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# CIVIL LIABILITY FOR DAMAGE CAUSED BY ARTIFICIAL INTELLIGENCE: THE MODERN EUROPEAN APPROACH

**Abstract.** The ***purpose of the article*** is to outline the main theoretical concepts and current legislative initiatives concerning tort liability for damage caused by artificial intelligence (AI) in the European Union.

***Research methods.*** The methodology of this article relies on such research methods as analysis and synthesis, as well as comparative method.

***Results.*** Artificial intelligence poses a challenge to existing tort law, as it can cause damage acting independently and, at the same time, it is not regarded as a legal entity like natural and legal persons. In theory, tort liability for AI-related damage may be viewed as vicarious liability, strict liability, or fault-based liability. There is also a theoretical possibility of granting legal personality to autonomous AI systems, thus making it possible to hold them directly liable for the damage they cause. However, this approach does not have much support at the moment, even though it cannot be ruled out in the future. Considering the legislative initiatives of the European Parliament, the most probable approach to civil liability for AI-related damage in the EU will be based on the assessment of risk posed by different AI systems and will include strict liability of the operators of high-risk AI systems as well as fault-based liability of the operators of other AI systems which are not classified as high-risk.

***Conclusions.*** At the theoretical level, it is possible to approach the issue of civil liability for AI-related damage using the concepts of vicarious liability, strict liability, including product liability as well as fault-based liability. At the practical level, it is most likely that the European approach to developing legislation on civil liability for AI-related damage will be based on the assessment of risk and therefore will include a combination of strict liability for damage caused by high-risk AI systems and fault-based liability for damage caused by other AI systems that are not regarded as high-risk. In the near future, the possibility of granting legal personality to autonomous AI systems with for making them liable for damage does not seem realistic, although it cannot be ruled out in the long run.

**Key words:** artificial intelligence, civil liability, damage, tort, electronic person, legal personality.

## 1. Introduction

Nowadays, artificial intelligence (further – AI) is becoming ever more pervasive in all fields of life. The development and application of AI technologies brings about a lot of opportunities and advantages for governments, businesses and individuals along with some challenges. As it is pointed out by the European Commission in its White Paper on Artificial Intelligence, AI will change our lives by improving healthcare (e. g., making diagnosis more precise, enabling better prevention of diseases), increasing the efficiency of farming, contributing to climate change mitigation and adaptation, improving the efficiency of production systems through predictive maintenance, increasing the security of Europeans, and in many other ways that we can only begin to imagine (European Commission, 2020). However, like many other new technologies AI presents a number of risks and challenges stemming from its autonomous, self-learning and unpredictable nature, such as the lack of algorithmic transparency, cyber security vulnerabilities, intellectual property issues, privacy and data protection issues, unfairness, bias and discrimination, lack of accountability for harm, etc. (Rodrigues, 2020).

From the legal perspective, one of the most significant challenges of AI is the potential for causing damage as well as ensuing civil liability for such

damage. The harmful effects of AI may vary from property damage and economic losses in case of AI-powered software providing incorrect financial advice to personal injury and immaterial harm in case of a self-driving vehicle running over a pedestrian. Whatever the nature of AI-related damage, it is essential to understand who will ultimately bear responsibility for it. The law of tort usually provides clear rules on who is liable for damage. However, in case of damage caused by AI systems, it is not always clear how to apply traditional rules of tort liability due to the complexity of such systems, their autonomy, self-learning ability as well as the number of individuals and companies participating in the development, manufacturing and operation of AI systems. In other words, the existing tort law is not always sufficiently clear and effective when it comes to the recovery of damages resulting from the use of AI. For this reason, in recent years there have been numerous efforts on the part of the European Commission and the Parliament to work out specific rules on the liability for damage caused by AI systems in order to supplement the existing civil liability legal regimes. The issue of civil liability for the damage resulting from the application of AI has also been addressed by legal scholars such as B. Schütte, L. Majewski, K. Havu, E. Karner, B. Koch, M. Geistfeld, P. Cerka, J. Grigiene, G. Sirbikyte, and others. Nonetheless, the issue does not appear to be settled for the time being and there is still a lot of room for research and debate. Considering what has already been discussed and published in various studies and proposals, it is important to provide a comprehensive analysis and overview of the relevant issues. Thus, the purpose of this study is to outline the main theoretical concepts and current legislative initiatives concerning tort liability for damage caused by AI in the European Union.

Research methodology relies on such research methods as analysis and synthesis, as well as comparative method. The method of analysis is used for exploring different theoretical concepts of tort liability with regards to AI-related damage. The method of analysis is used along with the method of synthesis, which is applied for building connections between the available concepts of tort liability and their possible future applications for the redress of damage caused by AI. The comparative method of research assists in identifying the advantages and shortcomings of different tort liability concepts as well as legislative initiatives.

**2. AI as a challenge for the existing tort law**

Regardless of whether it is continental or common law system, the general purpose of tort law comes down to a very simple idea: harm or damage inflicted on a person by another person has to be compensated. As long as this tortious relationship involves natural and legal persons, this principle works well enough. However, there comes a time when damage can be done by intelligent entities that are neither natural persons nor legal persons. Unlike natural and legal persons, AI systems are not regarded as legal entities (subjects of law) in spite of the fact that such autonomous systems are capable of learning, accumulating personal experience and making independent decisions, which is quite similar to what humans do. Therefore, the question arises how should the law deal with the damage caused by these human-like entities capable of acting independently?

In the absence of AI specific legislation covering among other things civil liability for damage caused by AI systems, there is no shortage of theoretical discussions of possible ways to tackle the problem of tort liability for damage caused by AI. Many legal scholars have already addressed this issue. Exploring the entire range of different views on this issue, it is possible to single out the most common approaches to this subject. Tort liability for damage caused by AI may be viewed as: vicarious liability, strict liability or fault-based liability.

**3. Vicarious liability and AI-related damage**

Vicarious liability usually applies to situations where employers are held liable for the torts of their employees, provided these torts took place in the course of their employment (Harpwood, 2000, p. 345). Other examples of vicarious liability include the liability of parents for the harmful acts of their children (Cerka et al., 2015, p. 385) or the liability of a principal for the conduct of an agent (auxiliary) acting under the direction and for the benefit of the principle (Abbot et al., 2019, p. 24).

Vicarious liability has a lot of variations and differences in many countries of continental and common law. Nonetheless, irrespective of national differences the main idea of vicarious liability consists in holding a person liable for the wrongful acts of another person, provided there is a special legal bond between them. The nature of this legal relationship between the person bearing vicarious liability and the person, who actually committed a tortious wrongdoing, has a number of special features. First of all, it is normally presumed that a person who actually caused the damage acted on behalf and for the benefit of a person who is held liable for the damage. In addition, it is also presumed that the tortfeasor acted under the direction or supervision of the person liable for the damage.

Since the concept of vicarious liability hinges on the possibility of holding a benefi-

ciary liable for the wrongdoings of his human helper (auxiliary), it is argued that the same concept can be extended to non-human helpers such as AI systems as well. As it is pointed out in the Report from the Expert Group on Liability and New Technologies, if harm is caused by autonomous technology used in a way functionally equivalent to the employment of human auxiliaries, the operator's liability for making use of the technology should correspond to the otherwise existing vicarious liability regime of a principal for such auxiliaries (Abbot et al., 2019, p. 45). Although this approach seems logical, it raises some further questions.

Even though the notion of vicarious liability implies no personal fault of the liable person the tortfeasor is expected to be at fault notwithstanding. In the case of vicarious liability for the damage caused by AI it means that an AI system has to be at fault. However, is it theoretically possible for an AI system to be at fault if it's not human and is not recognized as a legal entity? If the answer is no, then another question springs to mind – is it time to give AI systems some sort of legal personality?

**4. Strict liability and AI-related damage**

Another type of tort liability which is widely discussed with regards to AI is the so-called "strict liability". It is noteworthy that this type of liability does not require any fault on the part of a liable person. Instead, strict liability is based on risk, which is why it is often referred to as risk-based liability. The risk may stem from a certain object or activity associated with an increased level of danger (e. g., motor vehicles, wild animals, use of nuclear power, etc.). According to the Comparative Law Study on Civil Liability for Artificial Intelligence, the basis for a risk-based liability independent of fault is not misconduct on the part of some wrongdoer. Instead, it proceeds from the understanding that someone is permitted to use a (particularly) dangerous thing or pursue some risk-prone activity for her own purposes, which is why she should also bear the loss if such risk should materialize (Karner et al., 2021, p. 58).

It is clear that certain categories of AI systems pose a significant risk to human life, health and property. For instance, an autonomous vehicle can run over pedestrian, a self-learning medical software can suggest an incorrect diagnosis or medication, etc. For this reason, many scholars believe that AI systems can be regarded as a source of increased danger and therefore strict liability should apply to damage caused by AI (Cerka et al., 2015, p. 386). In this regard it is impossible to disagree with the Expert Group on Liability for New Technologies, arguing that the advantage of strict liability for the victim is obvious, as it exempts them from having to prove any wrongdoing within the defendant's sphere, let alone the causal link between such wrongdoing and the victim's loss, allowing the victim to focus instead only on whether the risk brought about by the technology materialised by causing them harm (Abbot et al., 2019, p. 26).

However, a number of other scholars express their doubts as to whether treating AI systems as a source of increased danger is fully justified. They argue that holding liable for damage caused using AI technologies under the rules of compensation for damage caused by a source of increased danger, albeit logical, has its drawbacks (Maydanyk et al., 2021, p. 156). According to M.M. Velykanova when it comes to compensation for damage caused by a source of increased danger, the infliction of such damage occurs in the case of using a particular vehicle, mechanism, equipment, which, although can get out of control, but not able to take autonomous decision. Instead, the feature of AI is its ability to make decisions independently. Consequently, the point is not in its uncontrollability, but also the unpredictability of its actions and causing harm. Accordingly, since such damage is unpredictable, its infliction is not covered by the concept of activities that pose an increased danger to others, in the sense of the Principles of European Tort Law (Velykanova, 2020, p. 195). Acknowledging the importance of this reasoning, it is also necessary to bear in mind that the distinction between uncontrollability and unpredictability is not always evident. Moreover, lack of control often leads to unpredictability. So, at any rate these categories are closely interrelated.

Strict liability for damage has many variations in different countries. However, there is a special form strict liability, provided for in the Product Liability Directive (Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products), which is common for all countries of the European Union (European Union, 1985). As a form of strict liability product liability is imposed on the producers of defective products. If a defective product causes any physical damage to consumers or their property, the injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage, but once this burden of proof is fulfilled, the manufacturer or producer has to provide compensation irrespectively of whether there is negligence or fault on their part (Benhamou, Ferland, 2020, p. 5).

At first sight, the application of product liability to the producers of AI systems may seem like a viable approach. However, it has its drawbacks

as well. In particular, some researchers point out the fact that AI may not be considered a "product", despite its broad definition in Product Liability Directive. According to Y. Benhamou and J. Ferland product liability generally only concerns tangible movables (such as hardware), not services; key modern technologies such as software and algorithms are most often considered services, not products (Benhamou, Ferland, 2020, p. 9).

Furthermore, P. Cerka, J. Grigiene, G. Sirbikyte make a good point, arguing that "in some cases it would be difficult to apply the product liability case, because AI is a self-learning system that learns from its experience and can take autonomous decisions. Thus, for the plaintiff it would be difficult to prove an AI product defect and especially that the defect existed when AI left its manufacturer's or developer's hands. It is hard to believe that it is possible to draw the line between damages resulting from the AI will, i.e. derived from self-decision, and damages resulting from product defect; unless we would equate the independent decision-making (which is a distinctive AI feature) with a defect" (Cerka et al., 2015, p. 386).

Nonetheless, despite its shortcomings the concept of product liability may serve its purpose in relation AI in certain circumstances. For example, it is quite possible to imagine a situation with a self-driving car bumping into a shop window due to a faulty sensor. In this case the damage occurred as a result of a physical defect in the tangible component of an AI system that can be regarded as a movable product.

**5. Fault-based liability and AI-related damage**

Apart from vicarious and strict liability with all their variations, fault-based liability should also be considered with regards to damage caused by AI. After all, fault-based liability is the sort of tort liability that is applied by default in all European jurisdictions, if there are no specific provisions providing for vicarious or strict liability for certain categories of torts. In other words, this type of tort liability is a sort of backup liability in the absence of alternatives (Karner et al., 2021, p. 38).

As it is rightly observed by E. Karner and B.A. Koch, due to the wide range of possible applications of AI, it is clear from the outset, though, that not all of them may be deemed sufficiently dangerous to qualify as an obvious candidate for risk-based liability (Karner et al., 2021, p. 59). This observation provides some food for thought as well as grounds for making a conclusion that strict liability may not always be appropriate with regards to damage caused by AI. In the event of damage caused by an AI system that is not regarded as high-risk it might make more sense to apply tort liability based on fault.

In practice, the majority of torts do require some proof of fault (Elliott, Quinn, 2009, p. 6). Fault-based tort liability is imposed in case of misconduct where there is a wrongful action (inaction) on the part of the tortfeasor. The wrongfulness of misconduct results from the breach of a duty of care (negligence). A duty of care is a legal obligation that requires adherence to a standard of reasonable care while performing any acts that could foreseeably harm others (Kenton, 2021).

According to some studies, the duty of care in case of AI should be enhanced. In particular, Y. Benhamou and J. Ferland point "out that instead of considering new liability principles <...>, one should consider simply adapting current fault-based liability regimes with enhanced duties of care" (Benhamou, Ferland, 2020, p. 20). In this connection, the report of the Expert Group on Liability and New Technologies suggests that operators of emerging digital technologies should comply with an adapted range of duties of care, including with regard to the choice of technology (choosing the right system for the right task and skills), monitoring and maintaining the system (including safety checks and repair) (Abbot et al., 2019, p. 44).

**6. Legal personhood of autonomous AI systems and AI-related damage**

Aside from the use of existing tort liability regimes for redressing the damage caused by AI, there is also an alternative option to address this issue by way of granting legal personality to autonomous AI systems. The implementation of this drastic idea would give autonomous AI systems a legal status of "electronic persons" similar to that of legal persons. In this case an AI system could be directly liable for any damage it might cause.

Although this idea may seem quite shocking at first sight, in reality an autonomous AI system with its inherent ability to learn and make independent decisions has even more reasons to be recognized as a legal entity than a corporation, which is a pure legal fiction. With regards to liability for damage the legal personhood of AI systems could solve at least one of the existing problems – it would make it easier to identify a person responsible for the damage instead of trying to figure out who is to blame for it among the designers, manufacturers, operators and users of AI.

However, the notion of AI systems' legal personhood has not gained much support yet. On the contrary, some legal researchers point out potential difficulties of holding AI systems as legal entities liable for the damage they caused. In particular, it is argued that grant-

ing legal personhood to AI systems would require significant legislative steps, and intricate legal and practical questions would need to be addressed in terms, for instance, of funds "governed" and "owned" by an AI application or a robot (Schütte et al., 2021, p. 15). Additionally, there are concerns that unlike corporations AI may not have funds of its own to indemnify its potential victims even if it is found liable for damage (Benhamou, Ferland, 2020, p. 11).

**7. Legislative initiatives for AI-related tort liability in the EU**

Although there is no currently specific legislation on tort liability for damage caused by AI in Europe, there have been some initiatives to establish a common EU legal framework for AI in recent years. In particular, these legislative initiatives include proposals concerning tort liability for damage caused by AI systems. In this regard, at least two resolutions of the European Parliament need to be mentioned. One of them is the European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (European Parliament, 2017).

Civil liability for damage caused by AI-powered robots is one of the main issues addressed in this resolution. First of all, the European Parliament suggests that the European Commission should determine whether to apply strict liability or the risk management approach when elaborating future legislative instruments. In addition to this, the possibility of introducing a compulsory insurance scheme for the producers of autonomous robots as well as the establishment of a special compensation fund are also contemplated in the resolution.

It is not surprising that the idea of imposing strict liability for damage caused by AI is combined with the idea of providing civil liability insurance for the producers of AI systems. The thing is that strict liability usually comes with some sort of compulsory insurance of the liable person (e. g. civil liability insurance of motor vehicles' owners). As for the proposal to establish a compensation fund, it can be regarded as a supplementary measure, since such a fund is supposed to ensure compensation for damage caused by autonomous AI systems if there is no insurance cover.

The most interesting part of this resolution calls on the Commission to consider the possibility of creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could have the status of electronic persons responsible for redressing any damage they may cause (European Parliament, 2017). As it has already been observed the notion electronic persons appears to be quite controversial at present. In part, this idea does not enjoy much support at the moment, because there are other more traditional ways of dealing with the compensation of damage caused by AI. Nonetheless, it should be emphasized that the creation of such a legal status for autonomous AI systems cannot be ruled out in the future, particularly when AI reaches the level of general human intelligence or superintelligence, exceeding the human level.

In October 2020, the European Parliament adopted another important resolution with recommendations to the Commission on a civil liability regime for artificial intelligence (European Parliament, 2020). The general approach of this resolution to civil liability for damage caused by AI is based on the degree of risk posed by different AI systems. According to this resolution, the type of AI-system the operator is exercising control over is a determining factor regarding liability. It is repeatedly emphasized that an AI-system that entails a high risk potentially endangers the user or the public to a much higher degree and in a manner that is random and goes beyond what can reasonably be expected. Thus, high-risk AI systems are distinguished from other systems driven by AI (such high-risk AI systems are listed in the relevant Annex to the proposed Regulation laying down harmonized rules on artificial intelligence) (European Commission, 2021). It is for this reason that damage caused by high-risk AI system must give rise to strict liability.

At the same time, in accordance with the draft Regulation proposed in the 2020 Parliamentary resolution, AI systems that are not listed as high-risk systems in the relevant Annex should remain subject to fault-based liability, unless stricter national laws and consumer protection legislation are in force (European Parliament, 2020). Thus, the European Parliament suggests a hybrid approach to civil (tort) liability for damage caused by AI systems combining strict liability and fault-based liability. This approach is meant to be flexible enough taking into account the degree of risk posed by different AI systems.

However, even such a hybrid approach is not perfect. Some of the proposals in the resolution are quite contradictory. In particular B. Schütte, L. Majewski, K. Havu draw attention to the fact that the idea put forward by the Parliamentary Resolution, that is, using both a very general notion of high-risk systems and simultaneously an exhaustive list of such systems does not appear recommendable because such a solution would endanger both flexibility and legal certainty. In addition, future civil liability for AI-related damage and the existing product liability regime need to be harmonized, since the Product Liability Directive provides for

the liability of a producer whereas the Parliamentary Resolution envisages the liability of an operator (Schütte et al., 2021, p. 28, 30).

**8. Conclusions**

Summing up the above, it is necessary point out that at the theoretical level of civil law, there are many possible ways of dealing with the liability for damage caused by AI systems. In theory, it is possible to approach this issue using the concepts of vicarious liability, strict liability, including product liability as well as fault-based liability. It is also possible to grant legal personality to autonomous AI systems and hold them directly responsible for the damage they may cause. At the practical level, judging from the legislative initiatives of the European Parliament, it is most likely that the European approach to developing legislation on civil liability for AI-related damage will be based on the assessment of risk and therefore will include a combination of strict liability for damage caused by high-risk AI systems and fault-based liability for damage caused by other AI systems that are not regarded as high-risk. At the same time, in the near future the possibility of granting legal personality to autonomous AI systems with a view to making them liable for damage does not seem realistic, although it cannot be ruled out in the long run.

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# ЦИВІЛЬНО-ПРАВОВА ВІДПОВІДАЛЬНІСТЬ ЗА ШКОДУ, ЗАВДАНУ ШТУЧНИМ ІНТЕЛЕКТОМ: СУЧАСНИЙ ЄВРОПЕЙСЬКИЙ ПІДХІД

**Анотація.** ***Мета статті*** – викласти основні теоретичні концепції та актуальні законодавчі ініціативи щодо деліктної відповідальності за шкоду, заподіяну штучним інтелектом, у Європейському Союзі.

***Методи дослідження.*** Методологія роботи передбачає використання таких методів дослідження, як аналіз і синтез, а також порівняльного методу.

***Результати.*** Штучний інтелект становить виклик для наявного деліктного законодавства, оскільки він може завдати шкоди, діючи самостійно, і водночас не розглядається як суб'єкт права, тобто як фізичні та юридичні особи. Теоретично деліктна відповідальність за шкоду, пов'язану зі штучним інтелектом, може розглядатися як субсидіарна відповідальність, сувора відповідальність (незалежно від вини) або відповідальність за наявності вини. Є також теоретична можливість надання правосуб'єктності автономним системам штучного інтелекту, що дасть можливість покласти на них пряму відповідальність за завдану ними шкоду. Однак на цей час такий підхід не має великої підтримки, хоча його не можна виключати в майбутньому. З огляду на законодавчі ініціативи Європейського парламенту найбільш вірогідний підхід до цивільної відповідальності за шкоду, пов'язану зі штучним інтелектом, у Європейському Союзі базуватиметься на оцінці ризику, спричиненого різними системами штучного інтелекту, і включатиме сувору відповідальність операторів високоризикових систем штучного інтелекту, а також відповідальність за наявності вини операторів інших систем штучного інтелекту, які не класифікуються як високоризикові.

