concept of "principles of law", which was formed in the legal doctrine of the last century, in order to determine the possibility of applying and developing the principle of subsidiarity in Western European and post-Soviet countries. This category is also characterized by various approaches to its interpretation.

Starting from the historically conditioned post-revolutionary Soviet period, it is worth starting from the position of the positivist approach to the "principles of law" advocated by Yavych L.S., Yershov V.V., and Kornev V.N. According to this approach, the principles of law appear as certain theoretical ideas, normative and guiding provisions to various types of human activity. The principles of law are determined and specified in the content of legal norms. They are objectively determined by certain material conditions of society's existence and guide the entire mechanism of legal regulation of social relations (Yavich, 1967, p. 64). The principles of law become a reference point for the legislative activity of state authorities regarding their concretization through the creation of specific norms, as a result, the principles of law act as independent regulators of social relations together with the norms of law. Moreover, the principles are obligations established by law and addressed to subjects of law-making and law-enforcement activities, which involve taking specific actions to ensure and implement some legal values (Kornev, 2018, p. 69).

In addition to the positivist approach, there was also an "ideological" one. It states that the category "principles of law" should belong to the sphere of human legal consciousness, legal ideology and science, which is due to

their fundamental importance for the formation of a certain human worldview. Thus, Alekseev S.S. believed that their existence is always driven by the economic and socio-political system, and, accordingly, they exist in law itself and are a phenomenon of an ideological nature (Alekseev, 1972, pp. 102-105).

Mr. Smirnov underlines that the principles of law find expression in the creation of relevant guiding provisions, the conscious desire of people to direct their behavior in line with the trends and objective laws of the development of society as a whole, as well as its individual social phenomena, which include both the economy with politics and the norms of morality with human rights (Smirnov, 1977, p. 11).

Another approach that was formed at the time of the ideological approach was also a "normativist" approach. According to the latter, the principles of law are universally binding, formally defined and established provisions by the state (Lukasheva, 1973, pp. 94-95).

After paying attention to the scientists of the Soviet period and gradually moving to the study of the development of the concept of the principles of law, it will be logical and expedient to draw attention to the positions of modern domestic scientists. After Ukraine gained independence together with the collapse of the Soviet Union and liberation from the views imposed by the ruling party, the scientific community received the opportunity and impetus to express those scientific positions that went beyond the previous ideology.

The most generalized understanding of the principles is given in the work of Boyaryntseva M. A., who has relied on the positions of such scientists as Kopeichikov V. V. and Sumina V.O. Thus, the principles of law are considered as basic positions, fundamental ideas characterized by universality, general significance, higher imperativeness, and reflect the most essential provisions of law (Boiaryntseva, 2015, p. 116).

Mr. Pohrebnyak focuses on various scientific categories in their connection with principles and demonstrates their interdependence. He calls the term "idea" the genetic aspect of principles and emphasizes their intellectual-spiritual character. Mr. Pohrebnyak justifies this statement by the fact that the basis of the formation of principles is the intellectual process of a person's understanding of the world fixed in thought, which gives principles the character of universality, fundamentality, self-sufficiency for a certain historical period and sets certain principles for further development and movement (Pohrebnyak, 2008, p. 240).

Another way of looking at the category of principle of law is to look through the prism of its "nature of requirement". Mr. Dvorkin considers the principles of law as requirements, imperatives for people who observe them or have obligations to observe them in connection with legal relations in which they act as a party to justice or other moral dimensions without observing or understanding which these principles cannot function (Dvorkin, 2000, p. 519).

Administrative law scientist Sharaya A. A. combines most of the previously mentioned aspects of principles from separate definitions and from various scientists and stresses that principles are the basic, initial provisions of any theory or teaching, the basic principles of explanations and instructions, which are characterized by universality, general significance, higher imperative, and reflect essential provisions of theory, teaching, science, legal system, state system, etc. In addition to the given definition, the scientist underlines that the principles are characterized by such a property as an abstract reflection of the laws of social reality, which determines their role in the system of a large number of phenomena. In addition, Sharaya A. A. defines the principles as the source of many phenomena, processes, and conclusions are related to them as an action to a cause (real principle) or as consequences to a basis (ideal principle). (Sharaya, 2016, p. 206).

Going forward, having previously paid attention to the research of scientists of eastern Europe during the last century and up to the present, we will move on to the representatives of the scientific community of the Western legal doctrine.

Mr. Palombella states that the principles of law refer to the sources of law. They have found wide application in the precedent law of judicial bodies both at the national level of the countries of the Anglo-American legal system and in international law, including by the UN court. In this field, the principles of law, acting as a source of law, are used to provide official judicial interpretation of norms and rules of laws and by-laws or to provide legal justification for a specific decision (Palombella, 2015, pp. 3-4).

Jordan Daci and Joseph Esser describe the principles of law as the abstract rules that do not regulate the behavior of the subjects of legal relations directly (indirect influence), as opposed to the legal norms expressed in legislative acts (direct influence). The principles are implemented by acting as a foundation and basis for the introduction of specific prescriptions in the content of legal norms based on them. Principles of law appear as a form of expression of points of view or as a proposal to act in a certain way, but they do not specify the way to do so, nor do they indicate a specific

way of solving a particular issue. Such a task relies on legal norms, which specify legal cases regarding the implementation of legal principles (Esser, 1956, p. 51).

Mr. Kornev mentions the position of Robert Alexy, who also resorts to comparative analysis. According to Mr. Alexy, a rule is a norm that provides for a specific form of behavior under specific circumstances, the breach of which casues specific consequences, which is also called subsumption, and in the legal field it is known as the qualification of the norm, which was already mentioned in the positions of scientists above. By relying on this provision, the scientist calls the principles of law norms that do not provide for specific and detailed forms of behavior under specific conditions, and are not characterized by the onset of consequences. Mr. Alexy concludes that the rules (legal norms), following his understanding, have the same binding force for the subjects in respect of which their application is possible. The principles of law, in turn, are characterized by their optimization. In other words, they have the so-called "weight" of different levels, are not universally binding, but are applied as necessary, actual possibility, with certain legal tools, etc., which indicates their "optimization" nature (Kornev, 2018, p. 67).

It can be seen that according to the results of our review of the positions of scientists and lawyers, certain trends and signs are observed that are common to Western legal doctrine and Eastern (Soviet and post-Soviet) legal doctrine.

For example, scientists of the Soviet period endowed the principles of law with an ideological character, claiming that they were the basis of people's conscious desire to establish certain material conditions for the existence of society and the regulation of social relations. In addition, positivist and normativist approaches gained considerable popularity, seeing the normative nature of the principles of law and their definition, establishment and consolidation directly by the state.

Among the group of domestic scientists of independent Ukraine, there is the privilege of the approach according to which the principles of law are perceived as the basic principles, original ideas, provisions that have the character of universality, flexibility, imperativeness and reflect the most essential provisions of the law, and do not come purely from imperative imposition and establishment by the state by the authorities, indicating that the principles of law are the highest category.

If we analyze the positions of the representatives of the group of foreign scientists, then the issue of studying the relationship between the principles of law, legal norms and rules is becoming relevant nowadays. A few studies are devoted to such a broad category, but those that exist deal with comparative analysis of other categories.

4. Conclusions.

Therefore, it can be seen that the representatives of the Western scientific community, in their legal adaptation, carefully treated the original essence of the principle of subsidiarity, namely, its representation in the Catholic social doctrine. After all, its nature was not in any way distorted or turned in the other direction within the countries of a democratic orientation, and its content remains the provision of a wide opportunity for the achievement of goals by lower subjects independently, as well as providing them with support in this by higher subjects only in case of urgent need. Moreover, in the Western world, this principle was incorporated in different systems, where it would be relevant. That is why research and development of it continue to this day.

At the same time, against the background of the development in the XX century of the systems of political power that were new for humanity, which provided for an extremely high level of control over all spheres of citizens' lives, the concept of the principle of subsidiarity was added to the concept of its belonging to the social state, without which it cannot exist and presupposes freedom and independence in the actions of the citizens of such a state from the total control of the government, which would not be adapted in any way in totalitarian regimes.

As a result, this principle did not receive recognition and even attention during the years of the Soviet Union, because the principle tends to the opposite - decentralization and a greater distribution of powers between subjects of different levels, giving subordinates more freedom and independence in making decisions on local issues.

However, Eastern European scientists showed some interest in it after the Soviet period, taking into account the western trend and the European integration process of already independent Ukraine.

It can be concluded that the relevance of adaptation and application of the principle of subsidiarity remains to this day. The eastern post-Soviet countries, where power remains at the high centralized level, will not be able to effectively apply and introduce it into their system. Although, the effectiveness and positive impact of the principle of subsidiarity when applied to the social well-being of society has been proven by Western countries for more than seventy years, and will be proven and developed in the future even more.

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АДАПТАЦІЯ ПРИНЦИПУ СУБСИДІАРНОСТІ В ЗАХІДНИХ ТА СХІДНИХ ПРАВОВИХ СИСТЕМАХ

Анотація. ***Мета.*** Стаття присвячена висвітленню питання значення та застосування принципу субсидіарності в соціально-економічних відносинах та управлінських правовідносинах суб'єктів різного рівня, які складалися протягом двадцятого та двадцять першого століття, а також як поступова зміна ролі принципу субсидіарності впливала на його поступову адаптацію в різноманітних правових системах. ***Методи дослідження.*** Робота проведена на підставі загальнонаукових та спеціальних методів наукового пізнання, в тому числі порівняльно-правового методу та аналізу. ***Результати.*** Для доцільного аналізу можливості адаптації принципу субсидіарності у західноєвропейських та східноєвропейських правових системах було розглянуто основні теоретико-правові підходи до визначення поняття «принципи права» загалом, попередньо групуючи дослідників та членів наукової спільноти за територіальною приналежністю та політико-правовою системою, а саме розділивши їх на умовно «західноєвропейських» та «східноєвропейських». Також, враховуючи, що розглянуті підходи розглядались починаючи з двадцятого століття, було розглянуто глобальне формування думки про принципи права в тоталітарній (радянській) системі, у порівнянні із західноєвропейською думкою. На підставі висвітлення підходів до визначення «принципів права» були висвітлені підходи до визначення принципу субсидіарності, але в сьогоденні, у пострадянському та європейському науковому просторі. ***Висновки.*** На підставі ознайомлення з теоретико-правовими підходами до принципів права вищезазначених груп вчених у радянській та європейській наукових спільнотах можна було зробити висновок, що адаптація принципу субсидіарності, як сучасного принципу права (адміністративного), до тоталітарних режимів або систем із високим рівнем централізації влади була б проблематичною, якщо б не неможливою. Адже зміст принципу субсидіарності, не спотворюючи його генези і високої соціальної направленості, що була сформована ще католицькою церквою, направлено як раз у бік децентралізації та розширення повноважень і самостійності нижчестоящих суб'єктів системи, що важко допустити при тоталітарній владі. Піднімаючи зазначене питання, стаття наголошує на важливості розуміння історично-обумовлених процесів та їх впливу на соціально-економічні відносини в суспільстві та, як результат, на можливість адаптації тих чи інших принципів у сучасних правових системах.

Ключові слова: принцип субсидіарності, принципи права, зміст принципу, правові підходи, історичний аспект, адаптація.

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ACTIVITIES OF THE STATE MIGRATION SERVICE OF UKRAINE RELATING TO IMMIGRATION

Abstract. ***Purpose.*** The purpose of the article is to elucidate administrative procedures of the State Migration Service of Ukraine relating to immigration. ***Results***. The article characterises administrative procedures of the State Migration Service relating to immigration. It is noted that the Law of Ukraine "On Immigration" defines the categories of immigrants for which a quota is established. The main indicators of the quota are, firstly, an analysis of the immigration process in the previous calendar year; secondly, the need to limit as far as possible the immigration quota to Ukraine for foreigners and stateless persons from the countries of origin of a large number of illegal migrants. The list of the latter is envisaged by the Ministry of Foreign Affairs of Ukraine. It is determined that the administrative procedures of the State Migration Service relating to immigration constitute the procedure defined by law for considering administrative cases by the State Migration Service of Ukraine, for taking the appropriate decision on granting, refusing to grant, as well as for revoking the immigration permit in order to ensure rights, freedoms and legitimate interests of foreigners and stateless persons. It is marked that administrative procedures relating to immigration performed by the State Migration Service, its territorial bodies and units include the case formation, verification of the grounds and legality of the stay of immigrants in Ukraine, verification that the documents provided are original and their conformity with the requirements of the legislation, depending on the category of immigrants, organisation of the decision-making on the granting of an immigration permit, refusal to grant an immigration permit, revocation of an immigration permit and issuance of copies of these decisions to the persons to whom they relate; organisation of issuance and withdrawal of a residence permit in cases provided for by law; maintenance of records of persons, applicants and persons who have been granted an immigration permit. ***Conclusions.*** It is concluded that administrative procedures relating to immigration should be improved by shifting priorities in the activities of the State Migration Service in respect of forecasting migration risks, ensuring timely response to potential threats, regulating effective cooperation between the State Migration Service and other State bodies to prevent illegal migration, further simplifying the provision of administrative immigration services on migration amnesty as an effective tool of migration policy.

Key words: State Migration Service, administrative procedure, immigration, immigration quota, immigration permit, administrative and judicial appeal.

1. Introduction

Migration is a wide-ranging concept, which means different types of mass migration to a temporary or permanent place of residence. In the context of globalisation, such processes have reached irresistible proportions. For example, in 2001, 101.7 thousand immigrants lived in the territory of Ukraine. In 2002, figures were 106.4 thousand, in 2003 - 108.5 thousand, in 2004 - 119.2 thousand, in 2005 - 128.1 thousand, in 2006 - 149.4 thousand, in 2007 - 165 thousand, in 2012 - 233 thousand, in 2013 - 250 thousand people, in 2014 - 253 thousand people, in 2015 - 250 thousand people, at the end of 2016 - 252.5 thousand people, in 2017 - 264.7 thousand people, in 2017 - 264.7 thousand people and in 2018 - 276.4 thousand people from more than 250 countries of the world, which is 0.62% of the total population of Ukraine (State Migration Service of Ukraine: Migration Profile of Ukraine, 2018: 63).

For a particular country, two types are distinguished: immigration, that is, the entry of foreigners into the State, and emigration, that is, the departure from the country. Studies by many administrative law experts are devoted to the peculiarities of administrative and legal regulatory mechanism of migration policy

and migration processes in general. At the same time, no scientific development of legal regulatory framework for the activities of the SMS relating to immigration and emigration exist.

It should be noted that administrative procedures have been and remain the subject of scientific interest by domestic and foreign administrative scientists such as: V. Averianov, D. Bakhrakh, Yu. Bytiak, O. Bandurka, V. Harashchuk, I. Holosnichenko, M. Dzhafarova, Ye. Demskyi, T. Kolomoiets, A. Komziuk, O. Lahoda, Ye. Leheza, H. Pysarenko, V. Tymoshchuk, V. Shkarupa, etc. In the field of state migration policy, this concept has been studied in the works by such scientists as: O. Vlasenko, S. Mosondz, V. Olefir, Ya. Poiedynok, N. Tyndyk, and others.

The purpose of the article is to cover administrative procedures of the State Migration Service of Ukraine relating to immigration.

2. Legal and regulatory framework for migration

Immigration, according to the literature, is defined, inter alia, as the entry of foreigners into a country for permanent residence (Bilodid, 1973:20); the process by which foreigners come to the country for further settlement and residence (Holubovska, Leuta, 2015: 11); the act by which a person establishes his or her residence in the territory of an EU Member State for a period of at least twelve months, or with intent for the duration thereof, having previous residence in another EU Member State or a third country (Sadova, 2018: 80).

According to Law 2491-III of Ukraine "On Immigration" as of June 07, 2001, immigration is the entry of foreign nationals and stateless persons to Ukraine for permanent residence or continuation of their stay in Ukraine, according to legislatively established procedures (Law of Ukraine on Immigration, 2001). Therefore, the main characteristics of immigration should include: 1) the entry into the country; 2) the regulatory mechanism; 3) the change of the legal status of the newcomer; 4) the temporary or permanent residence.

Issues of immigration at the legislative level are regulated by Law 2491-III of Ukraine "On Immigration" of June 07, 2001, which determines the conditions and procedure for immigration of foreigners and stateless persons to Ukraine, in particular the powers of the SMS of Ukraine relating to immigration. For example, the Law provides for that the actors, in charge of enforcing immigration legislation, are the Cabinet of Ministers of Ukraine, the central executive body, which makes public policy on migration (immigration and emigration), including countering illegal immigration (illegal) migration, citizenship, registration of individuals, refugees and other categories defined by law, diplomatic missions and consular offices of Ukraine.

The SMS of Ukraine has the following powers: 1) to receive applications on issuance of immigration permits, accompanied by documents, specified in Law, from individuals, staying in Ukraine legally; 2) to check, 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 reject issuance of these permits; 3) to make decisions to issue immigration permits, to reject to issue immigration permits, to withdraw immigration permits and issue copies of these decisions to the persons involved; 4) to issue and withdraw permanent residence permits in cases, stipulated by Law; 5) to register persons, who submitted applications on issuance of immigration permits and persons, who have been granted these permits (Law of Ukraine on Immigration, 2001).

According to this Law, the immigration permit is granted within the limits of the immigration quota, which is defined by the legislator as the highest possible number of foreign nationals or stateless persons, who may be granted permission for immigration within a calendar year; the immigration permit is a decision, permitting immigration of a foreigner or a stateless person (Law of Ukraine on Immigration, 2001). The immigration quota is determined annually by the CMU and issued by order. The immigration quota is formed in accordance with the proposals of the central and local executive authorities on a regional basis.

Proposals to the State Migration Service regarding the establishment of the immigration quota for the next calendar year are submitted by the Ministry of Culture and Information Policy, the Ministry of Social Policy, the Ministry of Economic Affairs, the Ministry of Education and Science, the Ministry of Defence, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city State Administrations, the SMS directly (Resolution of the Cabinet of Ministers of Ukraine On Approval of the Procedure for Forming an Immigration Quota, the Procedure for Proceedings on Applications for Immigration Permits and Submissions for its Abolition and Execution of Decisions, 2002).

The Law of Ukraine "On Immigration" defines the categories of immigrants for which a quota is established. The main indicators of the quota are, firstly, an analysis of the immigration process in the previous calendar year; secondly, the need to limit as far as possible the immigration quota to Ukraine for foreigners

and stateless persons from the countries of origin of a large number of illegal migrants. The list of the latter is determined by the Ministry of Foreign Affairs of Ukraine.

The analysis of the quota indicators established by the CMU in 2020, 2021 and 2022 shows the absence of the preliminary analysis, namely, taking into account the regional principle, particularly the demographic situation, and the formal approach of many regions to the establishment of an immigration quota. This conclusion is based on the fact that there is practically no difference between the indicators for certain categories in these years (Order of the Cabinet of Ministers of Ukraine on the establishment of the immigration quota, 2020; On the establishment of the immigration quota for 2021: Order of the Cabinet of Ministers, 2021; Order of the Cabinet of Ministers of Ukraine on the establishment of the immigration quota, 2022). It should be noted that the category of highly skilled professionals and workers, required by the economy of Ukraine until 2020, were not determined by such indicators. They were reflected in the CMU Order 431-r of March 11, 2020 (Order of the Cabinet of Ministers of Ukraine on the establishment of the immigration quota, 2020), in which the Government set a limit of 5,000 specialists for highly qualified foreign IT.

It should be noted that the issue of quotas is generally debatable. World practice demonstrates different systems for issuing permits for immigration. For example, not all countries set immigration quotas, such as Poland, Slovakia. However, all countries impose requirements on persons who intend to immigrate to the country. Therefore, we believe that it is advisable to establish quotas only for labour immigration, and that an appropriate formula should be developed for calculating the need for labour immigrants in accordance with the region, moreover detailed statistics on immigrant workers should be introduced. In all other cases, the submission of immigration quota proposals by the SMS is formal and does not regulate immigration processes.

With regard to the administrative procedures of the SMS relating to immigration, it should be noted that they are the administrative procedures of the SMS relating to immigration constitute the procedure defined by law for considering administrative cases by the SMS of Ukraine, for taking the appropriate decision on granting, refusing to grant, as well as for revoking the immigration permit in order to ensure rights, freedoms and legitimate interests of foreigners and stateless persons.

Administrative procedures of the SMS relating to immigration are determined by Law 2491-III of Ukraine "On Immigration" of June 07, 2001, the Procedure for Proceedings on Applications for Immigration Permits and Submissions for its Abolition and Execution of Decisions, approved by the CMU Resolution 1983 of December 26, 2002. (Resolution of the Cabinet of Ministers of Ukraine On Approval of the Procedure for Forming an Immigration Quota, the Procedure for Proceedings on Applications for Immigration Permits and Submissions for its Abolition and Execution of Decisions, 2002) and provide for the consideration of the case, judgement and annulment of the case, as well as the enforcement of the decisions.

Depending on the category of immigrants, the decision makers are the SMS, its territorial bodies and units. To the administrative procedures performed by the SMS, its territorial bodies and units to which the application for an immigration permit is submitted, include the case formation, verification of the grounds and legality of the stay of immigrants in Ukraine, verification that the documents provided are original and their conformity with the requirements of the legislation, depending on the category of immigrants, the decision-making on applications on granting or refusal to grant an immigration permit, information of the decision taken. The term of consideration of the application shall not exceed one year from the date of its submission. Moreover, the process of legalisation of documents issued by the competent authorities of foreign States is important. Difficulties may arise in the legalisation of documents issued by the authorities of countries with which Ukraine does not have a treaty on legal assistance in civil, family and criminal cases. Such documents shall be apostilled, that is, they shall have a seal certifying the authenticity of the signature, the position of the signatory, and the authenticity of the seal or stamp by which the document is sealed. In particular, documents of citizens of the Republic of Belarus shall have an apostille, because several years ago Ukraine and Belarus broke the agreement on mutual recognition of documents. In addition, the Embassy of Belarus in Ukraine refuses to provide certificates of criminal record.

The legislation also regulates the grounds for refusal to grant an immigration permit, which include: a sentence of imprisonment for more than one year for an act which, under the laws of Ukraine, is a crime, if the conviction has not been expunged or withdrawn in accordance with the procedure established by law; the commission of a crime against peace, a war crime or a crime against humanity, as defined in international law, or the search for a person in connection with the commission of an act,

in accordance with the laws of Ukraine is recognized as a grave crime, or notifying a person of suspicion of committing a criminal offence, the pre-trial investigation of which has not been concluded; diseases of chronic alcoholism, substance abuse, drug addiction or infectious diseases, the list of which is established by the central executive body, which provides for the formation of State health policy; indication of knowingly false information or submission of false documents; prohibition of entry into the territory of Ukraine; other cases provided for by the laws of Ukraine.

3. Powers of the State Migration Service relating to migration

In order to reveal the reasons for the refusal of an immigration permit, the SMS and its territorial bodies and units shall cooperate with the relevant ministries, in particular, the Ministry of Culture and Information Policy, the Ministry of Education and Science, Ministry of Internal Affairs, the National Police, the SSU, the State Border Service.

In the event of a decision to grant or refuse an immigration permit, the bodies in charge, within three working days from the date of acceptance, send its copy directly to the applicant or through the Ministry of Foreign Affairs to the relevant foreign diplomatic institution of Ukraine. The decision to grant or refuse an immigration permit is valid for one year from the date of its adoption (Resolution of the Cabinet of Ministers of Ukraine On Approval of the Procedure for Forming an Immigration Quota, the Procedure for Proceedings on Applications for Immigration Permits and Submissions for its Abolition and Execution of Decisions, 2002).

However, when the decision to grant an immigration permit was taken by the relevant authority and it is later revealed that 1) It was granted on the basis of patently false information, forged documents or invalid documents; 2) The immigrant has been sentenced in Ukraine to imprisonment for more than one year and the sentence of the court has entered into force; 3) The actions of the immigrant constitute a threat to the national security of Ukraine, public order in Ukraine; 4) It is necessary for the health care, protection of the rights and legitimate interests of Ukrainian citizens; 5) The immigrant has violated the legislation on the legal status of foreigners and stateless persons; 6) There are other cases stipulated by the laws of Ukraine (Law of Ukraine on Immigration, 2001), the body that made the decision has the right to cancel it.

To this end, the authority that initiates the annulment of the decision on the granting of an immigration permit shall make a reasoned submission indicating the reasons for the revocation of the permit and submit it to the SMS body that issued the decision. The SMS, its territorial bodies or units shall, within one month, undertake the actions necessary to examine the application on the cancellation of the immigration permit, in particular, shall receive additional information from the filing initiator, other executive bodies, legal and natural persons, persons who have applied for an immigration permit and on the basis of an analysis of the materials shall take the appropriate decision.

In the event of a decision to cancel an immigration permit, a copy of the decision shall be given within one week of its adoption to the person in accordance with which the decision has been taken, under receipt or sent by registered letter. The body that issued the decision shall notify the State Border Service within a week by sending a copy of the relevant decision. In addition, the decision to cancel the immigration permit is sent by the body that issued it to the territorial unit at the place of residence within a week in order to revoke the permanent residence permit of the immigrant and to take measures in accordance with article 13 of the Law "On Immigration" (Law of Ukraine on Immigration, 2001).

Consequently, the administrative immigration procedures of the SMS result in a decision to grant an immigration permit, to deny an immigration decision and to revoke an immigration permit.

The legislation governing the issuance of an immigration permit also provides for an administrative appeal procedure against decisions to reject issuance and revocation of an immigration permit, as well as actions or omissions of officials and officers of the SMS, its territorial bodies and subdivisions, involved within the competence in a proceeding.

Appeals against decisions to reject issuance and cancelation of an immigration permit are considered by the courts in simplified proceedings, according to article 12 of the Code of Administrative Court Procedure of Ukraine, as cases of minor complexity and those for which the priority is a quick solution of the case. The SMS in this category of cases is the respondent with the duty to prove the lawfulness of the decision, action or omission. Next, the powers of the SMS in the procedure of appeal against these decisions should be under focus. The SMS shall prove its case on the basis of a submission in which the grounds for the decision are substantiated and supported by evidence. The analysis of cases shows that the SMS makes significant errors, which are: 1) the absence of a legislative ground for rejecting or revoking an immigration permit. As mentioned above, the grounds for

rejection are provided for in Art. 10 of the Law of Ukraine "On Immigration", the grounds for cancellation – in Art. 12 of this Law. Both articles contain an exhaustive list of grounds. Frequently, in the submission, the SMS refers to grounds not provided for by law. For example, the SMS refers to the findings of the SSU, the MIA, the National Police as legal regulations and as a ground for revocation, although this is not provided for by law; 2) the SMS's submission does not contain sufficiently substantiated appropriate and admissible evidence; 3) misinterpretation or incorrect reference to a provision of law. For example, failure to submit a list of documents defined by law is a ground for non-acceptance of the application for consideration, not a ground for revocation of the decision to grant an immigration permit; 4) failure to consider the principle of proportionality, in other words, the failure to strike the necessary balance between the adverse effects on the rights and interests of the foreigner or stateless person and the aims of the decision. In particular, when deciding whether there are grounds for rejecting or revoking an immigration permit, circumstances such as the existence of a family, underaged children, etc., must be assessed; because the withdrawal of such authorisation would have adverse effects (Eighth Administrative Court of Appeal: generalisation of the case law of the Eighth Administrative Court of Appeal in administrative lawsuits concerning the forcible detention of foreigners in order to identify and ensure deportation or extension of detention to ensure the transfer of a foreigner in accordance with international readmission agreements, 2019).

The above may indicate, first, a lack of training of SMS personnel. A solution is the obligatory advanced training of employees of the SMS and its territorial bodies and units, constant advisory and training activities for the staff of the SMS and its territorial bodies and units on migration legislation. Second, the requirements as to the amount and content of information provided to the SMS by other bodies involved in the decision-making, such as the SSU, the MIA, the National Police, are absent. The solution requires the development of a SMS's request form that contains requirements for the content, information, references to regulations, evidence, etc.

If a decision is taken to cancel an immigration permit, the person concerned will suffer negative effects, namely: 1) The person shall voluntarily leave Ukraine within one month of receiving a copy of the decision; 2) If a person has not voluntarily complied with the decision, he or she shall be expelled in the manner prescribed by the legislation of Ukraine.

An administrative court takes a decision on the forced expulsion of an foreigner or stateless person, if two conditions are met: first, the decision by the State Committee on the forced return of an foreigner or stateless person; second, the existence of grounds for an action for the forced expulsion of foreigners. The grounds for the forced return of an foreigner or a stateless person, as well as for bringing an action for the forced expulsion of foreigners, are provided for in the legislation of Ukraine relating to immigration, in particular, the laws of Ukraine "On Immigration," "On the legal status of foreigners and stateless persons", the Instruction "On the forced return and forced expulsion from Ukraine of foreigners and stateless persons", approved by Order 353/271/150of the MIA of Ukraine, the Administration of the SBS of Ukraine, the Security Service of Ukraine of April 23, 2012.

The powers of the SMS bodies in the procedure of forced expulsion are: to prepare and submit to the local general court, as an administrative court, a grounded statement of claim; to participate in court proceedings; to ensure the participation of detained foreigners in court proceedings; to familiarise the foreigner with the court decision on his or her forced expulsion and the procedure for appealing against this decision (if the decision was not served to the foreigner immediately after its announcement); to ensure the actual execution of a court decision on the forced expulsion of an foreigner or other court decision taken to enforce the forced expulsion (Order of the Ministry of Internal Affairs of Ukraine, the State Tax Administration of Ukraine, the Security Service of Ukraine on the forced return and forced expulsion of foreigners and stateless persons from Ukraine, 2012).

The activities of the SMS relating to combating illegal immigration are linked to immigration processes. According to the Regulations on the State Migration Service of Ukraine, the SMS, its territorial bodies and units are entrusted with the exercise of the control function, which consists, inter alia, in preventing and combating illegal (unlawful) migration. The Strategy for State Migration Policy until 2025 defines the objectives of countering illegal migration, in particular Objective 8 calls for strengthening the monitoring of compliance with migration legislation within the State, and Objective 10 establishes an appropriate regulatory mechanism and programme for illegal migrants (Order of the Cabinet of Ministers of Ukraine On approval of the Strategy of state migration policy of Ukraine for the period up to 2025, 2017). The implementation of the measures for the defined objectives is foreseen in the annual work plan of the SMS. In particular, the SMS of Ukraine has developed an electronic service "Report on

the probable violation of migration legislation" (https://dmsu.gov.ua/services/migrant.html) through which citizens can report to the SMS any violation of migration legislation by foreigners and stateless persons. Messages sent by citizens are automatically recorded in the SMS document management system. In order to prevent and counteract illegal migration and other violations of the legislation of Ukraine on migration, the SMS, in cooperation with other bodies in accordance with their powers, participates in targeted preventive measures "Migrant", "Carpathians-2021", "Student". In addition, digitalisation of processes of countering illegal migration is carried out, in particular, the following subsystems and functionalities of Unified information and analytical system for the management of migration processes were put into experimental operation and applied: "Administrative offenses", "Register of foreigners and refugees", "Register of requests for readmission and transit transportation", the function "Illegal migrants" of the modernized version of the subsystem "Register of foreigners and refugees" of UIAS MMP were launched (Report of the State Migration Service of Ukraine on the results of the work plan, 2021).

4. Conclusions

The above indicates an improvement in the work of the SMS relating to immigration. However, to date, there are still problems in shifting the priorities of SMS activities to counter irregular migration from the provision of administrative services in this field to forecasting migration risks and ensuring timely response to potential threats, regulating effective cooperation between the State Migration Service and other State bodies to prevent illegal migration, further simplifying the provision of administrative immigration services, initiating migration amnesty as an effective tool of migration policy. These issues require further scientific research.

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ДІЯЛЬНІСТЬ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ УКРАЇНИ У СФЕРІ ІММІГРАЦІЇ

Анотація. ***Мета.*** Метою статті є розкриття адміністративних процедур Державної міграційної служби України у сфері імміграції. ***Результати.*** Стаття присвячена характеристиці адміністративних процедур Державної міграційної служби України у сфері імміграції. З'ясовано, що Закон України «Про імміграцію» визначає категорії іммігрантів, для яких встановлюється квота. Основними показниками для формування квоти є, по-перше, аналіз імміграційного процесу у попередньому календарному році; по-друге, необхідність максимального обмеження квоти імміграції в Україну іноземців та осіб без громадянства з країн походження значної кількості нелегальних мігрантів. Перелік останніх визначається Міністерством закордонних справ України. Визначено, що адміністративні процедури Державної міграційної служби у сфері імміграції являють собою визначений у законодавстві порядок розгляду Державної міграційної служби України адміністративних справ, прийняття відповідного рішення щодо надання, відмови у наданні, а також скасування дозволу на імміграцію з метою забезпечення прав, свобод і законних інтересів іноземців та осіб без громадянства. Визначено, що до адміністративних процедур, які здійснює Державна міграційна служба, її територіальні органи та підрозділи у сфері імміграції, належить формування справи, перевірка підстав та законності перебування іммігрантів в Україні, перевірка наданих документів на справжність та відповідність їх оформлення вимогам законодавства залежно від категорії іммігрантів, організація роботи з прийняття рішень про надання дозволу на імміграцію, про відмову у наданні дозволу на імміграцію, про скасування дозволу на імміграцію та видання копій цих рішень особам, яких вони стосуються; організація роботи з видання та вилучення у випадках, передбачених Законом, посвідок на постійне проживання; забезпечення ведення обліку осіб, які подали заяви про надання дозволу на імміграцію, та осіб, яким надано такий дозвіл. ***Висновки.*** Зроблено висновок про необхідність удосконалення адміністративних процедур у сфері імміграції шляхом зміщення пріоритетів у діяльності Державної міграційної служби щодо прогнозування міграційних ризиків та забезпечення своєчасного реагування на потенційні загрози, нормативного врегулювання ефективної взаємодії Державної міграційної служби з іншими органами державної влади для запобігання нелегальній міграції, подальшого спрощення надання адміністративних послуг у сфері імміграції щодо міграційної амністії як дієвого інструмента міграційної політики.

Ключові слова: державна міграційна служба, адміністративна процедура, імміграція, імміграційна квота, дозвіл на імміграцію, адміністративне та судове оскарження.

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MODERN CONCEPT OF ADMINISTRATIVE AND LEGAL PROTECTION OF CYBERSPACE IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to cover the modern concept of administrative and legal protection of cyberspace in Ukraine, relying on the systematic analysis of the positions of scientists, reference materials and provisions of current legislation. ***Results.*** It is found that information legislation should regulate the contradiction between the needs of the individual, society and the State in expanding the free exchange of information and certain restrictions on its dissemination. Today, Ukraine has hundreds of laws and other legal regulations focused on the development of information processes, the protection of the national information space, the acceleration of integrated processes in the world information space. It is underlined that the main purpose of law enforcement bodies' performance is to combat dealers of harmful digital services and related tools; thus, it is advisable to establish a register of such suppliers with a questionable reputation, including IT companies, other business entities, thereby ensuring control over the situation in the digital economy. ***Conclusions.*** The article covers the concept of administrative and legal protection of cyberspace in Ukraine as a defining, strategically established, modern model of the national idea, the system of legal measures and processes of effective protection of cyberspace, which further develops general policy on information security and accelerates the integration processes of using the opportunities of cyberspace by Ukrainian society. The fundamentals underlying the modern concept of administrative and legal protection of cyberspace in Ukraine are defined as follows: 1) The elaboration of effective information legislation and national strategic instruments on the use of cyberspace should be a priority; 2) The cybersecurity actors' practical activities should be improved; 3) New programs, measures and tools to protect information and counteract cyberattacks should be created; 4) High-quality digital services should be ensured; 5) The focus should be on an intensive and secure entry of Ukrainian society into the world cyberspace.

Key words: administrative protection, administrative means, administrative and legal framework, State information policy, information security, information, cyberspace, sovereignty.

1. Introduction

The rapid development of information technology is gradually transforming the world. Every day we are faced with the need to use information technologies - from social networks, posting information about our personal data on the Internet to using ATMs, bank accounts, etc. This raises the question of whether the problem is addressed by national legislation and how to protect one's own information from cybercriminals. Of particular concern is the possibility of the development, use and proliferation of information weapons, the resulting threats of information wars and cyberterrorism, whose negative effects are comparable to those of weapons of mass destruction. The illegal creation, collection, receipt, storage, use, dissemination, security, protection of information, illegal financial transactions, theft and fraud on the Internet continue to spread. Cybercrime has become a transnational problem and has the potential to significantly harm the interests of the individual, society and the State in general [6, p. 180–186].

In order to prevent cybercrime and generally protect the information sovereignty of the State, a new concept of administrative and legal protection of cyberspace in Ukraine should be developed.

Current issues of cyberspace in the context of administrative law in Ukraine were studied in their scientific works by V. Bukhariev, V. Hapotii, O. Herasymova, S. Horova, V. Horovyi, S. Demchenko, O. Dovhan, D. Dubov, H. Duhinets, Yu. Lisovska, V. Markov, V. Nabrusko, O. Oliynyk, A. Pysmenytskyi, V. Polevyi, O. Radutnyi,

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However, given the duration of hybrid warfare, the intensification of cyber-attacks of State portals and other information infringements in the public sector, the relevance of scientific research in the field of cyberspace acquires new features and characteristics.

The purpose of the article is to reveal the modern concept of administrative and legal protection of cyberspace in Ukraine, relying on the systematic analysis of the positions of scientists, reference materials and provisions of current legislation.

2. Cyberspace as a subject matter of administrative and legal protection

First, the concept of cyberspace as a subject matter of legal protection should be defined. The analysis of the related concept of "cybersecurity" allows defining the object of administrative and legal protection (according to V. Bukhariev) cybersecurity is a certain legal institution, protected within the scope of the rules of administrative law and is carried out by individual State bodies on the basis of imperative and hierarchy. Moreover, the scientist elucidates features of cybersecurity as an object of administrative and legal protection, such as: a) A clear definition of the content of administrative and legal protection of cybersecurity is absent; b) Administrative and legal protection of cybersecurity, although it is a single legal institution, is enshrined in provisions of different legal regulations on the activities of the relevant State authorities; c) It is enforced not only in legal relations arising in the sphere of administrative offenses. The concept has a broader scope of application, including not only deterrence of violations but also prevention; d) The basic principles of cybersecurity have only recently been incorporated into the relevant legal regulation, the Law of Ukraine "On the Basic Principles of Cyber Security of Ukraine"); e) A special conceptual apparatus (Bukhariev, 2018, p. 182).

In our view, cyberspace is a valuable subject matter of administrative and legal protection and is an information space derived from the use of computer technologies and systems, the functioning of which ensures interactive communication in society.

Next, from the current perspective of scientists on the concept of protection of cyberspace, the dominant problem is the formation of effective administrative and legal protection of cyberspace in Ukraine is the need for its safe operation at the administrative, programmatic and procedural levels (Azarova, Tkachuk, Nikiforova, Shyian, Khoshaba, 2019).

Accordingly, the development of the concept of administrative and legal protection of cyberspace in Ukraine should focus on the effective implementation of plans and measures of the concept of protection at the administrative, programmatic and procedural levels of the implementation of legal relations.