***Висновки.*** На теоретичному рівні можна підійти до питання цивільної відповідальності за шкоду, пов'язану зі штучним інтелектом, із використанням концепцій субсидіарної відповідальності, суворої відповідальності (незалежно від вини), включно з відповідальністю за товари, а також відповідальності за наявності вини. На практичному рівні найбільш вірогідно, що європейський підхід до розроблення законодавства про цивільно-правову відповідальність за шкоду, пов'язану зі штучним інтелектом, базуватиметься на оцінці ризику, а отже, включатиме поєднання суворої відповідальності за шкоду, завдану системами штучного інтелекту з високим ризиком, і відповідальності за шкоду, спричинену іншими системами штучного інтелекту, які не вважаються високоризиковими. У найближчому майбутньому можливість закріплення правосуб'єктності за автономними системами штучного інтелекту з метою покладення на них відповідальності за шкоду не виглядає реалістичною, хоча в довгостроковій перспективі таку можливість не можна виключати.

**Ключові слова:** штучний інтелект, цивільно-правова відповідальність, шкода, делікт, електронна особа, правосуб'єктність.

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# FACTS ESTABLISHED BY COURT FOR THE PURPOSE OF PROTECTING FAMILY RIGHTS AND INTERESTS: CONCEPT AND CLASSIFICATION

**Abstract.** The ***purpose of the article*** is to establish the essence of and to classify facts established by the court with the purpose of protecting family rights and interests.

***Results.*** It is revealed that along with subjective family rights, the family interest, protected by law, as striving for the use of a specific tangible and/or intangible benefit, which is an independent object of judicial protection, is also subject to legal protection. Subjective family law and the interest protected by law is one of the elements of family legal relations, in so far as the content of family legal relations. Therefore, the legal facts that entail the advent, change or termination of family legal relations are grounds for the advent, change or termination of corresponding family rights and interests as one of the elements of legal relations. With regard to codifying a single household of a man and a woman without marriage in the provisions of civil procedure and family legislation of Ukraine, inaccuracy by the lawmaker should be emphasised. We argue that the court should establish not the fact of a single household of a man and a woman without marriage, but the fact of a single household of a man and a woman without registration of marriage.

***Conclusions.*** The concept of "legally relevant facts" and "legal facts" are the identical legal categories, since legal facts always entail the advent, change or termination of family legal relations (rights, interests and duties), i. e., they are legally relevant facts. The facts that are relevant to the protection of family rights and interests should be considered concrete living situations, regulated by the guidelines of family law and entail the advent, change or termination of family legal relations (including family rights, interests and duties). According to the parties to family legal relations, the facts legally relevant for the protection of family rights and interests should be classified in: a) facts relevant for the protection of family rights and interests of spouses (facts of registration and divorce of marriage); b) facts relevant for the protection of family rights and interests of parents and offspring (the fact of fatherhood (motherhood), the fact of birth of a person at a certain time); c) facts relevant for the protection of the rights and interests of other parties to family legal relations (the fact of family relations between natural persons, the fact of adoption, the fact of a single household of a man and a woman without marriage).

**Key words:** subjective family law, family rights and interests.

## 1. Introduction

Legal facts as legal phenomena have always aroused the interest of scientists in all spheres of legal study. Their presence relates to the process of the advent, change or termination of rights, separate powers, duties or whole legal relations. In fact, they are the engines of social relations and the determining factor of their dynamics (Kostruba, 2014).

Procedural specificities of a proceeding in cases concerning the establishment of facts, significant for protection of family rights and interests, cannot be identified without determining the essence, as well as classifying relevant facts.

According to S.Ya. Fursa, the establishment of legal facts in civil proceedings is important, because it contributes to realisation of constitutional rights of citizens, such as: the right to social protection in case of disability, the breadwinner, in old age, protection of property, interests, legal status of civil, family, labour and other legal relations. Mostly persons concerned apply to court for establishing legal facts, when required entitlement documents are absent and court decision is the only way to protect their interests for further enjoyment of subjective rights. The presence or

absence of legal facts affect the advent, change or termination of personal or property rights of citizens (Fursa, 1997).

**2. Theoretical approaches to establishing legally relevant facts**

Usually, the legal literature considers legally relevant facts as the actions and events that, according to law, entail certain legal effects (Bychkova, 2009).

For example, M.M. Yasynok argues that legally relevant facts are the key legal facts which the person associates with the advent, change or termination of his or her future subjective rights (Yasynok, 2014).

V.V. Komarov and H.O. Svitlychna identify legally relevant facts and legal facts and consider the latter as specific circumstances that directly or indirectly affect the rights and interests of society, state, natural persons and legal entities (Komarov, 2011).

A representative of modern civilisation school A.V. Kostruba defines one of the types of legal facts – the terminating fact – as a specific situation contained in the hypothesis of a legal provision, and which is connected to the effect of termination of rights or legal relations, according to this provision (Kostruba, 2014).

Some scientists suggest that legal facts be defined based on their sectoral affiliation. For example, V.S. Kovalska states that a legal fact in the family law is a specific living situation, the legal construction of which is envisaged or allowed by the family law provision, which entails legal effects on family legal relations (the advent, change, termination, suspension, obstruction or renewal) and/or on the family legal entity (the advent, change or termination, suspension, impediment or renewal) and/or regarding family legal personality (the advent, expansion, termination or limitation) (Kovalska, 2014).

Furthermore, the scientists identify main features of legal facts as follows: a) legal facts are situations (not opinions) that have found their external expression; b) they show the existence or absence of certain phenomena of the material world; c) they are provided for by law; d) they are documented in the manner established by law; e) they entail legal effects provided by law (Isakov, 1984); f) they are informational (Kostruba, 2014).

The analysis of the scientific doctrine gives grounds for the conclusion that most scientists refer to the concept of legally relevant facts and legal facts as identical, considering them as the specific circumstances of life with which the provisions of law relate to the advent, change or termination of family legal relations (rights and duties).

Obviously, this approach is justified, because the above definition covers all essential features of legal facts developed by the theory of law. Moreover, in our opinion, the concept of "legally relevant facts" and "legal facts" are the identical legal categories, since legal facts always entail the advent, change or termination of family legal relations (rights, interests and duties), i. e., they are legally relevant facts.

I.V. Venediktova's thorough study of the category of private interest, regulated by the state, enabled her to define it as a need, realised by the party to legal relations, to receive a certain tangible (intangible) benefit or a change of legal status, which encourages the parties to legal relations to take concrete actions or, conversely, to refrain from them, is in the legal field, is allowed by the state, is carried out in the form of a permit and is realised in a specific legal relationship (Venediktova, 2011).

In addition, the Constitutional Court of Ukraine expressed its perspective on interpretation of the category of interest in the case of the constitutional submission of 50 People's Deputies of Ukraine regarding the official interpretation of certain provisions of the first part of Article 4 of the Civil Procedure Code of Ukraine (the case on the interest protected by law) № 18-рп/2004 of December 1, 2004. The Constitutional Court of Ukraine explained that the notion of "interest protected by law", which is used in the laws of Ukraine in logical and mental connection with the notion of "right", should be understood as an aspiration to use specific tangible and/or intangible good, as a simple legitimate permission, stipulated by the general content of objective right, and directly not mediated in subjective right, that is an independent object of judicial protection and other legal remedies in order to meet individual and collective needs, which do not contradict the Constitution and laws of Ukraine, public interests, justice, good-faith, reasonableness and other general legal principles (Constitutional Court of Ukraine, 2004).

In addition, in clause 3.6 of the motivational part of Decision № 18-рп/2004 of December 1, 2004, the Constitutional Court of Ukraine stressed that the interest, even being protected by law, unlike subjective right, has no legal capacity as the latter, since it is not provided by the legal obligation of the other party.

In the Family Code of Ukraine, the lawmaker quite often uses the wording "in the interests of the family" (part 1 of art. 54, art. 65), "in the interests of the state" (art. 27), "in the interests of society" (part 3 of art. 7), "in the interests of spouses" (part 1 of art. 27), "in the interests of the child" (part 1 of art. 42, part 6 of art. 19, art. 207), thus guaranteeing the realisation of interests which are not mediated by subjective family rights (Churpita, 2015).

Therefore, along with subjective family rights, the family interest protected by law as striving for the use of a specific tangible and/or intangible benefit, which is an independent object of judicial protection, is also subject to legal protection. Subjective family law and the interest protected by law is one of the elements of family legal relations, in so far as the content of family legal relations. Therefore, the legal facts that entail the advent, change or termination of family legal relations are grounds for the advent, change or termination of corresponding family rights and interests as one of the elements of legal relations.

Moreover, the characterisation of the facts relevant to the protection of family rights and interests requires to focus on the relation between the notions of "protection" and "defence".

In the context of the correlation between the legal categories of protection and defence, we advocate the perspective of I.V. Spasybo-Fatieieva that protection is "guarding" from violation of a certain good (right or interest protected by law), and defence is the opportunity to defend from encroaching, to prevent violation or to restore violated right. Thus, legal protection suggests preventive means against encroaching on subjective rights. However, the defence is legal response to an offense that has already occurred, provides for legal liability and other remedies of a compensatory and restorative nature (Spasybo-Fatieieva, 2009). Therefore, legal protection includes both legal regulatory mechanism for social relations with the purpose of establishing subjective rights and duties of participants in legal relations, and legal defence of subjective rights (Krasytska, 2014).

Therefore, we advocate the perspective that, during a separate proceeding of cases concerning the establishment of legally relevant facts in the field of family relations, there is a legal protection of family rights and interests, which includes, among other things, their defence.

Therefore, the facts that are relevant to the protection of family rights and interests should be considered concrete living situations, regulated by the guidelines of family law and entail the advent, change or termination of family legal relations (including family rights, interests and duties).

Features of the facts significant for the protection of family rights and interests are:

1. These are specific living situations. The specificity of the legal fact is due to the family legal relationship, which arises, changes or terminates as a result of the legal fact, concerns specific actors, a specific object, with respect to which actors are given specific family rights and duties (Kovalska, 2014). For example, as a result of a legal fact such as marriage, mutual rights and duties of spouses arise for the respective actors.

2. These are living situations, regulated by the provisions of family law. It should be noted that codification of legal constructions of legal facts can be carried out in different ways: direct or indirect (collateral) (Isakov, 1984).

In case of a direct way, legal facts are directly indicated in the legal provision as the basis for the advent, change or termination of legal relations (Kovalska, 2014). An example of a direct way of stating legal facts in the family law may be the construction of a legal provision in part 1 of the art. 36 of the Family Code of Ukraine, according to which marriage is the ground for the advent of rights and duties of spouses.

In case of an indirect way, legal facts are not explicitly stated in the provision as the ground for the advent, change or termination of legal relations, but may entail legal effects of a family legal nature on the analogy with right or law.

Z.V. Romovska describes legal facts. For example, art. 84 of the Family Code of Ukraine provides for that the right to maintenance in connection with pregnancy is given to the wife, i. e., the woman in marriage. In case of voluntary recognition of fatherhood by a person with whom a pregnant woman is not married, on the analogy with right, the right to aliments for the time of pregnancy may be recognised for her (Romovska, 2003).

3. These are living situations that entails the advent, change or termination of family legal relations (including family rights, interests and duties).

According to P.F. Yeliseikin, one or the other situation should be regarded as legally relevant only in terms of the legal effects it may cause under law, and on the contrary, the very situation may legally indifferent if it is considered in connection with the legal effects for which it does not have legal significance. Therefore, the legal significance or legal indifference of the fact should be determined specifically in each case (Eliseykin, 1972).

Therefore, the essence of this feature of legal facts, which are relevant for protection of family rights and interests, is that such facts have in each case to create "expected" legal effects in the form of the advent, change or termination of family legal relations, that is, to be law-making. For example, adoption results in parental legal relationship with all mutual personal, non-personal and property rights and duties of parents and offspring (art. 232 of the Family Code of Ukraine); the divorce entails termination of personal non-property, as well as property rights and duties of spouses (art. 105 of the Family Code of Ukraine); the change of the conditions of the marriage agreement is

the ground for the change of the legal relations regulated by it (art. 100 of the Family Code of Ukraine), etc.

**3. Legal regulatory mechanism for the establishment of legally relevant facts**

According to explanations of the Plenum of the Supreme Court of Ukraine in part 1 of its Resolution № 5 "On judicial practice in cases of establishing legally relevant facts" of March 31, 1995, cases of establishing facts are considered in individual proceedings if:

1. Under law, such facts produce legal effects, that is, affect the advent, change or termination of personal or property rights of citizens.

The legal significance of the facts established in a separate proceeding is determined by the provisions of substantial law (in this case family law), which should be applied by the court in considering the case (Komarov, 2011).

In addition, it is possible to determine whether the legal effects are caused in connection with the purpose for which the applicant appealed to the court. The purpose of establishing the fact can be both realisation of a specific subjective right and determination of the legal status of a person: it is important only that between the fact established, on the one hand, and the subjective right and the interest protected by the law, on the other hand, there is a connection making the fact legally relevant.

For example, in case of appeal to the court with the application on establishing the fact of fatherhood (motherhood) (art. 135 of the Family Code of Ukraine) the applicant's purpose is the advent of parental legal relationship between him or her and the child, which will be a legal effect of the "positive" consideration of the case.

2. The current legislation does not provide for another procedure of their establishment.

When deciding on the establishment of legally relevant facts, the individual proceeding should consider the provisions of legal regulations, which provide for a non-judicial procedure for establishing certain facts. In particular:

a) according to the Law of Ukraine "On rehabilitation of victims of political repression in Ukraine", facts of dispossession and administrative eviction of citizens are established by the committees of the Council of People's Deputies on the issues of renewal of the rights of the rehabilitated;

b) according to the Procedure for confirmation of the available length of service for the appointment of pensions in the absence of the employment record or corresponding records in it, approved by Resolution № 637of the Cabinet of Ministers of Ukraine of August 12, 1993, if the documents have not been preserved, the length of service is confirmed out by district (city) departments of social security of the population on the basis of testimony; in other cases, the length of service is determined in the procedure provided by the legislation regulating the legal relations associated with the need to establish this length of service;

c) according to the Law "On Labour Protection" and the Procedure for investigation and record of accidents, occupational diseases and accidents at work, approved by Resolution № 1232 of the Cabinet of Ministers of Ukraine of November 30, 2011, the fact of injury and other health damage at work is indicated by the act on accident, and in case of refusal of the owner of the enterprise, institution, organisation or authorised body to make such act or refusal of the victim or other interested person to consent with the content of the act, the issue is considered in the manner provided by the legislation on labour disputes consideration.

In addition, the courts may not consider applications on establishing the fact of belonging of persons affected by the Chernobyl disaster to war veterans or war invalids, military service, stay on the front, in partisan groups, injuries and shell shocks during the performance of military service duties, causes and degree of disability, group of disability and time of its occurrence, graduation of educational institution and reception of corresponding education, reception of government awards.

3. The applicant has no other opportunity to obtain or restore a lost or destroyed document, which proves the legally relevant fact.

In most cases, legal facts are confirmed by records of civil status acts, various certificates and other documents (e. g. marriage certificate, birth certificate, etc.). Nevertheless, not always a legal fact can be certified by the relevant document (Kivalov, 2010).

The inability of the applicant to obtain in another manner the relevant documents, which prove the legal fact, is caused by several reasons. One of the reasons is that the fact legally relevant for the applicant is not subject to state registration. Such facts include, for example, the fact of a person being dependant, the recognition of fatherhood. The inability of the applicant to obtain the necessary documents may also be due to unduly, for any reason, registration of the legal fact, which is subject to state registration. Such facts include, for example, the death of a person at a certain time or under certain circumstances. The inability to restore lost documents can also be caused by the fact that, despite the timely registration of the relevant legal fact, documents confirming it have not been retained and cannot be restored

for objective reasons. For example, the fact of registration of marriage can be established in a separate proceeding in connection with the fact that the archives of the State Civil Registry Office were destroyed during the fire and therefore the applicant cannot receive a duplicate of the lost marriage certificate (Osokina, 2010).

4. The establishment of the fact is not connected with the following decision of the dispute over the right.

In legal literature, the presence of dispute over the right is usually defined as a feature of the case of a suit proceeding. Moreover, the presence of dispute over the right, under the general rule, excludes the possibility of considering the case in a separate proceeding (Osokina, 2010).

This perspective is reflected in the legal provision of part 6 of art. 235 of the Civil Procedure Code of Ukraine, according to which, if during the consideration of the case in a separate proceeding a dispute on the right arises, that is solved in the accordance with the claim proceeding, the court shall leave the statement without consideration and explain persons concerned that they have a right to claim on the general grounds.

The civil procedure legislation of Ukraine provides the approximate list of facts which can be established by the court in a separate proceeding. For example, according to part 1 of art. 256 of the Civil Procedure Code of Ukraine, the court considers cases on establishment of the fact of: 1) family relations between natural persons; 2) dependence of a natural person; 3) injury, if necessary, for the purpose of pension or assistance on obligatory state social insurance; 4) registration of marriage, divorce, adoption; 5) a single household of a man and a woman without marriage; 6) the belonging of entitlement documents to the person, whose surname, name, father's name, place and time of birth do not coincide with the name, father's name, surname, place and time of birth, specified in the birth certificate or in the passport; 7) the birth of a person at a certain time in case of impossibility of registration of birth by the State Civil Registry Office; 8) the death of a person at a certain time in case of impossibility of registration of death by the State Civil Registry Office; 9) the death of a missing person in circumstances threatening him or her with death or giving reasons to consider him or her dead in a certain accident as a result of man-made and natural emergency situations.

The list of facts that may be established by the court in a separate proceeding is not exhaustive. The court may establish other facts, affecting the advent, change or termination of personal non-property or property rights of natural persons, unless the law provides for another procedure of their establishment. For example, a separate proceeding may establish: the fact of recognition of fatherhood or motherhood in the event of death of a person who considered him-/herself a father or mother of a child, provided that the recording is made according to the rules established by law (articles 130, 132, 135 of the Family Code of Ukraine); the fact of adoption of the inheritance, the place of opening of the inheritance (articles 1221, 1268 of the Civil Code of Ukraine) etc.

In addition, according to paragraph 1 of the Supreme Court of Ukraine Resolution № 5 "On judicial practice in cases of establishing legally relevant facts" of 31 March 1995, the court may establish facts which, under foreign law, entail legal effects for the applicant, if the court's decision is necessary for applicant in relations with citizens of other states (for example, for the resolution of the issue of the right to inheritance of a person who is not recognised by the legislation of Ukraine to the circle of heirs under the law).

The legal nature of family legal relations, their content and parties, as well as provisions of parts 2, 3 of art. 234, parts 1, 2 of art. 256 of the Civil Procedure Code of Ukraine, articles 130–132 of the Family Code of Ukraine, enable to conclude that a separate proceeding considers cases of establishing facts relevant for protection of family rights and interests, such as:

1) family relations between natural persons (para. 1 of part 1 of art. 256 of the Civil Procedure Code of Ukraine), if, for certain reasons, the fact was not registered by the bodies of State Civil Registry Office (hereinafter – the SCRO);

2) registration of marriage, divorce, adoption (para. 4 of part 1 of art. 256 of the Civil Procedure Code of Ukraine), if the corresponding record has not been kept in the SCRO, its restoration has been refused or the record can be restored only on the ground of the court's decision to establish the fact of registration of the civil status act;

3) fatherhood (motherhood) – in the case of the death of a man who was not married to a child's mother (the death of a woman who considered herself a child's mother), if the record of the child's father in the Birth Registration Book is made with the mother's surname and the child's patronymic is recorded by at the behest of the mother (part 1 of art. 135 of the Family Code of Ukraine) or the mother of a child whose parents are unknown, is recorded by the decision of the body of guardianship and care (part 2 of art. 135 of the Family Code of Ukraine);

4) a single household of a man and a woman without marriage (para. 5 of part 1 of art. 256 of the Civil Procedure Code of Ukraine), if this fact causes the advent, change or termination of legal relations, for example, the advent of the right to

joint ownership of property, acquired by a man and a woman during the time of a single household, the right to be dependant in accordance with the provisions of art. 76 of the Civil Procedure Code of Ukraine, etc. With regard to codifying a single household of a man and a woman without marriage in the provisions of civil procedural and family legislation of Ukraine should be emphasised on such inaccuracy, as allowed by the law-maker. It is seen that the court should establish not the fact of a single household of a man and a woman without marriage, but the fact of a single household of a man and a woman without registration of marriage. Therefore, we propose to make appropriate changes to: a) the legal provision in para. 5 of part 1 of art. 256 of the Civil Procedure Code of Ukraine, shall be worded as follows: "a single household of a man and a woman without registration of marriage"; b) the legal provision in part 2 of art. 21 of the Family Code of Ukraine, shall be worded as follows: "a single household of woman and man without registration of marriage is not a ground for rights and duties of spouses";

5) the birth of a person at a certain time in case of impossibility of registration by the SCRO of the birth (para. 7 of part 1 of article 256 of the Civil Procedure Code of Ukraine).

The list is not exhaustive. According to the para 2 of art. 256 the Civil Procedure Code of Ukraine may also establish other facts affecting the advent, change or termination of personal or property rights of natural persons depends, unless otherwise specified by law.

According to V.V. Yarkov, the significance of any classification is that it allows to study object more deeply, to identify specificities, interrelation of general and special. The general classification of legal facts has been developed in jurisprudence a long time ago and quite thoroughly. It is carried out according to a volitional feature into actions and events. The place of legal facts in this classification is determined by the nature of the relation between the legal fact and the will of the person. The significance of grouping legal facts on the basis of their correlation with individual will is due to the effectiveness, which expressed is in the influence on the will of the person (Yarkov, 2012).

According to M.M. Yasynok, legal relevant facts can be divided into three groups. The first group covers registration legal facts, which are registered by the state only in written form (registration of marriage, divorce, adoption, birth, death). The second group is unobvious legal facts, which do not have their written form of recording, and therefore can be established both on the basis of testimony and other written or verbal evidence (fact of family relations, fact of the person's dependence). The third group of legally relevant facts are obvious facts, such as events, for example, injury. For this fact, it is important to establish the place and circumstances of receiving such injury, because the fact of injury without place and circumstances of the event is not complete, and these circumstances are inseparable and constitute the only content of this legal fact (Yasynok, 2014).

V.V. Komarov and H.O. Svitlychna propose to classify legally relevant facts by sectoral orientation into: a) legally relevant facts for the realisation of rights and interests arising from civil, family and other legal relations; b) legally relevant facts for the realisation of social rights and interests of natural persons; c) the facts which are acts of civil status, as well as the fact of the validity of entitlement document (Komarov, 2011).

V.I. Prokopenko proposes to classify the legally relevant facts on a procedural basis, such as the unity of the grounds and conditions for the proceeding of such cases. According to this feature, the author identifies the following types of legally relevant facts: facts that are subject to mandatory state registration and which were previously registered; facts that were previously documented but with errors; facts that are subject to mandatory state registration but were not previously registered; facts that are not subject to mandatory state registration; facts that are not subject to mandatory state registration; facts that terminate citizens' ability to act (Prokopenko, 1963).

**4. Conclusions**

The concept of "legally relevant facts" and "legal facts" are the identical legal categories, since legal facts always entail the advent, change or termination of family legal relations (rights, interests and duties), i.e., they are legally relevant facts.

The facts that are relevant to the protection of family rights and interests should be considered concrete living situations, regulated by the guidelines of family law and entail the advent, change or termination of family legal relations (including family rights, interests and duties).

According to the parties to family legal relations, the facts legally relevant for the protection of family rights and interests should be classified in:

a) facts relevant for the protection of family rights and interests of spouses (facts of registration and divorce of marriage);

b) facts relevant for the protection of family rights and interests of parents and offspring (the fact of fatherhood (motherhood), the fact of birth of a person at a certain time);

c) facts relevant for the protection of the rights and interests of other parties to family legal relations (the fact of family relations between natural persons, the fact of adoption, the fact of a single household of a man and a woman without marriage).

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# ФАКТИ, ЩО ВСТАНОВЛЮЮТЬСЯ СУДОМ ІЗ МЕТОЮ ОХОРОНИ СІМЕЙНИХ ПРАВ ТА ІНТЕРЕСІВ: ПОНЯТТЯ І КЛАСИФІКАЦІЯ

**Анотація.** ***Метою статті*** є визначення сутності фактів, що встановлюються судом із метою охорони сімейних прав та інтересів, і здійснення їх класифікації.

***Результати.*** З'ясовано, що поряд із суб'єктивними сімейними правами правовій охороні підлягає також охоронюваний законом сімейний інтерес як прагнення до користування конкретним матеріальним та/або нематеріальним благом, що є самостійним об'єктом судового захисту. Суб'єктивне сімейне право та охоронюваний законом інтерес є одним з елементів сімейних правовідносин, а саме частиною змісту сімейних правовідносин. Таким чином, юридичні факти, що тягнуть виникнення, зміну чи припинення сімейних правовідносин, є підставою також для виникнення, зміни або припинення відповідних сімейних прав та інтересів як одного з елементів правовідносин. З приводу законодавчої регламентації проживання однією сім'єю чоловіка та жінки без шлюбу в нормах цивільного процесуального та сімейного законодавства України варто наголосити на такій неточності, яку допустив законодавець. Вбачається, що суд має встановлювати не факт проживання однією сім'єю чоловіка та жінки без шлюбу, а факт проживання однією сім'єю чоловіка та жінки без реєстрації шлюбу.

***Висновки.*** Поняття «факти, що мають юридичне значення» та «юридичні факти» є тотожними правовими категоріями, адже юридичні факти завжди зумовлюють виникнення, зміну чи припинення правовідносин (прав, інтересів та обов'язків), тобто є фактами, що мають юридичне значення. Фактами, які мають значення для охорони сімейних прав та інтересів, необхідно вважати конкретні життєві обставини, що регламентовані нормами сімейного права та тягнуть за собою виникнення, зміну чи припинення сімейних правовідносин (зокрема, сімейних прав, інтересів та обов'язків). Вважаємо за доцільне класифікувати факти, що мають юридичне значення для охорони сімейних прав та інтересів, за суб'єктним складом учасників сімейних правовідносин на такі види: а) факти, що мають значення для охорони сімейних прав та інтересів подружжя (факти реєстрації та розірвання шлюбу); б) факти, що мають значення для охорони сімейних прав та інтересів батьків і дітей (факт батьківства (материнства), факт народження особи в певний час); в) факти, що мають значення для охорони прав та інтересів інших суб'єктів сімейних правовідносин (факт родинних відносин між фізичними особами, факт усиновлення, факт проживання однією сім'єю чоловіка та жінки без шлюбу).

**Ключові слова:** суб'єктивне сімейне право, сімейні права та інтереси.

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# INTERNATIONAL COMMERCIAL ARBITRATION DURING MARTIAL LAW IN UKRAINE

**Abstract.** The ***purpose*** of the article is to determine changes in the activities of international commercial arbitration on the territory of Ukraine and analyze the problems that the parties may face in national courts due to the declaration of martial law in Ukraine.

***Research methods.*** The methodological research comprises general scientific (analysis, generalization, induction, deduction, and classification) and special methods of cognition of the scope of international commercial arbitration (collection and processing of information, comparison, and forecasting). Thus, the following methods were used in the work: deduction – to specify the particularities of arbitration at different stages during martial law in Ukraine; forecasting – to indicate the central problems prevailing in the recognition and enforcement of arbitral awards during martial law in Ukraine and study the main trends in the development of international commercial arbitration.

The ***research database*** consists of international acts; regulations of arbitration institutions; legislation of Ukraine; judicial generalizations; state register of court decisions; official statistical data; the practice of international commercial arbitration courts; notices of institutions posted on their official websites; scientific doctrine's provisions.

***Results.*** The basic alterations that occurred in the activities of the International Commercial Arbitration Court during the declaration of martial law due to the military aggression of the Russian Federation are analyzed; ensuing problems in the activities of international commercial arbitration under martial law are clarified, and possible options for their solution are proposed.

***Conclusions.*** The military aggression of the Russian Federation and the declaration of martial law on the territory of Ukraine elucidated a range of problems faced by both judicial authorities and international commercial arbitration, including filing documents with the arbitration institution and enforcement of arbitration awards. The solution to the above problems is a prerequisite for the proper performance of international commercial arbitration in Ukraine as an efficient institution.

**Key words:** international commercial arbitration, martial law in Ukraine, military aggression of the Russian Federation, ICAC activities during martial law in Ukraine, recognition and execution of arbitration award, force majeure, Ukrainian Chamber of Commerce and Industry.

## 1. Introduction

Due to the military aggression of the Russian Federation against Ukraine, martial law was declared in Ukraine following the Decree of the President of Ukraine dated 24.02.2022 № 64/2022 and the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated 24.02.2022 № 2102-IX. It influenced all economic and legal ties, both inside the country and outside. International commercial arbitration has also been significantly affected. Therefore, the purpose of this article is to analyze amendments considering disputes in international commercial arbitration during martial law in Ukraine and study the problems of recognition and enforcement of an arbitration award in Ukraine in the current conditions.

**Main body.** The military aggression of the Russian Federation against Ukraine has influenced all the processes taking place on the territory of our state. The institution of international commercial arbitration was not an exception. Today, there are two permanent arbitration institutions in Ukraine – the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (hereinafter referred to as "the arbitration institutions"). In order to better understand the changes that occurred in the activities of international commercial arbi-

tration due to the declaration of martial law on the territory of Ukraine, it is proposed to classify such changes under the arbitration stages. At the same time, the following should be noted among the stages of arbitration:

– pre-trial;
– arbitration proceedings;
– enforcement of an arbitral award.

It should be emphasized that the last two stages were the most affected, so they are analyzed in the present work.

**2. Changes in arbitration proceedings**

The first change in arbitration proceedings that must be noted is that arbitration institutions fulfil the vast majority of their functions online for the period of martial law. The conclusion follows from the decision of the Presidium of the ICAC and MAC at the UCCI dated March 21, 2022 (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022a). According to the mentioned decision: "Communication with the arbitral tribunals in specific cases, parties to disputes and other users of services, and sending procedural documents, except for final arbitral awards, are carried out by the ICAC and IAC secretariats via electronic means". Moreover, the parties should submit procedural documents via electronic means. The relevant provision does not apply to procedural documents of fundamental importance, namely, a statement of claim. It may be submitted in electronic form to international commercial arbitration only by agreement of the parties to the dispute. It is worth mentioning that the Rules of the ICAC at the UCCI were amended on July 1, 2022, in particular, regarding the option of submitting documents to international commercial arbitration in digital form (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022c).

In addition, it is essential to pay attention to the appeal of the Chairman of the ICAC and IAC at the UCCI to the arbitrators of the institutions dated 18.03.2022 (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022b) and the information posted on the official websites of the arbitration institutions dated 18.03.2022 regarding the operation of the ICAC and IAC at the UCCI during martial law (International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine, 2022d). The official information states that during martial law, all oral hearings shall be held online or in writing by agreement of the parties. That kind of trend is not new. It has come into existence because of the progress of information technologies. But a special need for such a procedure arose during the COVID-19 pandemic. However, despite the advantages of online hearings, there may be some difficulties that should be resolved. For example, it raises the question: does the arbitrator have the right to decide on the form of meetings if there is no agreement between the parties? Can the arbitrator's decision on the form of arbitration be further interpreted as a reason for appealing and reversing the arbitral award?

At the same time, it makes one wonder about the platform's security where such meetings and data exchange will be held. It is worth noting that the above concerns are not original, and the scientific community is already looking for their solutions. For example, in 2019, the International Council for Commercial Arbitration (ICCA), the New York State Bar Association, the International Institute for Conflict Prevention and Resolution, and the International Bar Association drafted and promulgated the Protocol on Cybersecurity in International Arbitration (2020 edition) (CPR, 2019). Following the specified goal, the Protocol fulfils the following task: 1) to provide a basis for determining information security measures for individual arbitration issues; 2) to increase awareness of information security in international arbitration. The Protocol gives cybersecurity recommendations relevant to all stages of arbitral proceedings. For example, the Protocol's Schedule B establishes information security risk factors and their classification, which should serve to enable the parties, after analyzing it, to define reasonable measures to be applied in arbitration. Schedule D provides recommendations on security measures decided by the parties at the time of the conclusion of the contract. Hence, the parties are not recommended to provide for specific measures, since they may be outdated or no longer relevant at the time of consideration. Instead, the parties may provide that, during arbitral proceedings, they may apply reasonable security measures. Thus, the appendix specifies an algorithm of actions to coordinate the measures: 1) the Parties shall take reasonable measures regarding the security of information for arbitration; 2) tribunal prescribes reasonable information security measures for the arbitration; 3) the Parties agree reasonable information security measures for the arbitration.

The following particularity of arbitration proceedings, which should be brought to notice upon the topic under study, is the problem of certifying force majeure. As a rule, force majeure is a prerequisite for foreign economic contracts, disputes of which most often become the subject matter in international commercial arbitration. Thus, according to the Law of Ukraine "On Chambers of Commerce and Industry of Ukraine", the authentication and issuance

of certificates of force majeure are carried out exclusively by the Chamber of Commerce and Industry of Ukraine and its authorized regional chambers of commerce and industry. The period for issuing the certificate issuance took about 7 days. However, the UCCI decision as of 24.04.2022 (Ukrainian Chamber of Commerce and Industry, 2022) simplified the relevant procedure. Thus, on the official website it was reported that the CCI of Ukraine confirms that "the specific circumstances (the imposition of martial law on the territory of Ukraine in connection with the military aggression of the Russian Federation) from February 24, 2022 until their official termination, are extraordinary and irreversible". Interested persons do not need to contact the CCI to obtain a certificate confirming such circumstances as force majeure hence they can print the specific confirmation.

It should be separately emphasized that the arbitral tribunal shall provide a legal qualification of force majeure compared with other evidence of the parties. Since the certificate is issued by the chamber of commerce and industry at the request of one of the parties to the disputed legal relations, the other party to the disputed legal relations is deprived of the opportunity to provide its arguments and influence the conclusions of the chamber of commerce and industry. That sort of authentication of force majeure can be considered sufficient proof of availability of such circumstances for the parties to the contract if they have agreed. In addition, it is interesting to mark that the above does not bind the arbitral tribunal in terms of the legal qualification of particular circumstances as force majeure in the case of a dispute between the parties. In other words, the certificate issued by the Ukrainian CCI should be analyzed, taking into account other evidence available in the case file. Otherwise, it violates the principle of competition between the parties. For a better understanding, it is necessary to introduce an example. If the parties have concluded a supply agreement whereby one company (registered outside Ukraine) shall accept and pay for the goods, and the other company (registered in Ukraine) shall transport it to a specific location (outside Ukraine), then qualification of the military aggression of the Russian Federation as force majeure is not a basis for releasing liability for non-fulfillment of an obligation or its improper fulfillment. However, if the contract stipulated that the cargo would be transported by sea and the seaports of Ukraine were closed due to the military aggression of the Russian Federation, then the shipment was impossible. For this reason, the certification of the fact of military aggression in Ukraine by the Ukrainian CCI, together with other evidence (lack of ports' operation), is a sufficient basis for a temporary non-fulfillment of the obligation. The recommendations originate from national practice. Thus, in the decision as of August 19, 2022, in case № 908/2287/17, the Supreme Court noted "<...> the certificate is issued by the chamber of commerce and industry at the request of one of the parties to the disputed legal relations (parties to the contract), which the party pays (except for small business entities) for the services of the chamber of commerce and industry. At the same time, the other party to the disputed legal relationship (contract) is deprived of the opportunity to provide its arguments and influence the conclusions of the chamber of commerce and industry. Such authentication of force majeure (acts of God) may be considered sufficient proof of force majeure for the parties to the contract if so agreed, but it does not bind the court in the case of a dispute between the parties regarding the legal qualification of particular circumstances as force majeure. Hence, the Supreme Court, composed of judges of the joint chamber of the Commercial Cassation Court states that the certificate of the chamber of commerce and industry confirming force majeure cannot be considered irrefutable proof of its existence but shall be critically evaluated by the court, taking into account the established circumstances of the case and in the aggregate with other evidence. Therefore, the recognition of a certificate of the chamber of commerce and industry as indisputable and sufficient proof of force majeure (acts of God) without the court's assessment of other evidence contradicts the principle of the competitiveness of the trial participants" (Supreme Court, 2022a).

In addition, in the decision as of 27.01.2022 in case № 904/3886/21, the Supreme Court stated that "Force majeure circumstances are not of a pre-judicial (predetermined) nature. If they occur, the party referring to the force majeure circumstances shall prove them. The party referring to specific circumstances shall prove that they are force majeure, including for a particular case. Based on the features of force majeure, it is also necessary to prove its extraordinariness and inevitability. The fact that force majeure shall be proved does not exclude that the existence of force majeure can be certified by the relevant competent authority" (Supreme Court, 2022b). However, it is important to keep in mind that force majeure does not exempt from the fulfilment of the obligation, but only from sanctions for non-fulfilment, taking into account that the court (national or international) will establish that they have been the cause of non-compliance or improper compliance with the contract.

**3. Changes during the execution of an arbitral award**

The final stage of arbitration is the execution of an arbitral award; in case of refusal of voluntary execution – the application of the procedure for recognition and execution of the arbitral award within the territory of Ukraine. This stage is sometimes cumbersome enough if a party is unwilling to comply with the arbitral award. It can be assumed that the problem of enforcement of arbitral awards may become more complicated in wartime.

According to the current legislation, an application for recognition and enforcement is submitted to the court of appeal, the jurisdiction of which extends to Kyiv (Kyiv Court of Appeal). In the first months of the war, organizational changes were introduced in the Kyiv Court of Appeal. Thus, following the notice posted on the court's official website (Kyiv Court of Appeal, 2022b) as of February 28, 2022, court proceedings of some categories, including civil cases, will be withdrawn. And in the notice as of March 29, 2022 (Kyiv Court of Appeal, 2022c), it is indicated that one of the organizational changes is the stay of action in open court hearings involving the trial participants. At the same time, it is marked that "the procedural activity of the court of appeal is not terminated – the Kyiv Court of Appeal considers the following court cases: civil cases subject to consideration in writing on the materials available in the case if the parties to the case have exercised their procedural rights (filed a recall, objection); other civil cases and cases of administrative offenses, in the presence of petitions of the parties to the case to consider it in their absence". According to the announcement dated May 18, 2022 (Kyiv Court of Appeal, 2022a), the Kyiv Court of Appeal has been operating as usual since May 2, 2022. However, it makes one wonder if one party initiated recognition and enforcement of the arbitral award from 28.02.2022 to 02.05.2022, then the case did not progress; the maximum done was the case's registrationand the determination of the bench. In other words, instead of the term envisaged in the Civil Procedure Code of Ukraine (two months), the case will actually be considered for longer.

In addition, it is worth mentioning existing cases that are being considered in national courts in terms of the recognition and enforcement of an arbitral award or the cancellation of an arbitral award upon which the procedural period was defaulted due to martial law in Ukraine. In this regard, we should analyze the case № 824/259/21, which is being considered by the Supreme Court. The appeal was filed after the expiration of the relevant deadline under the norms of the current legislation, but the parties asked in the appeal for the renewal of the specific period. The Supreme Court renewed the deadline, noting that "Given the imposition of martial law throughout Ukraine on February 24, 2022 by the Decree of the President of Ukraine № 64/2022 "On the Introduction of Martial Law in Ukraine" and the related restrictions, as well as the human right to access to court, the bench concluded that the reasons for missing the deadline for appeal are valid and the missed deadline shall be renewed" (Supreme Court, 2022 c).

The very legal proceeding may also be a problem faced by the party that initiated the litigation on the recognition and enforcement of the arbitral award or the annulment of the arbitral award. It lies in the inability to appear before the court due to martial law in Ukraine. The issues can be settled in various ways, namely: holding a court session via video conference at the premises of another court or outside the premises of the court. Depending on the conference type, different participants are responsible for the consequences of interrupting the videoconference. Accordingly, if a party will make a videoconference outside the court, the interruption of communication or other problems associated with the video conference shall be borne by the party to the case who filed the relevant application.

Another potential problem for the party that initiated the recognition and enforcement of the arbitral award after receiving an affirmative court decision is enforcement proceedings. Thus, it is essential to specify the alterations which were made to the Law of Ukraine № 2129-IX "On Amendments to Section XIII "Final and Transitional Provisions" of the Law of Ukraine "On Enforcement Proceedings" dated 15.03.2022 (Verkhovna Rada of Ukraine, 2022b). According to the amendments, the initiation of enforcement proceedings is prohibited in temporarily occupied territories. The Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine keeps them recorded. The Instruction on the organization of enforcement of decisions dated 02.04.2012 № 512/5 (Ministry of Justice of Ukraine, 2012) states that "during martial law, enforcement of decisions, the place of execution of which under part one of Article 24 of the Law is the territory which, in accordance with the Law of Ukraine "On Ensuring Civil Rights and Freedoms and the Legal Regime on the Temporarily Occupied Territory of Ukraine" is the temporarily occupied territory of Ukraine, is carried out by an executive body whose competence extends to such territory, provided that such a body has been relocated in another territory of Ukraine, or an executive

body determined by the Ministry of Justice of Ukraine upon recommendation/proposals of the Department of the State Executive Service of the Ministry of Justice of Ukraine". Therefore, from a legal standpoint, in the occupied territories or the territory which is located in the area of military (combat) operations or is surrounded (blocked), no enforcement proceedings are initiated, but enforcement proceedings are taken by another body of the state executive service vested to enforce decisions, the place of execution of which is the temporarily occupied territory of Ukraine or the territory that is located in the area of military (combat) operations or is surrounded (blocked).

The Resolution of the Cabinet of Ministers of Ukraine as of March 03.03.2022 № 187 "On protection of national interests in future lawsuits of the state of Ukraine due to the military aggression of the Russian Federation" (Cabinet of Ministers of Ukraine, 2022) also deserves attention. It imposes a moratorium on the fulfillment of obligations by creditors (claimants) who are supported by the Russian Federation or persons associated with the aggressor state. Moreover, in accordance with the Law of Ukraine № 2129-IX "On Amendments to Section XIII "Final and Transitional Provisions" of the Law of Ukraine "On Enforcement Proceedings" dated March 15, 2022, the commission of executive actions is suspended, the replacement of claimants, which are the Russian Federation, in executive actions is prohibited.

**4. Conclusions**

To summarize the above, the following should be highlighted. The introduction of martial law in the territory of Ukraine elucidated new problems related to the effective functioning of arbitration, namely:

1. *The problem of the functioning of arbitration (acceptance of statements of claim in arbitration, arbitration proceedings, etc.) during martial law.* The solution to the relevant problem is the widespread use of information and telecommunication technologies. The use of cyber technologies is possible only by the standards of arbitration institutions or by the standards provided for in the contract.

2. *The problem of a simplified procedure for certifying the military aggression of the Russian Federation by the Ukrainian CCI.* The best solution is to amend the legislation on the Ukrainian CCI, which enshrines an option of simplifying the certification of force majeure, but under specific conditions (for example, if force majeure applies to the whole country).