The State, with its arsenal of a wide range of means of influencing public relations in the information sphere, should naturally be the main actor of information security policy. If information security is considered as certain conditions, parameters and characteristics of information processes taking place in the information sphere of the State, then the State has the possibility, through legal regulation, to define uniform, universally binding standards of information processes that meet the security requirements of the forces exercising political power in that State. This is the basis of public policy on information security, embodied in the relevant legal regulations. The level of information security depends not only on the goals of the relevant public policy, but also its content (Foros, 2018, pp. 180–186).

Modern challenges and threats to cyber-driven critical infrastructure as a strategic object of the State require guarantees and effective improvement of legislative, institutional and other instruments for the implementation of public policy on information. In addition, the critical infrastructure of Ukraine is based on the security and defence sector, consisting of four mutually agreed components: security forces; defence forces; defence and industrial complex; citizens and public associations. To this end, it should be emphasised that the Ukrainian Security Service has special tasks in the institutional mechanism for ensuring the critical information infrastructure of Ukraine. This relates primarily to counter-intelligence protection of State sovereignty, constitutional order and territorial integrity, defence, scientific and technological capabilities. In addition, a national system of confidential communication, making of public policy on cyber protection, namely, cryptographic and technical protection of information, telecommunications, use of Ukraine's radio frequency resource, special purpose mail, government field communication, etc., should be established at an appropriate level (Lisovska, 2019, pp. 162–171).

3. Administrative and legal protection of cyberspace in Ukraine

Since Ukraine faces hybrid warfare, it has been possible at the state level to synchronise measures for the development of armament and military equipment, with measures for the reform and development of the defence and industrial complex. These measures are aimed at restructuring, reorganisation and corporatisation of enterprises of the defence

and industrial complex and improvement of the management system of such complex; introduction of the mechanism of strategic management of the defence and industrial complex; provision of financial control of enterprises; integration of science and production; improvement of the system of standardisation, quality unification and management (Lisovska, 2019, pp. 162–171).

Information legislation should regulate the contradiction between the needs of the individual, society and the State in expanding the free exchange of information and certain restrictions on its dissemination. Today, Ukraine has hundreds of laws and other legal regulations focused on the development of information processes, the protection of the national information space, the acceleration of integrated processes in the world information space. The most significant laws are: "On the protection of personal data", "On the protection of information in information and telecommunication systems", "On information", "On the printed media (press) in Ukraine", "On the Protection of Industrial Design Rights", "On Copyright and Related Rights", "On State Support for Mass Media and Social Protection of Journalists", "On the Procedure for Covering the Activities of State and Local Authorities in the Ukrainian Mass Media", "On the National Informatisation Programme", and others (Foros, 2018, pp. 180–186).

Cyber security and cyberspace of Ukraine for a long time remained out of sight by domestic researchers, and then civil servants. For more than 20 years, the young Ukrainian State has not spent its efforts on forming not only an effective and reliable military force, but also information security. The leadership of the State made no efforts to strengthen the defence capability of the country, and rather weakened it by lack of progress in the fight against corruption and the domination of the Russian media and secret services. As a result, in the spring of 2014, after a long confrontation between Ukrainian citizens and the Yanukovych regime, Russia resorted to a special operation to annex Crimea and contribute to the war in the Donbas. An important role in this special operation was played by information factors and cyber-attacks of Russian hackers in order to paralyse government structures and influence the formation of public opinion in Ukraine through Russian-controlled media. Long and massive cyberattacks caused significant material and reputational losses for Ukrainian public structures, banking system, industrial facilities and private business. At the same time, Ukraine began to understand the seriousness of cyberspace security as a component of national security and this contributed to the creation of the cyber police, the State strategy for cybersecurity, the adoption of a number of legal regulations on cybersecurity, strengthening of the State protection in the national cyberspace security (Katerynchuk, 2018).

All cybersecurity actors have a range of both specific and general powers. Common features of cybersecurity actors are: first, they use coercion in their activities in order to exercise their statutory functions; second, cybersecurity actors are in a systemic relationship with other actors in an administrative legal relationship based on hierarchy; third, the activities of cybersecurity actors are aimed not only at suppressing cybersecurity offences, but also at ensuring that such violations are not possible, through monitoring activities (Bukhariev, 2018, p. 185).

The main purpose of law enforcement bodies' performance is to combat dealers of harmful digital services and related tools, it is advisable to establish a register of such suppliers with a questionable reputation, including IT companies, other business entities, thereby ensuring control over the situation in the digital economy. According to I. Revak, the main areas of strengthening cyberspace are continuous modernisation of information and telecommunication technologies; strengthening of communication security, namely improvement, development and launch of the latest data protection programs; the legal regulatory mechanism and coordination of actions to create separate elements of the cybersecurity system; introduction and use of blockchain technology. The activities of law enforcement bodies to prevent (minimise, neutralise) real and potential threats should include: long-term and sustainable effective communicative cooperation and close communication between the various units of the internal affairs bodies and other State bodies; activities of different departments and subordinate law enforcement bodies in the field of information technologies for collective functioning and coordination of purposes; more intensive use (application) of electronic evidence, information and telecommunication technologies and registers; development of criteria for regulating secret data on effective circumstances, establishing software access of various internal affairs bodies, which effectively counteract crimes in digital computer technology and cyberspace (Revak, 2021, pp. 164–169).

4. Conclusions

To sum up, the concept of administrative and legal protection of cyberspace in Ukraine as a defining, strategically established, modern model of the national idea, the system of legal measures and processes of effective protection of cyberspace, which further develops general

policy on information security and accelerates the integration processes of using the opportunities of cyberspace by Ukrainian society.

It is possible to formulate the fundamentals underlying the modern concept of administrative and legal protection of cyberspace in Ukraine as follows:

1) The development of effective information legislation and national strategic instruments on the use of cyberspace should be a priority;

2) The cybersecurity actors' practical activities should be improved;

3) New programs, measures and tools to protect information and counteract cyberattacks should be created;

4) High-quality digital services should be ensured;

5) The focus should be on an intensive and secure entry of Ukrainian society into the world cyberspace.

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НОВІТНЯ КОНЦЕПЦІЯ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ КІБЕРПРОСТОРУ В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає в тому, щоб на основі системного аналізу позицій вчених, довідникових матеріалів та норм чинного законодавства розкрити новітню концепцію адміністративно-правового захисту кіберпростору в Україні. ***Результати.*** З'ясовано, шо інформаційне законодавство має регулювати суперечність між потребами особи, суспільства та держави у розширенні вільного обміну інформацією та окремими обмеженнями на її поширення. Сьогодні Україна має сотні законодавчих та інших нормативно-правових актів, що зорієнтовані на розвиток інформаційних процесів, захист національного інформаційного простору, прискорення інтегральних процесів у світовому інформаційному просторі. Наголошено, що основною метою діяльності правоохоронних органів є боротьба з дилерами шкідливих цифрових послуг та відповідних інструментів, доцільним є створення реєстру таких постачальників, які мають сумнівну репутацію, в тому числі ІТ-компаній, інших суб'єктів господарювання, тим самим забезпечивши контроль над ситуацією у сфері цифрової економіки. ***Висновки.*** У статті розкрито концепцію адміністративно-правового захисту кіберпростору в Україні як визначальну, стратегічно-закріплену, сучасну модель національної ідеї, систему правових заходів та процесів ефективного захисту кіберпростору, що забезпечує та в подальшому розвиває загальну політику інформаційної безпеки та прискорює інтеграційні процеси використання можливостей кіберпростору українським суспільством. Визначено засади формування новітньої концепції адміністративно-правового захисту кіберпростору в Україні: 1) першочерговим має стати формування ефективного інформаційного законодавства та національ-

них стратегічних документів щодо використання можливостей кіберпростору; 2) удосконалення практичної діяльності суб'єктів забезпечення кібербезпеки; 3) створення нових програм, заходів та інструментів захисту інформації та протидії кібератакам; 4) забезпечення високої якості надання цифрових послуг; 5) зосередження на інтенсивному та безпечному входженні українського суспільства у світовий кіберпростір.

Ключові слова: адміністративний захист, адміністративні засоби, адміністративно-правові засади, державна інформаційна політика, інформаційна безпека, інформація, кіберпростір, суверенітет.

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ACTIVITIES OF SPECIAL MOBILE POLICE GROUPS ON PREVENTION AND RESPONSE TO GENDER-BASED VIOLENCE

Abstract. ***Purpose.*** The purpose of the article is, relying on the analysis of the current state of mobile police groups in prevention and response to gender-based domestic violence, to make scientifically based conclusions on optimising these police activities. ***Research methods.*** The methodology of scientific publication is a system of methods, which allow analysing the subject matter of research, such as dialectical, logic and semantic, formal and legal, as well as systemic structural methods. The theoretical basis of the research constitutes scientific studies of domestic scientists on issues of the administrative and legal regulatory framework for police activities on prevention and response to gender-based violence. ***Results.*** Recently, the number of administrative gender-based offences, the victims of which are the most vulnerable segments of the population, has steadily increased. The negative trend in the cases of gender-based domestic violence is indicative of the ineffectiveness of the State in prevention and response to gender-based violence, contributes to a low trust of citizens in authorised actors, including the National Police of Ukraine. These issues are of particular relevance and require modern reflection on the basis of current legislation regarding the administrative and legal framework for the implementation of gender equality by the National Police, determination of the prospects for its implementation in the context of rapid scientific progress. ***Conclusions.*** The activities of special mobile police groups are a modern and operational tool of prevention and response to gender-based domestic violence. Police officers employed in mobile groups are authorised to take appropriate measures against abusers, such as records of administrative offences, preventive police registration, issuance of urgent restraining orders, etc. The organisation and conduct of trainings and exercises for police officers employed in mobile groups, which will increase the effectiveness of special mobile groups of the Police in preventing gender-based violence, improve communication skills with the parties to the conflict, awareness of the identification of victims of domestic and gender-based violence, specificities of relevant services under the quarantine restrictions. Considering the conditions caused by the pandemic (24-hour accommodation with the abuser, restricted access to specialised support services, restricted transport, etc.) requires changes to the Procedure for assessing the risks of domestic violence, gender-based violence.

Key words: gender-based violence; conflict; prevention; counteraction; special mobile police groups; administrative and legal regulatory framework; powers.

1. Introduction

Gender-based violence is not a local problem in Ukraine. As well as in many other countries of the world, trends towards domestic violence, at the interpersonal level, in relations between spouses, parents with children, etc. are traced (Sukmanovska, 2014, p. 216). Such conflicts are often gender-based. In such circumstances, the family, as the nucleus of society, without the support of the State and its institutions, cannot always perform its primary functions, in particular, to ensure the proper well-being and upbringing of children (Zaporozhtsev, Labun, Zabroda, 2012, p. 9). Prevention and response to domestic violence and gender-based violence are among the priorities of the Ministry of Internal Affairs and the National Police of Ukraine.

In order to combat manifestations of domestic violence, in 2017 the Ministry of Internal Affairs together with the National Police of Ukraine launched a pilot project under the code name "POLINA," which is an abbreviation from *police against violence*. In accordance with this project, domestic violence mobile response groups, composed of repre-

sentatives of different police units, are provided (Bakhaieva, 2019, p. 55). "Polina" is an appropriate interaction algorithm between line operators "102" and patrol officers, district officers, juvenile police, investigators and operatives to respond to and prevent domestic violence. A mobile group responds to the calls on domestic violence, including gender-based violence, and takes all necessary measures to suppress the offence, document it and ensure the safety of the victim.

The experiment was launched in parts of Kiev, Odessa and Severodonetsk of Luhansk Oblast. Now, these mobile groups have been established and are operating in all regional centres and major cities (total: 86). The police assisted almost 28,000 victims of the actions of the abusers, including 22,000 women, 3.4 men and 2.4 thousand children (N.d. 2021).

The mobile response group is a modern and uncompromising tool in the fight against domestic violence. The police are sent to mobile groups, retaining their previous position. Therefore, in order to prevent their involvement in tasks not related to prevention and response to domestic violence, the police officers are employed in mobile groups of the police department of territory they have not previously served (Zaporozhtsev, Labun, Zabroda, 2012, p. 55).

Police officers of mobile groups are authorised to take appropriate measures against abusers, such as records of administrative offences, preventive police registration, issuance of urgent restraining orders, etc. Since the beginning of 2021, more than 16 thousand people have been placed on the preventive registration and more than 29 thousand preventive conversations with abusers have been conducted. In the first nine months of 2021, mobile police groups issued 13,000 urgent restraining orders against abusers and issued 21,000 administrative records under Art. 173-2 of the Ukrainian Code of Administrative Offences (N.d. 2021). As a result of the mobile groups' response to reports of domestic violence during the year, information on the commission of criminal offences related to domestic violence was entered in the Unified Register of Pre-trial Investigations, of which under article 126-1 (Domestic violence) are 343 facts and 45 are under article 390-1 (Failure to comply with restrictive measures, restraining orders or failure to pass the program for abusers) of the Criminal Code of Ukraine (N.d. 2021).

Undoubtedly, the existence of such positive statistics enables the official sources of the National Police to state that, thanks to the introduction of this modern experience, preventive work has significantly increased, these offences are promptly terminated and victims are provided with protection (N.d. 2021).

However, we are convinced that a thorough scientific analysis of the nature of the activities of mobile police groups in prevention and response to gender-based domestic violence will enable to express an objective attitude to this project, to determine its effectiveness, to identify the characteristics of the response of such entities to conflict situations in the context of quarantine restrictions. After all, 28% of respondents spoke directly about the worsening of their situation of domestic violence with the introduction of quarantine measures, while only 10% of respondents said that the situation has not changed much (Anosova, Borozdina, Lehenka, Cherepakha, 2021, p. 10).

Despite the considerable number of theoretical developments in the legal and administrative response to gender-based violence, measures to prevent and combat it, the issue of the activities of mobile police response groups to gender-based domestic violence needs to be addressed at the scientific and organisational level.

The purpose of the article is, relying on the analysis of the current state of mobile police groups in prevention and response to gender-based domestic violence, to make scientifically based conclusions on optimising these police activities.

According to the purpose and objectives of the scientific article, a system of methods of scientific knowledge has been used. These are philosophical, general scientific, as well as special methods of scientific research. The main method in this system is the dialectic method, which has contributed to the consideration and study of the problem in the unity of its social content and legal form, and which allows systematic analysis of the activities of special mobile groups of the police in the system of prevention and response to gender-based domestic offences. Using the logical and semantic method, theoretical and methodological approaches to the study of the activities of mobile police response groups to gender-based offences have been developed, the content of administrative-methodological measures to prevent such offences has been revealed. The formal-legal and systemic-structural methods enable to analyse the activities of mobile police groups on prevention and response to gender-based offenses, specific features of the response of such entities to conflict situations under quarantine restrictions have been identified. The scientific and theoretical basis of the study is the review of scientific works of domestic and foreign scientists. Statistical data on the activities of entities to prevent and combat gender-based domestic offences are also used.

The regulatory and legal framework for the study is the Constitution of Ukraine, laws and by-laws of Ukraine on the activities of entities involved in prevention and response to gender-based violence.

The empirical basis of the study is statistical materials related to the issue of the activities of actors' prevention and response to gender-based domestic offences, the materials of the survey on these issues.

2. Powers of special mobile police groups

The mobile group's main tasks include: 1) timely response to domestic violence; 2) reception from victims, as well as from others, including from actors engaged in prevention activities, allegations and reports of domestic and gender-based violence; 3) taking measures to prevent domestic violence and to assist victims, considering the results of risk assessment; 4) informing victims of their rights, measures and social services available to them; 5) immediate restraining orders for abusers; 6) cooperation with other actors working to prevent and combat domestic violence; 7) informing of the firearms control units with a view to revoking the authorisation to acquire, hold, carry firearms and ammunition to their owners in the event of domestic violence, as well as to seize firearms and ammunition in the manner, prescribed by law; 8) reports on administrative offences within the competence and administrative proceedings in cases determined by law; 9) preventive work with abusers and monitoring of compliance with the requirements of measures temporarily restricting the rights of the abuser or imposing obligations on him.

An important role in coordinating the activities of mobile groups belongs to the responsible persons from the Directorates of Preventive Action of the General Directorates of the National Police (hereinafter referred to as the GDNP) in the Oblasts and Kyiv, and the Patrol Police Directorates in the Oblasts (hereinafter referred to as the PPD) which, inter alia, have the following powers: to organise, coordinate and monitor mobile response groups to domestic violence; to provide appropriate guidance, information on how to respond to domestic violence or possible problematic issues; to monitor the conditions under which officers employed in mobile groups perform their assigned tasks and functions, and to establish cooperation between mobile groups and actors carrying out measures to prevent and combat domestic violence; to involve public associations and foreign non-governmental organisations in order to improve the organisation and the performance of mobile groups, in particular, conducting exercises and trainings; to monitor the work of mobile groups by synthesising the results of the work of mobile groups and to make proposals to management to improve their work.

The proper training of police officers employed in the response groups is of significance in prevention and response to gender-based domestic violence. For example, it is the possibility of applying a special measure to issue an urgent restraining order based on the risk assessment. In deciding whether to issue an order, priority is given to the protection of the victim. If the offender is the owner of the apartment in which he lives with the victim, and the measure of "ban on entry and stay in the place of residence (location) of the injured person" and/or "obligation to leave the place of residence (location) of the injured person" applies to him, then, despite his property rights, the offender shall comply with an urgent restraining order. In the event of their violation, a record on an administrative offence under Article 173-2 of the CoAO shall be drawn up against the offender, and when it is seen as systemic, (as a rule, these are identical acts combined by common intent and committed three or more times) the offender is prosecuted under article 126-1 of the Criminal Code of Ukraine (Aloshkin, Datsenko, Buhaichuk, 2019, p. 25).

It should be noted that an order may not contain the above-mentioned measures if the offender is a person who is under the age of 18 at the time of its issuance and lives with the victim. The offender who is ordered to leave the place of cohabitation (residence) with the victim must provide information on his or her temporary residence at the appropriate police department, in the territory of which domestic violence has been committed. The information shall be recorded in the Record of the temporary residence of the offender. Intentional failure to provide such information constitutes an administrative offence under articles 173-2 of the CoAO (Zaporozhtsev, Labun, Zabroda, 2012, p. 56).

Gender-based violence against women during quarantine has increased globally with the active introduction of quarantine restrictions. It is underlined that the number of reports registered may not reflect the real picture, as many women remain locked in the same accommodation with the abusers and are unable to report problems to the relevant services as in the pre-quarantine period. In general, the increase in gender-related and domestic violence during the COVID-19 pandemic has assumed such a scale that the phenomenon began to be called "shadow pandemic" (Anosova, Borozdina, Lehenka, Cherepakha, 2021, p. 3). These circumstances have made it imperative to activate mobile groups to prevent

and combat gender-based domestic violence.

According to the analysis of statistical data, during the COVID-19 pandemic, with the introduction of appropriate quarantine restrictions in Ukraine, there was an increase in the number and intensity of cases of gender-based and, in particular, domestic violence, which, inter alia, increased the complexity of the work of authorised entities (judicial and law enforcement), medical institutions, specialised support services for victims) and the access of victims to appropriate services (Anosova, Borozdina, Lehenka, Cherepakha, 2021, pp. 5-6).

We have identified that the main reasons for reduced effectiveness of mobile police groups in prevention and response to gender-based domestic violence are: limited use of personnel (19%); other quarantine-related tasks of authorised police officers (23%); remotely operating units (7%); health-related inability to exercise powers (12%); incompetence, inadequate training in conflict resolution (39%).

Victims often complain that the police officers on call are limited to a preventive interview and warning of the offender; issue an urgent restraining order but do not accept the application; accept the application but do not issue an order; do not take any action after the application. In some cases, the police openly take the side of the offender, devaluing the situation and suffering of the victim, advising the offender to file a counter-application or qualifying the situation as a "family business" to which they have no relation; impose fines on victims for false calls (Anosova, Borozdina, Lehenka, Cherepakha, 2021, pp. 5-6). During the survey we found cases where employees of the relevant services, usually involved in the mobile group, being insufficiently aware of domestic and gender-based violence, could not identify victims of violence, in particular children, trying to reconcile the parties to the conflict, one of whom was the perpetrator, refused to go on a call during the quarantine period, etc. The circumstances described indicate the need for training and exercises for staff of social services for families, children and youth, as well as police services that are involved in the mobile police group, to raise awareness of the detection of victims of domestic violence, gender-based violence, the provision of appropriate services, in particular under quarantine restrictions. In our opinion, the organisation of these measures should be entrusted to the Ministry of Social Policy of Ukraine.

This recommendation is in line with the specific objectives of the State social programme to prevent and combat domestic and gender-based violence until 2025, as well as para. 2 of the Plan of Urgent Measures to Prevent and Combat Domestic Violence, Gender-based Violence, Protection of the Rights of Persons Affected by Such Violence.

It should be noted, however, that quarantine restrictions also affected the behaviour of the victims themselves, in particular with regard to the use of protection against gender-based domestic violence. For example, experts have identified several reasons why victims of violence continue to live with their abuser under the same roof: financial condition and dependence on a husband if the woman is a housewife and does not work; common property, making resettlement impossible; a tyrant is often acquitted by the victim; self-doubt (the victim, usually a woman, does not know how to live without a man) (Kotsyna, 2020).

In their interviews with police officers, 128 out of 303 interviewees felt that they were taken seriously by the police, 80 victims of domestic violence interviewed by the National Domestic Violence, Trafficking and Gender-based Discrimination Hotline were not taken seriously. Most often, respondents attributed the police's lack of seriousness to the fact that the situation of domestic violence was perceived as a simple family quarrel; that they were fined for allegedly faulty calls; that they did not consider the situation to be violence unless there was a beating (Anosova, Borozdina, Lehenka, Cherepakha, 2021, p. 21). In addition, the survey revealed other negative cases: acceptance of an application without further response; failure to respond to the call; accusation of the victim of provocation of the abuser; failure to provide emergency medical assistance; failure to accept explanations; interviewing the victim and the offender in the same room; failure to assess risks when refusing to issue an urgent restraining order; failure to inform the victim of the existence and reasons for issuing the orders, disinformation about the possibility of obtaining them; inability to enforce the urgent restraining order (Anosova, Borozdina, Lehenka, Cherepakha, 2021, p. 6).

3. Rights and duties of the police to prevent and respond to gender-based violence

The methodological literature describes the algorithm of police action when reporting domestic violence: 1) To ascertain from the complainant: the form(s) of violence, the number of parties to the conflict, their physical and psychological condition; the need to provide medical assistance to the parties to the conflict (summoning medical personnel); the presence of children in the house or during the conflict; the presence of firearms (ammunition) at the scene of the conflict and the possibility of their use, as well as other threats to the life and health of citizens; participation of parties

to the conflict (offender) in the anti-terrorist operation; 2) To check the databases for the stay of persons living at the given address on the preventive registers (mentally ill, drug addict, previously convicted person, person already prosecuted for domestic violence) and to ascertain whether they have registered firearms; 3) To assign the main tasks of each police officer at the scene of the incident; 4) To work out prior joint actions in the use of physical force, special means and firearms (Kostiuk, Fedorovska, Pashkovska, 2021, p. 11).

Police officers employed in the mobile group must comply with appropriate actions when dealing with the injured person. If a person has physical injuries, medical care should be provided and an ambulance group should be called with a mandatory indication of the number of victims. Such a person must be notified of the possibility of writing a complain on an offence. In case of consent, due to the physical and psychological condition of the victim, it is recommended to take an application at the scene of the incident and to submit it to the territorial (separate) police body for registration and further action. If such a person refuses to write an application, he or she is informed of the possibility of subsequently contacting the territorial (separate) police body to write the application.

Police officers shall recommend the victim (his or her representative) to write a complain on domestic violence. At the same time, it should be noted that failure to report incidents of violence and negligence with regard to one's own security can lead to a deterioration of the situation and threaten life and health. The commission of any violent acts in the presence of children or incapacitated persons is considered psychological violence against them and requires appropriate police response without an application on violence, including detention, arrest or dismissal of the perpetrator (Aloshkin, Datsenko, Buhaichuk, 2019, p. 25).

The victim and/or his or her representative should also be informed (if this representative is not the abuser) of his or her rights and the social services available, the possibility for the offender to compensate for the material damage and harm caused to physical and mental health, to issue an urgent restraining order against the offender, possible procedural decisions, related to the consideration of the fact of violence against him/her, including those related to the detention, arrest or release of the offender.

It is advisable to interview a child witness or child victim of domestic violence in the presence of a person whom the child trusts. Under article 33 of the Law of Ukraine "On the National Police" the interview of underaged persons is allowed only with the participation of parents (one of them), another legal representative or teacher (Law of Ukraine On the National Police, 2015).

Then the authorised police unit of the National Police of Ukraine assesses risks, the results thereof are considered when issuing an urgent restraining order against the offender, takes other measures to suppress such violence, to prevent its extension or repetition and provision of assistance to injured persons in accordance with the procedure established by law. The risk assessment is conducted by communicating/interviewing the victim or his or her representative, clarifying the circumstances of the conflict and identifying factors and conditions that create or may pose a risk to the person (Order of the Ministry of Social Policy of Ukraine and the Ministry of Internal Affairs of Ukraine On approval of the Procedure for risk assessment of domestic violence, 2019).

In view of the subject matter of the study, we consider it appropriate to clarify certain aspects of the performance of mobile response groups to gender-based domestic violence, which may be dictated by the relevant situation.

As is known, under Ukrainian law, an offender is liable to administrative or criminal prosecution for domestic violence. In the event of a person's administrative liability under Article 173-2 of the CoAO, police officers of the mobile group take measures to collect the materials on the offence committed and take measures to bring the offender to court immediately for consideration and decision on the administrative materials.

In the event of a decision to impose administrative liability on the offender, the mobile police unit shall report to the operational duty officer of the territorial department (unit) of the police, in the service territory thereof the administrative offence has been committed, for subsequent entry into the IPNP system.

Based on the consideration of the report (allegation) of domestic violence by the mobile police unit, which has carried out a proper check, the exhaustive response shall be made; the check of such report (allegation) may be complete under a simplified system for the consideration of applications and communications from citizens that do not contain elements of criminal offences. For example, in accordance with the Procedure for Interaction of Entities Carrying Out Measures in the Sphere of Prevention and Counteraction to Domestic Violence and Gender-Based Violence, approved by CMU Resolution 658 of August 22, 2018, the police mobile group no later than 24 hours by telephone, e-mail, followed by written confir-

mation, informs about the fact of domestic violence of actors, implementing measures to prevent and respond to domestic and gender-based violence (Resolution of the Cabinet of Ministers of Ukraine On Approval of the Procedure for Interaction of Entities Carrying Out Measures in the Sphere of Prevention and Counteraction to Domestic Violence and Gender-Based Violence, 2018).

If the victim or abuser is a child, or the victim together with the child has contacted the National Police, the police officers employed in a mobile unit will inform the relevant children's service no later than 24 hours. In order to put the offender on the preventive register and carry out preventive work with him, mobile group employees prepare copies of the administrative records and a report on the measures taken by the police to inform the police officer responsible for the organisation of preventive work with the offender, the territorial (separate) police unit where domestic violence is committed. When evidence of a criminal offence is confirmed, the mobile police unit informs the dispatcher (an officer on duty) of the need to send the IOG and stay at the scene of the incident until it arrives (Aloshkin, Datsenko, Buhaichuk, 2019, pp. 27-28).

Worldwide, public experts sound the alarm about the outbreak of domestic violence during the COVID-19 pandemic, calling it a "pandemic among pandemics". Most of these acts are gender-based. International research confirms that domestic and gender-based violence proliferates in times of crisis, when threats to life and health, economic and financial security are on the rise (Violence against women and girls: the shadow pandemic. Statement by Phumzile Mlambo-Ngcuka, Executive Director of UN Women, 2020). During the period of quarantine measures, the isolation of women, children, persons with disabilities and the elderly with family members prone to violence increases. Access to channels of communication with police officers, social workers, relatives and acquaintances, members of non-governmental organisations who can provide assistance in cases of violence is also more difficult. In addition to the fact that the perpetrator feels impunity behind closed doors, the system of bodies and institutions that take measures to prevent and combat domestic violence is less able to control vulnerable families, because often these workers are involved in other measures in the conditions of an epidemic lock down.

Therefore, at the present time, in a situation of general crisis and relative employment of law enforcement bodies, measures to ensure the health and epidemiological well-being of the population are of particular importance for the speedy adoption of urgent measures that will enable to stop domestic violence and, if needed, to relocate victims to a safe place and ensure their access to high-quality legal and psychological assistance. In such circumstances, it seems effective to simplify and accelerate the access of victims of domestic conflict to high-quality and prompt assistance from the police. The special strengthened police response to cases of domestic violence, gender-based violence in crisis and emergency situations, such as the COVID-19 pandemic, with special attention to affected children, should be developed and implemented. In view of the conditions caused by the pandemic (24-hour accommodation with the abuser, restricted access to specialised support services, restricted transport, etc.), we propose to amend the procedure for assessing the risks of domestic violence and gender-based violence.

The potentials of training and exercises, organised for police officers, especially those employed in mobile response groups to domestic violence, gender-based violence in crisis situations, should be considered with special attention to the detection of affected children. According to experts in this area, such trainings should explain the impact of crisis and emergency situations, such as the COVID-19 pandemic, on the situation with domestic violence, the increased risks faced by the affected persons in such conditions, as well as the need to prioritise the safety of victims and the adoption of special measures for the protection of victims, including issuance of an urgent restraining order, over the practical inconvenience that the imposition of such measures may cause to the abuser (for example, his need to look for another temporary stay with quarantine restrictions or an increased risk of infection if he temporarily leaves the place of residence, etc.) (Anosova, Borozdina, Lehenka, Cherepakha, 2021, p. 6).

These recommendations are in line with the specific objectives of the State social programme for the prevention and response to domestic and gender-based violence for the period up to 2025, para. 15 of the Plan of prompt action to prevent and combat domestic and gender-based violence and protect the rights of victims of such violence.

4. Conclusions

Consequently, the activities of special mobile police groups are a modern and operational means of prevention and response to gender-based domestic violence. Police officers employed in mobile groups are authorised to take appropriate measures against abusers, such as records of administrative offences, preventive police registration, issuance of urgent restraining orders, etc.

The organisation and conduct of trainings and exercises for police officers employed in mobile groups, which will increase the effectiveness of special mobile groups of the Police in combating gender-based violence, improve communication skills with the parties to the conflict, awareness of the identification of victims of domestic and gender-based violence, specificities of relevant services under the quarantine restrictions.

Considering the conditions caused by the pandemic (24-hour accommodation with the abuser, restricted access to specialised support services, restricted transport, etc.) requires changes to the Procedure for assessing the risks of domestic violence, gender-based violence.

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ДІЯЛЬНІСТЬ СПЕЦІАЛЬНИХ МОБІЛЬНИХ ГРУП ПОЛІЦІЇ ЩОДО ЗАПОБІГАННЯ ТА ПРОТИДІЇ ГЕНДЕРНО ОБУМОВЛЕНОМУ НАСИЛЬСТВУ

Анотація. ***Мета.*** Мета – на підставі аналізу сучасного стану діяльності мобільних груп поліції у запобіганні та протидії гендерно обумовленому домашньому насильству надати науково обґрунтовані висновки щодо оптимізації зазначеної діяльності поліції. ***Методи дослідження.*** Методологію наукової публікації складає система методів, що дала змогу належно проаналізувати предмет дослідження, зокрема використано діалектичний, логіко-семантичний, формально-юридичний та системно-структурний методи. Теоретичне підґрунтя дослідження склали наукові розвідки вітчизняних учених, присвячені дослідженню питань адміністративно-правового регулювання діяльності поліції щодо запобігання та протидії насильству за ознакою гендеру. ***Результати.*** Останнім часом в Україні спостерігається стійке зростання кількості адміністративних правопорушень, учинених за ознакою статі, жертвами якими стають найбільш незахищені верстви громадян. Негативна динаміка щодо випадків гендерно обумовленого насильства у сімейно-побутовій сфері свідчить про неефективну діяльність держави у запобіганні та протидії гендерно обумовленому насильству, породжує низький рівень довіри громадян до суб'єктів владних повноважень, зокрема й до Національної поліції України. Зазначені питання набувають особливої актуальності та спонукають із сучасних позицій на базі чинного законодавства осмислити адміністративно-правові засади реалізації гендерної рівності Національною поліцією України, визначити перспективи її реалізації в умовах швидкоплинного наукового прогресу. ***Висновки.*** Діяльність спеціальних мобільних груп поліції є сучасним та оперативним засобом у запобіганні та протидії гендерно обумовленому насильству у сімейно-побутовій сфері. Співробітники поліції, які входять до складу мобільних груп, наділені повноваженнями вживати відповідних заходів щодо кривдників, зокрема складати протоколи про адміністративне правопорушення, здійснювати постановку на превентивні обліки поліції, виносити термінові заборонні приписи тощо. Підвищенню ефективності діяльності спеціальних мобільних груп поліції щодо протидії гендерно обумовленому насильству сприятиме організація та проведення тренінгів та навчань співробітників поліції, які залучаються до несення служби у складі мобільних груп, з підвищення навиків комунікації з учасниками конфлікту, обізнаності щодо виявлення постраждалих від домашнього та гендерно обумовленого насильства, особливостей надання відповідних послуг в умовах дії карантинних обмежень. Зважаючи на умови, викликані пандемією (цілодобове перебування в одному приміщенні з кривдником, обмеження доступу до спеціалізованих служб підтримки, обмеження в пересуванні транспортом тощо), необхідне внесення змін до Порядку проведення оцінки ризиків вчинення домашнього насильства, насильства за ознакою статі.

Ключові слова: гендерно обумовлене насильство, конфлікт, запобігання, протидія, спеціальні мобільні групи поліції, адміністративно-правове регулювання, повноваження.

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PERSONNEL MANAGEMENT IN MODERN CONTEXT

Abstract. ***Purpose.*** The aim of the article is to determine the place of personnel management in the modern context. ***Results.*** The article establishes that the manager should provide for the solution of issues of personnel training and education, the choice of management styles in accordance with the stages of maturity of the work team, and the choice of the structure of the organisation at each stage of its growth. The staff selection policy, which is a strategy for staff development, is the basis for personnel management. The way of implementing the strategy of work with personnel is management, which combines into one policy of work with personnel of the organisation and interests of the State and society in general. The practice of large both domestic and foreign organisations shows that the policy of personnel selection is formed at the highest levels of management. The basis for this is the administrative powers of the heads of organisations and management bodies. This policy is embodied in the relevant documents and instructions regulating the aspects of work of all managers of middle and lower management with different categories of personnel. At the same time, the key tasks of these links are to communicate the goals set by the leadership of the organisation to each employee personally. It is emphasised that promotion helps the organisation by allowing it to fill vacancies with employees who have already demonstrated their abilities. It also helps the employees, because it satisfies their desire for success, achievement, promotes self-respect. Promotion is an effective way of recognising thorough and successful performance. ***Conclusions.*** Performance assessment is required to inform people about their relative level of performance. If this function is properly organised, the employee will not only know how he or she works, but also the specific pros and cons of work and how to overcome them. Considering motivational functions, it is necessary to note that performance assessment is a principal means of motivating human behaviour. By identifying qualified and conscientious employees, the administration can reward them with gratitude, raised wages or promotion. Systematic, positive reinforcement of behaviour associated with high productivity should lead to similar behaviour in the future.

Key words: manager, performance assessment, information, discussion, staff.

1. Introduction

The main task of personnel management is the making of an effective policy of work with personnel within the organisation, region, or industry. Personnel management under modern conditions includes several interconnected stages: first, the establishment of an effective personnel management system and mechanism, the selection and training of personnel managers; second, human resource planning; third, career guidance and adaptation; fourth, staff training; fifth, performance assessment; sixth, labour discipline management; seventh, the training of senior managers. These conditions lead to the emergence of a new profession in organisational activities – a staff manager, that is, a professional supervisor, a highly qualified specialist in human resources management, whose training and continuing education have now become a major challenge.

The functions of the human resources manager are as follows. Tasks of optimal formation of managerial and executive structures include determination of basic requirements to employees, provided for by position; determination of optimal norms of management and construction of model of teams; staff selection: initial assessment of staff; career guidance; devel-

opment of methods to evaluate and motivate staff. The placement of staff includes: the distribution of personnel by the workplace, taking into account all the rules for the formation of the work team, individual and psychological characteristics of each employee, as well as compatibility with other workers; formation and implementation of training and promotion of staff. Improving the structure of the team and increasing its sustainability involves examining the needs and interests of different social groups and changing the structure of the team; optimising the relationship between the goals of the organisation, its management and the composition of different management groups.

2. Corporate personnel management

The basic element of existence of any organisation is people. Slogan "Cadres Decide Everything!" was and remains relevant. The current stage of development of Ukraine as an independent State determines the issue of quality personnel selection as topical. Although the labour market has developed to some extent, the issue of professional personnel for decision-making bodies at both the local and State levels is very acute. Before, there was a personnel management system that comprises: planning and forecasting of staff requirements; deployment and rotation of staff; staff training and retraining; rational use of current staff. Purposeful and reasoned work with personnel contributed to social stability of society. The situation was aggravated by the fact that practically higher education institutions (unlike in the West) did not train specialists in management. This fact also has an impact on the current situation.

HR management is complex and multifaceted due to many different and sometimes conflicting aspects. Of these, the following can be highlighted: 1. Technical and technological aspect, which determines the level of corporate development of and characterises the readiness of staff to work at the modern level, to implement innovations; the ability to work with the use of the latest technologies. As an example, one can study the cases of organisations which have been established with foreign representatives, where the level of technology and the intensity of the process are so high that our employees are unprepared. 2. Economic. The number of personnel in similar domestic and foreign organisations differs significantly – this issue requires study and analysis. 3. Legal. The employee of the HR department shall know the labour legislation. At the present stage, the legal framework in Ukraine is not sufficiently developed. 4. Socio-psychological. This implies the issues of social and psychological support for the staff. This issue has been poorly studied. Currently, many scientific and popular science publications cover HR management, which is of great importance for improving the quality of management in Ukraine.

Frequently, leaders are firmly convinced that only volitional pressure can inspire subordinates to new labour successes. Sometimes it works out. After all, such a pressure can always be transformed into a threat to recruit new workers from those who are looking for a job, or apply for a particular position. Nonetheless, these kinds of bosses often are the first to become outside the organisations. And not so much because their leadership saw in their actions the cause of the spread of discontent among workers, the growth of conflicts, but rather because the artificial inflammation of passions was considered to be the way necessarily leading to a decline in the quality of indicators. It should not be recalled that such leaders were not respected. Besides, most people are just waiting for the right opportunity to do harm to them. In any case, pressure on a subordinate could in no way ensure a long business career. The authoritative leader will never allow him or herself to "drive" people into a stressful state, his or her tool of management is conscious motivation of work. A good leader is clearly aware of the importance of the principle "for the sake of all and with all", understanding that in a situation "one against all" it is possible to achieve a complete collapse of all their undertakings.