3. *Certification of the Russian Federation's military aggression as a ground for untimely, improper,* or *non-observance of a contract.* Thus, when analyzing, the arbitration tribunal should consider the military aggression of the Russian Federation together with other actions and events. At the same time, force majeure shall be analyzed given other evidence available in the case materials. The same opinion is held by the Supreme Court, which in its decision as of 19.08.2022 in case № 908/2287/17 noted that "the certificate of the chamber of commerce and industry confirming the existence of force majeure cannot be considered irrefutable evidence of its existence but must be critically assessed by the court taking into account the established circumstances of the case and in conjunction with other evidence".

4. *The problem of recognition and enforcement of an arbitral award in Ukraine.* The first aspect of the problem is the need for elaborating a unified approach to renewing missed procedural deadlines, which occurred at the beginning of a full-scale war when the operation of courts was limited (quite logically and forcedly). The primary necessary steps have already been taken. For example, national courts generally interpret the military aggression of the Russian Federation as a valid reason for the renewal of missed deadlines, but they compare it in conjunction with other facts. National courts also increasingly agree to hold a court session via videoconference to improve and speed up effective justice.

Summing up, it should be noted that the settlement of numerous problems of the operation of both judicial bodies and international commercial arbitration, which were caused by the military aggression of the Russian Federation in the territory of Ukraine, is required for the proper functioning of international commercial arbitration in Ukraine as an efficient institution.

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# МІЖНАРОДНИЙ КОМЕРЦІЙНИЙ АРБІТРАЖ ПІД ЧАС ВОЄННОГО СТАНУ В УКРАЇНІ

**Анотація.** ***Метою*** статті є визначення змін у діяльності міжнародного комерційного арбітражу, який перебуває на території України, а також аналіз проблем, з якими можуть зіткнутися сторони в національних судах у зв'язку із запровадженням воєнного стану в Україні.

***Методи дослідження.*** Методологічною основою дослідження є загальнонаукові (аналіз, узагальнення, індукція, дедукція, класифікація) та спеціальні (методи збору й обробки інформації, порівняння та прогнозування) методи пізнання діяльності міжнародних комерційних арбітражів. Зокрема, у роботі використані такі методи: дедуктивний метод – для виокремлення особливостей арбітражного розгляду на різних стадіях під час воєнного стану в Україні; метод прогнозування – для окреслення основних проблем, які виникають у процесі визнання та виконання арбітражних рішень протягом воєнного стану в Україні, для дослідження основних тенденцій розвитку міжнародного комерційного арбітражу.

***Інформаційну базу дослідження*** становили міжнародні акти, регламенти арбітражних установ, законодавство України, судові узагальнення, державний реєстр судових рішень, офіційні статистичні матеріали, практика міжнародних комерційних арбітражів, розміщені на офіційних сайтах повідомлення установ, а також положення наукової доктрини.

***Результати.*** Проаналізовано основні зміни, які відбулися в діяльності Міжнародного комерційного арбітражного суду під час запровадження військового стану у зв'язку з військовою агресією Російської Федерації. Визначено проблеми, які виникли в діяльності міжнародного комерційного арбітражу в умовах воєнного стану, та запропоновано можливі варіанти їх вирішення.

***Висновки.*** Військова агресія Російської Федерації та запровадження воєнного стану на території України зумовили появу низки проблем, з якими зіткнулися як судові органи, так і міжнародний комерційний арбітраж; серед них – проблема щодо подачі документів до самої арбітражної установи, проблема щодо виконання арбітражного рішення. Їх вирішення є необхідною умовою для належного функціонування міжнародного комерційного арбітражу на території України як ефективного інституту.

**Ключові слова:** міжнародний комерційний арбітраж, воєнний стан в Україні, військова агресія Російської Федерації, діяльність Міжнародного комерційного арбітражного суду під час воєнного стану в Україні, визнання та виконання арбітражного рішення, форс-мажорна ситуація, Торгова промислова палата України.

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# INTERNATIONAL ECONOMIC SANCTIONS AGAINST THE RUSSIAN FEDERATION AND CRYPTOCURRENCIES: LEGAL ASSESSMENT

**Abstract.** ***Purpose of the article*** is to assess legal possibilities of using cryptocurrencies by the Russian Federation in order to evade international economic sanctions and formulate appropriate proposals.

***Research methods.*** The paper is executed by applying the general research and special methods of scientific cognition.

***Results.*** The article is devoted to the legal assessment of the possibilities of using cryptocurrencies by the Russian Federation in order to evade international economic sanctions with further substantiation of relevant proposals. It is proved that the cryptocurrency market cannot fully replace classical financial mechanisms for the Russian Federation, as the aggressor country. Therefore, we can talk about individual cases of withdrawal by residents of the Russian Federation of their own assets out of sanctions in the form of cryptocurrency with their subsequent conversion into fiat currencies. It is noted that legal operators of the virtual assets market, as well as professional participants involved in the chain of transactions with virtual assets, carry out their activities in accordance with the requirements of FATF and national legislation on prevention of funds laundering and combating terrorism. At the same time, it is established that the use of decentralized cryptocurrency exchange (DEX) and technologies increasing the anonymity of transactions (in particular, bitcoin mixer (tumbler), private, decentralized cryptocurrency (Monero), shadow banking), creates grounds to evade the norms of prevention and counteraction money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, and negate the effect of international economic sanctions.

***Conclusions.*** International initiatives regarding the legal regulation of stablecoins create risks for the Decentralized Finance industry and for using the decentralized crypto-asset market for fraud, including circumventing sanctions, but, at the same time, do not fully mitigate the risks associated with the circulation of stablecoins. Accordingly, the arguments in favor of taking appropriate international legal measures aimed at combating shadow banking and organizing the circulation of virtual assets are expressed. Thus, only cryptocurrencies, which are secured by currency values, securities or derivative financial instruments at the moment of their introduction and during the whole period of their stay in circulation, should be subject to conversion into fiat currencies.

**Key words:** cryptocurrencies, evasion of international economic sanctions, transactions, circulation of financial virtual assets, cryptocurrency exchanges, fiat currencies.

**1. Introduction**

On February 24, 2022, the Russian Federation launched a large-scale military invasion of Ukraine, which marked a sharp aggravation of the 2014 conflict. As a result, some foreign countries (the United Kingdom, the United States, Canada, Germany, France, and others) have introduced economic sanctions, in particular, removed a number of Russian banks from the international payment system SWIFT (Society for Worldwide Interbank Financial Telecommunication), partially blocked bank accounts of legal entities and individuals involved in such an invasion, etc., and pushed for the active use of virtual assets (in particular, cryptocurrencies).

As it is known, due to the fragmentation of the legal regulation of the circulation of virtual assets, incl. cryptocurrencies, at the international level, the lack of unity of scientific approaches concerning the nature of cryptocurrencies and their institutional impact on the economy, there are cases where the mentioned kind of virtual assets are used to achieve goals contrary to public order. Accordingly, the said may indicate interest from residents of the Russian Federation (according to Cambridge University, Russia takes the third place in the world in the production of biotkoins (Bitcoin Mining Map, 2022) – *author's note*) to use cryptocurrencies in order to evade economic sanctions. For example, today the Government of the Russian Federation plans, at the legislative level, to allow settlements on foreign economic contracts in cryptocurrencies (Financial Club, 2022) and legalize mining with the purpose of transformation of energy resources into digital financial assets. These opportunities may be minimised by appropriate national and international legislation, including legal rules which define the specifics of identifying and controlling cryptocurrency transaction subjects. And various international organizations, such as the Financial Action Task Force on Money-laundering Financial Action Task Force on Money Laundering – FATF), and the states have recently been working in this direction. Therefore, the issue of the sufficiency of existing legal norms for the fulfillment of the above-mentioned task and the necessity of their improvement taking into account modern challenges becomes of particular importance.

In general, the issue of the possibility and legality of using virtual assets during the period of economic instability, in particular, the application of economic sanctions, has long been in the focus of a large number of leading scientists both at the domestic and international levels.

In particular, the analysis of relevant aspects is conducted in the contributions of such Ukrainian scientists as: S. Volosovich (Volosovych, 2016), A. Malynovska (Malynovska, 2019), and others. In their works, the authors mostly note that "the important role in the formation and use of virtual assets is played by interested countries, which are under threat of international sanctions".

Among the foreign studies on the relevant subject, the following works should be specified: P. Antonopolous, E. Bouri, D. Cottle, L. Dinarte, N. Jalkh, D. Jaume, E. Medina-Cortina, P. Molnar, P. dos R. Nunes, D. Roubaud, H. Winkler etc. Unlike the papers of domestic scientists, the studies are devoted to the analysis of the peculiarities of using virtual assets as a safe alternative to fiat currencies amidst economic and geopolitical chaos.

For example, E. Bouri, N. Jalkh, P. Molnar and D. Roubaud in the work **"**Bitcoin for energy commodities before and after the December 2013 crash: diversifier, hedge or safe haven?**"** (Bouri et al., 2017) argue that the financial crisis of 2008 was the catalyst for Bitcoin's emergence and growing popularity as a virtual asset and an alternative currency for the economy. Other studies have analyzed the role of cryptocurrency as an instrument for easing international economic sanctions in Venezuela (Antonopolous et al., 2019), Iran (Farzanegan et al., 2016; Farzanegan, Hayo, 2019; Gharibnavaz, Waschik, 2018; Farzanegan, Fischer, 2021), etc.

Despite numerous publications, current trends in the legal possibilities of using virtual assets by the Russian Federation, particularly cryptocurrencies, as an instrument to weaken economic sanctions remain poorly investigated. Moreover, the above-mentioned studies focus on the experience of countries with much smaller economies and transactions in the international financial system.

The *purpose of the article* is to assess legal possibilities of using cryptocurrencies by the Russian Federation in order to evade international economic sanctions and formulate appropriate proposals.

In order to achieve the stated aim of the article and ensure the scientific validity of the research results, a set of general and specific scientific *methods* was used. Taking into account the complexity and multidimensional character of the subject of research, modern methodological approaches have been applied: analytical-synthetic, hermeneutic, comparative legal, praxeological, simulation and prognostic, generalization.

The application of the analytical-synthetic method has enabled to find out the possibilities and legitimacy of the use of virtual assets during the period of economic instability, in particular the application of economic sanctions.

The use of the hermeneutical, comparative legal methods made it possible to analyze and compare the content of the norms in international acts and norms reflecting the specifics of identification and verification of counterparties of the virtual asset market. Praxiological, simulation and predictive methods were used to determine the prospects for regulating the circulation of virtual assets, taking into account current global challenges. The generalization method was used to formulate conclusions, recommendations and suggestions.

**2. Legislative barriers to evade economic sanctions with cryptocurrencies**

International and national regulation of virtual assets clearly extends to operations with virtual assets requirements for prevention of funds laundering (Ustymenko, Polishchuk, 2018).

In October 2018, FATF adopted amendments to its recommendations to clearly explain what they apply to financial activities related to the circulation of virtual assets and added two new definitions in the glossary, *virtual asset* (VA) and *virtual asset service provider* (VASP) (FATF, 2018).

The amended FATF Recommendation 15 requires that virtual asset service providers be regulated for anti-money laundering and countering the financing of terrorism purposes, that they be licensed or registered, and subject to effective systems for monitoring or supervision (FATF, 2021). For example, the world's largest crypto exchange, Binance, has entered the Digital Asset Service Provider (DASP) in the French register. Consequently, Binance's activities fall under the influence of the Autorité des Marchés financiers, the body responsible for overseeing the French financial market. This will allow Binance to officially provide services in the trade and storage of Bitcoin as well as other cryptocurrencies. In fact, France became the first European country to approve Binance's activities. In Lithuania, this cryptocurrency exchange is followed by regulators in the area of money laundering, and it is only in the process of registration in Sweden (Hryhoriev, 2022; DASP, 2022).

In June 2019, FATF adopted an explanatory note to recommendation 15 to further clarify how FATF requirements should be applied to implement a risk-based approach to VASP or virtual asset operations; to monitor or monitor VASP activities for the purpose of countering money laundering and terrorist financing; licensing or registration; safety measures such as forced client blocking, documentation and reporting of suspicious transactions; sanctions and other legal measures; international cooperation.

By the way, FATF recommendations, which are implemented in the legal system of Ukraine (on the basis of the Law of Ukraine "On Prevention and counteraction to Legalization (laundering) of proceeds derived from crime, financing terrorism and financing of proliferation of weapons of mass destruction" of December 19, 2020), further tighten the requirements for identification and verification of counterparties and maintenance of their operations.

The general tendencies of state regulation of blockchain technologies and virtual assets market are in regulation of existing social relations, taking into account acts of international and European law, which provide:

– Protection of Personal Data (Directive 95/46/EC of the European Parliament and the Council of Europe of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data);

– Identification and verification of economic entities (FATF recommendations, "White Book. A blockchain in Trade Facilitation" of the Commission on Trade Facilitation and Electronic Business of the United Nations Economic Commission for Europe);

– Prevention of money laundering proceeds from crime (FATF recommendations, 4-a Directive (EU) 2015/849 on prevention the use of financial system for money laundering and terrorist financing and Regulation (EU) 2015/847 on information on the payer accompanying transfers of funds);

– Preventing tax evasion (the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, dated November 24, 2016).

Considerable attention to transparency of transactions with cryptocurrencies and disclosure of full information about participants of such transactions was paid in the initiative "Markets in Crypto-Assets Regulation" (MICA), which was adopted by the European Parliament's Committee on Economic and Monetary Affairs at the end of March 2022.

The initiative aims to support innovation and fair competition by creating a framework for the issuance, and provision of services related to crypto-assets. In addition, it strives to ensure a high level of consumer and investor protection and market integrity in the crypto-asset markets, as well as address financial stability and monetary policy risks that could arise from a wide use of crypto-assets and DLT-based solutions in financial markets.

The document is currently being discussed in the European Council and the European Commission. It is likely that this initiative may become a full-fledged European legal act.

It is important to note that in March 2022 the European Parliament adopted another important decision for the cryptoindustry, extending the Transfer of Funds Regulation (TFR) to cryptocurrencies. If it enters into force, any transfers using cryptocurrencies will include identification of participants.

At the same time, rules for circulation of virtual assets are even tougher compared to traditional money. In particular, the recipient will be identified regardless of the size of the transfer, although in the case of traditional money, the identification starts when the transfer amount is more than 1 thousand euros.

Moreover, if the service provider notices that the information provided is inaccurate, incomplete or suspicious, the latter must "taking into account the risk" assess whether the transaction should be rejected or suspended, and report it to the appropriate financial intelligence unit. Thus, the European Commission is trying to completely eliminate anonymity and significantly expand the possibilities for financial monitoring (Domina, 2022).

Attempts of economic entities and authorities of the Russian Federation to create their own surrogate payment means and crypto-exchanges (Suslov, 2022) triggered a mixed reaction (Bartenstein, Versprille, 2022) and counter-measures from the USA (as the main sanctions aggregate).

One of the first official warnings to cryptocurrency participants was sent by the American regulator – Financial crimes enforcement Network (FinCEN, 2022b), which states: "Although a large-scale deviation from sanctions using a convertible virtual currency (CVC) the government, such as the Russian Federation, does not necessarily have to be practical. The CVC, administrators, and other financial institutions may observe attempts or completed transactions involving wallets in the CVC or other sanctions-related activities of the CVC. In addition, FinCEN reminds financial institutions of the dangers posed by Russian-related ransomware campaigns. All financial institutions – including those with visibility into cryptocurrency or CVC flows, such as CVC exchangers and administrators – should identify and report suspicious activity associated with potential sanctions evasion quickly and conduct appropriate, risk-based customer due diligence or enhanced due diligence where required. Financial institutions are also encouraged to make full use of the information sharing authorities provided by Section 314(b) of the USA PATRIOT Act".

Thus, the informational warning of market participants about the necessity of control over operations and the reminder about extension to operations with crypto assets of the requirements of the USA PATRIOT Act Section 314(b), which "permits financial institutions, upon providing notice to the United States Department of the Treasury, to share information with one another in order to identify and report to the federal government activities that may involve money laundering or terrorist activity" was carried out (FinCEN, 2022c).

Therefore, the spread of requirements for identification and verification of virtual assets market contractors are generally accepted, mandatory and they are improving given modern challenges. Providers of services related to the circulation of virtual assets (crypto-exchanges, etc.) operating within the framework of the legal field of the EU, USA and other countries are obliged to monitor and identify the origin of the virtual asset, including cryptocurrencies, and its beneficiaries. The legal regime of client identification provides for checking of a person on the sanction lists available on official websites of authorized authorities. In particular, in Ukraine such lists are placed on the website of the National Bank of Ukraine (National Bank of Ukraine, 2022), as well as similar full lists are presented on the resources of the United States Department of the Treasury (U.S. Department of the Treasury, 2017), and sanctions lists of the EU in the single base of EU legislation, namely Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (European Union, 2014).

This reduces the possibility of their (virtual assets) usage by individuals from sanctions lists, as well as by other residents of the Russian Federation to evade economic sanctions. However, this does not fully apply to the decentralized circulation of virtual assets.

**3. Centralized Exchanges vs Decentralized Exchanges**

As is known, conversion of financial assets is carried out through the purchase and exchange of digital assets, in particular cryptocurrencies, on organized trading platforms, that is through crypto-exchange. Some of them integrate "physical gateways" (payment applications that allow to pay for the purchase of virtual assets and receive funds from their sale on-line) within the virtual assets circulation system itself. It allows clients to use their own bank account directly or through a payment card for purchase of cryptocurrency assets. In fact, in this case, the bank account is connected through a "payment gateway" using the API protocol to the "electronic wallet", implemented on the base of the crypto-exchange.

The following types of cryptocurrency exchanges are distinguished: Centralized

(Binance, Coinbase, Huobi, etc.), so-called CEX, decentralized (Binance DEX, Uniswap, Waves Dex, Bancor Network, Switcheo Network etc.), so-called DEX, and hybrid (exchanges that include the advantages of CEX and DEX and are now at the stage of development. Most famous: Nash, Qurrex, etc.) (see table 1).

In fact, the existing centralized virtual asset exchanges are integrated into the global financial system and operate within the respective national legal systems. In this connection, CEX-type exchanges fulfill the requirements for financial monitoring and prevention of laundering of funds obtained by criminal means.

While DEX may avoid requirements of financial monitoring and preventing the laundering of funds obtained by criminal means while in the so-called "gray zone". At the same time, users of the DEX stock exchange adhere to the requirements of the legislation on financial monitoring only during interaction with the classical institutions of the financial market (payment systems, banks, institutions of electronic money) and others. A significant percentage of the work of such exchanges (replenishment and withdrawal of funds from virtual wallets) is connected with the work of shadow banking ("black exchanges"), which operate in many foreign countries, but without compliance with the requirements of the national legislation on counteracting money laundering and financing terrorism and requirements to the activities of VASP.

Some countries, aware of the dangers of decentralized cryptocurrency exchanges, are attempting to regulate their activities at the legislative level. For example, state regulators of USA are trying to apply the existing legislative framework for such cryptocurrency exchanges (FinCEN, 2022a), and in Singapore, the government is trying to create a new regulatory framework (Monetary Authority of Singapore, 2018).

The European Union has initiatives to introduce identification-owners of non-custodial wallets, which are necessary for interaction with a decentralized stock exchange or a decentralized application. For example, MetaMask, WalletConnect, or the Ledger and Trezor hardware wallets.

The specified wallets differ in the process of configuration, namely: Such programs offer to record seed or, so-called, a mnemonic phrase. It gives you access to the content **o**f the address, allows you to sign transactions and manage coins. Accordingly, users of such platforms from

Table 1

**Comparative characteristics of centralized and decentralized crypto-exchanges**

| | **Centralized Exchanges (CEX))** | **Decentralized Exchanges (DEX))** |
|---|---|---|
| **Management** | The CEX is under centralized management of the founding companies | DEX is characterized by absence of any management, support services. Unlike traditional CEX, transactions and bidding on such platforms are automated through smart contracts and decentralized applications |
| **State licensing and regulation** | The activity of most of CEX is subject to state licensing and regulation | Not subject |
| **Identification (KYC procedures (Know your Customer)** | Yes | No |
| **User Interface & User experience** | Easy to use | Hard to use |
| **Matching speed** | Very fast | Slow |
| **Custodial services (storage, accounting, financial assets use)** | Users trust their funds to CEX. The risks of asset loss are based on the Exchange operator | Funds are owned by users. This type of crypto-exchanges is much safer, because a well-written smart contract will not allow attackers (hackers) to break it |
| **Trading volume** | High | Low[1] |
| **Liquidity** | High | Low |
| **Functions** | Unlimited | Limited |
| **Fiat gateway** | Yes | No |

*Source: compiled according to the site data https://www.nasdaq.com*

[1] According to the Block Research – 2021 Digital Asset Outlook, DEX trading volume in 2021 amounted to $1 trillion, and CEX trading volume for the same period – more than $14 trillion (DAOR, 2021).

Europe are expected to disclose information about themselves (Domina, 2022).

However, there is no clear position on the decentralized cryptocurrency exchanges in these countries and EU today, and in other countries the decentralized cryptocurrency exchanges are not regulated at all.

One of the main problems associated with regulation of decentralized exchanges is that in most cases such exchanges are not controlled by specific legal entities or individuals.

This will result in problems with identifying responsible in the event of any violation, difficulty in verifying trade activity and identifying possible violations. For the same reason, some of the existing standards applied to the centralized stock exchange cannot be applied to the decentralized stock exchange.

So, if we speak about sanction's avoidance mechanisms, this seems possible in case of violation of the requirements of the legislation on financial monitoring and prevention of legalization (laundering) of funds obtained by criminal means; substitution of the beneficiary with a nonexistent person (use of "dormant bitcoin wallets"); usage of technologies that increase transaction anonymity (such as bitcoin mixer (tumbler), private, decentralized cryptocurrency (Monero) (International Monetary Fund, 2022) or by helping to conduct transactions on decentralized crypto-exchanges. In addition, scientists also allocate other potential strategies to evade sanctions, which can be easily adapted to funding on the basis of blockchain. Use of front companies, power of attorney, authorized persons – only some of these techniques (Wronka, 2021). However, such means are acceptable only for operations of a relatively small volume. For example, settlements on state contracts or power contracts of monopolists through DEX and "black exchanges" are too complex and have a great risk of disclosure by law enforcement bodies.

As individual researchers point out, unlike, for example, Venezuela and Iran, the Russian Federation has firmly rooted in the world financial system over the past decades. Every day in the Russian Federation currency transactions are carried out with the volume of about 50 billion US dollars, which is approximately equal to the total cost of all bitcoin transactions all over the world, when the volumes reach peak levels. This scale and efficiency cannot be reproduced either through decentralized financial technology (Makhlouf, Selmi, 2020) or through technologies that increase transaction anonymity.

In turn, the opinions of experts-practitioners regarding using CEX by residents of the Russian Federation to evade sanctions differ. Thus, according to Ari Redbord of TRM labs – a company that is engaged in the tracking and security of blockchain – "eighty percent of daily currency transactions of the Russian Federation and half of its international trade are carried out in US dollars. It is very difficult to move a large number of cryptocurrencies and convert them into a suitable currency. Russia cannot use cryptocurrencies to replace hundreds of billions of dollars that could be potentially blocked or frozen" (Suleymanova, 2022) (according to the Russian government estimate, the volume of only Russian savings in cryptocurrencies as of early April 2022 is 10 trillion rubles (150,4 billion US dollars at the rate of 1 May 2022 (Pavlenko, 2022) – *author's note*).

Executive Director of BTC.top Jiang Zhuoer follows the same point of view. In his opinion, "the cryptocurrency market cannot "digest" the whole volume of foreign trade turnover of the Russian Federation (789 billion US dollars in 2021)" (Petrov, 2022).

At the same time, Meirid McGuinness, European Union Commissioner for Financial Services, believes that sanctions against the Russian Federation for the invasion of Ukraine should apply to cryptocurrencies as well. In her opinion, non-regulated cryptocurrencies pose more risks through fraud, deception etc.

As a vivid illustration of the above-mentioned statement by Meirid McGuinness, may be the information given by Mariel Cohen-brash, Financial Ombudsman of France, that approximately 25% of money fraud in the country last year was connected with investment schemes in cryptocurrencies. Compared to 2020, when this figure was 6%, this is a significant increase in the share of illegal transactions using cryptocurrencies (Domina, 2022).

**4. Legal regulation of stablecoins vs Decentralized Finance industry**

It is not accidental that considerable attention to the circulation of "stable cryptocurrencies" (stablecoins) is currently paid. In particular, the above-mentioned initiative "Markets in Crypto-Assets Regulation" (MICA) allocates two categories of stablecoins: pegged to assets (for example, connected to a bitcoin WBTC or PAXG – digitized version of physical gold); pegged to the financial currencies (for example, the USDC, fully secured by the US dollar, or Tether, provided by the US dollar, according to the issuer company, by 20%).

The quite high MICA's capital requirements for issuers with asset-tied tokens can be recognized reasonable. These requirements are even compared with Basel requirements for banks. In addition, issuers will be required to place reserves in the credit institution and to undergo an independent audit every 6 months.

In turn, for owners of stablecoins pegged to the financial currencies, MICA tried to create

the same protection as for owners of electronic money. For example, an issuer must be able to buy a token at any time from the owner at his request.

In general, the new rules are aimed at increasing protection of the rights of cryptoinvestors from possible fraudulent actions, which may lead to loss of their money (Domina, 2022).

Special attention to the features of legal regulation of the emission of stablecoins is also paid by parliaments of other countries. In particular, a bill on digital commodity exchanges was passed to the United States Congress, which obligates the issuers of stablecoins (stable cryptocurrencies) to register as operators of fixed-value digital goods. They will then have to provide the regulator with information about the stablecoins and ensure that they have enough assets to exchange coins for USA dollars. As a result, before listing and selling new cryptocurrencies, the exchanges will have to obtain authorization from the Commodity Futures Trading Commission (CFTC). As it is noted, this will make it clear in the process of asset standardization, although at the same time will slow down the speed of placing new coins on the exchanges (Newmyer, 2022).

At the same time, as the US Federal Reserve System stresses in the Financial stability Report, stablecoins are one of the risk areas for the financial system because of possible problems with their conversion into fiat. In particular, the report on stability notes: "The Stablecoins <...> are secured by assets that may lose value or become illiquid during stress, creating repayment risks. Vulnerability can increase the lack of transparency regarding the risk and liquidity of reserve assets. In addition, the increasing use of stablecoins to meet margin requirements in the trade of other cryptocurrencies with leverage may increase the volatility of demand" (Board of Governors of the Federal Reserve System, 2022).

The report on financial stability mentions a report drafted by the working group on financial markets under the President of the United States on risks associated with "stable coins". The authors of the report suggested that issuers of such tokens should be equated with banks (Ivanov, 2022).

At the same time, there are early reports that such initiatives, in particular MICA's requirements, pose an existential threat to the Decentralized Finance industry, including DEX (MiCA, 2022). The obligation that crypto-asset issuers must be incorporated in the form of a legal entity could pose significant challenges for DeFi projects where issuance is decentralized and there is no identifiable issuer (Partz, 2020). This further minimizes the opportunities for using the decentralized crypto-asset market for fraud, including circumventing sanctions.

**5. Conclusions**

Summing up the above, it is possible to reach the following conclusions.

Legal operators of the virtual asset market, as well as professional participants involved in the virtual asset transaction chain, perform their activities in accordance with FATF and national legislation on money laundering and combating terrorism. In the identification of origin, transactions of virtual asset (including cryptocurrencies) are reflected in its own code. This makes it technically impossible to hide the virtual asset circulation chains in the CEX system. Measures to "avoiding sanctions" are violations of the conditions defined by licenses, permits to conduct the activities in financial markets and are qualified as illegal with bringing the guilty persons to legal responsibility.

Thus, attempts to evade the sanctions with the use of cryptocurrencies are illegal (however possible), and in view of the current international legislation and legislation of the countries in which the operations of crypto-exchanges are carried out, is a usual violation of the requirements regarding the obligatory financial monitoring of the respective operations and violation of the conditions of the activity with virtual assets. Therefore, the legal crypto-market cannot replace the classical financial mechanisms for the Russian Federation as an aggressor country. Accordingly, it may be a case of single exit by residents of the Russian Federation out of the sanctions of their own assets in the form of cryptocurrencies with their further conversion into a fiat currency.

At the same time, it is established that the use of decentralized cryptocurrency exchange (DEX), as well as technologies that increase the anonymity of transactions (in particular, bitcoin mixer (tumbler), private, decentralized cryptocurrency (Monero), shadow banking), creates the grounds to evade the norms of prevention and counteraction money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, and, in some instances, negate the effect of international economic sanctions.

International initiatives regarding the legal regulation of stablecoins create risks for the Decentralized Finance industry, but at the same time do not fully mitigate the risks associated with the circulation of stablecoins. Accordingly, it is necessary to express arguments in favor of taking appropriate international legal measures aimed at combating shadow banking and organizing the circulation of virtual assets. Only cryptocurrencies, which are secured by currency values, securities or derivative financial instruments at the moment of their introduction

and during the whole period of their stay in circulation, should be subject to conversion into fiat currencies. At the same time, identification and verification of counterparties should be carried out on a mandatory basis.

The scientific conclusions obtained in this article can serve as a basis for further research, which is focused on the problems of development and improvement of legal regulation of the circulation of financial virtual assets.

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# МІЖНАРОДНІ ЕКОНОМІЧНІ САНКЦІЇ ПРОТИ РОСІЙСЬКОЇ ФЕДЕРАЦІЇ ТА КРИПТОВАЛЮТИ: ПРАВОВА ОЦІНКА

**Анотація.** ***Мета статті*** – оцінити правові можливості використання Російською Федерацією криптовалют із метою ухилення від міжнародних економічних санкцій та сформувати відповідні пропозиції.

***Методи дослідження.*** Роботу виконано із застосуванням загальнонаукових і спеціальних методів наукового пізнання.

***Результати.*** Статтю присвячено правовій оцінці можливостей використання Російською Федерацією криптовалют із метою ухилення від міжнародних економічних санкцій, а також подальшому обґрунтуванню відповідних пропозицій. Доведено, що фактично криптовалютний ринок не може повноцінно замінити для Російської Федерації як країни-агресора класичні фінансові механізми, тому можна говорити про поодинокі випадки виводу резидентами Російської Федерації з-під санкцій власних активів у вигляді криптовалюти з подальшою їх конвертацією у фіатні валюти. Зазначається, що легальні оператори ринку віртуальних активів, а також професійні учасники, залучені до ланцюга транзакцій із віртуальними активами, здійснюють свою діяльність згідно з вимогами FATF та національного законодавства щодо запобігання відмиванню коштів і боротьби з тероризмом. Водночас встановлено, що використання децентралізованих криптовалютних бірж (DEX), а також технологій, які підвищують анонімність транзакцій (зокрема, мікшерів, біткоїн-тумблерів, монет конфіденційності (Monero), тіньового банкінгу), створює підґрунтя для ухилення від дотримання вимог про запобігання та протидію легалізації (відмиванню) доходів, одержаних злочинним шляхом, фінансуванню тероризму та фінансуванню розповсюдження зброї масового знищення, нівелюючи ефект міжнародних економічних санкцій.

***Висновки.*** Міжнародні ініціативи, що стосуються правового регулювання стейблкоїнів, створюють ризики для індустрії децентралізованих фінансів, проте водночас неповною мірою знижують ризики, пов'язані з обігом стейблкоїнів. Відповідно, висловлюються аргументи на користь вжиття відповідних міжнародно-правових заходів, спрямованих на боротьбу з тіньовим банкінгом та організацію обігу віртуальних активів. Зокрема, конвертації у фіатні валюти мають підлягати тільки ті криптовалюти, які забезпечені валютними цінностями, цінними паперами або похідними фінансовими інструментами на момент їх запровадження й упродовж усього періоду перебування в обігу.

**Ключові слова:** криптовалюти, ухилення від міжнародних економічних санкцій, транзакції, обіг фінансових віртуальних активів, криптовалютні біржі, фіатні валюти.

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# GENERAL LEGAL DESCRIPTION OF FEATURES AND ESSENCE OF A COMMERCIAL SECRET

**Abstract.** The ***purpose of the article*** is the general legal description of the features and essence of a commercial secret. The object of the article is public relations in the field of a commercial secret. The subject matter of the study is the essence and features of a commercial secret from the general legal perspective.

***Results.*** The article provides general legal description of the features and essence of a commercial secret, the main legal arguments regarding the presence of certain elements and characteristics in its structure. It is proved that a commercial secret should be considered as derived from the basic concepts and categories, considering information as a social phenomenon, which in turn determines the need for its proper preservation, transfer and ensuring effective dissemination. These categories enable to sum up that the legal regime of a commercial secret is a specific legal status of a certain type of information that is privately protected by means of regulatory instruments provided by the state mechanism.

***Conclusions.*** It is established that the essence of a commercial secret as a specific legal information regime is, first of all, is attribution to it of a number of important facts and circumstances that are important in the process of managing an enterprise, institution, organisation, as well as significant in its efficiency, effectiveness and competitiveness. The author proves that the key characteristic features of a commercial secret, among others, are: specificity of information of this category; limited range of participants in these legal relations; mandatory presence of "commerciality" of the employer carrying out a certain type of activity; measures taken by the enterprise, institution, organisation (its authorised representatives) to preserve certain commercial information, which in their opinion and in accordance with the legislation of Ukraine and internal labour procedure is a secret. In addition, it is summarised that further scientific research in the relevant area of legal support for the proper functioning of the institution of a commercial secret should focus on the study of the mechanism of its provision from a practical perspective.

**Key words:** commercial secret, enterprise, institution, organisation, features, essence of secret, legal regime of information.

## 1. Introduction

Ensuring human and civil rights and freedoms in Ukraine in various sectors and spheres is an important element of the state's democracy in the world arena, as well as a fundamental internal regulator of social relations. The importance of economic security of the state through the formation of a proper system of market economy gives grounds for systematic and systematic improvement of the relevant institution, which in turn is ensured by a number of well-known and specially created concepts and methods.

For example, the functioning of enterprises, institutions and organisations engaged in a certain type of activity and responsible for the functioning of a particular sector of the state economy is primarily associated with the rules of the market economy, among which a fundamental one is the systemic progress and competitiveness in the market relative to other entities.

Considering some important complex categories that directly affect the competitiveness and systemic development of a particular enterprise, institution or organisation, the preservation (observance) of a commercial secret actually constitutes the specifics of any activity and may affect the performance (effectiveness) of a particular activity.

Meanwhile, the concept of a commercial secret, both in the general legal sense and within the labour law study, has repeatedly become the subject of analysis and scientific research in the works by: H. Bohorodchenko, L. Voronova, Yu. Vashchenko, I. Zaverukha, E. Karmanov, L. Kasianenko, L. Kolbov, I. Kolesnikova,

V. Klymeko, H. Nechai, N. Pryshva, H. Reznikov, A. Syrota, A. Selivanov, O. Orliuk, and others. However, we believe that the present, built on dynamic social relations, significantly negative impact of the aggressor state of Russia on the defined order of functioning of all mechanisms and elements of the market economy as an inter-institutional and international category determine the relevancy of the topic that requires additional research.

The purpose of the article is the general legal description of the features and essence of a commercial secret. This purpose, in our opinion, requires the solution of the following research tasks: 1) determination of the essence and legal framework for the existence of a commercial secret in Ukraine; 2) the study of a commercial secret as an inter-institutional phenomenon with a view to highlighting its characteristic features and essence.

The object of the article is public relations in the field of a commercial secret. The subject matter of the study is the essence and features of a commercial secret from the general legal perspective.

**2. A commercial secret as a concept of law**

In our opinion, a commercial secret as a concept of law and regulator of labour relations is the most crucial in the context of ensuring the continuous progress of the enterprise, institution, organisation. In addition, the existence of certain specifics in the activities of each institution enables to effectively implement some managerial processes, bring the level of development of their own business to the apogee, and affect the competitiveness in general and in a certain segment in particular.

H. Reznikov emphasises that, unfortunately, in Ukraine no special legal regulation regulates the use and protection of a commercial secret, which negatively affects the legal relations. It is possible to determine the legal mechanism for the protection of a commercial secret within the legal framework of Ukraine, using such legal regulations in aggregate (Reznikov, 2013). However, in our opinion, the expediency of adopting a special legal regulation contradicts the principles and ultimate goals, as well as the principles of a market economy, since such standards, first of all, provide for variety in application, which cannot be combined with clarity and legislative certainty.

For example, one of the most effective instruments, in our opinion, is to indicate what is not a commercial secret. For example, the Resolution of the Cabinet of Ministers of Ukraine № 611 as of August 9, 1993 stipulates that a commercial secret does not imply the following: constituent documents, documents allowing to engage in entrepreneurial or economic activity and its individual types; information on all established forms of state reporting; data necessary for verification of calculation and payment of taxes and other obligatory payments; information on the number and composition of employees, their salaries in general and by professions and positions, as well as the availability of vacant jobs; information on environmental pollution, non-compliance with safe working conditions, sale of products harmful to health, as well as other violations of the legislation of Ukraine and the amount of damage caused; documents on solvency; information on participation of the company's officials in cooperatives, small enterprises, unions, associations and other organisations engaged in entrepreneurial activity; information that is subject to disclosure in accordance with the current legislation (Cabinet of Ministers of Ukraine, 1993). Such an approach enables to effectively regulate in this field and provides an opportunity for business entities, managers and owners of institutions and organisations of various forms of ownership to effectively manage the conceptual content of certain phenomena that, in their opinion, should be classified as a commercial secret and which do not contradict the legislation of Ukraine.

It should be underlined that the general provisions of part two of Article 505 of the Civil Code of Ukraine stipulates that a commercial secret is information that is secret in the sense that it, as entirely or in a certain form and aggregate of its components, is unknown and not easily accessible to persons who usually deal with the type of information to which it belongs, in this regard has commercial value and is subject to measures adequate to the existing circumstances to preserve its secrecy taken by the person, who legally controls this information, as well as that a commercial secret may include technical, organisational, commercial, production information, except for such that, according to the law, cannot be classified as a commercial secret (Verkhovna Rada of Ukraine, 2003). In our opinion, such mutually exclusive construction effectively establishes the legal regime for the protection of a commercial secret and enables its flexible and effective management in the context of the real time and technological and intellectual progress rapidly developing all sectors of social life.

**3. Features and the essence of a commercial secret**

L. Kolbov and I. Kolesnikova underline that an enterprise as the owner of information that is a commercial secret has the right to appoint a person (persons) who will possess, use and dispose of such information, determine the rules for processing information and access to it, as well

as establish other conditions for access to a commercial secret. Nevertheless, it should be noted that not all information can be given the status of a commercial secret by an enterprise, thus restricting access to it by third parties and, above all, by regulatory authorities (Kolbov, Kolesnikova, 2016), which, in our opinion, significantly affects the formation of an understanding of the essence of a commercial secret as a multidisciplinary phenomenon and a preventive mechanism in a market economy.

In addition, the final formation of a number of features of a commercial secret requires, in our opinion, the focus on the provisions of the Law of Ukraine "On Protection of Unfair Competition", which regulates one of the main institutions of a commercial secret – its protection, which determines the circumstances of bringing to liability and determines the content and essence of violation of a commercial secret in real conditions (Verkhovna Rada of Ukraine, 1996). It should be noted that this element of the legislation is not an isolated phenomenon, and the state is making efforts to protect certain elements and types of commercial information considered secret in the understanding of the employer, in particular in the Law of Ukraine "On Scientific and Technical Information", which defines that "Information about all the results of scientific and technical activities registered in Ukraine, indicating the location of the reporting documentation and the conditions of their transfer, shall be disseminated at the request of interested persons and organisations by the bodies and services of scientific and technical information responsible for the registration of these results, except for cases of restrictions related to state or commercial secrets" (Verkhovna Rada of Ukraine, 2015). The above opinions of researchers and provisions of the legislation of Ukraine indicate that the essence of a commercial secret as a multidisciplinary preventive phenomenon is the ability of actors of economic, commercial and other activities regulated by the legislation of Ukraine to determine the boundaries of secrecy (specificity) of their own activities (production and other forms) in the part that does not contradict the legal regulations and is clearly communicated to employees. For violation of the relevant rules and regulations, liability may arise.

O. Voronova identifies certain features of a commercial secret, which include: 1) secrecy of information that is a commercial secret, implying that it is unknown and not easily accessible to persons who usually deal with this type of information; 2) information recognised as a commercial secret has commercial value, i. e. a certain price certainty (cost); 3) it is the amount of information determined by the business entity or authorised body; 4) the owner of the information takes measures to protect the information that is a commercial secret; 5) the term of legal protection of a commercial secret is limited by the duration of a combination of factors, when such information: has commercial value, is unknown to third parties and is not freely accessible to other persons on legal grounds, and the owner of the information takes appropriate measures for its safety and others (Voronova, 2011, p. 86).

Therefore, the author has formed a general idea of the features of a commercial secret as a concept of law, which in turn serves as a regulator of the internal and external economic situation of an enterprise, institution or organisation. In our opinion, the range of characteristic features of a commercial secret should be supplemented by elements indicating the specificity of information belonging to this category, the importance of clearly establishing not just the status of information and its "commerciality", but the appropriate legal status of the enterprise or institution.

**4. Conclusions**

Thus, relying on the review of legal regulations, perspectives and opinions of scientists and researchers in the relevant field of law, it is proved that the understanding of a commercial secret derives from the basic concepts and categories, the consideration of information as a social phenomenon, which in turn determines the need for its proper preservation, transfer and effective dissemination. The legal regime of a commercial secret is a specific legal status of a certain type of information that is privately protected by means of regulatory instruments provided by the state mechanism.

The essence of a commercial secret as a specific legal information regime is, first of all, is attribution to it of a number of important facts and circumstances that are essential in the process of managing an enterprise, institution, organisation, as well as significant in its efficiency, effectiveness and competitiveness.

The key characteristic features of a commercial secret, among others, are: specificity of information of this category; limited range of participants in these legal relations; mandatory presence of "commerciality" of the employer carrying out a certain type of activity; measures taken by the enterprise, institution, organisation (its authorised representatives) to preserve certain commercial information, which in their opinion and in accordance with the legislation of Ukraine and internal labour procedure is a secret. In addition, the list of such features is not exhausted and requires further elaboration at a higher scientific level allowing for current trends.

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## ЗАГАЛЬНОПРАВОВА ХАРАКТЕРИСТИКА ОЗНАК ТА СУТНОСТІ КОМЕРЦІЙНОЇ ТАЄМНИЦІ

**Анотація.** ***Метою статті*** є загальноправова характеристика ознак і сутності комерційної таємниці. Об'єктом статті є суспільні відносини у сфері забезпечення комерційної таємниці. Предметом дослідження є сутність та ознаки комерційної таємниці в загальноправовому розумінні.