3. Organisation manager in the work team

The manager should provide the solution of issues of staff training and education, the choice of management styles in accordance with the stages of maturity of the work team, and the choice of the organizational structure at each stage of its growth. Staff selection policy, which is a strategy for staff development, is the basis for personnel management. The way of implementing the strategy of work with personnel is management, which combines into one policy of work with personnel of the organisation and interests of the State and society in general. The practice of large both domestic and foreign organisations shows that the policy of personnel selection is formed at the highest levels of management. The basis for this is the administrative powers of the heads of organisations and management bodies. This policy is embodied in the relevant documents and instructions regulating the aspects of work of all managers of middle and lower management with different categories of personnel. At the same time, the key tasks of these links are to communicate the goals set by the leadership of the organisation to each employee personally.

One way to work effectively in an organisation is to employ and select the most qualified and capable workers. However, this is not

enough. The manager should organise systematic training and education of staff, helping them to reach their full potential.

Heads, human resources managers, and all those responsible for identifying and recruiting employees in a rapidly growing organisation know how it is difficult to do so. Internal changes, which would normally occur every 10 years or more, have to be made immediately, and problems are increasing.

The situation is further complicated by the fact that many fast-growing organisations are young and inexperienced in personnel matters. But they have certain advantages. They have enthusiasm and a certainty of perspective, which can help to solve problems and make uncertainty attractive.

Training is important. Unfortunately, many managers are not aware of all the problems involved. One is the application, without analysis, of programmes used by other organisations.

They are copied, without considering whether the style really meets the needs of the organisation.

Training is useful and necessary in three main cases. First, when a person enters the company; second, when an employee is appointed to a new position or when a new job is assigned to him or her; third, when an inspection establishes that an employee lacks certain skills to perform his or her tasks effectively.

Thorough consideration of the structure of the training programs goes beyond the scope of this work. Training is a broad specialised area. Specific teaching methods are quite numerous, and they need to be adapted to the requirements of the profession and organisation. Some of the basic requirements for effective training programmes are:

- Training requires motivation. Employees must understand the purpose of the programme, learning will increase their productivity and thus their own satisfaction with their performance.

- The leadership should create a climate conducive to learning. For example, they should encourage learners. Some organisations offer training in special centres rather than on their own premises, which greatly improves the perception and quality of training.

- If you need to master a complex task, the learning process should be divided into several consecutive stages. The programme participant should be able to put into practice the material learned at each stage.

- Employees, who study, need to feel feedback on learning outcomes. It is necessary to ensure positive reinforcement of the material learned. This can be done, for example, in the form of praise from the teacher.

Next, once the employee has adapted in the team and has received the necessary training to perform his or her work effectively, performance should be assessed. This is the purpose of performance assessment, which can be seen as an extension of the control function. As noted above, the control process involves the definition of standards and the measurement of results to determine deviations from established norms where corrective action is required. Similarly, performance assessment requires managers to be aware of how effectively each employee is discharging delegated responsibilities. By providing this information to subordinates, the manager informs them of how they do their job and provides an opportunity to correct their conduct if it does not meet the requirements. Moreover, performance assessment allows the manager to identify the most conscientious employees and raise their level of achievement by promotion.

Basically, the performance assessment meets three objectives: administrative, informational and motivational.

Administrative functions include: promotion, demotion, transfer, termination of employment.

4. The performance assessment of corporate employees

Each organisation must evaluate the performance of its employees in order to make administrative decisions on promotion, transfer to a higher position, or termination of employment contract. Promotion helps the organisation by allowing it to fill vacancies with employees who have already demonstrated their abilities. It also helps the employees because it satisfies their desire for success, achievement, promotes self-respect. Promotion is an effective way of recognising thorough and successful performance. However, a promotion decision requires a manager to promote only those who have the capacity to perform effectively in a new post. Unfortunately, employees, who perform their current duties well but do not have the capacity to perform effectively in a new position, are sometimes promoted.

Reassignment can be used to increase the experience of an employee, as well as the ability to realise his or her abilities in this position. Reassignment is sometimes applied to workers who have not performed satisfactorily, but it would be unethical to terminate an employment contract because of long working experience or merit. In such a situation, the transfer implies a demotion, and the employee finds him or herself where he or she can still do some good and will not interfere with the career of a capable young employee or actually impede the realisation of the organisation's goals.

If the employee has been notified of the performance assessment and provided opportunities for its improvement, but the employee does not want or cannot work according to the standards of the organisation, the employment contract with him or her is subject to termination. Whatever the administrative situation, it is clear that without an effective methodology for performance assessment, it is impossible to make a justified decision.

Performance assessment is required to inform people about their relative level of performance. If this function is properly organised, the employee will not only know how he or she works, but also the specific pros and cons of work and how to overcome them.

Considering motivational functions, it is necessary to note that performance assessment is a principal means of motivating people's behaviour. By identifying qualified and conscientious employees, the administration can reward them with gratitude, raised wages or promotion. Systematic, positive reinforcement of behaviour associated with high productivity should lead to similar behaviour in the future.

Evidently, the informational, administrative and motivational functions of a performance assessment are interrelated, that is, the information required for an administrative decision on promotion should positively motivate the employee for a better performance.

The effectiveness of the assessment system is determined by several factors. First, frequently, the work of a subordinate is evaluated by his or her immediate supervisor. He must therefore be able to evaluate work correctly, without focusing on personal relationships with his or her subordinate. He must also be able to convey this assessment to a subordinate. This can be quite difficult if the manager has never been trained in communication techniques, the work of the subordinate is ineffective. Because of these potential problems, managers may oppose formal systems for measuring staff performance.

Criticism is not always an effective way to inform subordinates of the shortcomings in their work. It often elicits a defensive reaction. The subordinate in this case is more concerned with protecting him or herself, rather than worrying about the substance of the problem and ways to improve the work. In order to be effective, employees need to be ready to communicate and want to discuss their work without taking a defensive position. This requires that the manager create a calm, risk-free environment in which his or her staff can openly discuss their performance-related concerns.

The manager must clearly distinguish between criticism and a performance assessment. Criticism is communication in one direction. For effective information and adequate feedback, the manager should allow for a two-way constructive discussion on specific performance improvement issues.

The method of informing staff once or twice a year with their performance assessment is not effective. One or two formal results-based assessment sessions should be scheduled each year. However, a performance assessment must be conducted whenever necessary, daily or as often as the situation requires. If a subordinate is working on a new short-term project, his or her performance should be assessed two or three times a month. If a subordinate is unsure of his or her abilities, the manager can discuss his or her performance several times a week to build confidence. Experienced, confident and tested employees can be talked to by the manager, if necessary, to maintain control over them.

5. Conclusions

There should be no discussion of a performance assessment and wages at the same time. The strengths and weaknesses of a subordinate are better discussed in separate meetings with him or her rather than in conjunction with administrative measures related to wages.

Douglas Mac Gregor consistently advocates a performance appraisal. He argues that traditional assessments are not adequate, as they focus on basic traits such as initiative, teamwork, reliability, relationships with people. It makes the manager be biased, not objective. At the same time, if an employee has a bad relationship in the team, it gives very little information about what he is doing wrong. Instead, according to Mac Gregor, the manager and his or her employees should work together to define goals, which will create a certain standard for further assessment. When it is not possible to set specific goals, the manager should encourage the subordinate to perform his or her duties properly. As already mentioned, in order to achieve maximum objectivity in the performance assessment, a two-way interview is desirable. The employee should be free to discuss issues of concern: why his or her work does not meet the standard, what could be the cause and what will be done to remedy this situation (Bleik, Mouton, 1990, p. 72). For example, when a manager is asked to give an assessment to their subordinates on the following traits: reliability, relations with people, etc., the ratings reveal the effect of "halo". That is, a certain person receives such assessments for all traits, although some features are expressed more brightly, and others are not.

It is also noted that some managers tend to give high ratings to all, while others, on the contrary, tend to give low ratings, which further reduces the accuracy and usefulness of the performance evaluation.

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МЕНЕДЖМЕНТ ПЕРСОНАЛУ В СУЧАСНИХ УМОВАХ

Анотація. ***Мета.*** Метою статті є визначення місця менеджменту персоналу в сучасних умовах. ***Результати.*** У статті з'ясовано, що менеджер повинен передбачати вирішення питань підготовки персоналу та їх виховання, вибір стилів менеджменту відповідно до етапів зрілості трудового колективу, вибір структури організації на кожному етапі її зростання. Основою роботи з персоналом виступає політика добору персоналу, яка становить собою стратегію вдосконалення персоналу. Способом реалізації стратегії роботи з персоналом є менеджмент, який поєднує в єдине політику роботи з персоналом організації та інтереси держави й суспільства в цілому. Практика діяльності великих як вітчизняних, так і зарубіжних організацій свідчить, що політика добору персоналу формується на вищих сходинках менеджменту. Базою цьому є адміністративні повноваження керівників організацій та органів менеджменту. Закріплюється ця політика відповідними документами та інструкціями, які регламентують аспекти роботи всіх керівників середніх та нижчих ланок менеджменту з різними категоріями персоналу. При цьому основою завдань цих ланок є доведення поставлених керівництвом організації цілей до кожного працівника персонально. Наголошено, що просування по службі допомагає організації, оскільки дозволяє їй заповнювати вакансії працівниками, які вже виявили свої здібності. Воно допомагає і службовцям, оскільки задовольняє їх прагнення до успіху, досягнень, сприяє самоповазі. Просування по службі – ефективний спосіб визнання старанного і успішного виконання роботи. ***Висновки.*** Оцінка результатів діяльності необхідна для того, щоб можна було інформувати людей про відносний рівень їхньої роботи. При належній організації цієї функції працівник буде знати не тільки, як він працює, але й конкретні плюси і мінуси в роботі та шляхи їх подолання. Розкриваючи мотиваційні функції, необхідно зазначити, що оцінка результатів трудової діяльності є важливим засобом мотивації поведінки людей. Визначивши кваліфікованих та сумлінних працівників, адміністрація може належним чином нагородити їх подякою, підвищити заробітну плату або перевести на вищу посаду. Систематичне, позитивне закріплення поведінки, що асоціюється з високою продуктивністю, повинно привести до аналогічної поведінки й у майбутньому.

Ключові слова: менеджер, оцінка роботи, інформація, дискусія, персонал.

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STRUCTURE OF THE NATIONAL POLICE OF UKRAINE: MODERN INTERPRETATION

Abstract. ***Purpose.*** The purpose of the article is to analyse the modern interpretation of the structure of the National Police of Ukraine. ***Results.*** The article reveals that an important feature of the system is its purposefulness. It is demonstrated that the system is a set of ordered interconnected elements that constitute a holistic phenomenon. It is highlighted that the feature of variability is inherent in the system, which is due to changes in society and the State. The statement that the police is a complex social State legal institution has been further developed and is reflected in the structure of the National Police of Ukraine. It is marked that the police are an executive body and is therefore established according to the principles governing executive bodies. It is proven that the police system is based on the principles of territoriality and functionality. It is noted that the principle of territoriality provides for the bodies of the system to be grouped into higher and lower territorial bodies, corresponding to the administrative and territorial structure of Ukraine. It is highlighted that the principle of functionality means the construction of State bodies depending on their functional purpose and features inherent in this body. It is noted that in accordance with the principle of territoriality, the following can be distinguished in the structure of the police: the Central Office of the Police and territorial police bodies. It is underlined that the principle of functionality, governing the structure of the police, is expressed in the activities of the following units: Criminal Police; Patrol Police; Bodies of Pre-Trial Investigation; Guard Police; Special Police; Special Operations Police. It is suggested that the police system is changing due to various factors. It is demonstrated that one of the new units of the police system is the State and Society Protection Department. ***Conclusions.*** It is concluded that the National Police of Ukraine, as a system, has the following characteristics: determination, integrity, changeability and renovation. The determination is reflected in the National Police's main objective to protect human and civil rights and the rule of law in Ukraine. Integrity, as a feature, means that all elements of the police are structured and interoperable to ensure their smooth functioning.

Key words: system, system features, police system, territorial method, functional method.

1. Introduction

The guarantee and consolidation of human and civil rights and freedoms is the main objective of a democratic social State governed by the rule of law. In performing this function, the State shall use the mechanism provided for by law. Central to this mechanism is the Ministry of Internal Affairs. The National Police of Ukraine is a unit of the MIA whose function is aimed at establishing and protecting law and order in the State and protecting human and civil rights and freedoms.

The MIA bodies is of importance for the State and society due to ensuring coordinated activities of all actors of the political system of society. The constant changes in society, both internal and external, require the continuation of the reform of the entire system for the MIA bodies to perform their tasks more efficiently and effectively. That is why it remains an important issue to improve the structure of its units, including the National Police of Ukraine (Padalka, 2016, p. 1).

The general theoretical aspects of the organisational and legal framework for the National Police of Ukraine were under the focus in the works by legal experts in administrative law such as O. M. Bandurka, O.I. Bezpalov, S. M. Husarov, O. V. Dzhafarova, A. S. Dotsenko, O. M. Zaiets, D.P. Kalaianov, V. V. Konoplov, O. V. Kuzmenko, Ye. V. Kurinnyi, A. A. Manzhula, O. V. Nehodchenko, A.V. Panchyshyn, K. M. Rudyi, Yu. V. Siroshtana, O.S. Yunin, S. O. Shatrava and others. Nevertheless, the important issue is to comprehend the police structure, which is constantly changing in line with the transformations in society and the State.

The process of improvement and development of the structure of the National Police of Ukraine is ongoing, which causes the emergence of new entities. Therefore, it is an important task to understand the structure of the National Police.

2. Specificities of the system of the National Police of Ukraine as a central executive body

The National Police of Ukraine is the central executive body responsible for protecting human rights and freedoms, combating crime and maintaining public security and order (Law of Ukraine on the National Police, 2015).

One of the main objectives of ensuring the interests of society and the State is the presence of appropriate actors implementing appropriate organisational, legal and other measures aimed at timely prevention, identifying and addressing threats, both internal and external, to human and civil rights and the rule of law in the State (Bezeha, 2020, p. 40).

It should be noted that the concept of "system" as a category is quite complicated. At the same time, the universality of the concept enables to apply it to the designation of a large number of different phenomena, thus making it a scientific category.

The *Dictionary of the Ukrainian language* gives the following definition of the term "system" – "order determined by the correct, orderly arrangement and mutual connection of parts of something" (Bilodid, 1973, 203). The *Philosophical dictionary* considers the system as "a set of certain elements between which there is a natural interrelation or interaction" (Shynkaruk, 2002, p. 583).

An important feature of the system is its purposefulness. It manifests itself in the achievement of a certain objective, general scope, nature, content or other grounds thus forming a certain integrity. However, any system has not only linkages and relations between the elements of which it is composed, but is also linked to the environment with which the system interacts and manifests its integrity (Bezeha, 2020, p. 42). It should be noted that society is a complex social organism, therefore has its inherent structure, the components of which are a system characterised by a variety of connections, patterns of development and integrity, however, the most important condition for its existence is the constant reproduction of the features and characteristics essential to the social system (Antonov, 2018, p. 141; Pchelin, 2016, p. 130).

Moreover, scientists underline the integrity of the system as its peculiarity. For example, from the perspective of V.N. Sadovskyi, the system is "a set of elements, ordered in a certain manner, interconnected with each other, and forming some holistic unity" (Sadovskyi, 1974, p. 10). According to A.N. Averianov, the essential features of the system can be defined as separated, interconnected by contradictory interaction, unity of bodies or elements (Averianov, 1974, p. 65).

Each system changes in different ways, but there are always changes that are common to all systems, such as the existence of separate objects, phenomena and processes that are in a certain relationship (Bezeha, 2020, p. 42).

Therefore, the system is a set of ordered, structured elements that are interconnected, interact with the environment and are constantly changing and moving.

The National Police of Ukraine as a system has all the features of the system in general: determination (presence of a goal), integrity (consists of connected elements), constant changes and development. Therefore, it is important to understand the activities of the National Police of Ukraine as a system establishment.

Proceeding from the fact that the police and its activities are a complex social and state-legal institution, which changes in accordance with the legal structure of the State, economic development, living standards of the population, therefore, the Law "On the National Police" was adopted considering its structural and institutional changes conditioned by public life (Kosytsia, 2016, p. 96).

This is reflected in Article 13 of Law 580-VIII "On the National Police" of July 02, 2015, according to which the police system consists of: the Central Office of the Police and Regional Police Bodies; in addition, the Police is composed of: 1) Criminal Police; 2) Patrol Police; 3) Pre-trial Investigation Bodies; 4) Guard Police; 5) Special Police; 6) Special Operations Police (Law of Ukraine on the National Police, 2015). These types of police do not function in the structure of the National Police of Ukraine as separate elements but are only areas of specialisation of police units according to the official website of the National Police of Ukraine (Official site of the National Police of Ukraine, 2021). Moreover, the police may establish research and vocational (vocational and technical) education institutions with specific learning conditions (Official site of the National Police of Ukraine, 2021).

Given that the National Police of Ukraine is an executive body, it is established according to the principles governing executive bodies (Law of Ukraine on the National Police, 2015). These are the principles of territoriality and the principle of functionality. The principle of the territoriality of executive bodies provides that all bodies in the system are divided into higher and lower territorial bodies, which corresponds to the administrative and territorial structure

of Ukraine. The second principle is the principle of functionality, which means the construction of State bodies depending on their functional purpose and specificities of this body. It should be noted that the system elements are both controlling and controlled systems (Bytiak, Harashchuka, Zui, 2010, pp. 82-83).

This applies fully to the National Police of Ukraine. It is a structured, multi-level organisation based on territorial and functional principles. The above-mentioned law does not clearly specify how the structural elements of the police interact with each other, they can be found in the by-laws and regulations, so it can be said that the process of improving the structure of the police continues.

In accordance with the principle of territoriality, the following can be distinguished in the structure of the police: 1) the Central Office of the Police and 2) the territorial police bodies.

The Central Office of the Police has an apparatus empowered to supervise all police bodies. Its structure is approved by the Head in coordination with the Minister of Internal Affairs, and the requirements for the formation of such a structure are determined by the Cabinet of Ministers of Ukraine (Law of Ukraine on the National Police, 2015; Law of Ukraine on Central Executive Bodies, 2011). The apparatus is a system of structural units which are structurally connected with each other, performing managerial activities to ensure the work of the Head of the Police and fulfilling the tasks and functions of the higher management of the National Police [14, p. 134]. The structure of the police apparatus includes the leadership (Head, First Deputy and Deputies), departments, directorates, units and sectors. The existence of structural units and posts depends on the functions to be performed by the police apparatus.

In particular, the system of the Central Office of the National Police of Ukraine includes departments. For example, the departments that make up the Central Office of the Police Department are: Head Support Department, Criminal Investigation Department (within the Criminal Police), Migration Police Department (within the Criminal Police), Criminal Operatives Department (within the Criminal Police), Public Interest and State Protection Department (within the Criminal Police) and others (Official site of the National Police of Ukraine, 2021). Therefore, depending on the scope of work performed by the central apparatus, a sufficient number of departments assigned to individual tasks of the police act.

3. Optimisation areas in the structure of the National Police of Ukraine

As noted above, the dynamics of society require constant changes in the structure of the police force, which is reflected in the creation of new units. For example, the State and Society Protection Department of the National Police of Ukraine was established to make public policy on public security and order, human rights and freedoms protection, as well as the interests of society and the State, combating crime, and providing, within the limits defined by law, the services of assistance to persons, who are in need of such assistance due to personal, economic, social reasons or as a result of emergency situations, as well as operational and investigative activities to prevent, detect and suppress offences, including those committed by participants and members of organised groups and criminal organisations. The Department is a structural unit of the Central Office of the National Police, within the Criminal Investigation Police and is responsible for detecting, preventing and suppressing offences that violate public security and order, human and civil rights and freedoms (Official site of the National Police of Ukraine, 2021).

The structure of the Central Office of the Police consists of Departments, which are a single-branch or single-function unit with at least two units [16]. These are the following Departments: the General Investigation Department (within the pre-trial investigation body), the Internal Audit Department, the Department of Property and Communications Management and others (Official site of the National Police of Ukraine, 2021). Therefore, the branch structural element of the performance of certain functions in the police apparatus are Departments.

The units of the Central Police Office are the Police Canine Unit, the Secure Communication Unit, the Pensions Section, the Firearms Control Division (Law of Ukraine on the National Police, 2015). The peculiarities of the unit as a component element of the department (directorate) is performance of tasks in one area (function) of activities of the executive authority (Resolution of the Cabinet of Ministers of Ukraine on streamlining the structure of the staff of central executive bodies, their territorial subdivisions and local state administrations, 2005).

It should be noted that the structure of public authorities is characterised by vertical and horizontal links between various structural elements. According to V.P. Rubtsov, vertical links are established between managers and subordinates. Horizontal linkages, in turn, are interrelated or interdependent and are established between equal managers and entities that work closely together (Rubtsov, 2008, p. 133; Batrachenko, 2017, p. 70).

Therefore, departments, directorates and divisions are in a horizontal relationship, that is, coordination, and their heads and subordinate in a vertical relationship, that is, subordination.

All units of the police apparatus are created to integrate different activities into logical work units and can change depending on the functional requirements of internal and external processes. The main task of the apparatus of any public authority, including the police, is to perform organisational matters, planning, decision-making, allocation of resources, monitoring, ensuring the performance of special functions entrusted to this authority, etc. It should be noted that they cooperate as an integral system in the performance of their functions, and their activities are coordinated by the Head of the Police and his deputies. (Shylo, 2021, p. 135).

Horizontal and vertical structural linkages in the system of public authorities form special managerial relationships between different structural units. According to V. P. Sadkovckyi, the structural units at the higher level of hierarchical organisation are the governing bodies in relation to the corresponding units at the lower level. In other words, structural units at the lowest level of the hierarchy are objects of management, and structural units at the highest level are managers. At the same time, at each hierarchical level, each organisational unit has a head with a management apparatus who oversees a unit (Sadkovckyi, 2009, p. 12; Batrachenko, 2017, p. 71).

An important component of the system of the National Police of Ukraine is territorial bodies, structured according to the organisation and work of the police apparatus.

The apparatus of the police in the hierarchy fulfils managerial tasks for making public policy in a certain sphere, and the territorial bodies perform most of the law enforcement functions and powers: prevention and investigation of crimes, consideration of cases on administrative offenses, protection of human rights and freedoms, property protection, society and the State protection, etc.

The principle of functionality is the fundamental principle on which the structure of the National Police of Ukraine is based. In accordance with this principle, structural elements are created to perform certain police activities. For example, the police include: 1) Criminal Police; 2) Patrol Police; 3) Pre-trial Investigation Bodies; 4) Guard Police; 5) Special Police; 6) Special Operations Police (Law of Ukraine on the National Police, 2015).

The State and Society Protection Department is part of the Criminal Police, and is defined as a central executive body, directed and coordinated by the Ministry, responsible for public policy on public order and protection of persons, society and the State against unlawful encroachments (Mink, 2017).

The main task of the Criminal Police is to combat crime through organisational, operational, analytical and preventive measures. Organisational and legal measures by Criminal Police units include the introduction of a proposal for a State programme to combat crime, the analysis and forecasting of the crime situation. The organisational and operational activities by the Criminal Police are the detection and denunciation of persons who prepare or commit grave crimes, as well as crimes that are not included in the legislation in this category, but committed in a qualified manner using firearms or knives or a group of persons, search for criminals and missing persons, etc. The preventive measures by the Criminal Police include the prevention of juvenile offences resulting from the detection, suppression, and prevention of offences committed by juveniles. The State and Society Protection Department performs both preventive measures and organisational operations.

4. Conclusions

The National Police of Ukraine, as a system, has the following characteristics: determination, integrity, changeability and renovation. The determination is reflected in the National Police's main objective to protect human and civil rights and the rule of law in Ukraine. Integrity, as a feature, means that all elements of the police are structured and interoperable to ensure their smooth functioning. Integrity, as a property, means that all elements of the police are structured and interoperable to ensure their smooth functioning. Changeability and renovation are expressed in the constant transformation of the structure, caused by changes in the society, creation of new elements.

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СТРУКТУРА НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ: СУЧАСНЕ РОЗУМІННЯ

Анотація. ***Мета.*** Метою статті є аналіз сучасного розуміння структури Національної поліції України. ***Результати.*** У статті відображено, що важливою ознакою системи є цілеспрямований характер. Продемонстровано, що система є сукупністю упорядкованих взаємопов'язаних між собою елементів, що являють собою цілісне явище. Висвітлено, що системі притаманна ознака змінності, що пов'язано зі змінами у суспільстві й державі. Набула подальшого розвитку теза про те, що поліція є складним соціальним державно-правовим інститутом, що знайшло відображення у структурі Національної поліції України. Розкрито, що поліція є органом виконавчої влади, тому створюється відповідно до принципів, за якими побудовані органи виконавчої влади. З'ясовано, що система поліції заснована на принципах територіальності та функціональності. Зауважено, що принцип територіальності передбачає поділ органів, що входять в систему, на вищі та нижчі територіальні органи, що відповідає адміністративно-територіальному устрою України. Висвітлено, що

принцип функціональності означає побудову державних органів залежно від їх функціонального призначення та особливостей, притаманних даному органу. Зазначено, що відповідно до принципу територіальності у структурі поліції можна вирізнити: центральний орган управління поліцією та територіальні органи поліції. Наголошено, що принцип функціональності, на якому базується структура поліції, виражається у діяльності таких підрозділів, як: кримінальна поліція; патрульна поліція; органи досудового розслідування; поліція охорони; спеціальна поліція; поліція особливого призначення. Представлено, що у системі поліції під впливом різноманітних факторів відбуваються зміни. Продемонстровано, що одним із нових підрозділів системи поліції є Департамент захисту інтересів суспільства і держави. ***Висновки.*** Зроблено висновок, що Національній поліція України як системі притаманні ознаки: цілеспрямованість, цілісність, змінність та оновлення. Цілеспрямованість виражається в тому, що головною метою Національної поліції України є захист прав і свобод людини і громадянина та правопорядку у державі. Цілісність як властивість означає структурованість та взаємодію всіх елементів, що входять до складу поліції, що забезпечує її злагоджене функціонування.

Ключові слова: система, ознаки системи, система поліції, територіальний метод, функціональний метод.

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IMPROVEMENT OF LEGAL REGULATORY MECHANISM FOR PUBLIC CONTROL OVER ACTIVITIES OF SPECIALISED ANTI-CORRUPTION BODIES OF UKRAINE: INTERNATIONAL PRACTICE

Abstract. ***Purpose.*** The aim of the article is to analyse the international experience of public control over the activities of State authorities, identifying the positive aspects, proposing ways of their implementation, which will contribute to the effectiveness of this control over the activities of specialised anti-corruption bodies. ***Results.*** The article reveals an analysis of international experience in public control over the activities of State authorities. The positive experience of a number of countries, which have legislated the possibility of performing "preventive-control" measures on transparency of the work of executive authorities with the public in the form of hearings, discussions and other consultations with the public. It is underlined that introducing positive foreign experience, Ukraine should invent its own way of developing public control over the activities of State authorities, especially those entrusted with the function of preventing and combating corruption. It was noted that the way of public control institutionalisation must be based on international democratic foundations, considering the specificities of the national State formation. Relying on positive international practice, a number of additions to the legislation of Ukraine in force are proposed to contribute to the effectiveness of public control over the activities of specialised anti-corruption bodies. It is determined that in order to observe the principle of publicity and transparency in the activities of authorised persons, in our view, it is advisable to provide for mandatory disclosure of information and reporting on the results of monitoring and evaluation of the implementation of anti-corruption programmes by a state authority, prepared by an authorised unit (authorised person). ***Conclusions.*** It is concluded that the public is one of the independent and impartial actors of anti-corruption control, which can resist corruption manifestations both at a practical level and by involving special anti-corruption bodies in the development of various anti-corruption initiatives and participating in the adoption of their decisions. However, the development of public control and the strengthening of its role depends on the State, which should provide at the legislative level effective conditions for the development of this institution, and the organisation of legal cooperation between specialised anti-corruption bodies and the public in the fight against illicit enrichment.

Key words: public control, specialised anti-corruption bodies, international anti-corruption practice, State authorities.

1. Introduction

Full-fledged cooperation between society and the State is possible provided the latter meets principles of the legal State, its openness and accountability to citizens (Nalyvaiko, Savchenko, 2017, p. 105), facilitated by the invention of more effective ways at the legal level to regulate the public's cooperation in monitoring the activities of the bodies entrusted with the prevention of corruption in Ukraine.

To date, a number of laws have been drafted to improve the legal regulatory mechanism for public control over compliance with the principle of legality by State authorities. But it should be noted that even at the project level, the development of a single unified regulation on improving the administrative and legal regulatory mechanism for public control over the activities of specialised anti-corruption bodies has been neglected.

Some issues of public control were studied by scientists such as: O. Andriiko, L. Apasova, A. Balatska, O. Dzhafarova, V. Harashchuk, T. Kolomoiets, V. Kolpakov, A. Kom-

ziuk, A. Krupnyk, O. Muzychuk, I. Skvirskyi, D. Kholdar, T. Chepulchenko, O. Chub, Ye. Shevchenko, M. Shunin, and others.

The aim of the article is to analyse the international experience of public control over the activities of State authorities, identifying the positive aspects, proposing ways of their implementation, which will contribute to the effectiveness of this control over the activities of specialised anti-corruption bodies.

2. Specificities of public control

One of the significant gaps in the implementation of public control over the activities of specialised anti-corruption bodies is the absence of a specialised legal regulation that would accumulate and clearly define legal criteria, specificities and implementation of such control.

A range of draft laws on public control have been sent to the Verkhovna Rada of Ukraine, but none of these have been adopted to date. The legal analysis of draft laws on the implementation of public control over the activities of State authorities leads to the conclusion that most of them do not correspond to the legal nature of associations of citizens and other actors of public control, with the determination of their place and their relations with State bodies. The proposed project novels on the legal regulatory mechanism for public control in most cases contradict the current legislation. Most scientists argue that foreign experience in public control in terms of activating the role of the public in administrative appeals of actions and acts of local self-government and other State authorities, which has already passed the test of time in foreign countries, should be studied and implemented. For example, in the Kingdom of the Netherlands, special advisory commissions (20-25 persons) are set up to consider complaints about the actions and decisions of the above-mentioned bodies, i.e., when exercising their administrative legal personality shall include the inhabitants of the city, elected by the municipal parliament (council) for the term of office of the latter. The commissions' work in subgroups with specialisation (social affairs, construction, etc.), and complaints are examined by panels consisting of 2-3 commissioners once or twice a month. Although the decisions of the respective commissions are of a recommendatory (advisory) nature (members of the commission do not have to have a law degree), however, as practice shows, "the authorities in the absolute majority of cases listen to the recommendations of advisory commissions". The Commission reviews the decision not only and not so much on the basis of legality as on the basis of fairness (common sense, etc.), which demonstrates the implementation of the rule of law in the administration (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019; Control over the activities of local self-government bodies (foreign experience): Information reference prepared by the European Information and Research Centre at the request of the Committee of the Verkhovna Rada of Ukraine, 2017).

3. Foreign experience in counteracting public corruption risks

The issue of administrative appeal of actions and acts of local self-government bodies in the Republic of Poland is regulated by the Code of Administrative Procedure, which states that the relevant relations are regulated by filing a complaint against acts, actions of bodies of "territorial self-government" by this code (art. 2), complaints are submitted to the Appeals Board of Self-Government (art. 17), to the Chairman of the Council of Ministers or to the relevant Ministers (art. 18), the procedure for the submission and consideration of complaints is defined (part II-X) (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019; Control over the activities of local self-government bodies (foreign experience): Information reference prepared by the European Information and Research Centre at the request of the Committee of the Verkhovna Rada of Ukraine, 2017).

The positive foreign experience of Andorra, Belgium, Finland, Norway, Switzerland and Belgium should also be noted, because they have legislated the possibility of performing "preventive-control" measures on transparency of the work of local self-government bodies with the public in the form of hearings, discussions and other consultations with the public. In our opinion, this practice of public control should be introduced in a special legal regulation, with mandatory scope of preventive-control measures on the activities of the State specialised anti-corruption bodies.

In Finland, the Act on Administrative Procedure (Administrative Procedure Act, 2003) clearly defines the obligation of local authorities to address the parties, to which the event or decision relates, in order to receive comments from them by the time the matter is resolved, which may well be considered as a manifestation of prior public control. Similar provisions are in legislation of Norway (Act relating to procedure in cases concerning the public administration, 1967), of the Republic of Poland (Law of 1990 "On Local Self-Government" (Ustawa o

samorządzie terytorialnym, 1990)) (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019).

Therefore, the most positive foreign experience in preventing corruption by public authorities is the practice of Norway, the Republic of Poland, the Kingdom of the Netherlands, Finland, etc., which can be borrowed and implemented by Ukraine at the legislative level. Introducing positive foreign experience, Ukraine should invent its own way of developing public control over the activities of State authorities, especially those entrusted with the function of preventing and combating corruption. The way of public control institutionalisation must be based on international democratic foundations, considering the specificities of the national State formation.

The institution of local human rights ombudsmen is of significance in the system of public resistance to the emergence of corruption risks in the practical activities of public authorities and the prevention of these manifestations. This experience is actively used in such countries as: Great Britain, Iceland, Norway, Romania, Slovenia, Portugal, Republic of Moldova.

The ombudsmen are specifically mandated and relatively independent supervisors, who, in case of violation of human rights and freedoms by decisions or actions of officials and employees of public authorities, give them advice and recommendations to correct and improve their decisions. The experience of Belgium, Finland, Norway and Switzerland, where the legal regulations govern the implementation of precautionary measures in the form of mandatory hearings, discussions or other forms of interaction with citizens in respect of possible violations of local government is quite acceptable in domestic practice (Opinion on the Draft Law of Ukraine On Amendments to Certain Laws of Ukraine Concerning the Establishment of an Institutional Mechanism for Public Control over the Activities of Bodies and Officials of Local Self-Government, 2019; Control over the activities of local self-government bodies (foreign experience), 2017). In national practice, this is reflected in the institution of the authorised (authorised unit, authorised person), coordinated by the National Agency for the Prevention of Corruption. This institution should be thoroughly analysed to determine further ways of its improvement.

4. Features of the activities of public authorities and the public in the prevention and combating of corruption

For effective cooperation of all State authorities, including special anti-corruption bodies, with the public in preventing and combating corruption, the Cabinet of Ministers of Ukraine has developed a Draft Law 4135 On the Principles of the State Anti-Corruption Policy for 2021 - 2025 of September 21, 2020, providing for the adoption of the Anti-Corruption Strategy for 2021-2025, the introduction of a number of additions to the existing legislation. This Anti-Corruption Strategy envisages ways of harmonious cooperation of all State bodies, considering the adoption of measures aimed at improving the areas of work of specialised anti-corruption bodies in the fight against and prevention of corruption, preventive measures to minimise the manifestations of anti-corruption risks among officials and employees.

It is for the coherent and coordinated implementation of measures to prevent and detect corruption in State bodies, local self-government bodies, enterprises, institutions and organisations related to the management of a state body, as well as in State trust funds, it is mandatory to form (define) independent and functionally independent structural units (authorised persons), which are entrusted with the functions of prevention and detection of corruption. Article 13-1 of the Law of Ukraine "On the Prevention of Corruption" provides for the list of State bodies and institutions in which these units are established and authorised persons operate, the definition of their tasks. The coordination and methodological function is entrusted to the National Agency for the Corruption Prevention (hereinafter referred to as NACP) that approves the Standard Regulations on the Authorised Unit (Authorised Person) and the procedure for consent to the dismissal of the head of the authorised unit (authorised person) (Law of Ukraine on the prevention of corruption, 2014).

According to the Standard Regulations on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption, drawn up and approved by Order 277/21 of the NACP of May 27, 2021 (Order of the National Agency for the Prevention of Corruption of Standard Regulations on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption, 2021), an authorised person shall be elected from among the employees of the relevant body and shall be entrusted with the functions of such person. This person is appointed to a separate position, which is included as a structural unit of the staff of a state body.

The main tasks of the authorised units (authorised person), defined both by the Law of Ukraine "On the Prevention of Corruption" and the Standard Regulations on

the on the Authorised Unit (Authorised Person) for the Prevention and Detection of Corruption, include: development, organisation and supervision of activities to prevent corruption and corruption-related offences; organisation of work on assessment of corruption risks in the activities of the relevant body, preparation of measures to eliminate them, submission of appropriate proposals to the head of such body; provision of methodological and advisory assistance on compliance with legislation on the prevention of corruption; implementation of measures to identify conflicts of interest, assistance in resolving them; informing the head of the relevant body and the NACP about the detection of a conflict of interest and the measures taken to resolve it; verification of the submission by declaring entities of declarations and the reporting on cases of failure or late submission of such declarations in a certain manner to the NACP; implementation of control over compliance with anti-corruption legislation, including consideration of reports on violation of the requirements of the Law of Ukraine "On Prevention of Corruption", including at subordinate enterprises, institutions and organisations; provision of protection of employees, reporting a violation of the requirements of the law, from negative measures by the head or employer in accordance with the legislation on the protection of whistle-blowers; informing the head of the relevant body, the NACP or other specially authorised actors in the field of anti-corruption about violations of legislation on prevention and combating of corruption (Law of Ukraine on the prevention of corruption, 2014). It should be noted that the scope of powers of the authorised unit (authorised person) does not include cooperation with the public, disclosure of information and reporting on the results of monitoring and evaluation of the implementation of anti-corruption programmes by the State body. This information must be prepared and provided twice a year by the authorised unit (authorised person) of the NACP, as prescribed by the Standard Regulations on the authorised unit (authorised person) for the prevention and detection of corruption.

This calls into question the transparency and impartiality of the activities of the authorised unit (authorised person) of the State body. In order to remedy this situation, we believe it would be appropriate to add a paragraph to the Standard Regulations on the authorised unit (authorised person) for the prevention and detection of corruption, approved by NACP's Order 277/21 of May 27, 2021, providing for public participation in the control over anti-corruption activities by authorised persons.

Moreover, in order to observe the principle of publicity and transparency in the activities of authorised persons, in our view, it is advisable to provide for mandatory disclosure of information and reporting on the results of monitoring and evaluation of the implementation of anti-corruption programmes by a state authority, prepared by an authorised unit (authorised person).

For more effective interaction of State authorities, local self-government bodies, authorised units (authorised person) in these bodies, specialised anti-corruption bodies, as well as the public, relevant experts, international anti-corruption projects to invent effective and efficient ways to combat and prevent corruption violations, identify practices to minimise corruption risks and prevent the emergence of new corruption schemes, we propose to create permanent sectoral platforms on the basis of the NACP.

5. Conclusions

Foreign practice shows that it is necessary to establish at the legislative level specificities for regulating public control over the activities of public authorities, including those entrusted with the task of combating corruption, with the establishment of a mandatory range of public preventive-control activities in respect of these bodies.

The public is one of the independent and impartial actors of anti-corruption control, which can resist corruption manifestations both at a practical level and by involving special anti-corruption bodies in the development of various anti-corruption initiatives and participating in the adoption of their decisions. However, the development of public control and the strengthening of its role depends on the State, which should provide at the legislative level effective conditions for the development of this institution, and the organisation of legal cooperation between specialised anti-corruption bodies and the public in the fight against illegal enrichment.