***Результати.*** У статті надано загальноправову характеристику ознак і сутності комерційної таємниці, наведено основні юридичні аргументи щодо наявності в її структурі тих чи інших елементів та характерних рис. Доведена позиція, згідно з якою розуміння комерційної таємниці виходить із базових понять і категорій, розуміння інформації як соціального явища, що своєю чергою зумовлює потребу в її належному збереженні, переданні та забезпеченні ефективного обігу. З огляду на ці категорії узагальнено розуміння того, що правовий режим комерційної таємниці є специфічним юридичним статусом певного типу інформації, що охороняється у приватному порядку за допомогою нормативно-правових інструментів, наданих державним механізмом.

***Висновки.*** Встановлено, що сутність комерційної таємниці як специфічного правового інформаційного режиму полягає насамперед у віднесенні до неї низки важливих фактів та обставин, що мають значення у процесі управління підприємством, установою, організацією, а також відіграють вагому роль у його ефективності, результативності роботи та суттєво впливають на конкурентоспроможність. Автором обґрунтовується, що основними характерними ознаками комерційної таємниці є, зокрема, такі риси: специфічність інформації, що належить до цієї категорії; обмеженість кола суб'єктів, які беруть участь у вказаних правовідносинах; обов'язкова наявність «комерційності» роботодавця, що здійснює певний вид діяльності; вжиття підприємством, установою, організацією (її представниками, уповноваженими на це) заходів зі збереження тієї чи іншої комерційної інформації, яка, на їх думку та відповідно до законодавства України й внутрішнього трудового порядку, становить таємницю. Крім цього, узагальнено, що перспективи подальших наукових пошуків у відповідному напрямі правового забезпечення належного функціонування інституту комерційної таємниці полягають у необхідності вивчення механізму її забезпечення з практичної позиції.

**Ключові слова:** комерційна таємниця, підприємство, установа, організація, ознаки, сутність таємниці, правовий режим інформації.

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# LEGAL MECHANISM FOR THE DISMISSAL OF PUBLIC OFFICIALS ON GROUNDS BEYOND A PUBLIC OFFICIAL'S CONTROL

**Abstract.** ***The purpose of the article*** is to establish the specificities of the legal mechanism for the dismissal of public officials on grounds beyond a public official's control.

***Results.*** The article analyses the specificities of the dismissal of public officials. The legal mechanism for the dismissal of public officials on grounds beyond a public official's control is described. The classification of sub-mechanisms included in such a legal mechanism is detailed. The content and meaning of each of them are revealed. Their essence and specificities are defined. It is revealed that if the ground for the dismissal of a public official is to reduce the number or staff of public officials, or to abolish a public authority, the first procedural step is to warn a public official of the subsequent dismissal in writing by the head of the civil service no later than thirty calendar days before the day of dismissal, as well as, if possible, to propose another public office. If a public official refuses such an offer, or it is not possible to employ a public official in another public office, the head of civil service shall initiate a dismissal procedure, making the appropriate order. The next procedural step, as in the previous sub-mechanisms, is to enter a record of the dismissal of a public official in the electronic employment record of the public official, as well as to enter such information into a paper employment record at the request of the public official.

***Conclusions.*** It is concluded that the sub-mechanisms that form the mechanism for the dismissal of public officials on grounds beyond a public official's control are more complex than those that we have considered in the mechanism for a public official's dismissal on grounds under a public official's control. For example, the sub-mechanism for dismissing a public official on the ground of acquiring the citizenship of another State or establishing the citizenship of another State constitute the provisions of a number of legal regulations, including Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, Constitution of Ukraine, Law of Ukraine "On Citizenship of Ukraine" of January 18, 2001 № 2235-III. The tendency to increase the capacity of civil service managers to dismiss public officials, and in turn, to reduce the guarantees of public officials to protect their labour rights is underlined. Essentially, individual sub-mechanisms do not enable public officials to appeal against dismissal, and in this respect the mechanism for the dismissal of public officials on grounds beyond public officials' control, is more problematic than the mechanism for the dismissal of public officials on grounds under public officials' control.

**Key words:** legal mechanism, dismissal, public official, civil service, control, labour.

## 1. Introduction

The relevance of the study of the mechanism for the dismissal of public officials on grounds beyond their control is due to the fact that a new procedure for the dismissal of public officials was introduced recently (in February 2020) in Ukraine, according to which their rights and guarantees to ensure these rights have been somewhat reduced, the procedure for the dismissal has become faster, and dismissals have become more frequent. For example, if the head of the civil service has previously been obliged to notify a public official of his or her dismissal two months in advance, the current period is only thirty days. As a result, only in IV quarter of 2020 in Ukraine, 6 888 public officials were dismissed, including 11 of job category "A", 311 of job category "B" and 5 290 of job category "C" (National Agency of Ukraine on Civil Service, 2020). If clear algorithms of the dismissal of a public official are met by the head of the civil service, violations thereof enable a public official to be reinstated, therefore the study of the mechanism for the dismissal of public officials on grounds beyond their control is required. In addition, legal regulations on

the dismissal of public officials (primarily, Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) and the Labour Code of Ukraine (Verkhovna Rada of Ukraine, 1971)) require the introduction of effective remedies against the abuse by managers of the civil service.

Contributions of the scientists who have studied the legal regulatory mechanism for the dismissal of public officials should be noted, these are: V.O. Babenko, V.A. Bahrii, B.O. Bezkorovainyi, L.R. Bila-Tiunova, A.B. Hryshchuk, Yu.S. Danylenko, M.I. Inshyn, A.V. Kirmach, O.L. Kravchuk, O.Ye. Lutsenko, A.O. Monaienko, O.M. Stets, etc. However, while not all the problems of the legal regulatory framework for the dismissal of public officials have been resolved, it is of importance to focus on the issue of the legal mechanism for the dismissal of public officials on grounds beyond a public official's control.

**2. Specificity of the dismissal of public officials**

According to M.I. Karpa, completion of civil service is guaranteed by a legal provision establishing that the change of the head or composition of the state bodies cannot be grounds for the dismissal of a public official by the newly appointed head of the civil service (part 2 of article 83 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII) (Karpa, 2014, p. 4). However, we have established that the current legislation provides for a number of sub-mechanisms that grant the head of the civil service such a right. Therefore, we will consider the contents of the mechanism for the dismissal of public officials on the grounds, beyond their control, because of the following sub-mechanisms:

– the sub-mechanism for the dismissal of a public official on grounds of loss of Ukrainian citizenship, acquisition of citizenship of another state or establishment of citizenship of another state;

– the sub-mechanism for the dismissal of a public official on the ground of the legal force obtained by the decision or the court indictment concerning his or her administrative or criminal liability for the offenses connected with corruption or the recognition of his or her assets ungrounded, including those which provide for the prohibition of employment in the civil service;

– the sub-mechanism for the dismissal of a public official on the ground of subordination to related persons in the civil service;

– the sub-mechanism for the dismissal of a public official on the grounds of establishing that the entry into the civil service and employment in the civil service does not meet the requirements of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII;

– the sub-mechanism for the dismissal of a public official on grounds of loss of the right to the civil service due to application of the prohibition established by Law of Ukraine "On Purification of Power" of September 16, 2014 № 1682-VII;

– the sub-mechanism for the dismissal of a public official on the grounds of reorganisation or liquidation of the state body;

– the sub-mechanism for the dismissal of a public official on the grounds of his or her inconformity to the occupied position in the course of the test or on the results of the performance assessment;

– the sub-mechanism for the dismissal of a public official on the grounds of disciplinary misconduct, for which Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII provides for the dismissal;

– the sub-mechanism for the dismissal of a public official on grounds of his or her absence from work due to temporary disability during the term stipulated by the legislation.

The first sub-mechanism we have allocated is the sub-mechanism for the dismissal of a public official on grounds of his or her loss of Ukrainian citizenship, his or her acquisition of citizenship of another state or establishment of his or her citizenship of another state. Thus, as we have established, the citizenship of Ukraine is one of the key requirements for the candidate for the vacant position of civil service. In accordance with part 1 of article 19 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, the citizens of Ukraine exclusively have the right to the civil service. Moreover, article 4 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) provides for a single citizenship in Ukraine. Therefore, a public official in Ukraine shall be a citizen of Ukraine, cannot be a citizen of a foreign state and cannot have double citizenship.

A sub-mechanism for the dismissal of a public official on the grounds of his or her acquisition of citizenship of another state or establishment of his or her citizenship of another state is governed by the provisions of articles 19 and 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, articles 4 of the Constitution of Ukraine, articles 17, 19, 20 and 21 of Law of Ukraine "On Citizenship of Ukraine" of January 18, 2001 № 2235-III, regulating the procedure for the dismissal of a public official on the grounds of his or her acquisition of the citizenship of another state or establishment of his or her citizenship of another state. First of all, the head of the civil service should

establish a legal fact that testifies to his or her loss of Ukrainian citizenship, his or her acquisition of citizenship of another state or establishment of his or her citizenship of another state. That is, the first procedural action is to receive information by the head of the civil service about the loss of the right to the civil service by the public official. In the three-day period from the date of receipt of such information, the head of the civil service should issue an order or instruction to dismiss the public official with the indication of grounds for the dismissal. The following procedural steps are to issue a copy of such order or command on dismissal, to carry out calculations with him/her, as well as to enter a record of the dismissal of a public official in the electronic employment record, and to enter such information into a paper employment record at the request of the public official.

The sub-mechanism for the dismissal of a public official on the ground of the entering into force of a decision or the court indictment concerning administrative or criminal liability for offenses connected with corruption or the recognition of his or her assets ungrounded, including those providing for the prohibition of employment in the civil service, consists of the provisions of article 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, article 36 of the Labour Code of Ukraine, article 290 of the Civil Procedural Code of Ukraine, as well as procedures, prescribed by Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII and the Labour Code of Ukraine. As in case of the previous sub-mechanism, first of all, the head of the civil service should receive one of the above-mentioned court decisions, which shows that the public official has lost the right to the civil service. Within three days after the head of the civil service has acquainted with the decision of the court, he or she shall issue an order or instruction on dismissal of a public official with the indication of grounds for the dismissal. A copy of such order or instruction is issued to the public official. The employer makes a record of the dismissal of a public official to the electronic employment record, as well as to the paper employment record on the demand of a public official. In addition, as in all the sub-mechanisms we have analysed, the head of the civil service should provide a calculation with the public official.

Another sub-mechanism, allocated on the ground of the provisions of article 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), is the sub-mechanism for the dismissal of a public official on the ground of establishment of subordination to related persons in the civil service. According to part 1 of article 1 of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b), a spouse, parents, a mother, children, a stepmother, a son, a daughter, a stepson, a stepdaughter, a brother, a sister, a cousin, a brother- and sister-in-law, a nephew, a niece, an uncle, an aunt, a grandfather, a grandmother, a great grandfather, a great grandmother, a grandson, a granddaughter, a great-grandson, a great-granddaughter, a son-in-law, a daughter-in-law, a mother-in-law, a father-in-law, an adopter or adoptee, a guardian or custodian, a person who is under the care or custody of a public official are persons close to the public official. Since such persons are defined by the current legislation as "related", it may create obstacles for them to realise their right to civil service, even if they meet the requirements of candidates for the civil service defined in articles 19 and 20 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII.

**3. The regulatory and legal framework for the dismissal of public officials**

Thus, in accordance with part 1 of article 27 of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b) and part 1 of article 32 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), a person who will be subordinate to a related person or whose subordinate will be a related person, i. e. any of the persons listed above, cannot be appointed to the position of civil service. This information shall be communicated by such persons at the stage of competitive selection for employment of the vacant position. In this case, a person may be accepted for the civil service, but for another position, so she will not be subordinate to a related person.

In practice, situations are possible when subordination of related persons appeared already after entering the civil service. In this case, part 2 of article 31 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) requires the public official to inform the head of the civil service of circumstances that have arisen and to take measures for the elimination of subordination within the fifteen-day period. If this problem is not resolved within the specified period, the head of the civil service can transfer the public official to another equal position. However, in case that such transfer is not possible, the person who is in subordination is dismissed from the civil service.

Thus, the sub-mechanism for the dismissal of a public official on the ground of establishing subordination of related persons in the civil

service is provided for by the provisions of articles 32, 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, article 27 of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII and the Labour Code of Ukraine, regulating the dismissal of a public official on the grounds of subordination to related persons in the civil service.

After related persons who were subordinate to each other in the fifteenth day have not taken measures to eliminate subordination, and the head of the civil service cannot transfer public officials to other equal positions, he or she shall dismiss the public official who is subordinate. For this purpose, the head of the civil service shall issue the order on dismissal of a public official on the ground of paragraph 5 of part 1 of article 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) and issue a copy of such order to the public official who has been dismissed. As in all other sub-mechanisms, the person dismissed by the head of the civil service shall be provided with a record of dismissal to the electronic employment record, the public official shall be issued an employment record with the corresponding record, and a calculation shall be made.

The next sub-mechanism, which is a component of the mechanism for the dismissal of public officials on grounds that beyond their control, is the sub-mechanism for the dismissal of a public official on the ground of the establishment that entering the civil service and employment in the civil service is contrary to the requirements of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b).

For example, in accordance with paragraph 7 of part 1 of article 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), a public official may be dismissed on the grounds of a real or potential conflict of interests, which cannot be regulated in any other way. The real conflict of interests, in accordance with the provisions of article 1 of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII, is defined as a conflict between the private interests of a public official and his or her official powers, and a potential conflict of interests, as the presence of a public official's private interest, which in the future may affect his or her decision-making. Part 4 of article 28 of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b) provides for that the head of the civil service is responsible for measures aimed at solving real or potential conflict of interests of a public official. For example, the head of the civil service has the right to suspend the public official from the performance of certain tasks; to establish external control over the performance of such tasks by the public official; to restrict the access of a public official to certain information; to amend the official powers of the person (which we have previously established as grounds for the dismissal of a public official on his or her initiative) or propose the public official to be transferred to another position. The most important thing in the context of our study is that, as follows from the provisions of paragraph 7 of part 1 of article 84 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, one of the ways in which a conflict can be resolved is the dismissal of a public official. However, according to part 2 of article 34 of Law of Ukraine "On Prevention of Corruption" of October 14, 2014 № 1700-VII, the dismissal, as a way of resolving the conflict of interests, is applied only in case the conflict of interests is permanent and cannot be resolved in another way, including because of the absence of consent of a public official him-, herself to the application of other remedies. In other words, dismissal is an extreme remedy for the conflict of interests of a public official, which is applied by the head of the civil service only in case when the application of other remedies is impossible, or the public official has refused them.

A special sub-mechanism for the dismissal of a public official is the dismissal due to the loss of the right to the civil service due to the application of the prohibition established by Law of Ukraine "On Purification of Power" of September 16, 2014 № 1682-VII (Verkhovna Rada of Ukraine, 2014a). The above-mentioned legal regulation, adopted in 2014, provides for in article 1 that the purification of power is the prohibition of individuals to be in the civil service, which is implemented with the purpose of preventing persons, whose decisions, actions or omissions contributed to the measures, aimed at the usurpation of power by President of Ukraine Viktor Yanukovych, undermining of the foundations of national security and defence of Ukraine and illegal violation of human rights and freedoms, from administration of public affairs. As a result, at present, the civil service cannot be held by persons who have occupied positions, provided for by Law of Ukraine "On Purification of Power" of September 16, 2014 № 1682-VII (Verkhovna Rada of Ukraine, 2014a), in period (which is different for different positions) defined by this legal regulation. The list of such positions is extensive. It includes such persons as the Prime Minister of Ukraine or the Prosecutor General of Ukraine and persons such as "other officials of state authorities, local self-government bodies". Paragraph 8

of part 2 of article 19 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII provides that persons who are subject to the prohibition defined by Law of Ukraine "On Purification of Power" of September 16, 2014 № 1682-VII, cannot enter the civil service, therefore, this rule applies to all persons, without exception, defined by this legal regulation. In case such person has entered the civil service, and it became known to the head of the civil service, he or she shall dismiss the public official, in accordance with paragraph 8 of part 1 of article 83 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015). The establishment of the fact that the public official shall be dismissed on the grounds of the purification of power is carried out by means of a special procedure.

Furthermore, the distinctiveness of this sub-mechanism, in comparison with the sub-mechanisms we have discussed earlier, is that it includes the provisions of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (articles 18 and 83) and a special legal regulation – Law of Ukraine "On Purification of Power" of September 16, 2014 № 1682-VII (Verkhovna Rada of Ukraine, 2014a) (in fact, all articles of this legal regulation) and the Labour Code of Ukraine, which regulate the procedure for the dismissal of a public official because of his or her loss of the right to the civil service.

The sub-mechanism for the dismissal of a public official on the ground of reorganisation or liquidation of the state body is composed of the provisions of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, as well as the procedures defined by Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII and the Labour Code of Ukraine. For example, if the ground for the dismissal of a public official is to reduce the number or staff of public officials, or to abolish a public authority, the first procedural step is to warn a public official of the subsequent dismissal in writing by the head of the civil service no later than thirty calendar days before the day of dismissal, as well as, if possible, to propose another public office. If a public official refuses such an offer, or there is no opportunity to employ a public official in another public office, the head of civil service shall initiate a dismissal procedure, making the appropriate order. The next procedural step, as in the primary sub-mechanisms, is to enter a record of the dismissal of a public official in the electronic employment record of the public official, as well as the entry of such an entry into a paper employment record at the request of the public official. In contrast to all other sub-mechanisms, a record to an electronic employment record or to a paper employment record on the demand of a public official is carried out not on the day of dismissal, but within seven days from the date of dismissal (part 5 of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015)). The last procedural action, according to part 4 of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), is the severance payment to the public official in the amount of two monthly average wages. As well as the issue of the employment record, the calculation is carried out not immediately on the day of dismissal, but within seven days.

The mechanism for the dismissal of a public official on the grounds of his or her inconformity to the position occupied in the course of the test or on the results of the performance assessment is that the public official may be dismissed due to his or her lack of conformity with the position occupied at the stage of the test, or on the results of the performance assessment, if the public official passed the test, and a labour contract was concluded with him.

The basis of the sub-mechanism for the dismissal of a public official on the grounds of his or her inconformity to the position occupied in the course of the test or on the results of the performance assessment is in the provisions of articles 35, 44, 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII and the Procedure for of public officials' performance assessment and the Labour Code of Ukraine, regulating the procedure for the dismissal of a public official on the grounds of his or her inconformity to the position occupied in the course of the test or on the results of the performance assessment.

Thus, when the public official is dismissed before the end of the term of the test, the head of the civil service shall notify him or her of his or her dismissal in writing not later than seven calendar days in advance. The dismissal is executed by the order, a copy of which is given to the public official together with the employment record. Moreover, the calculation is carried out with the public official who has not passed the test.

If the public official is dismissed on the ground of the performance assessment, he or she is given a conclusion with negative assessment and substantiation. Since according to article 11 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), the public official is granted the right to appeal the conclusion with substantiation, he or she can within a month from the date when he or she learned about the negative assessment or should have learned about it, submit a complaint to

the head of the civil service with appeal of conclusions. No later than 20 calendar days from the date of receipt of the complaint, the head of the civil service shall provide the public official with a written response to the complaint. If the demands of a public official are not met by it, the head of the civil service initiates the dismissal of a public official, which provides for the order on dismissal and issuing it to the public official together with the employment record, as well as calculation. However, a public official who does not agree with the answer of the head of the civil service to his or her complaint may appeal to the court, and, accordingly, in the future, resume his or her office.

The sub-mechanism for the dismissal of a public official on the ground of disciplinary misconduct, for which Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) provides for the dismissal, is functioning on the basis of the relevant provision, which determines the list of such disciplinary misconduct. For example, part 1 of Article 66 provides for that a public official may be dismissed for disciplinary misconduct. In addition, part 5 of article 66 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII establishes a reference to the exhaustive list of such grounds, established by Article 65 of the same legal regulation.

For example, one of the grounds is violation of the Oath of a public official. S.M. Kozin argues that this disciplinary misdemeanour means that the public official has committed acts incompatible with the powers of the position occupied. However, the act should be such that it undermines the trust in the public official as the carrier of power, as well as has led to the undermining of the trust in the state authority (Kozin, 2014, p. 172). For example, according to article 8 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, one of the duties of a public official is to observe the principles of the civil service and the rules of ethics. In addition, it should be noted that the text of the Oath, which provides for taking the duty by the public official "with dignity to carry high rank of a public official and to fulfil his or her duties in a conscientious way". Therefore, in fact, any violation of legal, ethical, moral or duty rules leads to violation by the public official of the Oath, and, accordingly, can be considered as grounds for the dismissal of a public official.

Therefore, the sub-mechanism for the dismissal of a public official on the grounds of disciplinary misconduct is formed by the provisions of articles 65, 66, 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, the Labour Code of Ukraine and the Procedure for disciplinary proceedings, which regulate the procedure for the dismissal of a public official on the grounds of disciplinary misconduct.

The first procedural action envisaged by this mechanism is the establishment by the head of the civil service of the fact that the public official has committed disciplinary misconduct incompatible with the further performance of his or her official duties. The head of the civil service shall initiate the creation of a disciplinary commission, in accordance with article 69 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), which should establish the degree of fault, character and severity of the disciplinary misconduct. The result of the disciplinary proceedings is the decision to impose disciplinary penalties. Accordingly, when a decision is made to dismiss a public official, the decision of the disciplinary commission (which can be appealed by the public official in court) is the ground for the dismissal of a public official. This is stated in the order of the head of the civil service, a copy of which is given to the public official together with the employment record and calculation.

The last component of the mechanism for the dismissal of public officials on grounds beyond their control is the sub-mechanism for the dismissal of a public official on the grounds of absence from work due to temporary disability during the term stipulated by the legislation. In accordance with part 2 of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), the grounds for the dismissal of a public official are his or her absence for more than one hundred and twenty calendar days, or more than one hundred and fifty calendar days during the year, except for cases of absence of a public official in connection with receiving leave for pregnancy and childbirth. If the public official has lost his or her ability to work, performing his or her duties, he keeps a position until recovery or his or her dismissal on his or her own initiative. In all other cases, the head of the civil service may initiate the dismissal of a public official immediately after the above-mentioned terms.

Such sub-mechanism is based on the provisions of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) and the Labour Code of Ukraine, governing the dismissal of a public official on the ground of absence from work as a result of temporary incapacity to work within the period prescribed by law. The procedural steps themselves are not complicated by certain specificities. The head of the civil service

states in the order on dismissal of a public official in accordance with part 2 of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, gives the public official a copy of the order, enters a record in the electronic employment record of the public official and a paper employment record at the request of the public official, and makes the calculation.

**4. Conclusions**

To sum up, the study of the mechanism for the dismissal of public officials on grounds beyond a public official's control enables to make the following conclusions:

1) the sub-mechanisms that form the mechanism for the dismissal of public officials on grounds beyond a public official's control are more complex than those that we have considered in the mechanism for a public official's dismissal on grounds under a public official's control. For example, the sub-mechanism for dismissing a public official on the ground of acquiring the citizenship of another State or establishing the citizenship of another State constitute the provisions of a number of legal regulations, including Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, Constitution of Ukraine, Law of Ukraine "On Citizenship of Ukraine" of January 18, 2001 № 2235-III;

2) our study has revealed a tendency to increase the capacity of civil service managers to dismiss public officials, and in turn to reduce the guarantees of public officials to protect their labour rights. Essentially, individual sub-mechanisms do not enable public officials to appeal against dismissal, and in this respect the mechanism for the dismissal of public officials on grounds beyond public officials' control, is more problematic than the mechanism for the dismissal of public officials on grounds under public officials' control.

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# ПРАВОВИЙ МЕХАНІЗМ ЗВІЛЬНЕННЯ ДЕРЖАВНИХ СЛУЖБОВЦІВ ІЗ ПІДСТАВ, ЯКІ НЕ ЗАЛЕЖАТЬ ВІД ВОЛІ ДЕРЖАВНОГО СЛУЖБОВЦЯ

**Анотація.** ***Метою статті*** є з'ясування особливостей правового механізму звільнення державних службовців із підстав, які не залежать від волі державного службовця.

***Результати.*** У статті проаналізовано особливості звільнення державних службовців. Охарактеризовано правовий механізм звільнення державних службовців із підстав, які не залежать від волі державного службовця. Деталізовано класифікацію субмеханізмів, які входять у такий правовий механізм, розкрито зміст і значення кожного з них. Визначено їх сутність та особливості. З'ясовано, що у випадку, коли підставою для звільнення державного службовця є скорочення чисельності чи штату державних службовців або ліквідація державного органу, перша процедурна дія полягає в попередженні державного службовця про подальше звільнення в письмовій формі керівником державної служби не пізніше ніж за тридцять календарних днів до дня звільнення, а також у пропозиції іншої посади державної служби (за можливості). У тому випадку, коли державний службовець відмовляється від такої пропозиції або коли можливість працевлаштувати державного службовця на іншій посаді державної служби відсутня, керівник державної служби ініціює процедуру звільнення, оформлюючи відповідний наказ. Наступна процедурна дія, як і в попередніх проаналізованих субмеханізмах, – внесення запису про звільнення державного службовця до електронної трудової книжки державного службовця, а також внесення такого запису до паперової трудової книжки за вимогою державного службовця.

***Висновки.*** Зроблено висновок, що субмеханізми, які формують механізм звільнення державних службовців із підстав, що не залежать від волі державного службовця, є дещо складнішими, аніж ті, які розглядалися нами в межах механізму звільнення державних службовців із підстав, що залежать від волі державного службовця. Наприклад, субмеханізм звільнення державного службовця з підстави набуття ним громадянства іншої держави або встановлення наявності в нього громадянства іншої держави утворюють норми низки нормативно-правових актів, зокрема Закону України «Про державну службу» від 10 грудня 2015 р. № 889-VIII, Конституції України, Закону України «Про громадянство України» від 18 січня 2001 р. № 2235-III. Наголошено на тенденції до розширення можливостей керівників державної служби звільняти державних службовців та, відповідно, звуження гарантій державних службовців щодо захисту їхніх трудових прав. Зокрема, окремі субмеханізми є такими, які фактично не залишають державним службовцям можливості оскаржити звільнення, і в цьому аспекті механізм звільнення державних службовців із підстав, які не залежать від волі державного службовця, є більш проблемним, аніж механізм звільнення державних службовців із підстав, що залежать від волі державного службовця.

**Ключові слова:** правовий механізм, звільнення, державний службовець, державна служба, воля, праця.

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# TRAINING OF MANAGERS (LEADING PERSONNEL) FOR EFFECTIVE MANAGEMENT

**Abstract.** ***The purpose of the article*** is to determine the areas of effective training of managers (leading personnel) for effective management.

***Results.*** The article establishes that the choice of candidates for the vacant positions of lower-level managers depends on whether they want to manage, on their mental, analytical abilities, communication skills, and integrity. They must have a desire for leadership. This quality is valued above all in the course of a manager's work with a subordinate who is seeking managerial positions. In the selection of personnel for the positions of lower-level managers may be useful proposed methodology of questionnaires of job seekers. It is underlined that in selecting candidates for the position of manager, the focus should be on the desire to lead. Perhaps a strong desire to lead is the most common condition for successful management. There is a close link between managerial work and a strong desire to achieve goals through the joint efforts of subordinates. Most people aspire to a managerial position because they are attracted by prestige and different privileges. Frequently, they do not realise that management implies responsibilities. Therefore, the choice must be made of people who are able to enjoy achieving the goals. Such individuals will, of course, have the energy and determination needed for a good leader.

***Conclusions.*** It is concluded that the official career advancement programme gives people the opportunity to perceive their work in the organisation as a "number of transfers to different positions, which contributes to the development of both the organisation and the individual". This is important because research proves that people tend to be quite passive about their careers. They tend to have important decisions about their careers driven by other people rather than their personal interests, needs and goals. According to researchers in this field, the result of career advancement programmes is a greater commitment to the organisation, increased motivation, reduced staff turnover and full use of employees' abilities.

**Key words:** employee, management, organisation, judgment, decision, managerial position.

**1. Introduction**

Managers are trained to develop the skills and competencies they need to carry out their work effectively in the future. In practice, systematic training programmes are most often used to prepare managers for promotion. Their successful preparation, as well as training in general, requires careful analysis and planning.

Through performance assessment, the organisation must first determine the abilities of its managers. Then, relying on performance assessment, management should determine what abilities and skills are needed to perform duties in all line and headquarter positions in the organisation. This allows the organisation to determine which managers are qualified to take up a position and who needs training and retraining. By addressing all these issues, management may develop a training schedule for specific individuals who may be further promoted or reassigned.

Managers are trained mainly to acquire the skills required to achieve the goals of the organisation. From another point of view, it is the need to meet such higher-level needs: professional development, success, testing their

strength. Unfortunately, many organisations do not provide opportunities to address such needs through increased accountability and promotion. According to research, many managers, after completing the course, have noted a large discrepancy between their personal aspirations for growth and promotion and what they have been actually offered. If such hopes are of great importance to a person, he or she will usually quit such job. There is no need to talk about the undesirable turnover of managers due to the high cost of their recruitment and adaptation in the organisation. The replacement of such an employee may cost three months' salary.

If the organisation's successes and failures are due to managerial qualities, then approaches to evaluating managers in the selection process are also needed. It is important to draw the right line between a leader who sees the performance of his or her functions as an end in itself and a leader who bases his or her actions on a deep understanding of human qualities, strives to create conditions, ensuring the existence of a healthy and developmental team. This approach enables to develop a system of value orientations, giving the manager an opportunity to choose the best type of behaviour, to form a strategy for the development of their personal qualities.

These are the generalised provisions of the professiograms of the manager: 1) knowledge of law, economics, psychology; 2) the ability to correctly set the task; 3) the ability to predict action; 4) the ability to build up domestic reserves; 5) intransigence to flaws; 6) the sense of new; 7) coordination of activities; 8) the desire to improve their and subordinate qualifications; 9) scheduling and rhythm of work; 10) objectivity of assessments, ability to analyse; 11) efficiency of decision-making (the ability to make extraordinary decisions); 12) clarity and literacy of thinking; 13) the ability to quickly grasp the essence of the question; 14) ingenuity and intelligence; 15) demanding; 16) command of service etiquette, ethics of behaviour; 17) determination and perseverance; 18) proneness to conflict; 19) a sense of humour; 20) sensitivity, attractiveness; 21) high qualification in the questions most vital to the organisation; 22) initiative; 23) attitude to the organisation; 24) desire and ability to interact with heads of units; 25) attitude to criticism; 26) the image of the manager.

**2. Manager evaluation**

American management researchers suggest five categories of manager evaluation. The category "A" includes the pursuit of self-learning, self-expression, the ability to work hard, personal responsibility, fairness and integrity. Category "B" includes organisational skills, administrative abilities, communicativeness, high level of intelligence and physical development. The greatest values of category "C" is high level of professional training, presence of legal education and objectivity. The category "D" refers to the ability to navigate in the field of sales and service, self-esteem. And finally, category "E" includes absolute values: ability to adapt to changes, integrate different points of view.

The choice of candidates for the vacant positions of lower-level managers depends on whether they want to manage, on their mental, analytical abilities, communication skills, integrity. They must have a desire for leadership. This quality is valued above all in the course of a manager's work with a subordinate who is seeking managerial positions. In the selection of personnel for the positions of lower-level managers may be useful proposed methodology of questionnaires of job seekers. The questionnaire is used to assess the managerial capacity of candidates for lower-level managers. The effectiveness of the organisation in the future depends largely on the ability of its managers to attract, select and educate staff with high managerial potential. Once the questionnaire is completed, it becomes an important document, part of the personal history of each employee. Moral reliability of the candidate, his or her integrity and responsibility, high professionalism in the performance of work are the key to the success of any organisation.

In selecting candidates for the position of manager, the focus should be on the following qualities:

*Desire to lead*. Perhaps a strong desire to lead is the most common condition for successful management. There is a close link between managerial work and a strong desire to achieve goals through the joint efforts of subordinates. Most people aspire to a managerial position because they are attracted by prestige and different privileges. Frequently, they do not realise that management implies responsibilities. Therefore, the choice must be made of people who are able to enjoy achieving the goals. Such individuals will, of course, have the energy and determination needed for a good leader.

*Mental abilities*. Testing can be used to determine the mental abilities of the candidate. It should be remembered that a test survey cannot definitively determine the level of mental ability. Examination of the personal files of students will allow to determine the necessary information. If there are doubts about the reliability of these documents or if the candidate is not among them, the manager will assess the mental ability of the candidate on the basis of the performance.

*Ability for logical analysis*. Experience in some countries has shown that one of the factors characterising a candidate's skills is the ability to apply analytical methods to organisational decision-making. Therefore, the best way to evoke the potential of a person in the development of the right organisational decisions is to give the young specialist the opportunity to independently develop a plan to solve any practical problem. For example, experienced managers of Japanese organisations widely use the method of collective preparation of organisational decisions, as they believe that one conscious and corrected error made by the young man in practice, will benefit him/her more than hundreds of lectures during training. Therefore, in Japanese organisations, the development of collective organisational solutions, as a rule, begins with the assignment of a junior new employee of the department to independently prepare a solution to the existing problem. At the same time, the managers of the organisation know alternative solutions. The new employee appeals to experienced employees, tries to get their opinion. Especially he or she listens to those who communicate most with the management of the organisation. In this way, he or she learns to define common opinion and, at the same time, to form its own judgement. It is not the decision itself that matters, but rather how widely people are aware of it and to what extent they are willing to support it. An optimal decision can fail, as well as a bad decision can be made an effective action just because it has the support of the whole team. In the opinion of Japanese managers, it is better to have a solution developed jointly by all employees, rather than what is developed and applied at the management level. It is difficult to find a better leader of this solution than a young worker, because he or she is characterised by a lack of conservatism in the views, the desire to get acquainted with the activities of the organisation and its employees, to identify one's analytical qualities. All this provides the desired result, and of course the autonomy and full trust given to the work by the management and encourage at the earliest stage a high responsibility for action, allow to fully reveal the abilities of the young person to management. In fact, the assessment of his or her qualities is limited to the analysis of results obvious for the whole team. The considered approach to assessment of analytical abilities of candidate for managerial position reveals another important quality, that is, communication skills of the future manager.

*Communication skills*. Management can judge candidates for positions in the management structure because of their ability to put their ideas on paper, to talk, to participate in any meeting. Attention should be paid to the ability to choose the words, the logic of thinking, the construction of the phrase, the structure of the sentence, the distribution of the text into paragraphs and the general clarity and confidence of the statement.

*Integrity*. Managers should be morally reliable and trustworthy. They hold significant power, and it is difficult to establish impartial control over them, all the more so when organisations expand their autonomy. Much also depends on the integrity of managers because they are in fact held personally responsible for actions that may compromise the organisation and the overall system they represent. The integrity of leaders goes beyond what we mean by honesty in monetary and material matters and in the use of time. Nevertheless, the evidence shows that the integrity of some leaders, even within such narrow boundaries, often does not withstand serious criticism. Although it is not easy to assess the integrity of subordinates, close acquaintance with them in the work environment gives the best opportunity for correct assessment. Their time and expense reports, their interaction with colleagues and other businesspeople, their integrity in tasks, their attitudes – all of these serve as a basis for the careful manager to assess the integrity. It is easier for line managers to nominate candidates for future leadership from among their subordinates because they know them well. If managers can objectively assess candidates on the basis of the qualities identified in the above methodology, their judgement is important. Centres for the evaluation of managers could be assigned to the selection of managers. With sufficiently good technical equipment, such centres (laboratories) could be of great assistance.

In order to assess the behaviour of potential managers in typical management situations, a group of candidates participate in organisational decision-making games within 3–5 days, acting as managers of a small organisation, they review incoming papers, containing a variety of issues arising in management practice, discuss ways to address some of the issues that produce short oral reports on any topic, including recommendations to the senior manager, perform a number of other exercises, for example, the written report preparation. Their activity is monitored and evaluated by psychologists and experienced managers, employees of the centre, additionally subjecting them to various psychological tests. In the final stage, observers summarise their impressions of the candidates' activities, compare them with those of other observers, draw conclusions on managerial capacity and compile a final report. The reports are submitted to the managers responsible for the appointment, providing

guidelines for the necessary professional development of senior staff. In some cases, candidates are informed of the results of their assessment, in others – this is done only at their will. The final assessment may not be announced.

Some methods require psychological examination to identify features of a strong manager. This type of examination can be carried out by an analytical or synthetic approach. The analytical approach enables to reveal a combination of qualities (or personal abilities) of the manager responsible for the efficiency of organisational activity. The main problems of the analytical approach are related to the search for methods of their adequate measurement. The analytical approach does consider the integrity of the manager's personality. The presence and degree of development of certain qualities is only one side of the case, and the other is the way of organisation of these qualities in the complete structure of the manager's personality. This way of organisation is studied by a synthetic approach. We focus on the identification of features of a strong leader, based precisely on a synthetic approach, in other words, on the concept of overall ability to organisational activities. Given the psychological content of organisational activity, it is possible to recognise the strong manager on the basis of an analysis of his or her daily activities aimed at revealing the degree of heterogeneity of his or her techniques and methods of management. The higher the degree, the stronger the manager. The consideration of leadership skills that a developed personality reveals enables to concretise the approach. These skills are easier to demonstrate because they are persistent and repeated. Leadership skills can therefore be seen as concrete features of a strong manager. Standard managerial problems can be addressed through certain rules. In contrast, non-standard problems do not have ready-made solutions. The latter relate to management situations that place conflicting demands on the manager. They are difficult to describe in general terms because of their specificity and differences.

Frequently, non-standard managerial problems are caused by conflict situations, such as the allocation of bonuses, leave scheduling, the selection of one candidate from among several possible candidates when dealing with personnel issues, etc. Managers can be sufficiently clearly differentiated by their proneness to conflict. The difference between managers in that regard is primarily one of conflict resolution, not avoidance. Successful conflict resolution depends on the ability to reconcile different, or even mutually exclusive, requirements. The proneness to conflict can therefore be used to judge the managerial ability of a manager. The general pattern is that the stronger the manager, the less prone to conflict he is.

It has long been confirmed that the manager's activities have an impact on every aspect of his or her life. A manager lives in a person even when he or she is not at work. Managerial activities shape interests, habits, behaviours. Evidently, there is a psychology of the head of a small or large division, the director of the organisation, the chairman of the board, etc. An experienced psychologist can accurately determine even by the manager's appearance, behaviour his or her official status.

It is closely related to the rank and so-called scale of thinking of the manager. A large-scale thinking manager is one who thinks according to the scope of his or her office. One of the main psychological difficulties faced by the promoted manager is to adjust the scale of his or her thinking to the new rank of the post. An effective solution to this difficulty will depend on the level of training of the manager. Therefore, from his or her organisational tendencies one can judge how effectively the previous scale of thinking has been restructured.

One of the important rights granted to a manager is the authority to deal with personnel matters in his or her office. The effectiveness of staff selection and placement is directly dependent on the managerial ability of the manager. In fact, in order to complete an assignment, the manager must consider the diversity of information about the candidate (which may be both positive and negative) and ultimately envisage whether an employee would be weak, medium or strong. There is a kind of law of staffing. It is called the "self-organisation effect" of the management system, according to which a strong manager chooses also strong subordinates, and, conversely, a weak supervisor selects weak subordinates. One should not underestimate the effect of self-organisation, which can lead to both the formation of productive work teams or scientific schools and to the collapse of teams, even with high internal potential, if the head was accompanied by the person not capable enough.

Any structure is conservative because it "protects" itself from large-scale job moves. A strong manager, if for one reason or another he is not able to really replace weak or average subordinates, is on the wrong path of improving the functional placement of personnel. Without making replacements, he or she tries to adjust the forms, methods and techniques of management of subordinates so that the differences in the efficiency of their work would be considered. The scientific management is to significantly improve the performance under the same conditions with the help of the same employees. A capable manager seeks opportunities to address the concerns of his or her office,

a weak manager seeks reasons to justify inaction and lack of initiative. The enthusiasm of the manager can be a key factor, a cornerstone in increasing the productivity of the organisation he leads.

The qualities of a strong manager include the ability to distinguish the main from the secondary, the concentration of power in the decisive areas of the organisation, the strength of will in making complex decisions, the courage to go beyond the established stereotypes, etc. The main thing is that the recognition of strong managers cannot be based on the intuition (or sensation) of those who are in charge of official replacements – it can and should be based on the identification of specific features. The function of "human resources planning" in management includes forecasting the organisation's prospective staff needs and developing activities that should meet these needs.

Therefore, managers-leaders should meet not only increased, but also specific requirements compared to other employees of the management apparatus.

Therefore, the manager should have known administrative abilities, that is, the ability to force others to perform their tasks. This requires perseverance, firmness of character, energy. It must be proactive, that is, to find new ways of doing things and to have the courage to do so. The manager should have an inclination to systematic planned work, that is, to be able to imagine all the tasks in general, to divide it into components, to draw up a plan for the future. He should never be afraid to take on a difficult task with great responsibility.

**3. Methods of training managers**

Managers can be trained through lectures, small group discussions, discussion of specific business situations, reading of literature, business games and role training. Variants of these methods are annual courses and seminars on managerial problems. Another common method is rotation in service. By moving a low-level manager from division to division for a period of three months to one year, the organisation introduces him/her to many aspects of the work. As a result, the young manager is aware of the special problems of different divisions, the need for coordination, the informal organisation and the relationship between the goals of different units. Such knowledge is also vital to the success of higher positions but is particularly useful to managers at the lower levels of the management hierarchy.

In the original, management development, that is, the training of managers to improve the work, the occupation of new positions. In addition, in American practice, the term management training, more consistent with advanced training to perform any clearly defined, specific tasks, which are most often part of the duties within the post.

Japanese organisations rotate much more often than Americans. Professor Ouchi, author of the best-selling *Theory Z*, notes that in Japan, virtually every department has personnel who know people, problems, practical activities of any part of the organisation. When something needs to be coordinated, both sides can understand each other and come to cooperation (Ovsievich, 1979, p. 87). Most importantly, each employee will move from one part of the organisation to another, even in different geographical locations, during the course of his or her work. In addition, in many Japanese organisations, rotation throughout the working life extends to all workers. When people work permanently, in one profession, they tend to form local goals related only to this profession, and not to the future of the entire organisation. They do not have knowledge that would enable them to effectively assist others within the organisation.

Promotion is of importance. Many advisory organisations have developed career advancement programmes, that is, promotion, to improve the training of managers. The concept of career advancement is a formal career advancement programme that helps to disclose all abilities and use them in the best way the organisation believes. Career advancement programmes help organisations to make full use of their employees' abilities and enable employees to make the most of their abilities.