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УДОСКОНАЛЕННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ЗДІЙСНЕННЯ ГРОМАДСЬКОГО КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ СПЕЦІАЛІЗОВАНИХ АНТИКОРУПЦІЙНИХ ОРГАНІВ УКРАЇНИ: МІЖНАРОДНА ПРАКТИКА

Анотація. ***Мета.*** Мета статті – провести аналіз міжнародного досвіду зі здійснення громадськістю контролю за діяльністю органів державної влади, визначивши позитивні моменти, запропонувати шляхи їх впровадження, що сприятиме ефективності здійснення цього контролю за діяльністю спеціалізованих антикорупційних органів. ***Результати.*** Стаття розкриває аналіз міжнародного досвіду зі здійснення громадськістю контролю за діяльністю органів державної влади. Виділено позитивний досвід низки країн, які на законодавчому рівні закріпили можливість проведення з громадськістю «попереджувально-контрольних» заходів відносно прозорості роботи органів виконавчої влади, які проходять у вигляді слухань, обговорень та інших форм консультацій із громадськістю. Звернуто увагу, що, впроваджуючи позитивний зарубіжний досвід, Україна має винайти власний шлях розвитку громадського контролю за діяльністю органів державної влади, особливо тих, на які покладено функцію запобігання та протидії корупції. Наголошено, що шлях інституціоналізації громадського контролю повинен ґрунтуватися на базі міжнародних демократичних основ з урахуванням особливостей національного державотворення. Спираючись на позитивну міжнародну практику, запропоновано внести низку доповнень до чинного законодавства України, що сприятимуть ефективності здійснення контролю громадськістю за діяльністю спеціалізованих антикорупційних органів. Визначено, що з метою дотримання принципу публічності та прозорості в діяльності уповноважених осіб, на нашу думку, доцільним є передбачити обов'язкове оприлюднення інформації та звітності за результатами моніторингу та оцінки виконання антикорупційних програм державним органом, підготовленої уповноваженим підрозділом (уповноваженою особою). ***Висновки.*** Зроблено висновок, що саме громадськість є одним із незалежних і неупереджених суб'єктів антикорупційного контролю, який на практичному рівні здатен протистояти корупційним проявам, а також шляхом задіяння у розробці різних антикорупційних ініціатив спеціальних антикорупційних органів, участі у прийнятті їх рішень. Однак розвиток громадського контролю та посилення його ролі залежить

від держави, яка має забезпечити на законодавчому рівні ефективні умови розвитку цього інституту, а також на рівні організації правової співпраці спеціалізованих антикорупційних органів із громадськістю у боротьбі з незаконним збагаченням.

Ключові слова: громадський контроль, спеціалізовані антикорупційні органи, міжнародна антикорупційна практика, органи державної влади.

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FORMATION AND DEVELOPMENT OF THE LEGAL STATUS OF GUARD POLICE: HISTORICAL AND LEGAL ANALYSIS

Abstract. ***Purpose.*** The purpose of the article is the historical and legal analysis of the formation and development of the legal status of the Guard Police. ***Results.*** It is underlined that the Soviet period of formation and development of the legal status of the Guard Police became a real breakthrough in the area being studied. First of all, it should be noted that at this stage the guard agencies of the Soviet militia have acquired the legal status as the state law enforcement bodies that performed the functions of extra-departmental guard, not of some "private police". These bodies were part of the internal affairs bodies, had a regulatory legal framework for their activities and were financed from the State budget. In fact, in the Soviet era the model of the Guard Police agencies was formed, which was later borrowed in the time of Ukrainian independence. It is established that the adoption of Law of Ukraine 580-VIII "On the National Police" of July 02, 2015, which effectively terminated the former internal affairs agencies of Ukraine and gave rise to a new structure of the national police, was a turning point in the history of the establishment and development of extra-departmental security agencies. These reform processes have led to the transformation of the guard militia bodies into Guard Police, which is still evolving in parallel with the development of the domestic law enforcement system based on European standards. ***Conclusions.*** It is concluded that the historical and legal analysis showed that the development of the legal status of the Guard Police traces its roots back to ancient times. It is established that the foundations of the guard activities of the police were laid in the period of the ancient States, culture thereof has impact on the territory of Ukraine for centuries. Subsequently, the foundations of the work of quasi-police bodies were transformed during the times of Kyivan Rus and in the subsequent years of national fragmentation. However, the formation of the legal status directly of the agencies of the extra-departmental Guard Police, the creation of the legal basis for their activities took place in the 19th century and continued to evolve in the Soviet Union. Soviet trends in the studies on the topic became the basis for the construction of the Guard Police Department under the Ministry of Internal Affairs in the time of independence of Ukraine.

Key words: duties, guard services, guard unit, society.

1. Introduction

The historical review enables to compare the mistakes of ancestors and the positive achievements of modern generations, which ultimately helps to understand the future goals. We are convinced that the application of such a form will contribute positively to the study of the legal status of the Guard Police, because the use of this form will reveal the specificities of the formation and development of this State body.

First of all, it should be noted that the "core" of any historical and legal analysis is periodisation. It helps to systematise a large array of historical material, highlighting specific events in a separate time frame, on the basis of which it is easier to formulate conclusions about the object of research and its state at a certain point in development. In modern scientific literature, periodisation of the history of the formation and development of the legal status of the Guard Police does not have an adequate definition, however, this problem has been partially studied when considering various events of the general history of Ukraine.

2. The historical stage of formation and development of law enforcement bodies

The approaches of scientists to periodisation of the history of Ukraine are different, but

are based on a single model which distinguishes various stages with reference to specific historical events. Based on this important aspect, we have concluded that the historical and legal analysis of the formation and development of the legal status of the Guard Police should be conducted in the following stages:

- The formation of law enforcement bodies in the times of ancient States (until the 9th century AD);
- The development of the system of law enforcement and guard component in their activities during the Kyivan Rus (the 9th – 13th centuries);
- The functional-legal status of law enforcement bodies in the period from the 14th to the 17th century;
- The police departments of Imperial Russia and the emergence of special Guard Police units on their territory (the 17th - early 20th century);
- The development of extra-departmental guard in the Soviet militia (20-90s of the 20th century);
- The legal status of the Guard Police during the time of independence of Ukraine (90s of the 20th century till now).

The analysis of the first historical stage of the formation and development of the legal status of the Guard Police relates to the emergence of police bodies in the territory of ancient states, such as Egypt, Greece, Rome, etc. The importance of considering this part of the historical material depends on the fact that in ancient times the culture of the peoples of these countries had partial and sometimes quite deep impact on the territory of Ukraine and in the future influenced the development of the law enforcement system and the Guard Police, including.

For example, at the beginning of the development of the ancient country of Egypt, an important place in the system of the state mechanism was occupied by priests, whose functions were not limited to religion. The priesthood preached the sanctity of the pharaoh's personality, his divine origin and the immutability of power on earth. Any attempts at doubt were pursued by the priests, that is, in fact, it was peculiar political police. On the other hand, the priests sought to push the pharaoh out of power at the occasion, not allowing on the throne to be a man who is not able to perform their state functions (Makarchuk, 2015).

In subsequent years, the Egyptian police force was formed as a separate centralised apparatus. It included the police itself, the secret service of the pharaoh, the border guard, special guard units, which supervised the security of irrigation and other structures, guarded the pharaoh and state dignitaries. There was a special police unit to protect the pyramids, as the tombs of the pharaohs attracted many with their wealth. The robbery of the pyramids was punished quite severely, the robbers were subjected to various mutilations, put on a stake, but this did not stop those who wanted to profit from the tsarist wealth. The police were composed mainly of Nubian prisoners, who also served as executioners and slave guards.

Similar to Egypt, the police emerged in parallel with the evolution of statehood in a number of other ancient States, notably Greece. The central city of this country was Athens. On the territory of the latter, the police apparatus occurred in about 800-600 BC, borrowed by other Greek cities and subsequently Greek colonies in the territory of the Northern Black Sea. In Athens, for example, police units maintained order and monitored compliance with the law. The main function of the police was to maintain public order. With the exception of high-ranking police posts, to which members of the dominant social classes were appointed, the police consisted mainly of slaves and released (Hetmanchuk, 2010).

The Roman concept of the police force as a law enforcement body has its roots in the use of paramilitary forces to preserve peace and tranquillity. In the early stages of the development of the Roman State such a militarised force was the Praetorian Guard, which later had the duties of the Imperial Guard, guarding the palace and the Emperor's personality. Purely police functions were performed by city cohorts, ensuring order and peace in the city. It should be noted that during the period of the Roman Empire significant progress was made in the development of methods of protection of law and order. This system continued until the collapse of the Latin-speaking Roman Empire, and its repercussions were visible in the Middle Ages. It was not until the 5th century AD that police functions began to rely on governors and local nobles. An interesting position was that of prefect in Rome, whose main duty was to maintain order and tranquillity in the city, as well as to oversee the political credibility of its inhabitants (Kormych, 2009).

Therefore, during the first historical stage, the police was formed as a separate part of the State apparatus. This process was the separation from the military organisation of special militarised groups whose main task was to protect public order in the towns. At the same time, for example, Egypt had more sophisticated organisations engaged in quasi-investigative activities in the political field. Nevertheless, despite a wide range of achievements, during the first period the police have

only acquired an organisational framework. In other words, the scope of its activities was initiated, but the process was by no means defined in legal terms, so that there were no legal documents regulating the work of the police agencies of the time, much less the units within their structure.

The second historical stage covers the period when the Ukrainian lands experienced the development and decline of Kyivan Rus. This State was a feudal monarchy led by the Prince. He ensured the internal and external security of the State, dealt with the peace and tranquillity of the subjects and acted as the legislative administrator in all spheres of public relations (Pashchenko, Vodotyka, 1999, p. 25). At the initial stage of development of Kyivan Rus, the main instrument of ensuring the State was the military retinue, that is, an army with a wide administrative role and powers in peacetime. In the first centuries of the development of this State, the relationship between the prince and the military retinue was ambiguous: the military retinue could not be instructed, only convinced. In the ancient historical chronicals, Ihor was depicted as the prince dependent on the military retinue. During his reign, the power of the prince was not yet strong enough. Therefore, Ihor was forced to obey his military retinue not only about the conclusion of peace with Byzantium, but also under its pressure to resort to a disastrous campaign for the Drevlians' tribute.

It should be noted that the military retinue played the role of the police, especially in the early stages of development of Kyivan Rus. It was entrusted with the functions of public order and the search for criminals in peacetime. Subsequently, the police functions were put in place administratively, but they remained within the military jurisdiction. In the 10th-21st century, the key role in this field was played by sotnykchiliarches – *týsiatskyi*, who were military administrators of cities. For example, when conquering tribes Kyiv princes had to put in tribal or other large centres their garrisons. In the important centres they set up a large garrison - a thousand, divided into hundreds; the chiliarch was the commander of the garrison, and the centurions – *sotnyk* – the commanders of individual units. In the cities of less importance, the smaller garrison was set commanded by the centurion. Since the middle of the XII century, the "princely court" has been at the forefront of the administrative sector of the State, as a separate and influential authority structure, which was entrusted to organise public order and cities, that is, directing military forces towards the police functions (Morozan, 2013).

To sum up, the most outstanding moments in the second phase of the development of the embryo of policing in general and the basic work of the Guard Police are:

- First, unlike the ancient States on the territory of Ukraine, police functions were concentrated in the hands of military administrations;
- Second, the content of policing of the time consisted in the search activities and protection of public order in the cities, in particular the physical protection of the prince;
- Third, the first written sources of law were formed, containing rules that regulated social relations of almost all sectors of social life of the time and police activities including.

The third stage, the XIV - XVII centuries, was characterised by the division of the lands of Ukraine between three states - Poland, Lithuania and the Moscow Empire, which was a consequence of the decline and actual termination of the existence of Kyivan Rus as an independent country. The formation and development of the law enforcement system during this period, and of the police, in particular, were based on the trends of the dominant countries.

For example, the Lithuanian legislative monument of the 16th century, the Statute of the Grand Duchy of Lithuania, which had three editions (1529, 1566, 1588), gave rise to the development of law enforcement bodies. The issue of the identification of law enforcement bodies corresponded to the general trend of the internal policy of the Grand Duchy of Lithuania as a State. In particular, the essence of such an internal policy was as follows: "at the mercy of the master to preserve the old, to consolidate the social, political and legal system of the land". A turning point for the development of law enforcement in the Ukrainian lands was the political union between Lithuania and Poland, accompanied by the improvement of the norms of ancient Rus law through the application of the legal achievements of the Polish State, borrowing from their social regulation practices. For example, the main achievement of the Lithuanian-Polish era in the development of police activity is the identification of procedural law as a separate branch and the addition of various procedural actions to the judicial process (Khamula, 2015).

On the lands of Poland and Lithuania, and then Rzeczpospolita, changes occurred in the administrative management of the police, which was directly related to the development of Magdeburg law. For example, since its introduction, the role of local authorities in local economy, local finance, law enforcement, local administration and justice has been increasing. In the cities of Magdeburg law, the local author-

ities were the magistrates, who held all the powers. The Magistrate was in charge of city administration, court, economy, finance, police, etc. and composed of a Council dealing with administrative and economic affairs and the bank dealing with court cases (Kyrychenko, 2011).

Thus, on the lands of the Polish-Lithuanian State, police functions were under the control of city officials, who carried out them through the City Guard or other similar units. Decentralisation was a characteristic feature of the police at the time. Its structure and functioning were determined at the local level. The legal status of the police, which performed mainly protection tasks, was regulated by acts of local authorities.

With regard to the Moscow Empire, under whose authority a part of the Ukrainian lands came, by the 17th century there were provisions defining the legal status, functions and structure of the police bodies. In addition, during the period in question, the work of the law enforcement bodies of the Moscow Tsardom clearly reflected the elements of the indictment and search procedure. The analysis of the regulatory legal material of the time reveals that the legal origins of the law enforcement bodies at that time were concentrated in the Cathedral Code of 1649, according to which law enforcement functions were assigned to persons, who performed search and the zemstvo police (Tihomirov, 1961).

To sum up, in the third stage of the historical development of the legal status of the police and police bodies on the territory of Ukraine, in general, several law enforcement systems have been formed in the territory of our State. This was due to the deep fragmentation of the State between three immediate neighbours: Poland, Lithuania and the Moscow Tsardom. In this regard, there was no single legal and regulatory framework for the police force at that time and its legal status. However, there have been a number of positive developments in the third period, namely

- First, the police have been fully separated from the military sector;
- Second, both in the territory of the Moscow Empire and in Poland, numerous regulatory acts have been issued on the work of the police in the field of urban security, the search for persons involved in offences, the maintenance of public order, etc.;
- Third, a police management structure was established, with a local official in charge, who guided policing in almost all cases.

3. Development of extra-departmental guard in the Soviet militia and the Guard Police during the independence of Ukraine

The formation and development of the legal status of the police during the fourth stage took place during the period of the accession of Ukrainian lands to the Russian Empire. This is indeed a revolutionary stage in the development of policing. For example, the bulky autocratic apparatus, extended to large areas, needed constant support and protection, especially in the early stages of its establishment, when the new model of power was quite "fragile" and unstable. Any intra-state fluctuations could have led to destructive processes, which, of course, was not the central government's plan. The provision of law enforcement in the State was entrusted to a system of extensive police bodies, for the first time in history having a clearly defined legal status.

The first substantial steps towards a functional police system were taken in 1775 during the governorate reform. The main features of the organisation of administrative and police bodies according to it were: decentralisation of local government, strengthening the role of governors-general or deputies of civil governors and provincial boards; the division of provincial police bodies into city and county, and police officers into appointed "from the crown" and elected; the formation of a unified system of police organisation in cities and counties: by abolishing the "deanery" and lower county courts. However, in the early 19th century, this system changed. For example, the Ministry of Internal Affairs and the Ministry of Police were created. The police bodies were distributed to the police of cities and the county police - *zemstvo*. There were also the fiefdom police, which was a significant appendage to the State police. In the first quarter of the 19th century, the Tsarist government focused on the central management of the police and the organisational and staff strengthening of the city police, while in the second quarter of the 19th century, the development of the police was characterised by an improvement in the structure of the district police, which was due to the acute social situation in the village on the eve of the abolition of serfdom. The main bodies of the city police were the administrations of the "deanery" under the guidance of the police chief (sometimes two) in the governorate and the mayor in the county (Terliuk, 2011).

A significant milestone in the history of police bodies in Ukraine is the creation of gendarmerie corps – the political police. For example, according to the Decree of 1836, the entire Russian empire was divided into seven gendarmerie districts under the direction of gendarmerie generals. They consisted of gendarmes commanded by headquarters officers. At first, the latter were assigned one to the territorial unit, which comprised three

governorates and then to each governorate. Gendarmerie crews were used to enforce court sentences, search for thieves, fugitive peasants, pursue bandits, smugglers, escort particularly dangerous thieves, maintain order at fairs, during church holidays and public gatherings, that is, the functions performed by the police (Barmak, 2011).

Therefore, during the times of the Russian Empire the legal status of police bodies was formed, their administrative organisation was defined, and, most importantly, the structure of these State agencies was built. During this stage, the Imperial Police system has emphasised the functional orientation of each element. For example, urban law enforcement bodies, political police and search police units have been established separately. All these changes had a regulatory and legal basis, which was a broad framework of official State acts of the central authority and departmental documents. In addition, it was during the time of the Russian Empire that Guard Police activities began, which was the possibility of creating special police agencies to protect specific sites.

The fifth stage of the formation and development of the legal status of the Guard Police was marked by revolutionary events, which virtually ceased the existence of the Russian Empire and contributed to the creation of a new State on its ruins - the Soviet Union. In the first years of its existence, the country's law enforcement and political systems were formed under serious pressure from foreign States, and subsequently under the influence of the war of 1941-1942. In this connection, law enforcement bodies within this period focused their work mainly on countering anti-Soviet and anti-espionage activities.

After the Second World War, however, the Soviet Union began to develop its internal power apparatus. Improvements have also affected the law enforcement system, in particular with regard to the development of the legal status of guard units. For example, on the basis of Resolution 4633-1835 of the Council of Ministers of the USSR of 29 October 1952 "On the use in industry, construction and other branches of the national economy of employees released from the departmental guard, for the improvement of the organisation of protection of economic objects of ministries and departments" and the order of the USSR Ministry of Internal Affairs of 17 November 1952 "On measures to implement Resolution 4633-1835 of the Council of Ministers of the USSR of 29 October 1952," an extra-departmental external guard at the police was created as an action to improve the organisation of protection of objects of various departmental subordination. The necessity of an extra-departmental protection was dictated by the fact that the organisation of State property protection relied on the heads of enterprises and was carried out by squads of the departmental guard, which were expensive because of their disparity, weak organisation, lack of communication with the militia, failure to provide proper measures to prevent theft of property and the introduction of technical means of protection. For the management of the service of the police bodies, guard departments and units were created, acting as independent extrabudgetary organisations, enjoying the rights of legal entities, and their heads were at the same time deputy heads of departments of the external service of city district authorities. The creation of a single extra-departmental guard led to the fact that only in the first year of its existence the number of watchmen decreased by a third, the cost of maintaining the security significantly reduced, its reliability and professionalism of workers increased, the incidence of petty theft and theft of State property decreased (Uhrovetskyi, 2004).

Since then, the legal status of the Guard Police agencies has not actually changed, and the regulatory framework for their activities has been systematically improved. For example, according to the Order of the Ministry of Public Order of the Ukrainian SSR of July 17, 1965 on the reorganisation of the Guard Department into the Department of Extra-departmental Guard at the Police Department of the Ministry of Public Order of the Ukrainian SSR, 5 departments were established, as well as the Directorate of Extra-departmental Guard in 10 regions. In addition, Resolution 129 of the Council of Ministers of the USSR of February 18, 1966 approved the Model Regulations on Extra-departmental Guard at Police Bodies. The latter provides for that the extra-departmental guard, in addition to guarding facilities and inspecting departmental guards, were tasked with inspecting facilities in rural areas, assisting in the organisation of guard and the introduction of technical means at those facilities, development and implementation of measures to improve technical means, reduce the number and the cost of guarding objects. In the same year, the Council of Ministers of the Ukrainian SSR adopted the Resolution on Extra-departmental Guard under the Militia Bodies (Uhrovetskyi, 2004).

Therefore, the Soviet period of formation and development of the legal status of the Guard Police became a real breakthrough in the area being studied. First of all, it should be noted that at this stage the guard agencies of the Soviet militia have acquired the legal status as the state law enforcement bodies that performed the functions of extra-departmental

guard, not of some "private police". These bodies were part of the internal affairs bodies, had a regulatory legal framework for their activities and were financed from the State budget. In fact, it was in the Soviet era that the model of the Guard Police agencies was formed, which was later borrowed in the time of Ukrainian independence.

As a proof of this theory, the sixth and last stage of formation and development of the legal status of the Guard Police should be considered, just in the time when Ukraine became a sovereign and independent state in internal and external relations.

In particular, the adoption of Law of Ukraine 565-XXI "On the Militia" of December 20, 1990 was an important step in the formation of the Guard Police bodies in independent Ukraine. According to its provisions, the militia in Ukraine was recognised as a State armed executive body, protecting the life, health, rights and freedoms of citizens, property, the natural environment, the interests of society and the State from unlawful encroachments. One of the structural elements of the Ukrainian militia was the guard militia (Law of Ukraine On the Militia, 1990).

Subsequently, a departmental regulatory framework was created, which established the legal status of the Guard Militia agencies. For example, in 1993, Resolution 615 of the Cabinet of Ministers of Ukraine adopted the Regulations on the State Guard Service, under which the State Guard Service attached to the Ministry of Internal Affairs was established, operating on the basis of self-financing. The main task of the latter was the protection of particularly important facilities, the performance of duties of the law enforcement State Service, the performance of a set of paid security services. This decision not only changed the historical name of the guard units but became a legal regulation of the work of the guard units in the conditions of independent Ukraine, which meets the requirements of democratic society and market economic relations (Mazepa, 2011). This provision has since been amended and supplemented several times.

An important aspect of the development of the guard militia in Ukraine was also the creation of special units. For example, Order 1432 of the Ministry of Internal Affairs of Ukraine of November 25, 2003 approved the Regulations on units of the guard militia "Titan". In accordance with the said provision, special units of the guard militia "Titan" are an integral part of the State Guard Service of the internal affairs agencies, responsible for the implementation on a contractual basis of protection of the property of individuals and legal entities, ensuring the personal security of individuals from criminal infringements, provision of special guard services (Order of the Ministry of Internal Affairs On the organisation of service activities of special units of the Guard Militia "Titan", 2003).

The adoption of Law of Ukraine 580-VIII "On the National Police" of July 02, 2015, which effectively terminated the former internal affairs agencies of Ukraine and gave rise to a new structure of the national police, was a turning point in the history of the establishment and development of extra-departmental security agencies. These reform processes have led to the transformation of the Guard Militia into Guard Police, which is still evolving in parallel with the development of the domestic law enforcement system based on European standards.

4. Conclusions

Therefore, the historical and legal analysis showed that the development of the legal status of the Guard Police traces its roots back to ancient times. It is established that the foundations of the guard activities of the police were laid in the period of the ancient States, culture thereof has impact on the territory of Ukraine for centuries. Subsequently, the foundations of the work of quasi-police bodies were transformed during the times of Kyivan Rus and in the subsequent years of national fragmentation. However, the formation of the legal status directly of the agencies of the extra-departmental Guard Police, the creation of the legal basis for their activities took place in the 19th century and continued to evolve in the Soviet Union. Soviet trends in the studies on the topic became the basis for the construction of the Guard Police Department under the Ministry of Internal Affairs in the time of independence of Ukraine.

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СТАНОВЛЕННЯ ТА РОЗВИТКУ ПРАВОВОГО СТАТУСУ ПОЛІЦІЇ ОХОРОНИ: ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ

Анотація. ***Мета.*** Метою статті є історико-правовий аналіз становлення та розвитку правового статусу поліції охорони. ***Результати.*** Наголошено, що радянський період становлення та розвитку правового статусу поліції охорони став дійсним проривом у досліджуваному напряму. Преш за все варто відмітити, що саме на цьому етапі охоронні відомства радянської міліції набули правового статусу саме як державні правоохоронні органи, що виконували функції позавідомчої охорони, а не якась «приватна поліції». Дані органи входили у склад органів внутрішніх справ, мали регламентуючу нормативно-правову базу діяльності, фінансувались з державного бюджету. По суті, саме за радянських часів сформувалась модель охоронних поліцейських відомств, яку в подальшому запозичили вже за часів української незалежності. З'ясовано, що переломним моментом в історії становлення та розвитку органів позавідомчої охорони можна вважати прийняття Закону України «Про Національну поліцію» від 02.07.2015 № 580-VIII, який фактично припинив діяльність наявних до цього органів внутрішніх справ України та дав початок діяльності новій структурі Національній поліції. Ці реформаційні процеси викликали трансформацію охоронних міліцейських органів у охоронні поліцейські, становлення яких досі триває паралельно розвитку вітчизняної правоохоронної системи, що відбувається на ґрунті європейських стандартів. ***Висновки.*** Історико-правовий аналіз показав, що розвиток правового статусу поліції охорони тягне свої коріння у стародавні часи. Було визначено, що основи охоронної діяльності поліцейських органів було закладено ще у період Стародавніх держав, культура яких століттями проникала на територію України. Згодом засади роботи квазіполіцейських органів було трансформовано за часів Київської Русі та в подальші роки націо-

нальної роздробленості. Утім, формування правового статусу безпосередньо органів позавідомчої поліцейських охорони, створення нормативно-правової бази їхньої діяльності відбулось у XIX столітті та продовжило еволюціонувати у Радянському Союзі. Саме радянські тенденції в досліджуваній сфері стали підґрунтям побудови Державної служби охорони при Міністерстві внутрішніх справ за часів незалежності України.

Ключові слова: обов'язки, охоронні послуги, підрозділ охорони, суспільство.

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CONSIDERING THE PROVISIONS OF THE CONSTITUTION OF UKRAINE IN DECISION-MAKING BY LOCAL COURTS

Abstract. Purpose. Determining the role and significance of the Constitution of Ukraine, based on the analysis of the provisions from different branches of law and judicial practice of Ukraine, to justify the decisions of local courts and provide proposals for optimizing the enforcement of constitutional provisions by the courts. Research methods. A system of general and special scientific methods developed by humankind was used to achieve the purpose set in the paper. The authors used the following methods: analysis and synthesis, comparative legal one, the ascent from the abstract to the concrete, and others. They were used to systematize the existing knowledge about constitutional law enforcement in the activities of local courts, obtain the results of this systematization, and provide recommendations to law enforcement participants in the courts. Results. The paper defines the role of the provisions of the Constitution of Ukraine in substantiating the decisions of the local courts as the most stable and essential provisions that act as a kind of foundation of the legal system; it suggests optimizing the use by the courts of constitutional provisions through 1) increasing the role and importance of the Scientific Advisory Council of the Constitutional Court of Ukraine through the partial or complete transfer of its work to a professional level with funding envisaging hourly wages; 2) study and permanent discussion of decisions of the Constitutional Court of Ukraine at events within the framework of local courts, in which constitutional provisions are interpreted; 3) predominantly indirect reference by judges of local courts to the provisions of the Constitution of Ukraine (references to decisions of the Constitutional Court and the Supreme Court of Ukraine, in which the constitutional provisions are explained or such provisions are used as arguments). Conclusions. It is concluded that the provisions of the Constitution of Ukraine are characterized by greater constancy, balance, and more coherent content than the provisions of laws and bylaws. The provisions of the Constitution of Ukraine define the general principles of the state and political structure in the state, various human rights, and freedoms. The Constitutional Court of Ukraine clarifies and officially interprets constitutional provisions. Other local courts do not interpret the provisions of the Constitution but refer to them (sometimes with comments) as a weighty argument in justifying a particular decision. The role of the provisions of the Constitution of Ukraine is their highest significance compared with the provisions of other acts. They act as a kind of "arbitrator" during the conflict of provisions of other lower-level regulatory legal acts. Judges of local courts should resolve disputes in cases of conflicting legal provisions by applying constitutional provisions correctly.

References by judges of local courts to constitutional provisions can often be indirect. There are widespread references to court decisions of the Constitutional Court of Ukraine, the Supreme Court of Ukraine, clarifications of their plenums, which already contain references to constitutional provisions, and even their interpretation. The presence in decisions and other acts of local courts of a reference to decisions and explanations of the highest courts of the state and/or their bodies

contributes to the unambiguous interpretation of the provisions of different acts of Ukraine by Ukrainian judges and uniformity in law enforcement based on constitutional provisions.

Key words: Constitution of Ukraine, local courts, law enforcement, Romano-German legal system, judicial and administrative precedent, Constitutional Court of Ukraine, Scientific Advisory Council of the Constitutional Court of Ukraine, law enforcement practice.

1. Introduction

The legislative system of Ukraine is formed according to the classical rules for forming the regulatory framework of the states of the Romano-Germanic legal system. It has several stages of multi-level legislation. The provisions of the Constitution of Ukraine occupy the highest place in the hierarchy of legal provisions of the state. Pursuant to the rules enshrined in law by ancient Roman jurists, modern scientists, and practitioners, the provisions of lower legal acts should not contradict the provisions of higher acts (and the highest act of Ukrainian legislation is the Constitution of Ukraine). Thus, the provisions of modern general diversified legislation should concretize and explain the constitutional provisions as much as possible. In turn, the provisions of special diversified legislation should clarify the rules for application, supplement and specify the provisions of the general legislation. In Ukrainian legislation, this is most often the case. Constitutional provisions are often applied by citizens, business entities, executive authorities, and courts as provisions of direct action. However, the foregoing does not indicate the lack of problems associated with referring to the provisions of the Constitution of Ukraine during law enforcement activities in the work of the courts.

Literature review. Within the framework of modern legal science of Ukraine, a significant number of researchers have studied the problems of the judicial system and law enforcement by various courts. They are as follows: Belianevych (Belianevych, 2009), Bisiuk (Bisiuk, 2012), Demchenko (Demchenko, 2010), Dzhumahel'diyeva (Dzhumagel'diyeva, 2007), Harahonych (Bysaha, Harahonych, 2006), Hrudnytskyi (Hrudnytskyi, 2020), Illarionov (Illarionov, 2016; Illarionov, 2018), Khrimli (Khrimli, 2011), Koverznev (Koverznev, 2013), Mamutov (Mamutov, 1997), Nemchenko (Nemchenko, 2013), Nikolenko (Nikolenko, 2004; Vasyliev, Nikolenko, 2004), Pashkov (Pashkov, 2009), Podtserkovnyi (Podtserkovnyi, Belianevych, 2016; Podtserkovnyi, 2018), Rudenko (Rudenko, 2015; Rudenko, 2020), Smitiukh (Smitiukh, 2006), Stepanova (Stepanova, Lomakina, 2008; Stepanova, 2015), Turkot (Turkot, 2015), Urkevych (Urkevych, 2018; Urkevych, 2019), Ustymenko (Ustimenko et al., 2011; Ustimenko, Dzhabrailov, 2012), Vinnyk (Vinnyk, 2011), Zavhorodnii (Zavhorodnii, 2014), and others. In our previous papers, there were arguments in favor of maintaining the functioning of the optimal system of economic courts in Ukraine (Derevianko, 2014), arguments in favor of the development of a regulatory framework, and the formation of a separate specialized investment court of Ukraine (Derevianko, 2020), and arguments in favor of the urgent need to clarify the subject dispute, the scope of the special Law and the jurisdiction of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (Derevianko, 2021). However, today few scientific papers deal with analyzing the effectiveness of applying the provisions of the Constitution of Ukraine in law enforcement within the judicial branch of government.

Research methods. A system of general and special scientific methods developed by humankind was used to achieve the purpose set in the paper. The authors used the following methods: analysis and synthesis, comparative legal one, the ascent from the abstract to the concrete, and others. They were used to systematize the existing knowledge about constitutional law enforcement in the activities of local courts, obtain the results of this systematization, and provide recommendations to law enforcement participants in the courts.

Purpose. Determining the role and significance of the provisions of the Constitution of Ukraine, based on the analysis of the provisions from different branches of law and judicial practice of Ukraine, to justify the decisions of local courts and provide proposals for optimizing the enforcement of constitutional provisions by the courts.

2. The significance of the provisions of the Constitution of Ukraine as the Basic Law of the state

Ukraine is a state with a legal system formed based on the provisions and principles of the Romano-German legal system. According to it, the primary source of law is a regulatory legal act. A common law legal system was formed based on postulates different from this system. The main source of law is a judicial or administrative precedent. Based on the established rules of the Romano-Germanic legal system in Ukraine, a harmonious and balanced system of legislation has been formed, conditionally built according to the hierarchy of legal acts and their norms. The provisions of the Constitution of Ukraine as the Basic Law

of the state are conditionally at the highest level of this hierarchy. Provisions of other regulatory legal acts during their development, discussion, adoption, etc. must necessarily take into account the provisions of constitutional norms. However, according to the theory of law, a well-known truth is the existence of permanent conditional "races" between the legal and legislative systems. Due to the constant development of social, political, economic, cultural and other relations, society, and technology, the legal system is usually ahead of the legislative system. Thus, in the field of management, new types of activities appear that are partially similar to existing ones or are fundamentally new. In previous works, we pointed out the need to legitimize: 1) relations on the use of hydrogen engines; 2) relations on deduction, extraction, "mining", etc. units of cryptocurrency; 3) relations between participants in the gambling business in case of restoration of its legitimacy; 4) relations between the participants in the transport communication with the Moon and Mars, as well as relations related to the extraction and delivery of minerals from other planets to Earth, since such types of economic activity are becoming more real (Derevianko, 2021). Gaps in law that arise due to changes in socio-economic reality are first eliminated by applying the rules of the analogy of law. In the second stage, regulations appear that regulate new relations. Based on scientific and technological progress, modern relations in the economy indicate the emergence of new types of economic activity and, accordingly, indicate the need to expand both the scope of regulatory acts and the scope of economic legislation (Derevianko, 2021, p. 80). New types of activities, rules, principles, economic, environmental, natural, and other conditions of human life cause the need to enshrine new rules of life in state regulations. Therefore, it is quite natural for such changes to cause the need to coordinate the provisions of individual acts with the provisions of the Constitution of Ukraine. The latter is objectively less susceptible to change and is more universal. Considering them when regulating various human activities objectively entails judges of civil, economic, administrative, and other courts refer to constitutional provisions when adopting a decision, a ruling, etc. The court most often cites constitutional provisions from Section II of the Constitution "Rights, Freedoms and Obligations of a Human and Citizen" that proclaim guarantees of personal, housing, religious, political, property, economic, labor, family, educational, and other rights (Constitution of Ukraine, 1996). When considering cases of violation of electoral or political rights of citizens, the number of which is proportional to the number of active electoral events in the state, and the frequency is directly related to the dates of regular elections, the justification of judicial acts refers to the constitutional provisions of articles from Section III "Elections, Referendum" and Section IV "Verkhovna Rada of Ukraine" (Constitution of Ukraine, 1996). However, judges often refer to the provisions of other sections of the Constitution of Ukraine. However, even more common are cases of indirect reference to constitutional provisions.

As mentioned above, Ukraine belongs to the states of the Romano-German legal system, in which the primary source of law is a regulatory legal act. Another widespread and acknowledged legal tradition in the world is the common law legal system, the primary source of which is judicial or administrative precedent. In today's realities, in many countries, particularly Ukraine, these legal traditions have converged for a long time. In states, the common law legal system is gradually gaining weight in the importance of regulations and reducing the importance of precedent. However, in Ukraine, as in the state of the Romano-German legal system, this phenomenon is manifested in a very slow reduction in the weight of regulatory legal acts and an increase in the role of judicial and administrative precedent. The judicial system is one of the most conservative and most subordinated among government agencies and services. This is reflected in the fact that judges, as a rule, do not want to be pioneers in fundamentally resolving new cases or disputes. The vast majority of court decisions are made based on studying previous similar cases. Since the primary source of law in Ukraine is a regulatory legal act, judges in their professional activity should be guided by the law and internal personal conviction. However, when making a decision, a judge often examines similar cases and decisions on them made by the judge or colleagues working in the same or other courts of Ukraine. Moreover, for the same interpretation of legal provisions and their application in decision-making by judges, the judicial system has developed official advisory activities of lower-level courts by higher-level court bodies, in particular their plenums.

3. Indirect reference to the provisions of the Constitution of Ukraine

Explanations of the plenums of higher specialized courts and the Supreme Court of Ukraine regarding the correctness, accuracy, and relevance of the interpretation of specific legislative provisions are essentially precedents for judges of other courts, i.e., lower-level courts. The subordination mentioned above leads to the fact that decisions of the courts

of appeal can often be considered judicial precedents for the courts of the first instance, just as decisions of the courts of cassation can be regarded as judicial precedents for the courts of appeal. In justifying their decisions, judges of higher instances refer to the provisions of the Constitution of Ukraine. Accordingly, when justifying their decisions, lower-instance judges often refer not directly to the provisions of the Constitution but to explanations or decisions of higher courts, which, in turn, directly refer to constitutional provisions.

The Supreme Court of Ukraine and the Constitutional Court of Ukraine are the highest courts in the judicial hierarchy, and due to the excessive subordination of the judicial system, their decisions, in particular and especially in terms of interpreting the provisions of the Constitution or applying the provisions of the Constitution to justify decisions, act as dogma or judicial precedent. In the legal and legislative systems of the Romano-German legal system, court decisions and parts thereof are not rules of law but are acts that explain how to apply legal rules. These acts of the highest-level courts of Ukraine actually act as regulatory legal acts when justifying decisions of local lower-level courts. At the same time, the provisions of the Constitution of Ukraine are primarily applied by the higher courts, and the lower courts use their comments, arguments, and justifications when justifying their own decisions.

In addition to indirect citation of constitutional norms and application of the provisions of the Constitution of Ukraine, local courts often use mixed citation of such provisions. Thus, to justify the decision, the judge of the local court directly refers to the constitutional provision, explains its meaning through the decision of the Constitutional Court of Ukraine, the Supreme Court of Ukraine, the court of cassation, and, what should be most effective in terms of the specifics of a particular court dispute, gives the final interpretation of the constitutional provisions and the norms of legislative and/or bylaws that concern it, widely disclose its essence and establish the legal truth in the dispute.

The most widespread provisions in decision-making by local courts, among other constitutional provisions, relate to general theoretical provisions and are fundamental in justifying the protection of general human and civil rights. Thus, when confirming the right to judicial protection, judges of local courts refer to part one of Article 8 of the Constitution of Ukraine, according to which the principle of the rule of law is recognized and applies in Ukraine. The right to judicial protection is closely linked to such a fundamental principle of a state governed by the rule of law as the rule of law. The interpretation of the concept of "the rule of law" is provided in the decision of the Constitutional Court of Ukraine No. 15-RP/2004 of November 2, 2004, in the case concerning the constitutional submission of the Supreme Court of Ukraine regarding the compliance of the provisions of Article 69 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality) (the case on the appointment of a more lenient sentence by the court). This decision states: "The rule of law is the rule of law in society. The rule of law requires the state to implement it in law-making and law enforcement activities, in particular in regulations, which in their content should be imbued primarily with the ideas of social justice, freedom, equality, etc. One of the manifestations of the rule of law is that the law is not limited only to legislation as one of its forms but also includes other social regulators, in particular norms of morality, traditions, customs, etc., which are legitimized by society and are determined by the historically achieved cultural level of society. All these elements of the law are united by a quality that corresponds to the ideology of justice, the idea of law, which is primarily reflected in the Constitution of Ukraine. This understanding of law does not give grounds for its identification with the law, which can sometimes be unfair, including restricting the freedom and equality of the individual. Justice is one of the basic foundations of law, which is crucial in defining it as a regulator of public relations, one of the universal dimensions of law" (Decision of the Constitutional Court of Ukraine, 2004).

4. Direct reference to the provisions of the Constitution of Ukraine

When justifying decisions, judges of local courts often directly refer to the provisions of the Constitution of Ukraine. However, the high degree of subordination of the judicial system of Ukraine and the unwillingness to take full responsibility for the decision taken or a fully justified attempt to justify the decision as much as possible encourage a judge of a local court to refer to the decision of the Constitutional Court of Ukraine, the Supreme Court of Ukraine or the explanations of the advisory bodies of higher courts, in addition to directly referring to the constitutional provision. This is the case when considering both general and specific disputes. For example, for a long time, judges of economic courts referred to the decision of the Constitutional Court of Ukraine in the case concerning the constitutional appeal of the Open Joint-Stock Company Kirovogradoblenergo on the official interpretation of the provisions of part eight

of Article 5 of the Law of Ukraine On Restoring the Solvency of the Debtor or Declaring It Bankrupt (the case against creditors of communal enterprises) (Decision of the Constitutional Court of Ukraine, 2007). It should be noted that the actual decision-making by the Constitutional Court of Ukraine or the Supreme Court of Ukraine takes place concerning a significant number of decisions of other courts. Thus, the process is mutual. In case of inaccurate or incomplete interpretation by a judge of a local court of the provisions of the Constitution of Ukraine, the Constitutional Court of Ukraine will be able to supplement, clarify or correct the error. Moreover, this is defined by part 1 of Article 147 of the Constitution of Ukraine, according to which the Constitutional Court of Ukraine decides on the compliance of the laws of Ukraine with the Constitution of Ukraine and in cases of other acts provided for by this Constitution, exercises official interpretation of the Constitution of Ukraine, as well as other powers under this Constitution (Constitution of Ukraine, 1996). Based on the above provisions, the Constitutional Court of Ukraine carries out an official interpretation of the Constitution of Ukraine. Still, it does not have an absolute monopoly on references to the provisions of the Constitution of Ukraine in its decisions. The interpretation of constitutional provisions provided by them must necessarily be taken into account and applied by judges of local courts. This is not only appropriate, but also necessary.

Judges of local courts can refer to constitutional provisions by studying the scientific achievements of scientists in the field of state (constitutional) law and other branches of law. Such a practice is absolutely justified. However, the responsibility for the relevance, accuracy, and correctness of the application and interpretation of a particular constitutional provision lies not with the scientist but with the judge, who is guided by the law and inner personal conviction. Scientists and other experts comment on the legislation and influence the internal conviction of the judge. The law enforcement practice will assess whether the judges' application of a specific legal provision is correct and whether their conviction is correct. The judge may make a mistake. In this case, judges of appeal, cassation courts, and the Supreme Court of Ukraine will be able to correct the error. Regarding the provisions of the Constitution, the final assessment under the above provisions of the Constitution of Ukraine itself will be provided by the Constitutional Court of Ukraine.

5. Conclusions

Thus, the provisions of the Constitution of Ukraine are characterized by greater constancy, balance, and more coherent content than the provisions of laws and bylaws. In addition, it is the introduction of amendments and additions to the Constitution that can be carried out as a result of receiving a positive vote of at least 301 people's deputies, while only 226 positive votes are enough to amend other laws. The provisions of the Constitution of Ukraine define the general principles of the state and political structure in the state, various human rights, and freedoms. The Constitutional Court of Ukraine carries out clarification and official interpretation of constitutional provisions. Other local courts do not interpret the provisions of the Constitution but refer to them (sometimes with comments) as a weighty argument in justifying a particular decision. The role of the provisions of the Constitution of Ukraine is their highest significance compared with the provisions of other acts. They act as a kind of "an arbitrator" during the conflict between provisions of other lower-level regulatory legal acts. Judges of local courts should resolve disputes in cases of conflicting legal provisions by applying constitutional provisions correctly.

References by judges of local courts to constitutional provisions can often be indirect. There are widespread references to court decisions of the Constitutional Court of Ukraine, the Supreme Court of Ukraine, clarifications of their plenums, which already contain references to constitutional provisions, and even their interpretation. The presence in decisions and other acts of local courts of a reference to decisions and explanations of the highest courts of the state and/or their bodies contributes to the unambiguous interpretation of the provisions of different acts of Ukraine by Ukrainian judges and uniformity in law enforcement based on constitutional provisions. It is possible to optimize the enforcement of constitutional provisions by the courts through 1) increasing the role and importance of the Scientific Advisory Council of the Constitutional Court of Ukraine through the partial or complete transfer of its work to a professional level with funding envisaging hourly wages; 2) study and permanent discussion of decisions of the Constitutional Court of Ukraine at events within the framework of local courts, in which constitutional provisions are interpreted; 3) predominantly indirect reference by judges of local courts to the provisions of the Constitution of Ukraine (references to decisions of the Constitutional Court and the Supreme Court of Ukraine, in which the constitutional provisions are explained or such provisions are used as arguments).

Thus, the role of the provision of the Constitution of Ukraine was determined to justify

the decisions of local courts as the most stable and essential and acting as a kind of foundation for the legal system of the state; separate directions for optimizing the enforcement of constitutional provisions by the courts are proposed. The following scientific research should be aimed at improving the components of the legal status of courts and the legal regime of judges, in particular, at finding mechanisms for reorganizing the judicial system of Ukraine through the formation of new and/or liquidation of existing judicial institutions.

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РОЛЬ І ЗНАЧЕННЯ НОРМ КОНСТИТУЦІЇ УКРАЇНИ ДЛЯ ОБҐРУНТУВАННЯ РІШЕНЬ МІСЦЕВИХ СУДІВ

Анотація. ***Мета.*** На основі аналізу положень різногалузевого законодавства України та судової практики визначити роль і значення норм Конституції України для обґрунтування рішень місцевих судів, надати пропозиції щодо оптимізації процесів правозастосування судами конституційних положень. ***Методи дослідження.*** Для досягнення мети статті було використано вироблену людством систему класичних загальнонаукових і спеціальних методів наукового пізнання. Серед методів найширшого застосування отримали методи аналізу та синтезу, порівняльно-правовий, сходження від абстрактного до конкретного та інші, завдяки чому було систематизовано наявні знання про конституційне правозастосування у діяльності місцевих судів, підведено підсумки цієї систематизації і надано рекомендації учасникам правозастосовної роботи у судах. Результати. Визначено роль норм Конституції України для обґрунтування рішень місцевих судів як найбільш сталих та важливих і таких, що виступають своєрідним фундаментом правової системи держави; запропоновано оптимізувати процеси правозастосування судами конституційних положень за рахунок: 1) підвищення ролі та значення Науково-консультативної ради Конституційного суду України через часткове або повне переведення її роботи на професійний рівень із фінансуванням згідно з нормами погодинної оплати праці; 2) вивчення та перманентного обговорення на заходах у межах місцевих судів рішень Конституційного суду України, в яких тлумачаться конституційні норми; 3) переважно непрямого посилання суддями місцевих судів на норми Конституції України (посилання на рішення Конституційного суду і Верховного суду України, в яких роз'яснюються положення конституційних норм або такі норми застосовуються як аргументи). ***Висновки.*** Зроблено висновок, що норми Конституції України вирізняються більшою сталістю, виваженістю і більш стрункім змістом у порівнянні із нормами законів і підзаконних актів. Нормами Конституції України визначаються загальні засади державного та політичного устрою у державі, різноманітні права і свободи людини. Роз'яснення та офіційне тлумачення конституційних норм здійснює Конституційний суд України. Інші місцеві суди не тлумачать норми Конституції, а посилаються на них (деколи із коментарями) як на вагомий аргумент при обґрунтуванні того чи іншого рішення. Роль норм Конституції України полягає у їх вищому значенні у порівнянні із нормами інших актів. Вони виступають свого роду «арбітрами» під час конфлікту норм інших нормативно-правових актів нижчого рівня. Вирішити спори у конфлікті правових норм повинні судді місцевих судів правильним застосуванням конституційних норм.

Посилання суддями місцевих судів на конституційні норми частіше можуть бути непрямими. Поширеними є посилання на судові рішення Конституційного суду України, Верховного суду України, роз'яснень їх пленумів, в яких уже є посилання на конституційні норми а то й їх трактування та ін. Наявність у рішеннях та інших актах місцевих судів посилання на рішення і роз'яснення найвищих судів держави та/або їхніх органів сприяє однозначному трактуванню норм різних актів України українськими суддями та однотипності у правозастосуванні на основі конституційних норм.

Ключові слова: Конституція України, місцеві суди, правозастосування, романо-германська правова сім'я, судовий та адміністративний прецедент, Конституційний суд України, Науково-консультативна рада Конституційного суду України, правозастосовна практика.

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ARGUMENTATION IN LAW ENFORCEMENT ACTIVITIES

Abstract. The analysis of foreign and domestic literature, sources of law and legal practice made it possible to state that in modern conditions the theory of law enforcement needs to be clarified, and a number of its provisions need to be updated. ***The purpose*** of the study is to identify patterns of argumentation and objectification of the results of law enforcement activities. To achieve the goal, the following tasks were solved: characterizing law enforcement activities, law enforcement acts; individual legal prescription, legal argumentation and its relationship with proof; the main problems of argumentation in law enforcement activities are identified, and methods of their solution are proposed. ***Research methods***. This study is based on the activity approach, which allowed us to characterize law enforcement and argumentation as the activity of the relevant subjects and clarify the concept of law enforcement activity. Thanks to the general theoretical method, the nature of law enforcement activity, its results – law enforcement acts, their primary element – individual legal prescription was revealed; the definition of their concepts is formulated. Sociological methodology (in particular, document analysis) served to collect and study empirical facts necessary for general theoretical analysis. Technical and legal analysis (in particular, legal constructions) contributed to the characteristics of the process of law enforcement activities and argumentation. ***The results***. In the article, for the first time in Ukraine, the process of objectification of the results of law enforcement activities from the point of view of argumentation at its main stages is holistically reflected. ***Conclusions***. The study of law enforcement made it possible to characterize law enforcement activity as the actions of authorized subjects regarding the creation and objectification of individual legal prescriptions in law enforcement acts. The entire process of law enforcement is accompanied by legal argumentation, which is a broader concept than proof. The method of argumentation at each stage of law enforcement activity is proposed. Identified problems of law enforcement activities and arguments in domestic practice. It is proposed to form the rules of law enforcement activity and argumentation and enshrine them in law sources of Ukraine or regulatory acts. This could contribute to the expansion of the scope of legal argumentation, the application of a broader concept of «legal argumentation» using not only legal but also other arguments to which law enforcement subjects should give legal significance; creation of high-quality law enforcement acts; creation of appropriate conditions for direct implementation of the rights and obligations of participants in public life, development of law in general.

Key words: law enforcement activity, law enforcement acts, individual legal prescription, law enforcement precedent, legal argumentation.

1. Introduction

Research relevance. Global changes, which are generally characteristic of the world order, are also inherent in the modern legal system of Ukraine. They occur in all spheres following any kind of legal activity, including law enforcement. It especially applies to the shift in emphasis to its purpose and mission – to ensure proper conditions for the immediate enjoyment of the rights and obligations of participants in public life. The mentioned fact necessitates an in-depth analysis of law enforcement activity, its results, and individual legal instructions. There is an actualization of studies on argumentation in law enforcement, determination of its purpose, as well as the purpose and tasks at each stage, its capabilities for drafting high-quality law enforcement acts, finding ways to overcome deformations in law enforcement and its outcomes, and expanding the boundaries and scope of legal argumentation.

All these things should contribute to laying the groundwork for improving the effectiveness of law enforcement activities in Ukraine, elab-

orating and formalizing argumentation rules and methods necessary for adopting consistent law enforcement acts, which would contribute to a due exercise of the rights and obligations of participants in public life and the development of law in general.

Analysis of research sources assisted in clarifying the state of scientific developments on law enforcement activity, its results, and argumentation options during its implementation. In legal literature, scientific attention is paid to law enforcement issues, and a set of provisions on the concept of law enforcement, its nature, stages, and law-enforcement acts are covered in the works by Bocharov D., Vitruk S., Holovatyi V., Husariev S., Malyshev B., Moskaliuk O., Nedbail P., Petryshyn O., Rabinovych P., Serdiuk I., Uvarova O., et al.

The contributions by Burhin M., Habermas Yu., Dvorkin R., Karamysheva N., Converskyi A., Titov V., Tulmina S., Shcherbyna O., Yurkevych O., and others deal with logic and argumentation in the context of their concept, structure, and means of argumentation (proving).

The following authors devoted their works to legal, involving juridical, argumentation: Alexi R., Bella D., Borys M., Dudash T., Kystianyk V., Kaziubra M., Kryvytskyi Yu, Luts L., Perelman H., Savenko M., and others.

Significant scientific progress in branch jurisprudence in terms of argumentation and proving is marked in the works by Babenko V., Pohoretskyi M., Stefan M., et al.

However, the next aspects need in-depth analysis: the nature and concept of law enforcement, law enforcement acts in modern conditions, individual legal instructions as an element of such acts, argumentation options at the main stages of law enforcement for elaborating high-quality law enforcement acts, identification of law enforcement and argumentation problems, and finding ways to solve them.

The purpose of the article is to elucidate essential features of law enforcement activity, law enforcement acts, and individual legal instructions, and formulate their concepts; to define a goal of law enforcement activity and legal argumentation as a whole and at its main stages; to identify the possibilities of legal argumentation during law enforcement activities, problems in domestic legal practice generating deformations in the relevant field, and find ways to solve them, which will ensure the elaboration of high-quality law enforcement acts and proper conditions for the direct enjoyment of rights and obligations by participants in public life.

2. Modern theory of law enforcement

Although the theory of law enforcement is currently developed, some issues still require scientific attention, especially amidst the transformation of modern legal reality.

Legal literature interprets law enforcement as follows: a legal form of activities of entities authorized to exercise the rules of law towards specific life cases by adopting individual legal decisions (Petryshyn (Eds.), 2015. 265); a concrete form of law enforcement related to the exercise of powers by relevant participants in legal regulation to specify and individualize the content of legal norms and principles in subjective rights and obligations and guarantee actual implementation (Bocharov, 2017. 262-268); activities of competent entities aimed at individualizing regulatory instructions and creating prerequisites for their implementation (Luts, 2015. 283), etc.

At the same time, one should always pay attention to the fact that in the Ukrainian language the word "zastosovuvaty (to apply)" means to use something, to introduce into use, to adjust to something (Novyy tlumachnyy slovnyk ukrayins'koyi movy, 1998. p.101) and "zastosuvannia (application)" means an action (Slovnyk ukrayins'koyi movy, 1972. p. 322) and to the fact that it is carried out through the activities of authorized entities aimed at achieving the goal.

Analysis of such a legal phenomenon as law enforcement activity allowed for distinguishing a range of characteristic features: it is a kind of legal activity; it is carried out by authorized subjects following a regulated procedure; it consists of several main stages; it shall meet the basic requirements of lawfulness; a promising goal is to ensure proper conditions for direct law enforcement, and a short-term one is to formulate an individual legal instruction and objectify it in the law enforcement act. Thus, law enforcement activities are the actions of authorized entities to formulate individual legal instructions and objectify them in law enforcement acts to ensure proper conditions for direct enforcement.

It is customary for the theory of law to outline three successive fundamental stages of law enforcement conducted under a statutory procedure (Koziubra, 2015, p. 237), namely: the establishment of the factual circumstances of the case, the choice of the legal instruction to be applied; the decision on the case and its documentation (Luts, 2015, p. 288); or: the establishment of the factual circumstances of the case, the legal basis and its resolution (Uvarova, 2012). Therefore, the main stages of law enforcement activity entail the establishment of the factual circumstances of the case, the choice and specification of a regulatory instruction, the formulation of an individual legal instruction, and its objectification

in the appropriate legal form – a law enforcement act.

Thus, the relevant activity results in a law enforcement act, which is interpreted in legal literature as the external manifestation of a formally binding rule of conduct of an individual nature, which confirms, establishes, or abolishes the subjective legal rights and obligations of personalized entities in a particular life situation (Rabinovych, 2017. 552); a legal act which enshrines an individual decision of a law enforcement entity on a particular case (Koziubra, 2015. 240), a state-supported formally mandatory will (authoritative order) of the authorized party of managerial legal relations (public authorities, their officials and officers, and, in cases provided by law, representatives of civil society) which exercises a regulatory or protective influence on the behavior of individually determined legal entities by confirming, changing, or canceling their legal rights and obligations in a particular life situation and causes legal effects meeting the principle of legal capacity (Seruk, 2016. 49).

Professional literature also covers the legal nature of law enforcement acts, in particular, that they are issued by state bodies or officials; aimed at implementing the requirements of legal norms, are personalized, have no retroactive effect, and their effect is exhausted by the fact of use (Tsvik, Petryshyn, Avramenko, 2009. 414–415); are one of the types of legal acts issued by authorized personalized entity; are a written document that has a specific form (Koziubra, 2015, p. 240), etc. Such acts are legal facts for the emergence, change, and termination of legal relations, are aimed at achieving legal consequences, and create proper conditions for direct law enforcement and ensuring the interests of participants in social relations (Luts, 2015. 19).

Legal literature boasts a diversity of law enforcement acts under the classification criteria used: by the status of authorized entities, a legal form, a subject of legal regulation, the nature of legal consequences, etc. Such lists are long but necessary since they allow for deepening awareness of their features which is essential for legal science and practice (Serdyuk, 2013. 177–190).

Analysis of law enforcement acts made it possible to name their main features: they are acts-documents (sometimes acts-actions); are drafted by authorized entities under a regulated procedure; have a written, oral or conclusive external form of expression and applicability; objectify an individual legal instruction in the appropriate legal form; are designed to achieve legal consequences; regulate a specific life situation; are a legal fact for the emergence, change, or termination of legal relations; are a necessary prerequisite for direct law enforcement. Thus, law enforcement acts are acts-documents (or acts-actions) drafted by authorized entities which objectify individual legal instructions designed to achieve legal consequences and are a necessary prerequisite for direct law enforcement and ensuring the interests of participants in social relations. As already noted, among the immediate goals of law enforcement, there is a focus on formulating an individual legal prescription and its objectification.

Individual legal prescriptions have received insufficient attention in legal literature, and, as a rule, the relevant legal phenomenon is only referred to in the context of the characteristics of law enforcement acts or law enforcement activity as a whole, namely: it focuses on formulating individual legal prescriptions, and a law enforcement act contains an individual formally binding rule of conduct that is designed for personalized entities; it regulates specific cases; their validity is exhausted by the fact of application; it is available in the operative part of a law enforcement act (Luts, 2015.287–290); or the issuance of individual-specific instructions granting rights to some participants in legal relations and entrusting responsibilities to others (Malyshev, Moskalyuk, 2010, p. 10).

In addition, some authors understand the enforcement process as a kind of syllogism: the establishment of the case's factual circumstances and the legal basis for its resolution and rendering a decision (Uvarova, 2012. p.157-158), which allows interpreting the individual legal order as an appropriate judgment.

The law enforcement process involves specifying a regulatory prescription, which is regarded as a logically and grammatically completed judgment of a universally binding nature. Thus, the individual legal prescription, which contributes to its implementation into in a particular life situation, should also be a judgment containing two foundations: the factual and legal basis of the case as well as a conclusion (a formally binding rule of conduct regarding personalized entities in a particular situation).

All the above requires clarifying the nature of an individual legal prescription. Analysis of the relevant legal phenomenon allows the author to distinguish its main features: it is a logically and grammatically completed judgment formulated in the process of legal qualification; it is a formally binding rule of conduct for personalized entities; it must correspond to the content of a statutory prescription; it has established limits and direct effect; its validity is exhausted by the fact of application; it is objectified in the specific legal form; its structure must consist of the factual basis (legally relevant facts the occurrence of legal consequences

is associated with), the legal basis (assessment of the compliance of the factual circumstances with the content of the regulatory prescription), and conclusion (the way to achieve legal consequences by exercising the rights and obligations of participants to the public life, ensuring their interests); it is aimed at creating proper preconditions for direct law enforcement.

Thus, an individual legal prescription is a formally binding rule of conduct of personalized entities, which is a logically and grammatically completed judgment that is formed while specifying a regulatory prescription regarding a real-life situation.

Such a vision necessitates the formalization of both content and formal requirements not only with regard to law enforcement activities and legal acts but also individual legal prescriptions and their reasoning.

And these requirements become particularly relevant in the context of legal competition, collisions or gaps.

3. Correlation between legal argumentation and proving

Treating argumentation as intellectual activity on justifying or refuting some provisions or positions which is carried out using appropriate methods and means of persuasion (Luts, 2016. 27–30), it should also be noted that it has a well-defined structure which is characterized by the interrelations between its elements. Such elements are the subjects – the argumentator and the addressee; thesis – the provision, the truth of which must be argued; arguments – the means by which the truth is proved or refuted; demonstration – the sequence of thinking from arguments to the thesis, that is, the process of argumentation (Luts, 2020. 170).

Although legal argumentation, including juridical, is considered an interdisciplinary study area (Borys, 2009), it is always associated with a specific type of legal activity. It is an intellectual activity aimed at substantiating or refuting the authenticity of provisions using both legal and other arguments, and juridical argumentation uses only juridical arguments for occurrence of legal consequences. Therefore, juridical arguments are the means provided by the current sources of law used in the process of legal argumentation, and the process of legal argumentation implies the use of legal arguments and other means (which can become juridical arguments under specific circumstances) (Luts, 2016. 29-30).

At the same time, juridical argumentation is a process that consists of corresponding rules for the formation of legal judgments, finding and bringing legal arguments to the addressees' notice to obtain the desired legal consequences (Luts, 2020. 170).

In addition, it is necessary to characterize the interrelations between the logical and legal concepts of "argumentation", "proving", "proof", "argument", "reason", and "evidence", which are often equated both in legal literature and in practice.

In logic, argumentation is interpreted as the way of thinking which entails proving and refuting in the course of which the author and the opponents shape the conviction of a true or false statement Konverskyy, 2004. p. 283).

Logical operation that ascertains the truth of a certain point (thesis) using provisions, the veracity of which is already established, is understood as proving, and the process of establishing falsehood – as refutation (Konverskyy, 2004. 283–302); or: proving is a logical procedure for substantiating the veracity of a thesis using provisions the veracity of which has either been established or accepted without evidence (Yurkevych (Eds.), 2012. 97).

In jurisprudence, logical terminology acquires some specificity. Thus, argumentation (justification and refutation) is designated by the term of proving. Proving is usually governed by and must comply with procedural laws, that is, it is conducted in accordance with the requirements of juridical reasoning. For example, part 2 of art. 91 of the Criminal Procedure Code (hereinafter referred to as the CPC) of Ukraine states that proving comprises the collection, verification, and evaluation of evidence to establish circumstances relevant to criminal proceedings (Kryminalnyi protsesualnyi kodeks Ukrainy).

In legal literature, proving in criminal proceedings means a criminal-procedural activity of pre-trial investigation bodies, the prosecutor's office, and the court which has legal and logical forms. It entails suggesting potential versions of the system of legally significant circumstances of criminal proceedings in the collection, verification and evaluation of evidence following these versions, as well as substantiating a reliable conclusion on the pre-trial investigation about the proven guilty of a person and its further advocacy at the judicial stages (Kobzar (Eds.), 2017. p. 139).

There is also a standpoint that proving is an indissoluble integral process, which involves obtaining evidence (search and detection, collection of factual data and their sources, procedural registration (consolidation) and granting factual data and their sources the value of evidence in criminal proceedings) and using it to establish facts and circumstances that are of importance to criminal proceedings in substantiating legal position by the parties to criminal proceedings (Pohoretskyy, 2014. p. 22).

The Code of Administrative Procedure (hereinafter referred to as CAP) of Ukraine

lacks a definition of "proving", but Art. 77 determines the entities vested with the obligation of proving, and Art. 78 – grounds for relief of proving (Kodeks administratyvnoho sudochynstva Ukrainy).

Art. 81 of the Civil Procedure Code of Ukraine (hereinafter – the CPCU) also specifies entities of proving, but it does not define the concept. However, Art. 82 names the grounds for exemption from proving, and Art. 89 refers to the evaluation of evidence (Tsyvilnyi protsesualnyi kodeks Ukrainy). Identical provisions are also available in the Code of Commercial Procedure of Ukraine (hereinafter referred to the CCP) of Ukraine, namely: Art. 74 provides for the obligation of proving; art. 75 – grounds for exemption from proof, and Art. 86 – evaluation of evidence (Hospodarskyi protsesualnyi kodeks Ukrainy).

The legislator enshrined the process of proving within all procedural codes of Ukraine in separate chapters "Evidence and proof". Although this process is generally similar under the basic parameters, each of them has inherent characteristics conditioned by the subject of a specific branch of law.

Therefore, civil law literature conveys proving as the procedural and mental activity of the entities of proving which is carried out in a legally regulated civil procedure and is aimed at clarifying the actual circumstances of the case, the rights and obligations of the parties, establishing certain circumstances by confirming legal facts, reference to evidence, as well as the submission, acceptance, collection and evaluation of evidence (Shtefan, Drizhchana, 1994. 149).

Commercial procedure literature states that proving in business proceedings are the logical and practical activity of the economic court and other persons involved to establish the presence or lack of the factual circumstances of the case, which are important for the just decision on the case using means determined by law (Babenko, 2007, p. 5); and judicial proving as a whole is the activity of the court and other participants in proceedings to provide and examine evidence as the facts sought, which is intended to ascertain the truth and is carried out following the rules prescribed by the legislator (Babenko, 2007. p. 6).

At the same time, logic refers to evidence as arguments (reasons), which are understood as true statements naturally resulting in a thesis (Karamysheva, 1998, p.184).

In legal science, evidence means factual data which is information about facts and events under consideration (in exceptional cases, the facts themselves are evidence) (Yurkevych, Tytov, Kutsepal, 2012).

According to p. 1 of art. 84 of the CPC of Ukraine, evidence in criminal proceedings is the factual data obtained in the manner prescribed by the Code, based on which the investigator, the prosecutor, the investigating judge and the court establish the presence or lack of facts and circumstances that are relevant to criminal proceedings and subject to proof (Kryminalnyi protsesualnyi kodeks Ukrainy). Following p. 1 of art. 73 of the CCP of Ukraine and p. 1 of Art.76 of the CPCU, evidence is any piece of data based on which the court ascertains the existence or lack of circumstances (facts) that justify the claims and objections of the parties to the case and other circumstances, which are crucial for solving the case (Hospodarskyi protsesualnyi kodeks Ukrainy; Tsyvilnyi protsesualnyi kodeks Ukrainy). Part 1 of art. 72 of the CAP of Ukraine envisages identical provisions, but it additionally specifies circumstances that are important for the just solution of the case (Kodeks administratyvnoho sudochynstva Ukrainy).

Commercial law literature interprets evidence in business proceedings as information about the facts which confirms the existence or lack of circumstances that the party uses as the ground for its claims and objections, which are crucial for the just solution of the case via the means provided by law (Babenko, 2007. p. 6).

Analysis of the literature and procedural laws contributes to confirming the following viewpoint: any type of proving is argumentation, but not vice versa since the concept of "argumentation" is broader than the concept of "proving". Thus, the purpose of proving is only to establish the truth of the thesis (fact in proof), and the purpose of argumentation is to justify or refute the expediency of rendering a decision and its importance in a particular situation. Evidence is the provisions which prove the truth of the thesis; in argumentation – those that, in addition to the above, prove expediency and advantages over other arguments (their types are more diverse).

In proving inductive, deductive conclusions, or conclusions are made by analogy; in argumentation, they can merge, as well as justification and refutation can do so.

Therefore, argumentation allows for drafting a more solid and high-quality individual legal prescription meeting the basic requirements of the validity of enforcement acts (legality, practicability, and justification). It is the key to ensuring proper conditions for direct law enforcement and the interests of participants in public life.

4. Law enforcement and argumentation

As already noted, the long-term purpose of law enforcement is to create proper condi-

tions for direct implementation, and the short-term one is to create an individual legal prescription and objectify it in a law enforcement act. Similar goals are inherent in argumentation.

In addition, each stage of law enforcement, and hence argumentation, has its own objectives.

Thus, the purpose of argumentation at the stage of establishing the factual circumstances of the case is to substantiate or refute the legal significance of the facts associated with the occurrence of legal consequences. The tasks facilitating the achievement of the relevant goal are as follows: proving reliability and sufficiency of legally significant facts; assessing them from the standpoint of probability and objective truth; verification of evidence. The actual design is formed at this stage (elements of the model of logical judgment necessary for the formulation of an individual legal prescription).

The procedural codes of Ukraine devote separate chapters to the procedure of proving: "Evidence and proving", namely: chapter 5 of CPCU (Art. 76 – Art. 119); chapter 5 of the CAP of Ukraine (Art. 72 – Art. 117); chapter 5 of the CCP of Ukraine (Art. 73 – Art. 112); chapter 4 of the CPC of Ukraine (Art. 84 – Art. 102) (Tsyvilnyi protsesualnyi kodeks Ukrainy, Kodeks administratyvnoho sudochynstva Ukrainy, Hospodarskyi protsesualnyi kodeks Ukrainy, Kryminalnyi protsesualnyi kodeks Ukrainy).

Essential procedural requirements for solving problems at this stage comprise belonging, admissibility, reliability, and probability of evidence (Art. 76 – Art. 79 of CPCU). Thus, evidence included in the subject of proof is appropriate – circumstances which confirm the stated claims or objections or have other significance for the case's consideration and are subject to verification when making a court decision (art. 76); the means of proof set outlined in the law are admissible (art. 77); evidence is regarded as reliable if it is obtained without influence intended to shape a misconception of circumstances of the case, which are of importance (art. 78); evidence provided in support of the circumstance than those provided in support of its refutation is more conceivable (art. 79), and therefore the presence of the circumstance is considered proven. Para. 2 of art. 79 notes that the issue of evidential probability is decided by the court following its internal conviction (Tsyvilnyi protsesualnyi kodeks Ukrainy). Art. 94 of the CPC of Ukraine provides that entities of proving examine all the circumstances of criminal proceedings comprehensively, fully and impartially following the law and evaluate every piece of evidence in terms of belonging, admissibility, reliability, and totality of the collected evidence – sufficiency and interrelation for the adoption of the relevant procedural decision (Kryminalnyi protsesualnyi kodeks Ukrainy).

Art. 73 – art. 76 of the CAP of Ukraine convey the requirements of belonging, admissibility, reliability, and sufficiency of the evidence in the same manner. In particular, art. 75 states that the evidence contributing to the establishment of the actual circumstances of the case is considered reliable, and the evidence is sufficient, which in its totality makes it possible to conclude about the existence or lack of circumstances of the case which are part of the fact in proof (Kodeks administratyvnoho sudochynstva Ukrainy).

All procedural codes of Ukraine hold that the court or other entities of proving evaluate the evidence in the case following an internal conviction based on its direct, comprehensive, complete and objective examination (Art. 89 of CPCU, Art. 90 of the CAP of Ukraine, Art. 86 of the CCP of Ukraine, Art. 94 of the CPC of Ukraine (Tsyvilnyi protsesualnyi kodeks Ukrainy, Kodeks administratyvnoho sudochynstva Ukrainy, Hospodarskyi protsesualnyi kodeks Ukrainy, Kryminalnyi protsesualnyi kodeks Ukrainy).

The above provision should be clarified in terms of the expediency of using arguments and their significance for solving a specific legal case. After all, not the entire decision is prejudicial, but only a particular provision containing legal arguments, or can be a legal argument.

Therefore, it is worth paying attention to the opinion of J. Bell, who argues that even citing foreign legal sources in court decisions is not independent and reasonable. It provides additional support for such arguments as national legal sources because they illustrate principles or values shared by a specific legal system (Bell, 2012, pp.8–19).

Art. 78 of the CPC of Ukraine renders the provisions on prejudicial decisions in detail, namely, the circumstances established by a court decision in an economic, civil, or administrative case, which has entered into force, are not proved when considering another case involving the same persons or a person in respect of whom these circumstances are established unless otherwise established by law. It is also noted that the circumstances qualified by the court as generally known are not subject to proof (Kodeks administratyvnoho sudochynstva Ukrainy).

Attention should also be paid to para. 7. of art. 82 of the CPCU– the legal assessment provided by the court for a particular fact when considering another case is not binding on the court, and the circumstances established by the decision of the arbitration court or inter-

national commercial arbitration are subject to proof on general terms when considering the case by the court (para. 8 of Art. 82) (Tsyvilnyi protsesualnyi kodeks Ukrainy).

In the proof theory, provisions that do not require proof include legal axioms, presumptions, principles of law, etc. However, in this regard, it is advisable to know the views of law experts. Procedural legislation allows submitting to the court such a conclusion only about the analogy of legislation and the analogy of law; the content of foreign law norms under their official or generally accepted interpretation and the doctrine of the relevant foreign state (art. 108 of the CCP of Ukraine). But according to art. 109 of the Code, such a conclusion is not evidence: it is of an auxiliary (advisory) nature and is not binding on the court. The court should draw an independent conclusion on specific issues (Hospodarskyi protsesualnyi kodeks Ukrainy).

Analysis of the procedural legislation of Ukraine shows that it pays the most attention to the stage of formation of the case's factual basis and establishing the legal significance of the facts.

As for the second stage of law enforcement (selection and specification of the regulatory instruction to be applied) and the formation of the case's legal basis, it aims to assess the compliance of the circumstances of the case with the content of the regulatory prescription to be applied. In other words, it identifies compliance of the factual basis with the legal basis, exercises legal qualification, and ascertains legal consequences.

The main tasks of this stage of law enforcement and argumentation as well are the choice of a regulatory instruction and clarification of its content; assessment of the compliance of the actual circumstances with the content of the regulatory instruction; determination of opportunities for the occurrence of legally relevant results provided by it; formulation of a logical judgment that conveys the compliance of the case's factual and legal basis; creation of a model of an individual legal instruction.

In procedural legislation, these provisions are represented in the sections on the consideration of the case under proceedings. Thus, the chapter "Consideration of the case on the merits" indicates that it considers and resolves the dispute by relying on the collected materials (art. 92) (Kodeks administratyvnoho sudochynstva Ukrainy).

Analysis of procedural legislation allows concluding that it mainly envisages the actions that are usually inherent in the first stage of law enforcement, and few provisions provide for actions on legal qualification and assessment of the compliance of the factual basis of the case with the legal one. Art. 244 of the CAP of Ukraine specifies the following among the issues the court deals with when making decisions: a legal norm which should be applied to legal relations; or what decision is legal if made by the court under the rules of substantive law in compliance with the rules of procedural law (art. 242). Art. 245 of the Code provides for court powers in resolving the case, in particular, issues to be decided if the claim is satisfied. Only Art. 246, which deals with the content of the decision, including its motivational part, enshrines a set of provisions on argumentation, namely: circumstances established by the court with reference to the evidence it relies on; the reasons for rejecting the evidence; the grounded assessment of each argument in the context of satisfying the claim; the reasons for violation of rights and interests; reasons for the application of the rules of law (or non-application) (Kodeks administratyvnoho sudochynstva Ukrainy).

The provisions of para. 3 of art. 242 of the CAP of Ukraine are of importance – the court decision based on fully and comprehensively clarified circumstances in the administrative case, confirmed by the evidence that was examined in the court session with an assessment of all the arguments of the participants in the case, is considered reasoned (Kodeks administratyvnoho sudochynstva Ukrainy) is reasonable.

These provisions cover the actions of the entities of law enforcement and their effects in the context of the first and second stages, which are difficult to separate in actual practice, since the initial comparison of the factual and legal basis occurs at the first stage, and the legal qualification is completed at the second stage. However, some issues on argumentation, especially at the second stage, are not elucidated in procedural laws, involving, drafting of an individual regulatory instruction, which is initiated at the second stage and is finally completed and objectified at the third stage.

Procedural legislation defines the types of court decisions (law enforcement acts): rulings, decisions, resolutions (art. 241 of the CAP of Ukraine), rulings, decisions, resolutions, court orders (art. 252 of the CPCU), verdict, decision, resolution (Art. 369 of the CPC of Ukraine). Procedural laws also specify the decision's content (art. 246 of the CAP of Ukraine, art. 238 of the CCP of Ukraine, Art. 374 of the CPC of Ukraine, art. 265 of the CPCU) (Kodeks administratyvnoho sudochynstva Ukrainy, Hospodarskyi protsesualnyi kodeks Ukrainy, Kryminalnyi protsesualnyi kodeks Ukrainy, Tsyvilnyi protsesualnyi kodeks Ukrainy).

Thus, Art. 374 of the CPC of Ukraine states that the court decision consists of introductory, descriptive, motivational and operative parts; lists structural and attributive requirements, which each of them should elucidate.

The procedural legislation of Ukraine envisages the basic requirements for law enforcement acts. However, the analysis of the provisions on the operative part, e.g., para. 5 of art. 246 of the CAP of Ukraine, indicates that it lacks requirements for individual regulatory instruction, namely: such a paragraph enshrines the court's finding on the satisfaction of the claim or refusal; the distribution of court costs, the term and procedure for entering into force of the court decision and its appeal (Kodeks administratyvnoho sudochynstva Ukrainy).

Consequently, such an element of judgment as a finding is noted in the operative part of the decision. But the law enforcement actions and arguments taken at the third stage should be aimed not only at the drafting of a law enforcement act but also the formulation of an individual regulatory instruction and its objectification in the law enforcement act.

An individual regulatory instruction should be recorded in the operative part and have the form of a logically and grammatically completed judgment, that is, a formally binding rule of conduct for personalized entities.

Unfortunately, there are neither content-related nor formal requirements for an individual regulatory prescription and its formulation and reasoning in the procedural legislation of Ukraine. As for the opinions about juridical argumentation, in particular, judicial argumentation, available in legal literature, they represent its capabilities, primarily related to the first stage – the formation of the case's factual basis. For example, juridical argumentation is a process and result of substantiating the truth (validity) of facts and/or beliefs about the acceptability of a set of arguments regarding a legally significant issue arising during legal activity (Husaryev (Eds.), 2020. p. 50).

Sometimes it is not only about the activity but also a law enforcement act, namely: judicial argumentation is a set of means, methods, and techniques used by participants in the trial during position presentation, which is evidenced in a specific type of a court decision (Kistyanyk, 2015. 52). There are also considerations that deductive argumentation is used in administrative proceedings and inductive – in constitutional proceedings (Kistyanyk, 2016).

Some authors resort to cognitive imitation: in the characteristics of ECtHR judgements from the perspective of those types of legal argumentation (dialectical and rhetorical) that it scarcely uses (Dudash, 2017).

The above is dissonant both with art. 17 of the Law of Ukraine "On Execution of Decisions and Application of the Practice of the European Court of Human Rights" regarding the practice of the Court as a source of law (Zakon Ukrayiny "Pro vykonannya rishen' ta zastosuvannya praktyky Yevropeys'koho sudu z prav lyudyny") and official documents of the Council of Europe.

Pursuant to the procedural requirements, the ECtHR (as well as any other court instance) shall establish the legal significance of the factual circumstances, that is, to carry out juridical argumentation through the relevant laws of logic using legal arguments. If it is not enough, then the ECtHR shall use other arguments which are given legal significance (that is, they can be used as law enforcement, law interpretation precedents – legal arguments in similar cases) during argumentation and after their consolidation in the court decision.

At the same time, as noted in legal literature, it is unacceptable to misinterpret or manipulate the considerations of the European Court of Human Rights and one's own in previous judgments, that is, a conscious and deliberate attempt to recognize certain legal judgments and benchmarks that have nothing to do with the case as arguments to create an illusion of credibility of the Court's opinion (Savenko, 2013, pp. 12–17). As for the constitutional procedure of Ukraine, there are considerations that "rhetorical" evidence is of doubtful importance (if any) for the decision making and its justification (Kozyubra, 2016. 167–180).

The above-mentioned practices make it necessary to eliminate the discrepancy between the concepts of "judicial practice", "judicial precedent", which are vested with legal force of the law source by some authors that is a substitution of concepts and can lay the groundwork for errors in law-enforcement. It should be noted that the enforceable judicial precedent has no legal force of the legal source since the courts do not have law-making powers. Thus, its concept is closer to the concept of "judicial practice" – as a set of various models of law qualification objectified in judicial acts; "unified judicial practice" – as a system of typical models of law qualification objectified in judicial acts and ensuring the sustainability and uniformity of judicial practice, the effectiveness of justice and law enforcement in general (Holovatyi, 2017. 10). Law enforcement unification results in a precedent (court decision), which contains a typical model of law qualification, as a model reflected in the legal positions of judges and objectified the judicial act, which comprises the most generalized indicators of assessment and compliance of the actual cir-

cumstances with the content of specific regulatory prescriptions and the possibility of legally relevant effects in a certain category of cases and ensures assimilation of law enforcement (Holovatyi, 2017. 7).

In the legislation of Ukraine, there are provisions on law enforcement precedents in demand, which are designated by the term "judicial practice". Thus, the Law of Ukraine "On the Judiciary and the Status of Judges", including art. 27, names the following powers of the appellate court: studying and generalization of judicial practice, informing about the results of the generalization of judicial practice of local courts, as well as superior courts; the chairman of the appellate court is conferred with the powers to generalize judicial practice; art. 32 indicates that the High Specialized Court provides lower courts with methodological assistance for the same application of constitutional provisions and the laws of Ukraine in judicial practice based on its generalization, etc. (Zakon Ukrayiny "Pro sudoustriy i status suddiv"). Thus, it would be expedient to determine objectification outcomes of the generalization of judicial practice in details.

The foregoing encourages scientific analysis, which results in the identification of the nature of the law enforcement precedent and its significance during argumentation.

First of all, attention should be paid to the fact that law enforcement activities are legal in content and are carried out by specific entities in charge (of both national and international law). If such entities are not granted law-making powers in accordance with the established procedure, they do not have the right to go beyond the powers and carry out another type of legal activity in a procedure which is not prescribed by law sources.

At his time, A. Simpson marked in his works that the alteration of the provisions of legal sources requires a rule which allows the authorized body to act respectively, and rendering a case-law decision needs a different procedure than rendering an ordinary court decision (Simpson, 1958. p. 155-160).

Consequently, law enforcement precedent differs in nature from a regulatory one (law source), as it should differ from ordinary court decisions. Regulatory judicial precedent is created by the subjects of law enforcement, which are endowed with law-making powers.

The analysis of law enforcement precedent allows for specifying its characteristic features, as follows: it is a written act-document; it is formulated by the subject authorized for law enforcement; it is designed to ensure uniform law enforcement; it contributes to eliminating deformations in law enforcement; it fixes the model (pattern) of law qualification, which is aimed at solving the case and the occurrence of legal consequences, in an individual legal prescription which is objectified in a law enforcement act; it fixes in a law enforcement act argumentation about its possible application in similar cases; it is a means of argumentation (reasoning) during the consideration of similar cases.

A law enforcement precedent (in particular, the court one) is a written act-document of the law enforcement entity, which ensures the uniform law application due to the typical model of law qualification in a certain category of cases and is a pattern for solving other similar cases.

Unlike the case law one, a legal interpretation precedent is characterized by the following features: it is a written act-document; it is drafted by a subject authorized to interpret the law; it is aimed at uniform legal understanding; it fixes a model of law clarification in the interpretative legal prescription; it contains a pattern of a uniform rule-understanding of the norm or the principle of law; it fixes in the interpretative act the argumentation about the options of its application in similar cases, which is conveyed in legal positions; it is a means of arguing (motivating) when considering similar cases.

Thus, the legal interpretation precedent (in particular, a judicial one) is a written act-document of the legal interpretation subject, which maintains uniform legal understanding thanks to a typical model of interpretation of norms or principles of law; provides similar law enforcement; is a model for solving similar cases.

Such a vision of a law-enforcement (and also legal interpretative) precedent promotes its effective use at any stage of argumentation in law-enforcement activities. However, law sources are highly demanded legal arguments in law enforcement.

As J. Bell states, the source of law, as an argument, is based on authority, since it appeals to its correctness for the collective decision, and the arguments of other subjects (lawyers, judges, scientists, etc.) are evaluated by relying on it (Bell, 2018. pp. 40–41).

At the same time, R. Alexy emphasized that the system of norms, which does not aspire (directly or indirectly) to be correct, is not legal, since the requirement for correctness is of classification importance. In addition, the argument of correctness is the ground for other arguments, in particular, the arguments of injustice and principles (Aleksi, 2011. 41–49).

R. Dvorkin also marked that no statement can be considered true if there is no procedure –at least, to show its correctness in such

a way that any intelligent person has to recognize it as true (Dvorkin, 2000. p. 16).

The analysis of law enforcement activity and its results and legal literature in terms of the grounds for law enforcement and argumentation during its implementation confirms the lack of requirements recorded in legislative or other official documents, both regarding argumentation as a whole and the formulation of an individual legal prescription and its objectification.

In the context of the short-term goal and objectives towards the stages of law enforcement and argumentation, it is worth noting that the basic legislative provisions are focused on completing the first-stage tasks. However, at this stage, a set of questions arise. Thus, in logic and jurisprudence, there is an opinion that all stages are characterized by deductive thinking of law enforcement subjects, which is aimed at creating a factual basis (small foundation) under the framework of legal construction, which will allow making an appropriate conclusion. At the same time, the analysis of law enforcement acts indicates the potential application of the logical techniques only at the first stage. As for the second stage, and partly the first, the "analogy of relations" is applied in both the operation of proving and refuting.

The legislation lacks the concept of an individual legal prescription, which should be based on an enforceable and logically and grammatically completed judgment (a formally binding rule of conduct for personalized subjects).

The structure of the law enforcement act meets formal requirements, but does not meet content-related ones, in particular, regarding the application of the necessary logical techniques, rules of argumentation and formulation of an individual legal prescription.

Legal arguments are basic in the process of law enforcement. The use of other arguments that could acquire legal significance is next to nothing (except for international legal practice and national practice of other legal systems). Such a practice of argumentation should be applied in Ukraine, in particular, in the activities of the Constitutional Court of Ukraine and the Supreme Court when drafting individual legal prescriptions and judicial law enforcement precedents. However, they are also obliged to justify the legal significance of the relevant provisions, even when using court decisions of other national legal systems or international courts.

The formulation of rules for the implementation of law enforcement activities and argumentation methodology would facilitate overcoming various deformations and drawing up high-quality legal acts (Luts, Nastasiak, Karmazina, Kovbasiuk, 2021. 233–243).

5. Conclusions

The above allows us to state that the theory of law enforcement needs to be specified, updated, and reconsidered in the context of modern realities. This applies, first of all, to the clarification of the nature and concept of law enforcement activity. It is characterized by the following main features: it is a kind of legal activity; it is carried out by authorized subjects following a regulated procedure; it consists of some main stages; it shall meet the basic requirements of lawfulness; its long-term goal is to ensure proper conditions for direct law enforcement, and the short-term one is to draw up an individual legal prescription and objectify it in a law enforcement act.

Thus, law enforcement activities are the actions of entities authorized to draft individual legal prescriptions and objectify them in law enforcement acts to ensure proper conditions for law enforcement. At the same time, attention should be paid to the fact that law enforcement activities are carried out not for own needs but to create proper conditions for direct law enforcement and ensuring the interests of participants in public relations. Hence, the law enforcement act, which becomes a legal fact for the emergence, change, and termination of legal relations, should be such as to fully ensure the interests of participants in public life.

The main stages of law-enforcement activity involve establishing the factual circumstances of the case and granting them legal significance; choosing and specifying the regulatory prescription to be applied; formulating an individual legal prescription and objectifying it in a law-enforcement act.

Law-enforcement acts are characterized by the following features: they are acts-documents (sometimes acts-actions); are drawn up by authorized subjects following a regulated procedure; have a written, oral or conclusive external form of expression and applicability; objectify an individual regulatory prescription in the appropriate legal form; focus on achieving legal consequences; regulate a specific life situation; are legal facts for the emergence, change, and termination of legal relations; are a necessary prerequisite for direct law enforcement.

Therefore, law enforcement acts are acts-documents (or acts-actions) drawn up by authorized subjects objectifying individual legal requirements aimed at achieving legal consequences and are a necessary prerequisite for direct law enforcement and ensuring the interests of participants in social relations.

There is a good deal of varieties of law enforcement acts under the classification cri-

teria and its purpose. However, the short-term goal of the activity on their adoption always includes the formulation of an individual legal prescription, which has the following features: it is a logically and grammatically completed judgment formed in the process of legal qualification; a formally binding rule of conduct for personalized entities; it shall correspond to the content of the legal order; it has established limits and direct effect; its validity is exhausted by the fact of application; it is objectified in the established legal form; its structure shall consist of a factual basis (legally relevant facts which are associated with the occurrence of legal consequences), a legal basis (assessment of the compliance of the actual circumstances with the content of a statutory prescription), a conclusion (the way to achieve legal consequences by exercising the rights and obligations of participants in public life and creating proper conditions for direct law enforcement).

Thus, an individual legal prescription is a formally binding rule of conduct for personalized entities, which is a logically and grammatically completed judgment that is formed in specifying a regulatory prescription regarding a life situation.

Such a vision requires the formalization of both content-related and formal technical and process requirements for law enforcement activities and law enforcement acts, in particular, individual legal prescriptions and their argumentation.

Juridical argumentation is an intellectual activity aimed at substantiating or refuting the truth of provisions using legal arguments to produce legal effects. It is related to a specific type of legal activity. However, under specific conditions, some types of legal activity require the application of not only legal but also other arguments (moral, ideological, political, etc.), which may become legal arguments in other life situations.

At the same time, juridical argumentation is carried out in compliance with the relevant rules for the formation of legal judgments, search and conveying of legal arguments to the addressees to obtain legal consequences.

It is important to identify the correlation between the concepts of "argumentation" and "proof", "argument" and "evidence". As you know, logical terminology acquires a certain specificity in legal science. Thus, arguing is usually designated by the term "proving".

The concept of "argumentation" is broader than the concept of "proving", and "argument" is broader than the concept of "proof", as well as the types of arguments are more diverse. In other words, any proving is argumentation, and proof is an argument, not vice versa.

Juridical argumentation complements the entire law enforcement process. The long-term goal – creation of proper conditions for direct law enforcement, as well as the short-term one – creation and objectification of an individual legal prescription, is essential for both law enforcement and argumentation. However, each stage has its own goals.

Therefore, the stage of establishing factual circumstances aims to substantiate or refute the legal significance of the facts associated with the occurrence of legal consequences. The tasks assisting in achieving the goal are as follows: proving the reliability and sufficiency of legally relevant facts and assessing them from the standpoint of probability, objective truth, and evidence verification.

In general, the legislation of Ukraine, including procedural, consolidates the basic requirements for both law enforcement and proving at the stage under consideration. However, the rules of use of other arguments and those that the legislator equated with evidence, involving the decisions of foreign or international courts, need to be specified and formalized. Although the foreign legal literature states that such arguments are not independent evidence, and their application requires additional justification.

The conclusion of a law expert should also be crucial, as it can contribute to expending the limits and scope of arguing. In addition, the court should assess the doctrinal provisions of such a conclusion and the option of its use as evidence. This will be the transference of law enforcement beyond juridical arguing into a wider space of legal argumentation. It is essential for the highest judicial authorities of Ukraine in the context of the development of law.

The second stage (selection and specification of the regulatory prescription) aims to assess the compliance of circumstances of the case with the content of the regulatory prescription, implement legal qualification, and establishing the basis for the occurrence of legal consequences. The main tasks of the stage are as follows: selection of the regulatory prescription and clarification of its content; assessment of the compliance of the actual circumstances of the case with the content of the regulatory prescription; identification of opportunities for the occurrence of legally relevant results provided by it; formulation of a logical judgment that conveys the compliance of the case's factual and legal basis; creation of a model of the individual regulatory prescription.

In the legislation of Ukraine, the formalization of law enforcement and arguing is somewhat limited to the issues of examining evi-

dence in the case, the implementation of legal qualification, and the issues of forming a model of logically and grammatically completed judgment, which will be the basis for the future individual regulatory prescription, are not covered.

The third stage aims to formulate an individual regulatory prescription and objectify it in a law enforcement act. The legislation of Ukraine, as a rule, fixes formal requirements for law enforcement acts: their types, legal form, and structural and essential parameters. But there are no content-related requirements for them, as well as formal ones for an individual regulatory prescription, namely: the rules of formulation and its argumentation, structural requirements; full fixation of a logical judgment in the operative part of the law enforcement act, not only of the conclusion, etc.

All the above leads to conclusions about the need to enshrine in law of the relevant provisions both on law enforcement and argumentation of law-enforcement acts, which would eliminate deformations, determine their significance for law enforcement in terms of reasoning, expand the limits of argumentation for some types of law enforcement activities due to those arguments, the legal significance of which should be ensured by law-enforcement entities.

However, this requires proper scientific analysis, which will contribute to avoiding divergence in the understanding of relevant legal phenomena; substitution of concepts; manipulation of methodological constructions, which are means of scientific knowledge in other sciences.

This would prevent the substitution of the concepts "regulatory precedent", "legal interpretation precedent", and "law enforcement precedent", which play an important role in the argumentation process when realizing any type of legal activity. In legal literature and practical activities, law-enforcement precedents are often identified with the sources of law that contradicts their legal nature. First of all, it is worth mentioning that in Ukraine neither the entity of legal interpretation nor the law-enforcement one is endowed with law-making powers, and thus cannot create sources of law, but can create law interpretative and law-enforcement precedents.

The following features are characteristic of a law-enforcement precedent: it is a written act-document; it is created by the subject authorized for law enforcement; it is aimed at ensuring uniform law enforcement; it allows eliminating law-enforcement deformations (collisions, gaps, differences in law enforcement); in terms of the individual legal prescription, which is objectified in the law-enforcement act, it consolidates a typical model (pattern) of law qualification, which focuses on solving a legal case and the occurrence of legal consequences; in the law-enforcement act, it enshrines the argumentation about the options of its application in similar cases; it is a means of arguing (reasoning) during the consideration of similar cases.

Consequently, the law-enforcement precedent is a written act-document of the law-enforcement entity, which ensures the uniform application of law using the uniform model of law qualification in a certain category of cases and is a pattern for solving similar cases.

Unlike the law-enforcement one, the legal interpretation precedent is a written act-document of an entity of legal interpretation, which provides the uniform legal understanding thanks to a typical model of interpretation of norms or principles of law, maintains similar law enforcement and is a model for solving similar cases.

The above and other provisions should contribute to the expansion of the scope and limits of legal argumentation, the transition to a broader concept of legal argumentation, and the formulation of high-quality law enforcement acts. However, these and other issues require in-depth scientific analysis and further interpretation both from the standpoint of branch legal sciences and practical activities and the general theory of law.

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АРГУМЕНТАЦІЯ У ПРАВОЗАСТОСОВНІЙ ДІЯЛЬНОСТІ

Анотація. Аналіз зарубіжної та вітчизняної літератури, джерел права та юридичної практики дав змогу констатувати, що в сучасних умовах теорія правозастосування потребує уточнення, а низка її положень – оновлення. ***Метою*** дослідження є виявлення закономірностей аргументації та об'єктивації результатів правозастосовної діяльності. Для досягнення мети розв'язані такі завдання: охарактеризовано правозастосовну діяльність, правозастосовні акти; індивідуально-правовий припис, юридичну аргументацію та її співвідношення з доказуванням; виявлено основні проблеми аргументації в правозастосовній діяльності та запропоновано способи їх розв'язання. ***Методи дослідження***. Підгрунтям цього дослідження є діяльнісний підхід, що дозволило охарактеризувати правозастосування та аргументацію як діяльність відповідних суб'єктів та уточнити поняття правозастосовної діяльності. Завдяки загальнотеоретичному методу було виявлено природу правозастосовної діяльності, її результатів – правозастосовних актів, їх первинного елементу – індивідуаль-

но-правового припису; сформульовано визначення їх понять. Соціологічна методологія (зокрема, аналіз документів) слугувала збиранню та вивченню емпіричних фактів, необхідних для загальнотеоретичного аналізу. Техніко-юридичний аналіз (зокрема юридичні конструкції) сприяв характеристиці процесу здійснення правозастосовної діяльності та аргументації. ***Результати.*** У статті вперше в Україні цілісно відображено процес об'єктивації результатів правозастосовної діяльності під кутом зору аргументації на основних її стадіях. ***Висновки***. Дослідження правозастосування дозволило охарактеризувати правозастосовну діяльність як дії уповноважених суб'єктів щодо створення та об'єктивації індивідуально-правових приписів у правозастосовних актах. Весь процес правозастосування супроводжує юридична аргументація, яка є ширшим поняттям, ніж доказування. Запропонована методика здійснення аргументації на кожній стадії правозастосовної діяльності. Виявлені проблеми здійснення правозастосовної діяльності та аргументації у вітчизняній практиці. Запропоновано сформувати правила правозастосовної діяльності та аргументації і закріпити їх у джерелах права України чи регламентарних актах. Це могло б сприяти розширенню сфер та меж юридичної аргументації, застосуванню більш ширшого поняття «правова аргументація» з використанням не лише юридичних, а й інших аргументів, яким суб'єкти правозастосування мають надати юридичної значимості; створенню якісних правозастосовних актів; створенню належних умов для безпосередньої реалізації прав та обов'язків учасників суспільного життя, розвитку права загалом.

Ключові слова: правозастосовна діяльність, правозастосовні акти, індивідуально-правовий припис, правозастосовний прецедент, юридична аргументація.

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SOME ISSUES OF CRIMINOLOGICAL CHARACTERISTIC OF VIOLENT FEMALE CRIME

Abstract. ***Purpose.*** The purpose of the article is to study the main aspects of violent crimes committed by women and their criminological characteristics. ***Results.*** The article considers the issue of violent female crime, the behaviour of female offenders, analyses the motives for such crimes, specificities of the growing trend of female crime, as well as the clear study of their criminological description. The article defines the concept of female crime, as well as studies the place, role, causes and symptoms of violent and cruel female crime. Given the fact that female crime is now gaining ground faster than male, it rightfully causes greater concern for society. Aggression, cruelty and murder were associated with males all the time, but sometimes a woman can seriously outdo the "strong half of humanity." In modern Ukraine, the focus is on the aggressiveness of women who commit crimes: 35% of convicted women are punished right for violent crimes. Every fourth woman in correctional facilities is convicted of violent crimes committed by women due to prolonged domestic conflicts, and less frequently in connection with jealousy and lucrative motives. The author draws the attention of the readers to the fact that the analysis of the motives for the violent crime committed by a woman shows that they are often caused by the grave social and economic situation of women within the system of social relations. Women used to committ crimes on emotions, and now a woman is more often carrying out a planned, premeditated and serious crime. The article underlines a gradual transformation of the negative behaviour of women and their mastering of the type of social behaviour previously characteristic of male criminals (use of excessive quantity of alcohol, drugs, immorality, lack of spirituality, etc.). ***Conclusions.*** To sum up, the emphasis is placed on increased female aggression and criminal-dangerous actions in domestic conflicts, and the general increase in the cases of violence, tension and conflict in the State, violent crimes, aggressively committed by women, reflects the ethical state of society.

Key words: woman, offender, characteristic, female crime, aggression, violent crime.

1. Introduction

It is no secret that female crime is several times less numerous than male. Therefore, it is not surprising that female crime is not so under focus as male. As noted by some scientists, female crime is defined as secondary to male (Kubalskyi, Momotiuk, 2018, p. 67). Others consider female crime as a certain exception from general crime (Chaplyk, 2012, p. 114). However, female crime is now gaining ground faster than men, which rightfully causes greater social concern. However, despite this trend toward the increase in the number of female crimes, Ukraine now has a significant lack of information on the status of female crime.

Therefore, it is obvious that the issue of aggressive female crime and its criminological description is increasingly relevant.

The following Ukrainian and foreign scientists, in particular, those who studied female crime in the textbooks on Criminology, were focused on the topic of female crime: Yu.M. Antonian, V.A. Badyra, A.B. Blaha, M.Yu. Valuiska, A.P. Hel, V.V. Holina, I.M. Danshyn, O.M. Dzhuzha, A.I. Dolhova, A.P. Zakaliuk, A.F. Zelinskyi, V.O. Merkulova, V.A. Serebriakova, T.M. Yavchunovska, and others.

The growing level of female crime requires further research in this realm. The purpose of the article is to study the main aspects of violent crimes committed by women and their criminological characteristics. In order to achieve the purpose, the following task is proposed: to carry out the criminological analysis of the person of a criminal woman, as well as to identify the place, specificities, features and causes of violent female crime.

2. General features of violent female crime

Moving on to the study of the crime of criminological characteristics of violent female crime,

it is necessary to start with the fact that female crime is a combination of crimes that are committed by women on a certain territory for a certain period of time (Harhat-Ukrainchuk, 2014, p. 189), although the provisions of the Criminal Code of Ukraine provide only one composition of the crime (art. 117 of the CCU), the special actor of which is only a woman (the mother's murder of her new-born child) (Criminal Code of Ukraine, 2001).

Moreover, psychologists have not yet been able to answer the question of the clear reasons for violent female crime. Someone says that the main reason for this criminal behaviour of women is the promotion of violence in the media, others believe that social conditions are all to blame. However, violence is characteristic of not only economically disadvantaged families (Rodionova, 2012, p. 145).

Most experts, who research on female violence, argue that the aggressiveness of women's behaviour is a complex of factors, among which it is difficult to separate one dominant (Antonian, Kudriavtsev, Emynov, 2004).

In modern Ukraine, the focus is on the aggressiveness of women who commit crimes: 35% of convicted women are punished directly for violent crimes (Perelyhina, 2013, p. 323). Every fourth woman in correctional facilities is convicted of violent female crimes committed due to prolonged domestic conflicts, and less frequently in connection with jealousy and lucrative motives. Almost one-third of women commit criminal acts in the state of intoxication (alcohol or drug) (Korniakova, 2016, pp. 49-50).

Female crime compared to male one is characterised with greater stability of its quantitative and qualitative indicators, structural monotony, less aggression, cruelty, vandalism, etc.

The violent female crimes committed with aggression and cruelty is an unusual phenomenon for society, which is condemned more harshly than male crime (Rodionova, 2012, p. 146). Female violent crime is more often domestic. However, in recent years, there has been a trend towards increase in the number of women who are punished for grave violent crimes against the life and health of persons, for lucrative violent acts (such as robbery and robbery with extreme violence), for crimes related to drugs (Shalhunova, Orlean, Skok, 2017).

When comparing the criminal behaviour of men and women, it should be noted that men have a logic, and women have an impulse (Zakaliuk, 2007, p. 457).

Of course, the physical capacity of women to commit violent crime is usually more limited than one of men. In domestic or other disputes, a woman often cannot cause a man a significant harm, but, at the same time, it is worth remembering that women are more likely to commit crimes with premeditated intent. It is known that a premeditated murder is characterised by absolutely or almost complete absence of the struggle of the victim, because it is easier for a physically weaker woman (Shalhunova, Orlean, Skok, 2017).

Although there are specific crimes that are most common among women, now it is possible to see a change in the structure of female crime, in particular, the scope of violent crimes increases (Radzevilova, 2017, p. 48). In general, women used to commit crimes on emotions, and now a woman is more often carrying out a planned, premeditated and serious crime (Priadkin, 2004). Numerous cases show that women are increasingly assimilating the type of social behaviour previously characteristic of men. The negative behaviour of male criminals (the use of excessive alcohol, drugs, immoral behaviour, lack of spirituality, etc.) is increasingly common among women who commit criminal acts (Shalhunova, Orlean, Skok, 2017).

3. Negative trends in female crime.

According to T. Korniakova, negative trends in female crime are:

- the similarity with male crime as for a large number of indicators;
- increase in grave crimes in the structure of female crime, professionalism and organised female crime;
- increase of the cases of older children murder (for example, the mother's murder of daughter because of jealousy to the co-habitant);
- the murder of the lover's children in order to eliminate the "obstacles" for the husband's family's leaving;
- the woman's murder of her own children, who are "superfluous" for the idea of establishing a new family);
- etc. (Korniakova, 2016, p. 49).

With each year, violence is increasingly widespread in various spheres of human life, with regard to both the aggressiveness of violent crimes and the gravity of their consequences (Gilinskij, 1995, p. 206).

Victims of female aggression and violence usually include relatives, co-workers, lovers. As a rule, a woman should consider a murder because of prolonged conflicts provoked by the behaviour of the victim (Rodionova, 2012, p. 144).

According to L. Kryzhna, female aggressiveness and criminal-dangerous acts in domestic conflicts increase, consistent with the results of the study of criminal cases, the specific weight of women who committed domestic crimes has increased more than twice in recent years (Kryzhna, 2000, p. 8).

Some scientists underline the negative changes in violent female crime in the emotional and motivational basis of criminal acts. Especially dangerous is the spread of the motive of criminal behaviour as an aspiration to pleasure, craving for aggressive violence (Kubalskyi, Momotiuk, 2018, p. 64). At present, the specificity of the criminological parameters of female crime allows to consider these crimes as an independent group, which takes an important position in the framework of the general crime and, consequently, crimes committed by women become an independent object of criminological study (Debolskij, 2019).

When assessing the impact of gender, it should be noted that men show higher levels of direct and physical aggression, and women show indirect and verbal aggression. In general, men are prone to physical-type violence, and women often apply a psychological type of violence (Petechel, 2019, p. 180).

Men are characterised by direct and indirect physical aggression, as well as direct verbal aggression, and women are characterised by indirect verbal aggression. Male and female aggression differs in the direction of aggressive influence: if the manifestations of aggression of external open type are characteristic of "strong half of humanity", then women usually transact aggression internally oriented, accompanied by accompanied by helplessness, hopelessness, loneliness (Petechel, 2019, p. 181). According to L. Chahovets, men by the level of manifestation are characterised by primarily physical aggression, the next is verbal, the third is negativism, the fourth is irritation, and the fifth is indirect aggression. Women are characterised by a different order: the first is verbal aggression, the second is irritation, the third is physical aggression, the fourth is negativism, and the fifth is indirect aggression. Women, compared to men, are characterised by less physical aggression and negativism, and more by indirect aggression and irritation (Chahovets, 2004).

Women consider aggression as an expression – a means of manifestation of anger and stress removal through the release of aggressive energy. Men, unlike women, consider aggression as an instrument, as behaviour model, to which they apply to receive a diversified social and material reward (Petechel, 2019, p. 183).

Usually after aggression, women are in a state of concern as for the possible consequences of such behaviour. According to H. Hekhauzen, having showed aggression, women react to it with a sense of guilt and fear (Hekhauzen, 2003). Most women consider aggression as an expression of emotional tension through anger. Females are more concerned that aggression may turn on women themselves, for example, the possibility of being retaliated by the victim (Petechel, 2019, p. 182).

O. Petechel highlights the following characteristic features of aggressive female crime:

1) committing crimes using a premeditated plan;

2) special cruelty;

3) lack of strong family ties;

4) complicity in committing crimes with men;

5) the spread of recurrent crime, as well as the trend towards increase in its number;

6) complicated process of re-socialisation and further social adaptation;

7) the high level of latency;

8) equating to male crime;

9) increase in the number of grave and especially grave crimes;

10) etc. (Petechel, 2019).

4. Conclusions

To sum up, the recent trend in increased female crime requires constant focus and study. Aggression, cruelty and murder were associated with males all the time, but sometimes a woman can seriously outdo the "strong half of humanity." At present, the increase in the number of women found to have committed crimes is ahead of the corresponding increase in men-criminals. In recent years, the number of women convicted of violent crimes has been growing with geometric progression (Rodionova, 2012, p. 144).

An analysis of the motives for the female violent crime shows that they are often caused by the grave social and economic situation of women within the system of social relations.

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ДЕЯКІ ПИТАННЯ КРИМІНОЛОГІЧНОЇ ХАРАКТЕРИСТИКИ АГРЕСИВНОЇ ЖІНОЧОЇ ЗЛОЧИННОСТІ

Анотація. ***Мета.*** Метою статті є дослідження основних аспектів скоєння жінками насильницьких злочинів та їх кримінологічна характеристика. ***Результати.*** Стаття присвячена розгляду питання агресивної насильницької жіночої злочинності, поведінки жінок-злочинців, аналізуванню мотивів вчинення таких злочинів, особливостям тенденції зростаючої жіночої злочинності, а також чіткому дослідженню їх кримінологічного портрету. У статті наведено визначення поняття жіночої злочинності, а також розглядається місце, роль, причини й ознаки насильницької агресивної та жорстокої жіночої злочинності. Зважаючи на те, що наразі злочинність жінок набирає оберти швидше чоловічої, це законно викликає більшу стурбованість суспільства. Агресія, жорстокість й вбивства повсякчас асоціювалися із чоловічою статтю, однак інколи жінка здатна серйозно перевершити «сильну половину людства». В сучасній Україні привертає увагу агресивність жінок, що скоюють злочини: 35% засуджених осіб жіночої статі покарано безпосередньо за агресивні (насильницькі) злочини. Кожна четверта особа жіночої статі, котра перебуває у виправних колоніях, осуджена за насильницькі злочини, котрі жінки здійснюють через тривалі сімейно-побутові конфлікти, а рід-

ше – у зв'язку із ревнощами й мотивами користі. Автором звертається увага читачів на те, що аналіз мотивів вчинення насильницького агресивного злочину жінкою показує, що часто вони обумовлюються тяжкими соціальним й економічним становищем жінки в рамках системи суспільних відносин. Якщо раніше не викликало сумніву, що загалом жінки здійснюють злочини на емоціях, то зараз жінка частіше виконує спланований, продуманий й тяжкий злочин. У статті відмічається поступова трансформація негативної поведінки жінок та засвоєння ними того типу суспільної поведінки, що раніше був характерним для чоловіків-злочинців (використання надмірної кількості спиртних напоїв, наркотики, аморальність, бездуховність тощо). ***Висновки.*** Як підсумок наголошується на підвищенні жіночої агресивності й криміногенно-небезпечних дій в межах сімейно-побутових конфліктів, а також визначається, що загалом приріст кількості насильства, напруженості та конфліктності в державі, насильницькі злочини, котрі агресивно реалізуються жінками, є віддзеркаленням етичного стану суспільства.

Ключові слова: жінка, злочинець, характеристика, жіноча злочинність, агресія, насильницька злочинність.

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STATUS OF SCIENTIFIC DEVELOPMENT OF THE ISSUE OF CRIME CONTROL UNDER CRIMINAL LAW IN UKRAINE FROM 1922 TO 1960

Abstract. ***Purpose.*** The purpose of the article is to study the status of scientific development of the issue of crime control under criminal law in Ukraine in 1922-1960. ***Results.*** It is underlined that research in criminology focuses on quantitative and qualitative indicators of crime. The latter are determined by the level, structure, dynamics, coefficient, enabling a comprehensive analysis of crime over a certain period and in a certain territory. However, some scientists understand the status of crime solely as a quantitative indicator of the number of crimes with a determination of the number of perpetrators in a certain territory for a specified period. Some aspects of the criminal environment in the former USSR were examined by scholars who studied criminal subculture and prison subculture. This topic was covered both in scientific and in publicist works. Part of materials for the study was provided by law enforcement officers who had experience in countering criminals, communicated with them in places of deprivation of liberty, knew the features of the formation of subculture even in individual places of deprivation of liberty. Understanding the trends in the criminal subculture development enables to better reveal the motivations of its members, to identify their regional characteristics. Many people who have committed crimes have no connection to a criminal subculture. Therefore, the approach to crime as a feature of a special "sub-cultural community" does not fully reflect the realities of life. It is revealed that a significant part of experts in criminology consider the status of crime not only as quantitative, but also as a qualitative characteristic of it, determined by the level, structure, dynamics, coefficient, enabling a comprehensive analysis of crime over a certain period and in a certain territory. However, some scientists consider the status of crime solely as a quantitative indicator of the number of crimes with a determination of the number of perpetrators in a certain territory for a specified period. ***Conclusions.*** It is concluded that the strategy of the study of crime control under criminal law in Ukraine is the integration of historical experience with modern innovative approaches to the improvement of crime control under criminal law as a necessary condition for increasing its effectiveness.

Key words: methods, formation, legal awareness, population, criminal acts, socialisation.

1. Introduction

Historical and legal analysis of crime control under criminal law in Ukraine in 1922-1960 requires a review of the historiographical situation in Soviet legal science in the study of crime prevention in general, since scientific analysis of issues related to the history, theory and methodology of countering crime were either ideologically dependent or played a subordinate, auxiliary or secondary role in substantiating the official State position in this field. For example, the first scientific steps in the study of the process of crime control under criminal law in Ukraine were taken by researchers, who for some time worked in law enforcement bodies and had experience and materials for generalised conclusions. However, Soviet criminal law theory was also involved in the creation of artificial crime, offering from time to time more severe sanctions "to strengthen the fight" against it. The specificity of the study of crime control under criminal law was determined by the ruling party's policy on the conduct of criminological research: while during the 1920s scientists conducted searches in this field, during the 1930s - the first half of the 1950s, such studios were banned and data on the number of crimes committed were classified.

Issues that are important both in theoretical and practical aspects for understanding the crime control process were elucidated in the works by O.M. Bandurka, Y.A. Helfand,

L.M. Davydenko, A.I. Dolhova, A.P. Zakaliuk, A.F. Zelenskyi, O.M. Lytvak, P.P. Mykhailenko, and V.M. Popovych. The role and importance of the scientific heritage of Ukrainian and foreign scientists, their proposals and recommendations on the organisation of effective crime prevention are of high value, but it should be noted that the problem of historical and legal analysis of crime control under criminal law in Ukraine in 1922-1960 has not yet been under a comprehensive study.

That is why the purpose of the article is to study the status of scientific development of the issue of crime control under criminal law in Ukraine in 1922-1960.

2. Control status of juvenile delinquency in 1922 - 1960

In the 1920s, in order to obtain information and analyse the dynamics of criminal manifestations in the USSR, a department "Moral statistic" was created, which was subordinate to the Central Statistical Office. Statistical data were received and systematised at both the Republican and Union level. The problem of the relevant statistics remained both the incomplete sample, due to the relatively low level of expertise in the field, and the tendency of individual officials in the regions to report on their successful professional activity in the field of crime control, has not been able to find any evidence of professional success in the area of crime control, which often led to overestimation, related to the characterisation of criminal manifestations in smuggling, robbery attacks. For example, in 1923, on the initiative of a member of the Presidium of the Moscow City Council, V. Orleanskyi, a large-scale study of arrest buildings was carried out with a view to further scientific research, and a Cabinet for the study of the offender and crime was founded. The establishment of a similar Cabinet in Ukraine in 1924 was initiated by employees of the Odessa provincial corrective labour institution.

Some issues related to the spread of crime were researched by B. Utevskyi, M. Hernet and M. Polianskyi, who tried to characterise the personality of the criminal in Soviet society and determine the reasons for its criminalisation during the 1920s. P. Mamot studied the specifics of committing economic crimes in the years of NEP, as well as identified the main problems related to the detection of this type of crime [4]. The author noted a sharp increase in the number of economic crimes during the implementation of the new economic policy. Criticising the mismanagement that contributed to the spread of theft, he simultaneously focused on problems in the distribution of finished goods, which caused a shortage of and, accordingly, abuse of domestic services to the population and the provision of goods to them.

V. Kufaiev, P. Lublinskyi, S. Kopelianska studied the process of control of juvenile crime and the circumstances that contributed to involvement in criminal activity. Their research emphasised the detrimental impact of the war on the spread of neglect which led to so-called street education for some children and adolescents, often accompanied by the use of knives, fights for socialisation.

Soviet researchers during the 1920s paid a lot of attention to the analysis of criminal and corrective labour legislation (Isaev, 1927). This interest was due not only to the popularisation of the relevant findings, but also to the need to improve the qualification level of the staff of the courts and law enforcement agencies, many of them had relatively little professional experience. At the same time, much attention was paid to substantiating the need to completely dismantle the legal field that existed during the Russian Empire. As a result, the positive experience of crime control, especially the impact of non-custodial sentences on crime, was overlooked by researchers. Soviet researchers avoided the experience of countering criminality on the part of gendarmes, associating them primarily with the "stranglers" of the revolutionary movement. However, the experience of the law enforcement bodies of the Russian Empire in crime control could be an example in many cases for the Bolsheviks, who primarily preferred the power methods of counteracting and criminalising acts, seeing more and more threats to the existence of the Soviet State.

The collection of scientific works *Hooliganism and hooligans*, published in 1929, covered social and everyday conditions, which, according to the authors, contributed to the spread of hooliganism. The motives for the commission of crimes by women involved in serious disturbance of public order were investigated. In addition, the most effective methods of countering the spread of hooliganism were analysed (Anisimkov, 1998).

In the 1920s, Soviet scientists did not avoid covering the problem of the spread of drunkenness, pointed to its close connection with crime. Studies by R. Vlassak, D. Voronov, A. Hertsenzon, E. Deichmann, A. Rappoport, Yu. Larina, D. Shepilov analysed some causes of the spread of alcoholism, which were mainly associated with the remnants of capitalism. It was believed that drunkenness could be overcome through comprehensive measures, from re-education to criminal punishment. The problem of Soviet researchers was the virtual impossibility to analyse the conditions of intoxication among judicial and law enforcement officials.

In 1969, the work *Fight against crime and offenses* was published by the employees of the Academy of Sciences of the Ukrainian SSR. The book was prepared on the basis of a study of numerous materials of prosecutors and investigators' judicial practice, as well as the activities of social organisations in the field of crime control. It studies the main areas of prosecutors' supervision and shows the most effective, in the authors' opinion, forms of crime control. The direct results of the sociological study of juvenile delinquency in the cities of Chernivtsi and Donetsk (Lanovenko, 1969) are presented.

Among the Soviet researchers it is necessary to mention the work *Criminal-legal fight against hooliganism* by V.A. Kuznetsov, I.A. Lanovenko, F.A. Lopushanskyi and V.V. Leonenko, where, relying on sociological research, analysis of the legislation in force at that time and its application, it was an attempt to review the positive experience of the work of State bodies and public organisations of the Ukrainian SSR in countering the spread of hooliganism; to determine the main areas of work to prevent its manifestations. The book focuses on the criminological characterisation of hooliganism, analysis of the elements of the crime provided for in article 260 of the Criminal Code of the Ukrainian SSR and its separation from other crimes, the effectiveness of the investigative and judicial authorities in the investigation and judicial consideration of cases of this category. The researchers identified the most typical flaws in the organisation of counter-hooliganism and made some recommendations to improve preventive work in this area (Lopushanskyi, 1971).

Research in criminology focuses on quantitative and qualitative indicators of crime. The latter are determined by the level, structure, dynamics, coefficient, enabling a comprehensive analysis of crime over a certain period and in a certain territory. (Sokolov, 1973). However, some scientists understand the status of crime solely as a quantitative indicator of the number of crimes with a determination of the number of perpetrators in a certain territory for a specified period (Karpec, 1976). For example, the author of the work *Drunkenness and crime: History, problems* (Lanovenko, Svetlov, Skibickij, 1989) in the trend of anti-alcoholic propaganda during the "perestroika" traced the link between drunkenness and the spread of crime, including among young people. The researchers also tried to determine the relationship between the amount of alcohol consumed by the population and the number of crimes. Relying on the analysis of statistical indicators, they determined the State's measures against the spread of drunkenness.

A number of works by Ukrainian Diaspora researchers have also focused on the coverage and analysis of political decision-making mechanisms, including crime control (Nahaievskyi, 1994). In addition, they covered various issues related to the spread of Bolshevik terror, analysed the legal mechanism created by the Moscow occupier, for the forceful conquest and retention of power in Ukraine (Kurskij, 1958). The work by I. Mazepa, which underline the criminal essence of the Bolshevik regime, stemming from its attitude towards political opponents and the class approach to the interpretation of crime (Mazepa, 1922), deserves special attention.

Noteworthy are the memoirs in which the direct participants of those events depict the situation on the territory of Ukraine, including characterising individual types of crimes and giving their thoughts on their prevalence and causes (Martynov, 1923). This aspect of the information is also presented regionally: regarding the events in Odessa, Podillia, Yekaterinoslav, Kharkiv regions. The works highlight the conditions that preceded the adoption of the Criminal Code of 1922, with individual judgments on how to counteract criminal manifestations. At the same time, a significant part of such judgments related to countering the so-called counter-revolutionary crimes and provided detailed descriptions of the "criminal" behaviour of political opponents in the context of the spread of Red and White Terror (Abolin, 1922).

3. Features of the marginalisation of Soviet society in 1922-1960.

To study the crime control process from 1922 to 1960 it is important to highlight the impact of the marginalisation of Soviet society in the context of its de-ethnisation, as well as the large-scale population movements that have entailed the socialisation of individuals in new conditions in a new place of work. For example, Professor L. Shelley, an American researcher of crime in the post-Soviet countries, believes that the lack of unity in criminology became particularly noticeable with the beginning of globalisation in the 1990s (Dremin, 2009). Large-scale population movements within a country, region or continent, dictated by the need to carry out economic activities, as well as the new "social steps" in this regard, affected not only perceptions of the essence of crime, methods of counteracting it and characterising the personality of the offender, but also identifying the links between the socialisation of the individual and the possibility of his or her committing unlawful acts. In this regard, marginality has moved beyond cultural conflict to be seen as a product of social mobility.

These issues were under the focus in the works by I. Krauss, V.Mancini, T.Wittermans, T.Shibutani, E. Hughes. Voluntary renunciation of traditional society, problems of marginalised political consciousness, exclusion of individuals and social groups from the system of social relations, are reflected in the works by Western European researchers L. Vaskovich, J. Levy-Strenge, S. Raban, P. Rosenvallon. Problems of marginality were also investigated by Russian scientists A. Antonian, A. Galkin, V. Radaev, E. Rashkovskyi, E Starykov, V. Shapynskyi.

The link between the new conditions of socialisation of a part of Soviet society and the dynamics of crime was highlighted in the scientific publications, whose authors sought to comprehend the causes and nature of crime in the Soviet State. Many criminological studies focused on crime (Kudrjavcev, 1968), concepts of an offence and crime. In addition, during the Soviet period, much was done to characterise the identity of the offender with a view to developing ways of controlling crime under criminal law (Kostenko, 1990).

With the break-up of the Soviet Union and the creation of independent States, new and much more critical works of both theoretical and practical importance for understanding the process of crime control were presented. These are works by Yu.M. Antonian, A.M. Bandurka and L.M. Davydenko, A.I. Dolhova, A.F. Zelinskyi, O.M. Lytvak, V.V. Lunieiev, V.M. Popovych. It should be noted that most of these studies were theoretical and philosophical and aimed at understanding the worldview of the criminal world and the circumstances that led citizens to commit crimes (Bachinin, 1999).

At the theoretical level, the scientific heritage of A.M. Lytvak is worth noting, because of solid results of careful analysis of the different vectors of influence of State power on the status and dynamics of crime. In his view, the State fulfils its historic role in the protection of law and order and the crime control by means of legislation, in particular criminal law, by punishing offenders and by means of specific criminological prevention. However, State authority and the laws it creates have a criminogenic impact on society. According to the researcher, the task of civil society is to control the criminogenic influence of the State to be within the law. State crime control should be a form of social control. Non-State social control is alternative. The harmonious relationship between them is a prerequisite for keeping crime at a relatively low level. The conclusion of A.M. Lytvak is quite balanced, because when State control dominates the country, there is a danger of so-called non-criminalised crime of the political elite. Such a statement was especially relevant for the Soviet period, when in essence the criminal actions of some members of the Soviet political elite, including repressive activities, were considered as "successes in the class struggle".

Some aspects of the crime control process were covered by scientists who studied the activities of law enforcement bodies, Soviet special services and their role in the development of mass repression (Nikolskij, 2001).

The spread of crime in the NPA period was studied by A. Myronenko and O. Benko, M. Grinberg, B. Lytvak, T. Pryvalova, who, using a number of modern methods of interdisciplinary research, showed the influence of the Soviet transformations on the formation of the legal awareness of the population and, accordingly, between criminal actions and individual aspects of the socialisation of the population. Moreover, researchers focused on the impact of drunkenness on the spread of criminal behaviour.

The works by M. Doroshko, M. Frolov and I. Nikolaiev reveal some aspects of the formation and functioning of the Communist nomenclature in the 1920s-1930s with the definition of some conditions of criminalisation of its representatives (Doroshko, 2004). The influence of the general situation in the totalitarian Soviet country on the formation of the personality of leaders and their legal awareness has been shown. In the post-war period this topic is presented in the studies by Ukrainian scientists P. Kyrydon, V. Ivanenko, V. Vasyliev and Russian researcher V. Mokhov. The latter concludes that the scheme of power in the USSR was based on the principles of matrix, which led to social stratification not only in the nomenclature, but also in the whole society, enabling to understand the specificity of sentencing for the party leadership, including in the case of committing various types of crimes by its members.

Some aspects of the crime control process are covered by scientists who studied the activities of law enforcement bodies, Soviet special services and their role in the development of mass repression. It shows the destructive influence of the orientation of law enforcement towards illegal methods of investigation, instead of operational and investigative work.

The regional aspect of crime control under criminal law is presented by the studies by V. Faitelberg-Blank and V. Shestachenko on the criminal world of Odessa in the early 1920s. The presentation of many little-known facts allows to get an idea about the specifics of the criminal world of the region and the features of law enforcement on its territory (Fajtelberg-Blank, 1999). O. Mikheieva analyses the status and dynamics of criminal crime in

the Donbas region during the 1920s (Mikheieva, 2003) underlining the features of the criminal offender and the analysis of criminal-legal combating of crime in the region. In addition, A.Mikheieva studies the structure of law enforcement bodies of the USSR during the NEP period with determination of its effectiveness.

Some aspects of the criminal environment in the former USSR were examined by scholars who studied criminal subculture and prison subculture. This topic was covered both in scientific and in publicist works. Part of materials for the study was provided by law enforcement officers who had experience in countering criminals, communicated with them in places of deprivation of liberty, knew the features of the formation of subculture even in individual places of deprivation of liberty.

Understanding the trends in the criminal subculture development enables to better reveal the motivations of its members, to identify their regional characteristics. Many people who have committed crimes have no connection to a criminal subculture. Therefore, the approach to crime as a feature of a special "sub-cultural community" does not fully reflect the realities of life (Dromin, 2006). However, the influence of this environment undoubtedly stimulates, and sometimes encourages, the individual to commit unlawful acts.

A significant part of experts in criminology considers the status of crime not only as quantitative, but also as a qualitative characteristic of it, determined by the level, structure, dynamics, coefficient, enabling a comprehensive analysis of crime over a certain period and in a certain territory (Sokolov, 1973). However, some scientists consider the status of crime solely as a quantitative indicator of the number of crimes with a determination of the number of perpetrators in a certain territory for a specified period (Karpec, 1976).

4. Conclusions

In general, the significant results of research conducted in Ukraine on the issue of combating crime form a solid basis for determining the strategy of a comprehensive study of crime control under criminal law in Ukraine. Their analysis allows concluding that the strategy of the study of crime control under criminal law in Ukraine is the integration of historical experience with modern innovative approaches to the improvement of crime control under criminal law as a necessary condition for increasing its effectiveness.

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СТАН НАУКОВОГО РОЗРОБЛЕННЯ ПРОБЛЕМИ КРИМІНАЛЬНО-ПРАВОВОГО КОНТРОЛЮ ЗА ЗЛОЧИННІСТЮ В УКРАЇНІ У 1922–1960 РР.

Анотація. ***Мета.*** Метою статті є дослідження стану наукового розроблення проблеми кримінально-правового контролю за злочинністю в Україні у 1922–1960 рр. ***Результати.*** Наголошено, що дослідження в кримінології присвячені переважно кількісним та якісним показникам стану злочинності. Останні визначаються рівнем, структурою, динамікою, коефіцієнтом, що забезпечують можливість здійснення комплексного аналізу злочинності за певний період часу і на певній території. Водночас частина вчених під станом злочинності розуміють виключно кількісний показник числа злочинів із визначенням кількості осіб, що їх вчинили, на певній території за окреслений період часу. Деякі аспекти існування злочинного середовища на теренах колишнього СРСР розглядалися у дослідженнях науковців, які вивчали кримінальну субкультуру та субкультуру в'язниць. Ця тематика висвітлювалася як у наукових, так і в публіцистичних творах. Частина матеріалів для аналізу була представлена працівниками правоохоронних органів, які мали досвід протидії злочинцям, спілкувалися з ними у місцях позбавлення волі, знали особливості формування субкультури навіть окремих місць позбавлення волі. Усвідомлення напрямів розвитку злочинної субкультури дозволяє поглибити розуміння мотивації вчинків її представників із визначенням їх регіональних особливостей. Багато людей, що вчинили злочини, не пов'язані із кримінальною субкультурою. Тому підхід до злочинності як властивості особливої «субкультурної спільноти» не відображає повністю життєві реалії. З'ясовано, що значна частина представників кримінології розглядає стан злочинності не тільки як кількісну, але й як якісну її характеристику, що визначається рівнем, структурою, динамікою, коефіцієнтом, які забезпечують можливість здійснення комплексного аналізу злочинності за певний період часу і на певній території. Водночас частина вчених під станом злочинності розуміють виключно кількісний вираз числа злочинів із визначенням кількості осіб, що їх вчинили, на певній території за окреслений період часу. ***Висновки.*** Зроблено висновок, що стратегічним напрямком дослідження кримінально-правового контролю за злочинністю в Україні є інтеграція історичного досвіду із сучасними інноваційними підходами до удосконалення кримінально-правового контролю за злочинністю як однієї з необхідних умов підвищення його ефективності.

Ключові слова: методи, формування, правосвідомість, населення, злочинні дії, соціалізація.

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FULFILMENT OF VICTIM'S RIGHT TO COMPENSATION FOR DAMAGES IN CRIMINAL PROCEEDINGS

Abstract. ***Purpose.*** The purpose of the article is to outline, relying on the analysis of the legislation of Ukraine, scientific approaches and international experience, problematic aspects of the regulatory framework for forms and procedure of compensation for damage in criminal proceedings, to identify problematic issues arising during their enforcement and to make scientifically justified proposals aimed at improving the mechanism for enjoying the victim's rights to indemnity (compensation) for damage in criminal proceedings. ***Results.*** The article considers a number of topical issues related to the legal regulatory framework and order of compensation for damage caused to the victim as a result of a criminal offence, subject to both criminal procedure law, and individual legal provisions of civil law. In particular, the state of art in scientific development of this issue and reserves for further research of the topic has been evaluated; the modern regulatory model of compensation for damage in criminal proceedings is analysed and specific problem issues, arising in the law enforcement, are described; the existing legislative initiatives to improve the mechanisms for ensuring the right to compensation are examined. It is underlined that the Ukrainian legislator has a rather important and difficult task to implement an effective and efficient procedure for compensation for damage caused to the victim as a result of a criminal offence from the State budget of Ukraine. ***Conclusions.*** It is concluded that the settlement of problematic issues of indemnity (compensation) for damage to a victim in criminal proceedings from the State Budget of Ukraine requires further scientific research and urgent legislative reinforcement. In this regard, it is promising for the legislator to consider proposals developed in modern doctrine that meet the needs of practice. Therefore, the establishment of a special State Fund, identification of the sources of its formation, allocation of a separate department, responsible for the making public policy on indemnity (compensation) for damage caused by a criminal offence from the State, should be of paramount importance for Ukraine within the framework of the European integration processes.

Key words: victim, compensation for damage, State budget, criminal procedure, criminal offence.

1. Introduction.

Article 3 of the Constitution of Ukraine establishes that the individual, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. The main duty of the State is to affirm and ensure human rights and freedoms. The implementation of these and other constitutional provisions in criminal proceedings is connected not only with the need to improve the activities of investigative bodies, the Prosecutor's office, the court and the bar, but also with the consistent implementation of the procedural rights of the parties to the proceedings, including victims of criminal offences. If, despite all the measures taken by the State, a criminal offence has been committed, the victim should be afforded due process and guarantees. By these constitutional provisions, the State assumed the obligation to restore the rights of victims violated by a criminal offence, including by compensation for damage caused to them (Constitution of Ukraine, 1996; Draft Law of Ukraine on Compensation to Victims of Violent Criminal Offenses, 2020).

Thus, one of the tasks of criminal proceedings is to protect individuals, society and the State from criminal offences and to protect the rights, freedoms and legitimate interests of participants in criminal proceedings. The concept of compensation in criminal proceedings is essential for a fair trial and the protection of violated rights.

Indeed, the review of the legislation in force and the investigative and judicial practice aimed at ensuring the victim's right to success-

ful compensation for damage caused by a criminal offence enables to argue that compensation mechanisms are not always effective. In view of the above, it is urgent to develop and implement more effective mechanisms aimed at enjoying the victim's right to indemnity (compensation) for damage in criminal proceedings.

Theoretical and legal issues of compensation for damage caused by a criminal offence have been doctrinally considered in the writings by domestic scientists, such as: Yu.P. Alenin, M.I. Hoshovskyi, S.V. Davydenko, V.V. Kryvobok, O.V. Krykunov, O.P. Kuchynska, O.I. Nazaruk. V.T. Nor, T.I. Prysiazhniuk, V.M. Savitskyi, I.I. Tataryn, L.D. Udalova, and others.

However, the issue of indemnity (compensation) to the victim remains controversial and requires scientific research, organisational support and legislative regulatory mechanism.

The purpose of the article is to outline, relying on the analysis of the legislation of Ukraine, scientific approaches and international experience, problematic aspects of the regulatory framework for forms and procedure of indemnity for damage in criminal proceedings, to identify problematic issues arising during their enforcement and to make scientifically justified proposals aimed at improving the mechanism for enjoying the victim's rights to indemnity (compensation) for damage in criminal proceedings.

2. Main forms of indemnity (compensation) for damage to the victim in criminal proceedings

The reform of the law enforcement system in Ukraine and the constant improvement of criminal procedure law show that the victim's right to compensation for damage caused by a criminal offence remains one of the most important problems. Furthermore, Article 56 of the Criminal Procedure Code (hereinafter referred to as the CPC) establishes the right of the victim to compensation for damage caused by a criminal offence. A State governed by the rule of law implies the affirmation of democratic human and civil rights and freedoms and the mechanisms to guarantee them. The objectives of criminal proceedings are related to the expansion and proper exercise of the procedural rights of victims of criminal offences, in particular with regard to the right to compensation for damage caused by a criminal offence (Hroshevyi, Tatsii, Tumaniants, 2013; Honcharenko, 2013). Accordingly, current legislation provides for the forms and procedures for compensation for damages in criminal proceedings.

The analysis of article 127 of the CPC of Ukraine provides grounds for highlighting three forms of indemnity (compensation) for harm to the victim in criminal proceedings.

For example, article 127, part 1, of the CPC provides for a voluntary form of compensation for damage, i.e., it establishes that a suspect, accused person or any other natural or legal person, with his or her consent, has the right at any stage of the criminal proceedings to make reparation to the victim, territorial community, the State as a result of a criminal offence. Part 2 of this provision establishes the form of coercion, which provides that damage caused by a criminal offence or other socially dangerous act may be recovered by a court decision on the basis of the outcome of a civil action in criminal proceedings. Article 128 of the CPC contains certain requirements for such an action. For example, its form and content shall meet the requirements of civil proceedings. With regard to the third form, compensation for damage caused by a criminal offence is paid from the State budget of Ukraine, according to Article 127, part 3, of the CPC of Ukraine (Sytenka, Makarchuk, 2020).

In addition to the above-mentioned forms of compensation for damage in criminal proceedings, some scholars have singled out criminal procedural restitution. For example, M.I. Tlepova notes that criminal procedural restitution should be understood as a way to restore the property of the victim by returning to him or her things or other material objects, directly removed from his or her lawful possession as a result of committing a criminal offence against him or her (Tlepova, 2016).

The Civil Code of Ukraine (hereinafter referred to as the Civil Code) also provides for that damage caused to the person shall be compensated from the State budget of Ukraine in the cases and in the manner prescribed by law (Art. 1177, Part 2, of the Civil Code). Accordingly, property or moral damage to a person as a result of the criminal offence is a ground for not only criminal but also civil liability.

Therefore, the determination of the essence and content of the structure "enjoying the victim's right to indemnity (compensation) for damage in criminal proceedings" requires consideration of one of its forms of realisation, noted above, namely compensation for damage, caused by the criminal offence, from the State budget of Ukraine in the cases and in the manner prescribed by law.

Bearing in mind that the State has assumed the obligation to guarantee human rights and freedoms, it is understood that the State shall remedy the effects of a criminal offence by providing compensation in cases where the law enforcement bodies have failed in their functions.

In addition, article 127, part 3, of the CPC of Ukraine provides for that the victim of a crim-

inal offence shall be compensated from the State budget of Ukraine in the cases and in the manner prescribed by law, which is also due to the alignment of national legislation with international legal standards. In particular, on April 8, 2005, Ukraine signed the European Convention "On Compensation to Victims of Violent Crimes" of 24 November 1983 (hereinafter - the Convention), in which Article 2 specifies that if compensation for damage caused by an intentional violent crime cannot be provided from any other sources, the State shall be responsible for this (European Convention on Compensation for Victims of Violent Crimes, 1983). At the same time, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985 states that victims of crime have the right to prompt compensation for damage caused in accordance with national legislation (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985; Azarov, Pysmennyi, Khablo, 2014).

3. Promising trends in the legal regulatory mechanism for indemnity (compensation) for damage to the victim in criminal proceedings

The Verkhovna Rada of Ukraine has developed several draft laws aimed at improving the mechanism of compensation for damage, in particular: "On compensation to citizens for material damage caused by crimes" as of September 11, 2001, "On compensation from the State for material damage to individuals affected by crime" as of October 27, 2010, "On compensation to victims of violent criminal offences" as of July 16, 2020 (Azarov, Pysmennyi, Khablo, 2014), "On Amendments to the Code of Ukraine on Administrative Offenses and Criminal Procedure Code of Ukraine on assuring the mechanism of compensation to victims of violent criminal offenses" as of July 16, 2020 (Draft Law of Ukraine On Amendments to Code of Ukraine on Administrative Offenses and Criminal Procedure Code of Ukraine on Assuring the Mechanism of Compensation to Victims of Violent Criminal Offenses, 2020), On amendments to the Budget Code of Ukraine concerning the mechanism of financial provision for compensation to victims of violent criminal offenses" as of July 16, 2020 (Draft Law of Ukraine On Amendments to Code of Ukraine on Administrative Offenses and Criminal Procedure Code of Ukraine on Assuring the Mechanism of Compensation to Victims of Violent Criminal Offenses, 2020). However, today this issue remains open, and the absence of a special law in force leads to non-compliance with the provisions of article 127, part 3, of the Criminal Code of Ukraine and article 1177, part 2, of the Civil Code of Ukraine, as a result of which the courts render decisions rejecting claims for compensation from the State of Ukraine for damage caused by a criminal offence (Draft Law of Ukraine On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Procedure Code of Ukraine on Ensuring the Mechanism of Compensation to Victims of Violent Criminal Offenses, 2020).

Thus, the way to enjoy the right to compensation for damage caused by a criminal offence is to bring a civil action in criminal proceedings or to bring an action in a manner prescribed by civil proceedings.

Our study requires to decide on the conceptual apparatus, because the clarification of its content will allow to express own perspective on the essence of the subject matter of the study.

For example, the term "compensation" means a form of liability, giving someone something else as a recompense for the lost, spent, destroyed, etc. In the theory of criminal procedure, it is considered appropriate (regarding moral damage) to use the term "compensation for damage" (from Latin *compnesatio* – "compensation"), because it is difficult to imagine indemnity for suffering, while compensation for the latter is quite possible. With this in mind, Chapter 9 of the CPC of Ukraine is called "Indemnity (compensation) for damage in criminal proceedings, a civil action, payment of remuneration to the accuser", while article 1177 of the Civil Code "Indemnity (compensation) for damage to a natural person who suffered from a criminal offence" (Khablo, Koniushenko, Tsurikova, 2019).

When considering the problem of compensation for damage from the State, it should also be determined what kind of damage is subject to compensation, since article 127 of the CPC and article 1177 of the Civil Code does not specify this.

Etymologically, the word "damage" means loss, harm resulting from the commission of any unlawful acts caused by a criminal offence.

Damage is a combination of adverse personal non-pecuniary, as well as property consequences arising in the event of violation of the subjective rights of a natural or legal person. It is a condition or ground for the obligation to make indemnity. The category of "damage" is closely related to civil liability issues. The civil liability grounds, along with the unlawfulness of the conduct (act or omission), a causal link between the unlawful conduct and the damage caused by the guilty person who caused damage, necessarily distinguish the presence of property and/or moral damage.

In the theory of criminal procedure, the concepts of "damage" and "loss" are distinguished. Damage is any impairment of the good pro-

tected by law, so it is grouped into property and non-pecuniary (intangible), while loss is a monetary estimate of damage, calculated if compensation in kind is impossible (Khablo, Koniushenko, Tsurikova, 2019).

For example, article 55 of the CPC of Ukraine provides for that the victim in criminal proceedings may be a natural person who has suffered moral, physical or property damage caused by a criminal offence, a legal person who has suffered property damage caused by a criminal offence, as well as an administrator for the issue of bonds who, under the provisions of the Law of Ukraine "On Capital Markets and Organised Commodity Markets" acts for the benefit of bondholders who have suffered property damage caused by a criminal offence. The article specifies three types of indemnifiable (compensable) damage during criminal proceedings: moral, physical and property. However, it is significant that the victim who is a natural person can be compensated for moral, physical and property damage, while the victim who is a legal entity and the administrator for the issue of bonds shall be compensated only for property damage caused by the criminal offence (Hroshevyi, Tatsii, Tumaniants, 2013; Honcharenko, 2012).

At the same time, physical damage is defined as a set of changes that have objectively occurred in the human condition as a result of a criminal offence. The components of physical damage include bodily injury, impairment of health, physical suffering, and therefore cannot be effectively compensated. The costs of physical recovery are calculated in monetary terms and relate to property damage. They estimate the cost of restoring the health of the victim and, in the event of his or her death, of burying and paying for the maintenance of material well-being and raising disabled family members of the victim and his or her underaged children; costs expended by the health institution on inpatient treatment of the victim of crime (Azarov, Pysmennyi, Khablo, 2014).

Therefore, to be recognised as a victim a natural person should have suffered any of the three specified types of damage, although a criminal offence usually causes several types of damage.

The legislation in force defines all the non-pecuniary consequences with the term "moral damage". The content of this concept is revealed in Resolution 4 of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases of Compensation for Moral (Non-pecuniary) Damage" of March 31, 1995, in which it is determined that moral damage is non-material loss due to moral or physical suffering or other negative phenomena caused to a natural or legal person by unlawful acts or omissions of other persons. Accordingly, moral damage may consist in the humiliation of honour, dignity, prestige or business reputation, moral distress in connection with damage to health, violation of property rights (including intellectual), rights granted to consumers, other civil rights, illegal stay under investigation and trial, violation of normal life ties due to the impossibility of prolonging active public life, violation of relations with surrounding people, at the occurrence of other negative consequences (Resolution of the Plenum of the Supreme Court of Ukraine On Judicial Practice in Cases of Compensation for Moral (Non-pecuniary) Damage, 1995).

Non-pecuniary damage caused to a legal person should be understood as non-pecuniary loss, infringement on the brand name, trademark, production mark, disclosure of trade secret, as well as the commission of actions aimed at diminishing or undermining the credibility of its activities (Resolution 4 of the Plenum of the Supreme Court of Ukraine On Amendments to the Resolution of the Plenum of the Supreme Court of Ukraine of March 31, 1995 "On judicial practice in cases of compensation for moral (non-pecuniary) damage", 2001).

Moreover, in the course of the study of the topic, the issue arose as to whether the State should also assume the obligation to compensate for moral damage caused by a criminal offence. Provision of article 4 of the Convention stipulates that "compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance" (European Convention on Compensation for Victims of Violent Crimes, 1983).

In this regard, Yu.I. Azarov and D.P. Pysmennyi argue that the civil legislation in fact formulate the legal basis for the right of the victim to compensation for damage from the State, it is a question of compensation for property damage (Civil Code, art. 1177) or damage caused by injury, other harm to health or death (Civil Code, art. 1207). According to the authors, the State should only compensate for property damage, which includes costs spent on restoring the health of the victim and, in the event of his or her death, on funeral, maintenance payments for disabled family members of the victim and his or her underaged children (Azarov, Pysmennyi, Khablo, 2014).

However, the very fact of committing a criminal assault on the property of the victim may entail moral damage. In addition, civil law literature has repeatedly given examples that any property has a certain value for its owner,

sometimes a very high non-pecuniary value, and therefore the very loss of such property by theft, fraud, etc. cannot but cause him or her mental suffering. The fact that the identity of the perpetrator has not been established can also aggravate the mental suffering, which reduces the likelihood of the return to the owner of his or her belongings and property. And since the State is accountable to the individual for its activities, affirming and ensuring human rights and freedoms, its duty should be to compensate for moral harm in this particular delict (Onyshchenko, 2017).

Property damage is property and/or monetary loss caused to a legal or natural person.

Losses are wastage suffered by a person as a result of a criminal offence in connection with the destruction or damage of things, as well as expenses that the person has made or should make to recover his or her violated right; income that a person could realistically obtain under normal circumstances if his or her right had not been violated.

The concept of property damage caused by a criminal offence to the victim covers direct damage to the person in his or her property and money; not the proceeds of a criminal offence; assessed expenses for the rehabilitation of the victim's health and, in the event of his or her death, for funeral and maintenance of material well-being and for the upbringing of disabled family members of the victim and his or her underaged children; costs spent by the health institution on inpatient treatment of the victim of crime (Khablo, Koniushenko, Tsurikova, 2019).

4. Specificities of indemnity (compensation) for damage to the victim in criminal proceedings in civil and criminal legislation

As noted above, article 55, part 1, of the CPC of Ukraine provides for that a legal entity and an administrator for the issue of bonds, who, under the provisions of the Law of Ukraine "On Capital Markets and Organised Commodity Markets", acts in the interests of bondholders, may also be the victim. Accordingly, the criminal offence may cause direct damage in terms of property and money to the victim, who is a legal person and the administrator for the issue of bonds.

Article 1177 of the Civil Code provides for indemnity (compensation) for damage to a natural person who has suffered a criminal offence. According to part 1 of this article, as a general rule, damage caused to a natural person by a criminal offence shall be compensated as prescribed by law. Furthermore, Article 1177, part 2, of the Civil Code contains a rule, which similar to part 2 of Article 127 of the CPC of Ukraine, determines that the damage caused to the victim as a result of a criminal offence shall be compensated from the State Budget of Ukraine in the cases and in the manner prescribed by law (Civil Code of Ukraine, 2003).

We advocate M.P. Tkach's perspective that the provisions of the articles of the Civil Code, which determine the grounds for compensation for damage caused by a criminal offence, have blanket dispositions and provide for that the conditions and procedures for compensation by the State are determined by a special law, which does not currently exist. The trend of law application to refuse to satisfy such claims, due to the absence of special law and real mechanisms of compensation for damage, these provisions have no practical implementation (Onyshchenko, 2017).

The focus should also be on the issue of determining the amount of property damage that should be compensated. For example, according to statistics, the amount of damage caused by a criminal offence, which remains unrecovered, is considerable. The problem is that the State assumed an obligation to indemnify, but could not actually do so. In our view, in order to give effect to the victim's right to indemnity, the provisions of the Convention, under which compensation may be reduced or refused on account of the applicant's financial situation (art. 7), on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury (art. 8, part 1), on account of the victim's or the applicant's involvement in organised crime or his or her membership of an organisation which engages in crimes of violence (art. 8, para. 2); if an award or a full award would be contrary to a sense of justice or to public policy (art. 8, para. 3). In addition, article 5 of the Convention specifies that, the compensation scheme may, if necessary, set for an upper limit above which and a minimum threshold below which such compensation shall not be granted (European Convention on Compensation for Victims of Violent Crimes, 1983; Azarov, Pysmennyi, Khablo, 2014).

The conditions and grounds for indemnity (compensation) for damage caused to the victim from the State should include: the entry into the Unified Register of Pre-trial Investigations of information on the criminal offence committed; the presence of the victim (a person's application declaring that a criminal offence has been committed against him or her or declaring that he or she has been prosecuted as a victim, provided that there is no decision denying him or her recognition as a victim); determination of the amount of damage caused by a criminal offence.

According to the study by V. V. Vasyliev, if the law modifies, limits or extends the range

of conditions necessary to compensate for the damage caused, then these are special conditions of compensation, based on the rules on general delict. Such special conditions are: damage (property, physical, moral, suffered by a natural person, members of his or her family or his or her close relatives); damage as a consequence of a criminal offence; non-identified perpetrator of a criminal offence (it is obvious that this condition includes the declaration of the perpetrator of a criminal offence as wanted, etc.); the perpetrator of a criminal offence must be insolvent (Civil Code, arts. 1177, 1207) (Vasyliev, 2016).

During the investigation of criminal offences, there may be cases which preclude full compensation for damage caused by a criminal offence to the victim. For example, declaring the perpetrator of a criminal offence wanted or terminating the pre-trial investigation on the basis of an amnesty, etc. In such a case, the latter two conditions should be replaced by one, more universal, providing for any cases that preclude compensation for damage caused by a valid offender and where the State has an obligation to compensate for damage (property, moral) caused by a criminal offence (Vasyliev, 2016).

Currently, it is topical whether compensation for damage caused to Ukrainian citizens in the area of the Joint Forces Operation (hereinafter referred to as the JFO). Hundreds of thousands of people in the east of Ukraine since 2014 have experienced terrible moral, physical suffering, lost their loved ones and left homeless, lost their property there. There is an urgent need for the State to protect their constitutional rights and to establish an effective mechanism for recompense (Stiebieliev, 2016).

However, the absence of a unified legal approach to this important issue makes impossible the right of Ukrainian citizens to compensation for the damage caused to them in the area of the JFO. In this case, some lawyers argue that damages for destroyed real estate should be based on Article 19 of the Law of Ukraine "On Combating Terrorism", which specifies that compensation for damage caused to citizens by a terrorist act, is carried out from the State Budget, as prescribed by law, and with subsequent recovery of the amount of this compensation from persons who have caused damage in the manner established by law, the other - on the basis of Article 1177 of the Civil Code as damage to a natural person injured by a criminal offence.

In sporadic cases, the plaintiff's action on compensation for damage was initially refused by the court of first instance, while the Court of Appeal issued a new decision on compensation from the State budget of Ukraine to the plaintiff for the damage caused by the terrorist act, for the damaged apartment in the amount of UAH 363,789.40. The Court of Appeal based this decision on the provisions of Article 19 of the Law of Ukraine "On Fight against Terrorism" (Stiebieliev, 2016).

Definitely, the fact that the property of Ukrainian citizens has been destroyed or damaged in the area of the JFO is the case when the State assumes the obligation to compensate the victim of a criminal offence. Therefore, in our view, the process of compensation for damage caused to Ukrainian citizens in the area of the JFO should not take place within the framework of criminal proceedings, but in accordance with Article 19 of the Law of Ukraine "On Fight against Terrorism".

Therefore, article 1177, part 2, of the Civil Code and article 127, part 3, of the Criminal Code of Ukraine stipulate that the law must establish cases in which the State assumes the obligation to compensate damage to the victim of a criminal offence.

In the context of the study, the focus should also be on the certainty of terms during which the victim is entitled to reparation from the State. For example, article 6 of the Convention states that the compensation scheme may specify a period within which any application for compensation must be made (European Convention on Compensation for Victims of Violent Crimes, 1983). The need for time limits arises because, in order to make compensation from the State such as not to identify the perpetrator of a criminal offence, the pre-trial investigation bodies must have a certain time, after which it can be said that the person in fact could not be identified. It is therefore reasonable to stipulate that the right to compensation of the victim arises six months after the damage was caused by the criminal offence, provided that during this period the perpetrators of the criminal offence, or their location could not be identified.

Moreover, the result of the victim's right to compensation for damage from the State and its amount must be determined by a court, taking into account the specific circumstances of the case (nature and extent of the damage suffered by the citizen, his or her financial situation and the composition of the family), etc.

The promulgation of the above provisions requires addressing the issue of sources of funding. In this case, international experience should be studied and applied. The procedure for compensation to victims in criminal proceedings from the State is provided in many countries of the world, including the United States, Germany, the United Kingdom, France, Poland, Austria, the Netherlands, the Czech Republic, Belgium, Spain, etc.

In the United Kingdom, for example, a British Parliament commission, which conducted a comparative study of the issue, considered that a system of compensations for damages to the victims of crime from the State is the best, as it defines a wide range of offences, victims thereof receive monetary compensation and substantial cash payments are established (Smirnov, 2007).

Persons who have suffered damage as a result of one or more serious crimes and have the right to compensation from the State; the damage caused by the crimes that led to the arrest of the suspect shall be compensated; compensation shall be paid to the victim in cases where any damage has been caused.

In addition, the United Kingdom has the Criminal Injuries Compensation Authority. It administers a special fund set up to compensate victims of crimes for even minor damage not covered by approved general rates.

In Germany, compensations from the State are provided for victims of deliberate violence, including acts of sexual violence. The existence of physical or mental harm as a result of an assault is a prerequisite for obtaining compensation (Karpenko, 2018).

Payments are made regardless of the victim's application to the law enforcement agency and regardless of the conclusion of the pre-trial investigation, because the very fact of commencement of proceedings suffices. Several levels of consequences have been defined according to the degree of injury suffered from violent criminal offences. Compensation for moral damage to a victim of a violent criminal offence is possible in Germany only by court order. In addition, the victim does not indicate its amount in the application. The court determines this. As a rule, such amounts are not significant (Draft Law of Ukraine on Compensation to Victims of Violent Criminal Offenses, 2020). The right to compensation from the State exists as an integral part of the social right to compensation, independent of any claim by the victim for compensation from the offender.

The Ukrainian legislator has a rather important and difficult task to implement an effective and efficient procedure for compensation for damage caused to the victim as a result of a criminal offence from the State budget of Ukraine.

5. Conclusions

The settlement of problematic issues of indemnity (compensation) for damage to a victim in criminal proceedings from the State Budget of Ukraine requires further scientific research and urgent legislative reinforcement. In this regard, it is promising for the legislator to consider proposals developed in modern doctrine that meet the needs of practice. Therefore, the establishment of a special State Fund, identification of the sources of its formation, allocation of a separate department, responsible for the making public policy on indemnity (compensation) for damage caused by a criminal offence from the State, should be of paramount importance for Ukraine within the framework of the European integration processes.

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РЕАЛІЗАЦІЯ ПРАВА ПОТЕРПІЛОГО НА ВІДШКОДУВАННЯ (КОМПЕНСАЦІЮ) ШКОДИ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

Анотація. ***Мета.*** Мета статті полягає в тому, щоб на основі аналізу законодавства України, наукових підходів та міжнародного досвіду окреслити проблемні аспекти нормативного регулювання форм та порядку відшкодування шкоди у кримінальному провадженні, виявити проблемні питання, які виникають під час їх правозастосування, та запропонувати науково обґрунтовані пропозиції, спрямовані на удосконалення механізму реалізації прав потерпілого на відшкодування (компенсацію) шкоди у кримінальному провадженні. ***Результати.*** Розглянуто низку актуальних питань, що стосуються правового регулювання та регламенту відшкодування шкоди, завданої потерпілому

внаслідок кримінального правопорушення, яка одночасно перебуває у як площині кримінального процесуального законодавства, так й окремих правових норм цивільного закону. Зокрема, оцінено сучасний стан наукової розробки цього питання та резерви для подальшого дослідження проблематики; проаналізовано сучасну нормативну модель відшкодування шкоди у кримінальному провадженні та охарактеризовано окремі проблемні питання, що виникають у правозастосуванні; досліджено існуючі сьогодні законодавчі ініціативи щодо покращення механізмів забезпечення права на відшкодування шкоди. Наголошено, що перед українським законодавцем стоїть доволі важливе та складне завдання щодо запровадження ефективної та дієвої процедури відшкодування шкоди, завданої потерпілому внаслідок кримінального правопорушення за рахунок Державного бюджету України. ***Висновки.*** Зроблено висновок, що урегулювання проблемних питань відшкодування (компенсації) шкоди потерпілому у кримінальному провадженні за рахунок Державного бюджету України потребує подальшого як наукового дослідження, так і нагального законодавчого закріплення. У зв'язку із цим перспективним є врахування законодавцем пропозицій, які напрацьовані в сучасній доктрині з урахуванням потреб практики. Тому першочергове значення для України в межах євроінтеграційних процесів має стати створення спеціального Державного Фонду, визначення джерел його формування, виділення окремого відомства, відповідального за реалізацію державної політики у сфері відшкодування (компенсації) шкоди, завданої кримінальним правопорушенням за рахунок держави.

Ключові слова: потерпілий, відшкодування шкоди, державний бюджет, кримінальний процес, кримінальне правопорушення.

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INVESTIGATIVE EXPERIMENT DURING INVESTIGATION OF CRIMINAL OFFENSES COMMITTED BY UNDERAGE PERSONS

Abstract. ***Purpose.*** The purpose of the article is to highlight the features of conducting an investigative experiment involving underage persons in criminal proceedings for criminal offences and to form appropriate scientific provisions and practical recommendations. ***Results.*** It is underlined that an investigative experiment involving underage persons, as special participants in criminal proceedings, requires considering their procedural status, age, mental development, psychological state, and, accordingly, the application of specially designed organisational measures and tactics that meet the requirements of admissibility and are based on psychology. It should be considered that the organisational and tactical actions at all phases of the investigative experiment will depend on whether an investigative (search) action will be carried out in the form of on-site evidence verification or the actual investigative experiment as a system of experiments, examinations. In preparation for the investigative experiment, considerable attention is paid to the study of the personality of an underage person. The fullest possible information about a child is important for establishing rapport and choosing the right tactics for dealing with an underage person. According to empirical data, in the course of an investigative experiment in the investigation of criminal offences committed by underage persons, they most frequently examine: the possibility of the existence of certain events in the past, processes, phenomena; possibility for the participant of the investigative experiment to perceive a certain event, phenomenon, process, object; possibility of carrying out determined actions in certain conditions; establishment of certain circumstances of the event of criminal offence. ***Conclusions.*** In order to improve the effectiveness of the investigative experiment involving underage persons in the investigation of criminal offences, a number of recommendations are proposed: the investigation experiment should take place on the site, under conditions and environment in which a criminal offence or the most similar event has occurred; the location of the investigative experiment should be checked beforehand in order to ensure the safety of participants in criminal proceedings, to create an environment as close as possible to the one in which the event occurred; the same or as close as possible to the objects, means and instruments used to commit the criminal offence or their mock-ups should be built up; a thorough and repeated reproduction of experimental actions, detailed verification of evidence with reference to the environment; provision of psychological comfort conditions for the juvenile involved in the conduct of this investigative (search) action.

Key words: investigative experiment, criminal proceeding, criminal offense, inquiry officer, tactical technique, rapport.

1. Introduction

Among the investigative (search) actions during the investigation of criminal offences, in particular, criminal offences committed by underage persons, the investigative experiment is important.

According to the Prosecutor General's Office, 100,707 criminal offences were recorded in 2021, 51.954 persons were notified of the suspicion and 49.751 criminal proceedings were sent to court. Of these, 916 criminal proceedings with an indictment were related to criminal offences committed by underage persons or with their participation (Official site of the Prosecutor General's Office of Ukraine, 2021). The number of criminal offences committed is alarming. In addition, only in respect of less than half of the reported criminal offences, the indictment files are sent to the court. Statistical indicators on the involvement of juveniles in criminal offences are threatening, which requires an effective response: detection of facts

of illegal activities, investigation of criminal manifestations and implementation of comprehensive preventive activities. The achievement of the objectives of criminal proceedings is facilitated by the effective conduct of investigative (search) actions.

An investigative experiment involving underage persons, as special participants in criminal proceedings, requires considering their procedural status, age, mental development, psychological state, and, accordingly, the application of specially designed organisational measures and tactics that meet the requirements of admissibility and are based on psychology.

The problems of an investigative experiment involving underage persons in criminal proceedings were revealed in the scientific works by V.A. Konovalova, L.D. Udalova, Yu.M. Chornous, and V.Yu. Shepitka. However, an investigative experiment involving underage persons during the investigation of criminal offences has some specificities related to legal regulatory mechanism, organisational actions, tactics, and psychological characteristics. These important issues should be addressed in the article.

According to article 3, para. 12, of the CPC of Ukraine, an underage person is a minor and also a child aged between fourteen and eighteen (Criminal Procedure Code of Ukraine, 2012). An underage person is a special participant in criminal proceedings.

Article 240 of the CPC regulates the conduct of an investigative experiment. In particular, article 240, para. 1, of the CPC provides for that in order to check and clarify importance for establishing circumstances of criminal offence, the investigator or public prosecutor may conduct an investigative experiment by reconstructing behaviour, situation, circumstances of a certain event, and conducting required experiments or tests. The specificities of an investigative experiment involving underage persons derive from the content of article 227 of the CPC and concern the participation of a legal representative, a teacher, a psychologist, or a doctor in investigative (search) actions involving a minor or an underage person. Separately, the specific features of investigative (search) actions involving underage persons are regulated only with respect to interrogation (art. 226, CPC).

In addition, an investigative experiment in the system of investigative (search) actions is of importance in criminal proceedings, because it allows effectively verifying both the testimony and actions of the actors involved in its commission. However, the potential of the relevant investigative (search) action is insufficiently realised, and only 26.1% of the 230 files of criminal proceedings relating to criminal offences committed by underage persons have been examined using an investigative experiment. This circumstance also influenced the choice of the topic of the scientific article in order to provide both theoretical knowledge and practical recommendations.

The purpose of the article is to highlight the features of conducting an investigative experiment involving underage persons in criminal proceedings for criminal offences and to form appropriate scientific provisions and practical recommendations.

2. General principles of the investigative experiment's organisation and conduct

An investigative experiment in scientific and educational-methodical literature is considered as a method of cognition; an investigative (search) action; a tactic; a stage of the methodology of expert research.

An investigative (search) action, such as an investigative experiment with underage persons in the investigation of criminal offences, is carried out according to the stages as follows: preparatory, working, final.

During preparation for an investigative experiment involving an underage person, it is important to draw up a plan for the conduct of an investigative (search) action. It can be both oral and written. Written one is advisable in complex investigative situations where several underage persons are involved, or participants in the investigative (search) action have a negative attitude to law enforcement officers, or several circumstances in criminal proceedings should be checked simultaneously through complex experimental actions, etc.

In any case, the plan of the investigative experiment should cover: the purpose and objectives of the investigative (search) action; the place and time of its conduct; a certain number of participants; the technical means used. At the stage of preparation, it is necessary to study legal regulations guiding practical activities, materials of criminal proceedings, educational and methodical sources. The option is also developed if the investigative situation is unpredictable requiring a response to ensure the rule of law, the rights and freedoms of citizens (for example, an attempt to escape by the suspect, aggressive behaviour of participants, destruction of physical evidence on the scene).

Before planning an investigative experiment involving an underage person, it is mandatory to conduct an interrogation on the circumstances of criminal proceedings, which is planned to be checked. Other investigative (search) actions may be carried out (examination, simultaneous interrogation of two or more persons already interrogated, search, forensic examination) in

order to more fully outline the subject matter of the future investigative experiment.

The inquiry officer personally, as well as other participants involved, in particular, a specialist, should be familiarised beforehand with the place of the future conduct of the investigative experiment. The purpose of this measure is to: a) visually familiarise oneself with the place where the investigative (search) action to be carried out; and to ascertain whether the information obtained during the interrogation corresponds to the objective situation; to decide on the need for reconstruction to bring the real situation closer to the situation that occurred during the criminal process; b) to clarify, if necessary, from the person, whose testimony will be checked as to the inconsistency of the situation at the scene with his or her testimony; c) to plan measures that should ensure the best option of investigative (search) action: to exclude the possibility of the suspect's escape; to prevent access to the place of investigation (search) of actions of (Piaskovskyi, Chornous, Ishchenko, 2015).

At the stage of preparation, the range of participants in the conduct of investigative (search) action should be determined. First, it is an underage person, whose testimony and actions will be checked. It is necessary to examine his or her personality with a view to implementing tactics of rapport. Moreover, as Yu.M. Chornous argues that the establishment of rapport is a separate task that occurs during the investigation (search), other procedural actions, and is achieved using a system of tactics (tactical combinations) of psychological impact. A prerequisite for the establishment of rapport is a comprehensive study of the personality involved in such action, including psychological study, as well as an analysis of the situation prevailing in criminal proceedings (Chornous, 2020).

The study of the personality of a juvenile offender is a mandatory task of the inquiry officer during criminal proceedings. Thus, the inquiry officer shall precisely establish the age of the minor (date, month, year of birth), the state of health and the general development of the underage person. In case of mental retardation, psychological or psychiatric problems, it should also be established whether the underage person could have been fully aware of the significance of his or her actions and to what extent he or she was able to control them; an exhaustive description of the underage person shall be provided. However, in order to have the fullest possible understanding of the identity of the juvenile offender and to ascertain the causes and conditions that led to the commission of the criminal offence, such information is insufficient. Data should be obtained on the child's family relations, activities and hobbies, attitudes towards education or work, domestic behaviour, past offences and other data that are positive or negative for the juvenile. Such data is important for establishing rapport, choosing the right tactics for dealing with underage persons during any procedural measures, investigative (search) actions, including investigative experiment.

According to article 227 of the CPC, mandatory participants in an investigative experiment involving a underage person are a legal representative, a teacher or psychologist, and a medical practitioner, if necessary.

In addition, law enforcement officers, namely an operative officer, a juvenile prevention inspector, a criminalist inspector of the National Police of Ukraine, may be involved in the investigative experiment. In order to apply expertise in complex cases, the assistance of experts may be needed, in particular, the Expert Service of the MIA of Ukraine. In order to protect the rights and freedoms of underage persons, a defence counsel and a legal representative of the individual are involved. For tactical reasons, the suspect, victim, witness, defence counsel or representative (CPC, art. 240, paras. 2, 3) may also be involved in this investigative (search) action. In such circumstances, consideration should be given to the general rule that the participation of the suspect, the victim and the witness in the investigation experiment is necessary when: without them, it is impossible to conduct investigate activities, in particular whether the person has professional or other skills; without them, it is impossible to reproduce the environment and conditions necessary for the conduct of experiments; they are involved in the investigative experiment for tactical reasons (Kotiuk, 2013, pp. 130–135).

According to article 223, para. 5, of the CPC of Ukraine, the mandatory participants in the investigative experiment are attesting witnesses. Their number depends on the type, purpose and objectives of the experiment. Considering the specifics of the investigative (search) action (verification may take place outside the locality, require considerable time; verification of the testimony of several people), the investigator must take measures in advance for their selection and involvement. Attesting witnesses should not be persons with mental or physical defects (poor eyesight, hearing) (Piaskovskyi, Chornous, Ishchenko, 2015).

If an investigation experiment is conducted on multiple episodes of the same type or if the testimony of several suspects is verified during the investigation of a single criminal offence,

new persons acting as attesting witnesses should be involved for each experiment.

In some cases, a cynologist with a search dog should be involved in the investigation experiment; technicians should be involved to perform certain physical work (for example, digging, restoring part of the structure). Technical means can also be used for these and other tasks. For example, these are the means of fixation, technical-forensic means, means for reproduction of the situation and events of the crime. Care should also be taken to transport the juvenile suspect, other participants in the investigative (search) action to the place of the investigative experiment, especially if it is a public place, street, park, territory outside the locality, etc.

The investigative experiment provides an opportunity to verify the factual data obtained from the interrogation of victims, suspects, witnesses, presentation for identification, examination of the scene of the incident and other investigative (search) actions. The investigator receives new data confirming or refuting previously obtained information.

V.O. Konovalova argues that the necessity of the investigative experiment in a particular case should be convinced beforehand. To do this, one should analyse the possibility of: verifying the version; attracting certain persons to the experiment; reproducing the atmosphere necessary for the experiment; the admissibility of the experiment in terms of procedural and moral requirements (Konovalova, 1976, pp. 10–16).

3. Organisational and tactical features in the investigation of criminal offences committed by underage persons

It should be considered that the organisational and tactical actions at all phases of the investigative experiment will depend on whether an investigative (search) action will be carried out in the form of on-site evidence verification or the actual investigative experiment as a system of experiments, examinations.

After all, the more measures to reproduce, model and reconstruct the situation of a criminal offence, the more efforts the investigator should make, the greater the opportunities for the use of special knowledge should be used.

According to P. P. Ishchenko, the help of specialists is required in the following cases: when choosing the best type of experiment to perform a specific task; when planning the experiment in accordance with the optimal tactics of its conduct and using scientific-technical means and methods; when selecting objects, items to be used in the experiment; creation of special conditions for the experiment; reproduction of the situation and circumstances of the event for conducting experiments; the conduct of experimental actions proper in order to ensure their technical and methodical correctness; the fixation of the conduct and the results of the experiment with the help of photography and video recording; correct record of the conduct and results of the experiment in the investigation protocol; evaluation of the results of the experiment (Ishchenko, 1990).

Experimental actions carried out as part of the investigation experiment are grouped into: 1) actions related to reproduction of actions; 2) actions consisting in reconstruction of the situation and circumstances of a crime (Husachenko, 2015, pp. 36-37).

The first group of experimental actions include actions taken to: a) establish the possibility of perceiving any phenomenon, fact, checking the available data and assumptions about the possibility of hearing or observing a phenomenon human being, item in certain conditions; b) establish the ability to perform certain actions in a time-bound setting (evidence of professional or criminal skills, experience); c) establish the possibility and time of overcoming certain distances with or without vehicles (car, bicycle, motorcycle, motor boat).

The experimental actions of the second group, related to reconstruction, include actions taken to: a) clarify the mechanism of the event in general and in detail; b) confirm (refute) the possibility of the existence of a certain phenomenon; c) establish the mechanism for making traces.

The role of a specialist during experimental actions, providing consultations to the inquiry officer on their necessity or, conversely, expediency, is important. For example, if in the process of reproduction it is necessary to carry out experimental actions to establish the possibility of perceiving any fact (to see something, to hear the voice, the sound of a shot), the specialist can focus the investigator's attention on the need to conduct an experiment in conditions as close as possible to those in which the event being investigated took place (at the same time of day, with the appropriate state of the road surface) (Husachenko, 2015, p. 38).

The inquiry officer may involve one or more specialists from one or different fields of knowledge in the investigative experiment.

The specialist helps the investigator at all stages of the investigation experiment, namely: a) to determine the main aspects and identify health hazards during its conduct; b) to reproduce the situation and conditions of conducting experiments, which should correspond as much as possible to this event; c) to make a plan, organise experiments and control them; d) to select analogues or assist in making models

and moulages, tools and items used in the crime; e) to evaluate the results obtained (Kovalenko, 2007).

The assistance of a specialist in an investigation experiment involving underage persons contributes to the effectiveness of this investigative (search) action and, according to data from the criminal proceedings studied, such assistance was used in 90% of cases. According to empirical materials, a specialist in the investigation experiment was involved for the purpose of: video recording of the investigative (search) action; reproduction, reconstruction of the crime scene and its individual elements; determining the procedure for conducting individual experiments and tests; advising the investigator on the preparation, direct conduct and recording of the course and results of the investigative experiment, etc.

The working stage is the stage of direct investigation experiment, which can be called the key, because it is at this stage that the verification, clarification and final ascertainment of the circumstances of criminal misconduct takes place.

The investigative experiment consists of special experiments or tests to obtain new evidence and to verify existing evidence, as well as to verify the story about the possibility of facts, events or phenomena, carried out in the most approximate conditions (Chernetskyi, 2008, pp. 172–177).

The working stage of the investigative experiment begins with an explanation of the participants' rights and duties by the inquiry officer. Moreover, the inquiry officer shall explain to the participants the purpose and procedure of the experimental actions.

According to empirical data, in the course of an investigative experiment in the investigation of criminal offences committed by underage persons, they most frequently examine:

1) the possibility of the existence of certain events in the past, processes, phenomena;

2) the possibility for the participant of the investigative experiment to perceive a certain event, phenomenon, process, object;

3) the possibility of carrying out determined actions in certain conditions, including verification of personal skills;

4) establishment of certain circumstances of the event of criminal offence.

The study of theoretical (Kovbasa, 2011) and practical sources showed that in criminal proceedings for criminal offences committed by underage persons, the key objectives were:

- to verify and clarify factual data obtained from the results of individual investigative (search) actions;
- to obtain new evidence;
- to identify and resolve contradictions in the testimony of suspects, accused persons, witnesses and victims;
- to identify the causes and conditions that have contributed to or prevented the commission of a criminal offence, etc.;
- to identify the causes and conditions that have contributed to or prevented the commission of a criminal offence, etc.

A form of the investigative experiment is verification of testimony at the scene. It involves the use of a specific method of obtaining information to identify and clarify data not available to other procedural forms of evidence. This method consists in comparing the evidence of a specific criminal offence related to a particular place with the factual situation at that place shown to the inquiry officer by the person who testified. This method is a variation of the method of comparison, and the latter is the basis for verification investigative (search) actions. The comparison process involves three interrelated elements - narration, demonstration and review. The person whose testimony is verified recounts the events that have occurred at a particular place and the circumstances that are closely related to them. In order to clarify matters, the inquiry officer may ask questions and, with his permission, other participants in the investigative (search) action may do so. The story of the person at the crime scene is accompanied by a demonstration of individual actions not of interest to investigation, as well as individual objects, landmarks belonging to the general complex of this environment (Nehrebetskyi, 2016, pp. 177–181).

4. Conclusions

In order to increase the effectiveness of the investigative experiment involving underage persons during the investigation of criminal offences, we consider it appropriate to propose that inquiry officers and other persons involved in the conduct of the investigation (search) action the following:

- the investigation experiment should take place on the site, under conditions and environment in which a criminal offence or the most similar event has occurred;
- the location of the investigative experiment should be examined beforehand, both to ensure the safety of participants in criminal proceedings and to create an environment as close as possible to that in which the criminal offence occurred;
- the same or as close as possible to the objects used, means and instruments used to commit the criminal offence should be built up, provided that the means and instruments for committing the criminal offence are dangerous – their mock-ups should be used;

- thorough and repeated reproduction of experimental actions, detailed verification of the evidence in the context of the investigation experiment;

– provision of psychologically comfortable conditions for underage persons involved in this investigative (search) action (by explaining the procedure for conducting an investigative experiment, taking into account the emotions and psychological state of underage persons, etc.), that is providing various forms of assistance to a child in conflict with the law.

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ПРОВЕДЕННЯ СЛІДЧОГО ЕКСПЕРИМЕНТУ ПІД ЧАС РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРОСТУПКІВ, ВЧИНЕНИХ НЕПОВНОЛІТНІМИ

Анотація. ***Мета.*** Мета статті – висвітлити особливості проведення слідчого експерименту за участю неповнолітніх у кримінальних провадженнях щодо кримінальних проступків і сформувати відповідні наукові положення та практичні рекомендації. ***Результати.*** Наголошено, що проведення слідчого експерименту із неповнолітніми, як особливими учасниками кримінального провадження, потребує врахування їхнього процесуального статусу, віку, розумового розвитку, психологічного стану, і відповідно – застосування спеціально розроблених організаційних заходів і так-

тичних прийомів, які відповідають вимогам допустимості і ґрунтуються на даних науки психології. Необхідно враховувати, що організаційні й тактичні заходи на всіх етапах слідчого експерименту будуть залежати від того, у формі перевірки показань на місці чи власне слідчого експерименту як системи експериментальних, дослідницьких дій буде проведена дана слідча (розшукова) дія. Під час підготовки до слідчого експерименту значна увага приділяється вивченню особи неповнолітнього. Встановлення максимально повної інформації про дитину є важливим для встановлення психологічного контакту, обрання вірної тактики поводження із неповнолітнім. Як засвідчили емпіричні дані, під час проведення слідчого експерименту у процесі розслідування кримінальних проступків, вчинених неповнолітніми, найчастіше перевіряють: можливість існування в минулому окремих подій, процесів, явищ; можливість сприйняття учасником слідчого експерименту певної події, явища, процесу, об'єкта; можливість реалізації визначених дій у певних умовах; встановлення окремих обставин події кримінального проступку. ***Висновки.*** З метою підвищення ефективності проведення слідчого експерименту із неповнолітніми під час розслідування кримінальних проступків запропоновано ряд рекомендацій: проведення слідчого експерименту повинно відбуватися на місці, в умовах та обстановці, де відбулася подія кримінального проступку або максимально до них подібних; варто попередньо ознайомитися із місцем проведення слідчого експерименту, з метою забезпечення безпеки учасників кримінального провадження, створення обстановки, максимально наближеної до тієї, за якої відбулася подія; слід прилаштувати максимально наближені до використовуваних предмети обстановки, засоби і знаряддя вчинення кримінального проступку або їх макети; ретельне і кількаразове відтворення експериментальних дій, детальна перевірка показань із прив'язкою до обстановки; забезпечення психологічно комфортних умов для неповнолітнього, який бере участь у проведенні даної слідчої (розшукової) дії.

Ключові слова: слідчий експеримент, кримінальне провадження, кримінальний проступок, дізнавач, тактичний прийом, психологічний контакт.

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THE CONCEPT OF NOTIFICATION OF SUSPICION IN CRIMINAL PROCEDURE LAW OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to elucidate the specificities of the concept of the notification of suspicion in the criminal procedure law of Ukraine. ***Results.*** The article establishes that some issues of legal application of the concept of notifying a person of suspicion of committing criminal offenses have been considered at the level of the dissertation researches, in monographs, textbooks, manuals, educational and methodical publications, a number of scientific articles and other publications, however, these works do not cover the full complex of issues of proper implementation of the notification of suspicion to the person in the context of modern legal realities and peculiarities of law enforcement. The legal nature of the notification of suspicion to the person is extremely difficult, since, in the doctrine of criminal procedure, it is a comprehensive phenomenon. During the study of the content of the concept "notification of suspicion of committing a criminal offense" as the relevant procedural act, the theoretical comprehensive definition of the term of the notification of suspicion was formulated. It is proved that the legal nature of notifying a person of suspicion should be considered in a broad sense as a procedural concept; in a narrow sense, as a procedural action; in a material sense, as a procedural document made in accordance with the requirements of the CPC of Ukraine; and in a procedural sense, as the set of procedural actions aimed at: a) notifying a person who, in the conviction of the investigator and/or prosecutor, is likely to have committed a criminal offense, of suspicion in a written form of; b) serving a written notification of suspicion and explaining the suspect's rights; c) changing the notification of suspicion in cases envisaged by article 279 of the CPC of Ukraine. ***Conclusions.*** Ukraine is currently undergoing a period of comprehensive reform of criminal and criminal procedure legislation in view of its compliance with European and international standards. The logical result of State activities on this path is to strengthen the priority of the provisions of international legal acts ratified by Ukraine over the provisions of national criminal procedure legislation. This requires a thorough study of the provisions (standards) of international legal acts in the field of ensuring the rights and freedoms of a person during criminal prosecution against him or her, including in the process of involving such person in the criminal proceeding as a suspect.

Key words: suspect, notification of suspicion, concept, criminal procedure, criminal proceedings, pre-trial investigation.

1. Introduction

Since Ukraine gained independence, the criminal procedure legislation of the country has undergone a lot of changes and additions. One of the novelties is that the lawmaker has completely refused the concept of indictment in pre-trial investigation, replacing it with the mechanism of “notification of suspicion”. Accordingly, the possibility of the appearance of the accused at the pre-trial investigation is ruled out, the suspect becomes the accused after serving him or her a copy of the indictment at the conclusion of the pre-trial investigation.

The introduction of the concept of notification of suspicion to the criminal procedure legislation of Ukraine should be recognised as a significant guarantee of fulfilment of the tasks of criminal proceedings established by article 2 of the CPC of Ukraine. The analysis of the main terms contained in article 3 of the CPC of Ukraine reveals that the notification of suspicion is important, because it is from that moment that the criminal prosecution commences. In addition, the best way to implement principles of criminal proceedings, such as a presumption of innocence and proof of guilt (art. 17 of the CPC of Ukraine), the right to defence (art. 20 of the CPC of Ukraine), competition of parties and their freedom to submit their evidence to the court and to convincingly

prove this evidence before the court (art. 22 of the CPC of Ukraine), reasonable time (art. 28 of the CPC of Ukraine), etc. (Criminal Procedure Code of Ukraine: Law, 2012).

2. The significance of the act of the notification of suspicion in criminal procedure law of Ukraine

According to Yu. P Alenin and I. V. Hloviuk, the act of notifying a person of suspicion is important, because it serves as a means of ensuring inevitable liability of persons who have committed criminal offenses, furthermore, reasonable suspicion allows the court to appoint such persons a fair punishment in accordance with the nature and gravity of the criminal offense (Alenin, Hloviuk, 2014, p. 161).

However, the scheme, introduced in the CPC of Ukraine, when the person becomes the accused only after the investigation is completed and the indictment becomes the first act of its prosecution, may be vulnerable in view of the provisions of the International Covenant on Civil and Political Rights, which declares in part 2 of article 9 that: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him" (International Covenant on Civil Rights, 1966).

The European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) also provides: “Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him (part 2 of art. 5) [4].

In view of the above problem of legal definition and the fact that in accordance with the current legislation, the concept of "suspect" does not cover the status of a person against whom criminal proceedings are carried out, but he has not yet been detained and a preventive measure has not been applied to him or her, scientific works propose to introduce in legislative circulation, instead of the concept of "suspect", a new term "person under investigation " (Tertyshnyk, 2014, pp. 88–89). In our opinion, this proposal deserves attention. At present, lawyers and scientists give many comments on acquiring the status of the suspect in scientific works, but none of them is reflected in legislative acts.

It should be noted that the Criminal Code of Ukraine in force establishes the suspect as a specific participant in criminal proceedings, against whom criminal prosecution is conducted in the pre-trial investigation. Unfortunately, the legislative novelties did not promote effective protection of the rights and freedoms of the person suspected of committing a criminal offense, while causing many difficulties in law enforcement practice.

On this point, the legal experts rightly stress that the CPC of Ukraine in force contains a number of defects, the clear evidence of which is the practice of its enforcement. In particular, the term "notification of suspicion" may affect a certain stage of the pre-trial investigation, from which the prosecution of the person commences. It can be understood as a combination of criminal procedural actions and decisions taken at this stage (Faraon, 2013, p. 184).

Scientific research of any theoretical concept is based on its semantics. Therefore, before considering the essence of the concept of a notification of suspicion in criminal proceedings, we believe it appropriate to consider components of its definition such as "suspicion" and " notification".

According to the *Great explanatory dictionary of modern Ukrainian language* by V. Busel, the general meaning of the term "suspicion" is that suspicion is an opinion about someone's involvement in something negative; doubts about someone's decency, honesty, loyalty, etc. To suspect means to allow someone to be involved in something negative; to doubt honesty, decency, loyalty, etc. (Busel, 2009, p. 960).

Some scientists consider the definition “suspicion” (in case of criminal proceedings) as a reasonable assumption, the opinion of the investigator and/or prosecutor. In particular, L. Frank believed that suspicion was the opinion of the investigator about the relationship, interconnection and correspondence between the well-known circumstances of the case and the relevant person, which is based on reliable facts, research and scientific provisions and conclusions, as well as on unverified data, which detect this person in the investigation of the crime, with some or other degree of reliability (Frank, 1963).

Nowadays, the CPC of Ukraine does not provide a definition that would interpret the term “suspicion”, but instead proposes to interpret it with the term “suspect”.

The legal approach to the formulation of the term "suspect" does not reveal its true nature. First, because suspicion is interpreted through coercion, while it does not give rise to it, but vice versa, it entails the application to the person of coercive measures. Second, the detention of suspects and the application of a preventive measure to him or her does not eliminate situations when the person is actually under suspicion of law enforcement bodies.

Yu. Lysiuk identified suspicion as a precondition for a person to gain a procedural status of suspect in the event of a combination of the primary known circumstances of the case with the appropriate person on the basis of authenticity and probability (Lysiuk, 2014, p. 59).

According to O. Masliuk, suspicion is a reasonable assumption (based on the assessment of evidence available at a certain time) by the investigator, prosecutor about involvement of the person in criminal offense, which is procedurally formalised in the notification of suspicion and shall be checked for simplification or confirmation (Masliuk, 2017, p. 33).

We believe that such definitions of the term "suspicion" do not fully reflect all its aspects and essence.

Another component of the concept under study is the definition of "notification", which means (Busel, 2009, pp. 997–998): 1) the act of announcement, statement, report on something; 2) tell, communicate something; 3) what is communicated to someone, written or oral information; 4) the data, information, provided, transmitted to someone; 5) a small public speech, a small report on a topic; 6) a document in which something is reported, is conveyed (Krymchuk, 2020, p. 49).

For example, O. Tatarov argues that the notification of suspicion is one of the key acts at the stage of pre-trial investigation and the process of proving in criminal proceedings is carried out precisely to prove or refute the person's criminal offense and ensure his prosecution, which commences exactly when the person is notified of suspicion of committing a criminal offense (para. 14, part 1, art. 3 of the CPC) (Tatarov, 2012, p. 142).

Therefore, it should be noted that in semantics conveys the term "notification of suspicion" as follows:

1) the act of informing the person about his or her involvement in the criminal offense;

2) the document in which the person reports that he or she is suspected of committing a criminal offense.

On the other hand, the notification of suspicion can be considered as a criminal procedural guarantee of rights of the suspect, i.e. the aggregate of legal provisions established by law, which ensure fulfilment of tasks of criminal proceedings and enable the parties to the criminal procedure to perform duties and enjoy rights.

3. Regulatory and legal framework for the notification of suspicion in criminal procedure law of Ukraine

The systematic analysis of the CPC of Ukraine concerning the legal regulatory framework for the notification of suspicion shows the contradiction of the legislative provisions that determine the essence of the notification of suspicion. In our opinion, the first reason for this is that the legislator has not given the official definition of the term "notification of suspicion". Chapter 22 of the CPC of Ukraine, which directly regulates this institution, does not explain it. Only article 277 of the CPC of Ukraine specifies the contents of the written notification of suspicion; article 276 of the CPC of Ukraine establishes a comprehensive list of cases of mandatory notification of suspicion and the procedure for such notification, and articles 278, 279, 481 of the CPC of Ukraine establish procedural aspects of the notification of suspicion to the person.

It should be underlined that article 110 of the CPC of Ukraine, providing the types of procedural decisions in criminal proceedings, does not point to the notification of suspicion as a procedural decision of the investigator or prosecutor, but provides for that procedural decisions are all decisions of the bodies of the pre-trial investigation, prosecutor, investigator judge, court. The decision of the investigator, prosecutor is made in the form of a resolution. However, part 1 of article 111 of the CPC of Ukraine defines the notification in criminal proceedings as a procedural action by which the investigator, prosecutor, investigating judge or court informs a certain participant of criminal proceedings about the date, time and place of the relevant procedural action or about a procedural decision or a procedural action taken (Andrieiev, Blazhivskyi, Hoshovskyi, 2012).

With this regard, most scientists argue that although the term itself refers to the term "written notification of suspicion" and contains the word "notification", but the formulation of this term does not meet the requirements of article 110 of the CPC of Ukraine, and to a greater extent corresponds to features of a procedural decision. Therefore, when defining a notification of suspicion as a procedural document, it is noted that this procedural decision, made by the party of the prosecution and executed in the form of a notification corresponding to the form of the resolution, in cases provided for in part 1 of article 276 of the CPC of Ukraine (Faraon, 2016, p. 26).

Comparing part 5 of article 110 of the CPC of Ukraine, which defines the constituent parts of the resolution of the investigator, prosecutor, and article 277 of the CPC of Ukraine, which regulates the contents of the written notification of suspicion, we can conclude that the formal content of the notification of suspicion does not fully correspond to the constituent parts of resolution. Given this, we believe that according to the provisions of the CPC of Ukraine, the notification of suspicion cannot be equated with the procedural decision.

The legal nature of the notification of suspicion in criminal proceedings is extremely complex, as a result of which the doctrine of criminal proceedings deals with the above concept in many aspects.

N. R. Kostiv considers the notification of suspicion to be an independent criminal procedural concept, but gives a somewhat different definition of it. In particular, according to her belief, the notification of suspicion is an independent concept of criminal procedure law, the provisions of which determine the grounds and procedure for the notification of suspicion to a person (cases when the notification of suspicion is necessarily made; the contents of the notification of suspicion and the procedure for serving it; the procedure for changing the notification of suspicion; peculiarities of the notification of suspicion of certain categories of persons, etc.) (Kostiv, 2012, p. 127).

According to Yu. Alenin and I. Hloviuk, the notification of suspicion as a procedural document is a procedural decision – a legal act of the beginning and at the same time personification of criminal prosecution, because in connection with the notification of suspicion a party to criminal proceeding such as a suspect appears, and since the moment of the notification of suspicion of committing a criminal offense the prosecution of the person commences (para. 14, part 1, art. 3, CPC of Ukraine) (Alenin, Hloviuk, 2014). I. Ivasiuk proposes his definition of the notification of suspicion. He argues that this is a criminal procedural decision of the investigator, prosecutor, which is taken in a mandatory manner in case of detention of a person on suspicion of criminal offense in a written form and causes acquiring by the person, on whom it is adopted, a procedural status of the suspect (Ivasiuk, 2013, p. 77).

M. Huzela and A. Paliukh propose similar definition. In their opinion, the notification of suspicion to the person is a concept of criminal procedure law, which consists in procedural actions by a competent State body or official (the prosecutor or the investigator by his approval), implemented in the relevant law-enforcement act, this causes the person to be brought to criminal liability and to obtain the procedural status (of the suspect) by this person, as well as creates conditions for further progress of criminal proceedings and fulfilment of tasks of criminal proceedings (Huzela, Paliukh, 2017, p. 253). But this understanding of the notification of suspicion does not seem to be to the point and causes the following remarks. First, it is wrong to argue that the concept of law is to take procedural action, since in the theory of the State and law it is generally known that it is a system of related legal provisions regulating uniform social relations. Second, despite the fact that para. 14 of part 1 of article 3 of the CPC of Ukraine provides that criminal prosecution is the stage of criminal proceedings, which commences at the moment of the notification of suspicion, we believe that it is inappropriate to indicate that the latter causes the person to be brought to criminal liability. This is explained by the fact that the suspicion is only the primary assumption of the investigator, prosecutor of committing a criminal offense by the person (Krymchuk, 2018).

A detailed analysis of the provisions of the criminal procedure legislation of Ukraine in force and available scientific perspectives provides an opportunity to formulate original perspective on the definition of the term being investigated.

In our opinion, the notification of suspicion should be considered: first, in broad and narrow senses; second, in material and procedural aspects. We are convinced that such interconnected and complementary interpretation covers all its properties and more fully reflects its legal nature and essence.

In *the broad sense, the notification of suspicion* is the concept of criminal procedure law, which includes relatively independent legal provisions regulating legal relations, that arise between the participants in criminal proceedings in connection with the notification of suspicion, its change and consists in the procedural actions by the prosecutor, investigator upon approval with the prosecutor, implemented in the relevant law-enforcement act, in the presence thereof the person acquires the procedural status of the suspect, as well as conditions for further progress of criminal proceedings and fulfilment of tasks of criminal proceedings are created.

In a narrow sense, the notification of suspicion is a procedural action, involving the assumption by an authorised official (the prosecutor or investigator upon approval of the prosecutor), on the basis of available evidence in a criminal proceeding against committing the criminal offense by the person, which is made in written form, as prescribed by criminal procedure law, and served to the person with the observance of the specified procedure and determines his or her obtaining the procedural status of the suspect.

In the material aspect, the notification of suspicion is a procedural document, made by an authorised person in accordance with the requirements of the CPC of Ukraine, which should contain: contents of suspicion; legal classification of a criminal offense, in which the person is suspected (with the indication of the article (part of the article) of the Law of Ukraine on criminal liability; a brief description of the circumstances of a criminal offense; a list of the suspect's rights.

In *the procedural aspect, the notification of suspicion* is the set of procedural actions

aimed at: a) notifying a person who, in the conviction of the investigator and/or prosecutor, is likely to have committed a criminal offense, of suspicion in a written form; b) serving a written notification of suspicion and explaining the suspect's rights; c) changing the notification of suspicion in cases envisaged by article 279 of the CPC of Ukraine.

It should be noted that Ukraine is currently undergoing a period of comprehensive reform of criminal and criminal procedure legislation in view of its compliance with European and international standards. The logical result of State activities on this path is to strengthen the priority of the provisions of international legal acts ratified by Ukraine over the provisions of national criminal procedure legislation. This requires a thorough study of the provisions (standards) of international legal acts in the field of ensuring the rights and freedoms of a person during criminal prosecution against him or her, including in the process of involving such person in the criminal proceeding as a suspect.

According to M. Huzela, the CPC of Ukraine in force provides for that the suspect is a single actor of criminal proceedings against whom criminal prosecution is ongoing in the pre-trial investigation stage. That is why the subject matter of a thorough scientific analysis is the problem of ensuring rights of suspects in the context of the standards set out in the provisions of international legal acts ratified by Ukraine (Huzela, 2016, p. 190).

4. Conclusions

Therefore, during the study of the content of the concept "notification of suspicion of committing a criminal offense" as the relevant procedural act, the following theoretical definition of the term “notification of suspicion” should be formulated and legislated in part 1 of article 3 of the CPC of Ukraine by supplementing new paragraph 13-1 to be read as follows: "*The notification of suspicion is a procedural action, involving the assumption by the prosecutor or investigator or inquiry officer upon approval of the prosecutor, on the basis of available evidence in a criminal proceeding against committing the criminal offense by the person, which is made in a written form and served to the person with the observance of the specified procedure and determines his or her obtaining the procedural status of the suspect".*

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ІНСТИТУТ ПОВІДОМЛЕННЯ ПРО ПІДОЗРУ У КРИМІНАЛЬНОМУ ПРОЦЕСУАЛЬНОМУ ПРАВІ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є з'ясування особливостей інституту повідомлення про підозру у кримінальному процесуальному праві України. ***Результати.*** У статті встановлено, що окремі проблеми правозастосування інституту повідомлення особі про підозру у вчиненні кримінальних правопорушень розглядалися на рівні дисертаційних досліджень, у монографіях, підручниках, посібниках, навчально-методичних виданнях, низці наукових статей та інших публікаціях, однак зазначені праці не охоплюють повного комплексу питань належного здійснення повідомлення особі про підозру в контексті сучасних правових реалій та особливостей правозастосування. Позаяк правова природа повідомлення особі про підозру надзвичайно складна, оскільки в доктрині кримінального процесу воно є багатоаспектним явищем. Під час дослідження змісту поняття «повідомлення про підозру в учиненні кримінального правопорушення» у значенні відповідного процесуального актаяк сформульовано власне теоретичне комплексне визначення терміна повідомлення про підозру. Доведено, що правову природу повідомлення особі про підозру варто розглядати у широкому розумінні як процесуальний інститут, вузькому – процесуальну дію, матеріальному – як процесуальний документ, складений у відповідності до вимог КПК України, й процесуальному – як сукупність процесуальних дій, спрямованих на: а) пред'явлення особі, яка, на переконання дізнавача, слідчого та/або прокурора, ймовірно вчинила кримінальне правопорушення, письмового повідомлення про підозру; б) вручення письмового повідомлення про підозру та роз'яснення підозрюваному його прав; в) зміну повідомлення про підозру у випадках, передбачених ст. 279 КПК України. ***Висновки.*** Україна сьогодні переживає період комплексного реформування кримінального та кримінального процесуального законодавства з огляду на його відповідність європейським та міжнародним стандартам. Логічним результатом діяльності нашої держави на цьому шляху є закріплення пріоритету положень міжнародно-правових актів, ратифікованих Україною, над нормами національного кримінального процесуального законодавства. Цим обумовлюється необхідність ретельного вивчення норм (стандартів) міжнародно-правових актів у галузі забезпечення прав

і свобод особи під час здійснення щодо неї кримінального переслідування, в тому числі у процесі залучення такої особи в кримінальний процес як підозрюваного.

Ключові слова: підозрюваний, повідомлення про підозру, інститут, кримінальний процес, кримінальне провадження, досудове розслідування.

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