The formal career advancement programme enables people to perceive their work in the organisation as a "number of transfers to different positions, which contributes to the development of both the organisation and the individual". They tend to have important decisions about their careers driven by other people rather than their personal interests, needs and goals. According to researchers in this field, the result of career advancement programmes is a greater commitment to the organisation, increased motivation, reduced staff turnover and full use of employees' abilities.

Many organisations have established management training and career advancement programmes aimed at involving women as a source of leadership. Today, however, women are mainly in middle and lower management positions. Professor Wendell French notes that the main reasons for this disproportionate representation of women among managers are deeply rooted in our culture and expressed in a number of prejudices of male managers towards women (Ovsievich, 1979, p. 90). Such prejudices include, for example: 1) women leave work when they get married; 2) women will not work until they have small children; 3) women

feel uncomfortable among men and men become uncomfortable; 4) women are unreliable workers, they are too emotional and can fall apart in a critical situation; 5) female managers cannot be transferred to another city if their men have a similar or better job.

Most of the statements cited were based on old prejudices and misinformation of men. Recent studies have explicitly rejected them or questioned them. A study conducted among men and women did not prove that there was much disagreement in incentives such as prestige, sense of responsibility, salary, promotion, satisfaction. Another study, involving 1 000 male managers and 1 000 female managers, found that there was no significant difference in management activities. Among the identified differences is that women are more likely to be motivated to work and men are more open and franker with their colleagues (Blake, Mouton, 1990, p. 57).

Some programmes aimed at increasing the proportion of women managers and increasing their effectiveness include: 1) gender-specific behaviour in the workplace; 2) assistance for women in understanding some psychological, social and moral barriers to leadership roles; 3) gender-specific training; 4) training in support networking and leadership development; 5) participation in traditional administrative training programmes for senior management.

Job satisfaction is one of the most important recent developments in the field of human resources management, related to the creation of programmes and methods of promotion.

**4. Quality of working life**

Quality of working life is defined as the extent to which the personal needs of members are met through their work in the organisation and fair remuneration for it.

Good quality of working life should be characterised by the following principles:

– work should be interesting;

– employees should receive fair remuneration and recognition for their work;

– the workplace should be clean, low noise and well lit;

– management oversight should be minimal, but should be exercised whenever necessary;

– employees should be involved in decision-making that affect them and their work;

– work in friendly environment with colleagues should be guaranteed;

– domestic and medical facilities shall be provided.

These involve the methods we have already considered, including decentralisation of power, participation in leadership, training, management training, career advancement programmes, training of employees in more effective communication in the team. All these actions are aimed at providing employees with additional opportunities to meet their personal needs while increasing the efficiency of the organisation.

**5. Conclusions**

It is concluded that the official career advancement programme gives people the opportunity to perceive their work in the organisation as a "number of transfers to different positions, which contributes to the development of both the organisation and the individual". This is important because research proves that people tend to be quite passive about their careers. They tend to have important decisions about their careers driven by other people rather than their personal interests, needs and goals. According to researchers in this field, the result of career advancement programmes is a greater commitment to the organisation, increased motivation, reduced staff turnover and full use of employees' abilities.

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# ПІДГОТОВКА МЕНЕДЖЕРІВ (КЕРІВНИХ КАДРІВ) ДЛЯ ЕФЕКТИВНОГО УПРАВЛІННЯ

**Анотація.** ***Метою статті*** є визначення напрямів ефективної підготовки менеджерів (керівних кадрів) для ефективного управління.

***Результати.*** У статті з'ясовано, що вибір кандидатів на обіймання вакантних місць менеджерів нижчих ланок залежить від того, чи бажають вони керувати, а також від їхніх розумових, аналітичних здібностей, комунікабельності, чесності. Їм повинно бути притаманне прагнення до лідерства. Ця якість найкраще оцінюється у процесі роботи керівника з підлеглим, який прагне посісти управлінську посаду. У підборі персоналу на посади менеджерів нижчих ланок менеджменту може виявитися корисною запропонована методика анкетування претендентів. Наголошено на тому, що під час відбору кандидатів на посаду керівника необхідно звертати особливу увагу на бажання керувати. Можливо, сильне бажання керувати – найбільш поширена умова успішного виконання управлінських функцій. Є тісний зв'язок між управлінською роботою та наявністю сильного бажання досягти мети завдяки об'єднаним зусиллям підлеглих. Більшість людей прагне посісти управлінську посаду, оскільки їх приваблює престижне становище та різні привілеї. Часто вони не уявляють, що в управлінській роботі є ще й обов'язки. Тому вибір повинен здійснюватися з-поміж тих людей, які спроможні отримати задоволення від досягнення поставлених цілей. Такі особи, звісно, будуть володіти енергією та рішучістю, важливими для хорошого керівника.

***Висновки.*** Зроблено висновок, що офіційна програма керування просуванням по службі дає людям можливість сприймати їхню роботу в організації як «низку переміщень на різні посади, що сприяє розвитку як організації, так і особистості». Це має ключове значення, оскільки дослідження доводить, що люди зазвичай ставляться до своєї кар'єри досить пасивно. Вони схильні до того, щоб важливі рішення про їхню кар'єру були ініційовані іншими людьми, а не їхніми особистими інтересами, потребами та цілями. На думку дослідників, які працюють у цій галузі, результатом програм просування по службі є більша відданість інтересам організації, підвищення мотивації, зменшення плинності кадрів та повне використання здібностей працівників.

**Ключові слова:** працівник, керівництво, організація, судження, рішення, управлінська посада.

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# THE ESSENCE AND CONTENT OF LABOUR-LAW PRINCIPLES OF THE LEGAL REGULATORY FRAMEWORK FOR THE NATIONAL POLICE STAFFING IN UKRAINE

**Abstract.** The ***purpose of the article*** is to establish the essence and content the labour-law principles of the legal regulatory framework for the staffing of the National Police of Ukraine.

***Results.*** The article, relying on the review of scientific perspectives, conducts a general theoretical analysis of the concept of principles and legal principles. A theoretical and conceptual perspective on the essence of the principles of labour law is formed. The content and essence of labour principles of the legal regulatory framework for the staffing of the National Police of Ukraine are determined and classified. It is established that important principles of the legal regulatory framework for the National Police of Ukraine staffing are special labour-law principles inherent exclusively in this area of legal influence, and not in the entire labour law. These principles include the following: a) the principle of stability (the staffing is systematic and accompanies the entire labour process of all employees of the National Police of Ukraine); b) the principle of comprehensiveness (the staffing should not be limited to the documental preparation of personnel actions, but also constantly monitor the personnel problems of the National Police of Ukraine and develop ways to solve them); c) the principle of the primacy of police officers' labour interests (the staffing of the National Police of Ukraine should be aimed primarily at an enabling environment for the police officers provided and guaranteed to them by the Constitution of Ukraine and legislation on labour rights, and then at the personnel policy of the leadership); d) human capacity development principle (the staffing should be aimed at continuous development of the qualifications and professional skills of the police personnel with a view to improving the performance of duties and functions by the police; as well as strengthening the requirements for candidates to serve in the National Police of Ukraine).

***Conclusions.*** It is concluded that, to date, only a few of these principles have been incorporated into the legal framework governing the procedures for staffing the National Police of Ukraine. This reveals the inadequacy and ineffectiveness of the legal regulatory framework for the performance of police officers, as a result of which there is room for violation of their labour rights and the interests guaranteed by the Constitution and other labour legislation of Ukraine. We argue that one way of remedying this negative point is to legislate the system of principles proposed above in a separate, special document – the Law of Ukraine "On Police Performance".

**Key words:** National Police of Ukraine, staffing, labour-law principles, legal principles.

## 1. Introduction

Principles are general fundamentals of any legal phenomenon or category. Moreover, legal principles are diverse in their purpose and sector and are divided into many groups. For example, the study of the theoretical and methodological fundamentals of the staffing of the National Police of Ukraine requires to consider the ideological side of the legal regulatory framework for this category. In addition, given that the latter tends to labour law, it is the labour-law principles that are of particular importance in this context.

The issue of labour-law principles of the legal regulatory framework for the staffing of the National Police of Ukraine is generally little covered in the scientific sphere. Some aspects of this problem were only superficially considered in the works by K.S. Belskyi, E.A. Sukhanov, O.F. Skakun, M.I. Inshyn, V.L. Kostiuk, V.P. Melnyk, A.F. Nurtdinova, O.P. Orlovskyi, K.P. Urzhynskyi, O.V. Smyrnov, M.V. Molodtsov, O.M. Krapyvin, V.N. Tolkunova, etc. However, despite a large number of scientific achievements, the legal literature

review reveals a lack of research on the characterisation of the principles of the legal regulatory framework for the staffing of the National Police of Ukraine.

Consequently, the purpose of the article is to establish the essence and content the labour-law principles of the legal regulatory framework for the staffing of the National Police of Ukraine.

**2. The essence and content of labour-law principles**

Frequently, principles in law are interpreted as fundamentals, underlying ideas, characterised by universality, general significance, supreme imperativeness and reflecting the essential provisions of the theory, doctrine, science, the system of domestic and international law, political, state or public organisation (Shemshuchenko, 2011, pp. 110–111). Following this theory K.S. Bielsky understands the principles of law in modern scientific literature as the underlying sources, the key ideas of law that reflect its essence and content, determine the basic rules of scientific knowledge and consolidate the general order of practical activities (Bielskyi, 1998, p. 7). According to E.A. Sukhanov, the legal principles are the bases, the most general guidelines of law, which, by virtue of their legislative consolidation, are generally binding. Such bases are peculiar both to law in general (legal system) and to individual legal branches, as well as sub-sectors and even institutions and sub-institutions (Bakhnovska, 2013).

However, for example, O.F. Skakun does not agree with this interpretation, she understands the principles as the basic generally accepted norms-ideas (underlying sources), which express the essence of law, regularities of its development and have a high authority, that is indisputable requirements for the participants of social relations to meet with the aim of establishing a social compromise and order. Public relations with a view to establishing social compromise and order. According to the scholar, the principles are a unique coordinate system, within which law develops, and at the same time a benchmark, determining the vector of its development. The principles concentrate the world's experience in the development of law, the experience of civilisation (Skakun, 2009).

Therefore, the legal principles are constants formed by society, guiding ideas dissolved throughout the legal system, the basic provisions of law, defining its essential aspects of the essence, mechanism of influence on social relations, structural ties and, in general, a public perception of the content and purpose of law in the state.

At the same time, the principles of law generally do not specify in themselves the ideas of individual branches of legal reality, each of which has its own purpose and specificity. An example is labour law, under which labour-law principles have been developed. The latter, while relevant to leading legal ideas in general, include a large number of features that express their uniqueness.

The particular importance of labour-law principles is confirmed by the existence of a separate group of scientific approaches to defining their concept. For example, M.I. Inshyn, V.L. Kostiuk, V.P. Melnyk's perspective implies that the principles of labour law are a system of basic, guiding provisions, trends, which are determined by the status of society and state development, trends aimed at ensuring an effective legal regulatory framework for labour relations in order to ensure the unity, integrity, and systematisation of labour law (Inshyn et al., 2016). A.F. Nurtdinova and O.P. Orlovskyi interpret labour law principles as the basic ideas, starting points or general sources, expressing the essence of labour law, defining the unity and general trend of the branch (Dmitrieva, 2004). According to K.P. Urzhinskii, the principles of labour law are an interpretation explicitly legislated in legal provisions or derived from them that evolves a guideline (idea) reflecting the regularities of labour law framework (Urzhinskiy, 1968, p. 124). Similarly, A.V. Smirnov defines principles of labour law as the fundamental guiding ideas, enshrined in the legislation in force, which express the essence of the provisions of labour law and the main trends in public policy on the legal regulatory framework for social relations in the functioning of the labour market, application and organisation of employment (Smirnov, 1997, p. 23).

Therefore, it is important that the labour-law principles governing the staffing of the National Police of Ukraine are dissolved in the provisions of labour legislation, basic, fundamental, objectively existing, guiding ideas of the legal regulatory framework for social labour relations, which include standards of conduct of actors of labour law in the context of their activities related to staffing a special category of employees – police officers.

Moreover, the comprehensiveness of the basic principles noted above raises questions about their composition and list. Legal experts in labour law have different opinions on the classification of labour-law principles in general. For example, M.V. Molodtsov and O.M. Krapivin group the principles of labour law into: 1) principles of fairness, providing for fair working conditions, including limitation of working hours, provision of daily rest, holidays, paid annual leave, adequate wages, etc.; 2) principles of equality of actors of labour relations; 3) principles

of democratic security and labour management (Molodtsov et al., 2001).

K.N. Husov and V.N. Tolkunova propose to classify labour-law principles into the principles governing the staffing, employment and use of labour; the principles of high standards of working conditions and protection of labour rights; principles of industrial democracy and employee personality development (Gusov, Tolkunova, 1999). O.V. Smirnov advocates this perspective. In his study, the scientist groups of principles of labour law into: principles expressing state policy on legal labour market and effective employment; principles containing guidelines for the determination of work by an employee; principles governing the use of labour by employees; principles governing the protection of employees' labour rights. Considering this classification, the author formulates the principles of freedom, active participation of workers and trade unions in establishment of working conditions, certainty of work function, stability, discipline, remuneration without discrimination, guarantee of labour rights (Zolotukhina et al., 2014).

In our opinion, the labour-law principles governing the staffing of the National Police of Ukraine cannot be equated with any of these classifications, because as to the content and the list, they constitute a separate group of underlying ideas under labour law. The latter are general scientific principles, the content of which is adapted to labour law, directly some sectoral principles of labour law, as well as special underlying ideas arising exclusively in the field of police staffing.

The basic general labour-law principles of the legal regulatory framework for the staffing of the police are interrelated underlying ideas of the rule of law and legality. Both principles are reflected in the Constitution of Ukraine, as well as in the Law of Ukraine "On the National Police" of July 2, 2015 № 580-VIII (Verkhovna Rada of Ukraine, 2015). For example, the Basic Law states that the principle of the rule of law is recognised and is in force in Ukraine. The Constitution of Ukraine has supreme legal force. Laws and other legal regulations are adopted on the basis of the Constitution of Ukraine and shall be consistent with it. The provisions of the Constitution shall be the rules of direct effect. Recourse to the court for protection of constitutional rights and freedoms of an individual and citizen directly on basis of the Constitution of Ukraine shall be guaranteed. Moreover, the legal order of our State is based on the principle that no one may be forced to do anything that is not provided for by law. Public authorities and bodies of local self-government and their officials shall be obliged to act only on the grounds, within the powers, and in the manner stipulated by the Constitution and the laws of Ukraine (Verkhovna Rada of Ukraine, 1996).

**3. Principles of the staffing of the National Police of Ukraine**

In accordance with the departmental legal regulation, the police are guided by the rule of law, according to which an individual, his/her rights and freedoms are recognised as high values and determine the content and area of the state's activities. In addition, the police act solely on the basis, within the powers and in a manner prescribed by the Constitution and laws of Ukraine (Law of Ukraine "On the National Police" (Verkhovna Rada of Ukraine, 2015)).

In the context of police staffing, these principles are expressed in several ways:

– first, the basic regulator of the legal relations in the field of police performance and its support is law exclusively, the influence thereof is expressed through the provisions and the institution of labour law;

– second, the activities of the staffing actors of the National Police of Ukraine should be carried out in full compliance with the provisions of the legislation of Ukraine in force.

These principles are supplemented by the sectoral principle of labour law, that is, the principle of unity and differentiation in regulating labour relations. According to the latter, the basis of the staffing of the police is a system of provisions of legal regulations governing general employment, defining standards and regularities of regulatory framework for work of all categories of employees, as well as special documents, that is, departmental legal regulations that determine the specifics of the labour process of police officers only. The basis of this principle can be found in the Code of Labour Laws of Ukraine, which allows for the existence of both general labour legal provisions and regulations, and special ones (Verkhovna Rada of the Ukrainian SSR, 1971).

The next labour-law principle of the legal regulatory framework for the staffing of the police should be the equality of labour rights of Ukrainian citizens. According to article 2-1 of the Labour Code of Ukraine, any kind of discrimination in employment is prohibited, in particular violation of the principle of equality of rights and opportunities, and direct or indirect restriction of workers' rights on the basis of race, colour, political, religious or other beliefs, gender identity, sexual orientation, ethnic, social and foreign origin, age, health, disability, suspicion of or presence of HIV/AIDS, family and property status, family obligations, place of residence, membership in a trade union or other association of citizens, participation in a strike, applications or inten-

tions to apply to the court or other bodies for protection of their rights or providing support to other employees in the protection of their rights, reporting on possible facts of corruption or corruption-related offences, other violations of the Law of Ukraine "On the Corruption Prevention", as well as assistance to a person in the implementation of such reporting, on language or other grounds, not related to the nature of the work or the conditions of performing it (Verkhovna Rada of the Ukrainian SSR, 1971).

Another important guideline for the legal regulatory framework for the staffing of the NPU is the principle of fair and safe conditions of work and recreation, implying that the performance of duties in the police bodies should be in proper, safe and healthy conditions and paid in a timely and full manner, ensuring a decent living for an individual and his/her family; recreation should be provided, including limitation of working hours, daily rest, holidays, holidays, non-working days and paid annual leave, taking into account all the specifics of police activities and the risks involved (Melnyk, 2014).

Important principles of the legal regulatory framework for the National Police of Ukraine staffing are special labour-law principles inherent exclusively in this area of legal influence, and not in the entire labour law. These principles include the following:

– the principle of stability: in accordance with this principle, the staffing is systematic and accompanies the entire labour process of all employees of the National Police of Ukraine;

– the principle of comprehensiveness: in accordance with this underlying source, staffing should not be limited to the documental preparation of personnel actions, but also constantly monitor the personnel problems of the National Police of Ukraine and develop ways to solve them;

– the principle of the primacy of police officers' labour interests, implying that the staffing of the National Police of Ukraine should be aimed primarily at an enabling environment for the police officers provided and guaranteed to them by the Constitution of Ukraine and legislation on labour rights, and then the personnel policy of the leadership;

– human capacity development principle: the staffing should be aimed at continuous development of the qualifications and professional skills of the police personnel with a view to improving the performance of duties and functions by the police; as well as strengthening the requirements for candidates to serve in the National Police of Ukraine.

**4. Conclusions**

Consequently, the set of guidelines is the system of principles for the legal regulatory framework for the staffing of the police. In our opinion, the above-mentioned fundamentals fully show the legal relationship between the staffing as a separate institutional entity of labour law, and at the same time the uniqueness of this phenomenon and the peculiarities of police performance.

Unfortunately, to date, only a few of these principles have been incorporated into the legal framework governing the procedures for staffing the National Police of Ukraine. This reveals the inadequacy and ineffectiveness of the legal regulatory framework for the performance of police officers, as a result of which there is room for violation of their labour rights and the interests guaranteed by the Constitution and other labour legislation of Ukraine. We argue that one way of remedying this negative point is to legislate the system of principles proposed above in a separate, special document – the Law of Ukraine "On Police Performance".

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# СУТНІСТЬ ТА ЗМІСТ ТРУДОПРАВОВИХ ПРИНЦИПІВ ПРАВОВОГО РЕГУЛЮВАННЯ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ ОРГАНІВ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

**Анотація.** ***Мета статті*** – з'ясувати сутність і зміст трудоправових принципів правового регулювання кадрового забезпечення органів Національної поліції України.

***Результати.*** У статті з огляду на наукові погляди вчених здійснено загальнотеоретичний аналіз поняття принципів та принципів права. Сформовано теоретико-концептуальну позицію щодо сутності принципів трудового права. Визначено зміст і сутність трудових принципів правового регулювання кадрового забезпечення Національної поліції України, а також проведено їх класифікацію. Встановлено, що важливими принципами правового регулювання кадрового забезпечення Національної поліції України є спеціальні трудоправові принципи, які притаманні виключно цьому напряму юридичного впливу, а не всій галузі трудового права. З-поміж зазначених принципів варто виділити такі: а) принцип стабільності (кадрове забезпечення здійснюється систематично та супроводжує весь трудовий процес усіх працівників Національної поліції України); б) принцип комплексності (кадрове забезпечення має не тільки виражатися в підготовці паперів для здійснення тих чи інших кадрових заходів, а й постійно відстежувати кадрові проблеми Національної поліції України та формувати шляхи їх вирішення); в) принцип пріоритету трудових інтересів поліцейських (кадрове забезпечення органів Національної поліції України має бути спрямоване насамперед на формування найбільш сприятливих умов для реалізації поліцейськими наданих і гарантованих їм Конституцією України та законодавством трудових прав, а вже потім кадрової політики керівництва); г) принцип розвитку кадрового потенціалу (кадрове забезпечення повинне спрямовуватися на постійне підвищення кваліфікації та професійних навичок кадрового складу поліції з метою поліпшення виконання поліцейськими своїх трудових і службових функцій, а також посилення вимог до кандидатів на службу в Національній поліції України).

***Висновки.*** Констатовано, що на сьогодні лише окремі із зазначених принципів закріплені в нормативно-правовій базі, яка регулює процедури кадрового забезпечення Національної поліції України. Це свідчить про неповноцінність і неефективність правового регулювання трудової діяльності працівників поліції, унаслідок чого є поле для порушення їхніх трудових прав і гарантованих Конституцією та іншим законодавством України інтересів у сфері праці. Один зі шляхів виправлення цього негативного моменту ми бачимо в закріпленні запропонованої вище системи принципів в окремому, спеціальному документі – Законі України «Про трудову діяльність поліцейських».

**Ключові слова:** Національна поліція України, кадрове забезпечення, трудоправові принципи, принципи права.

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# CLASSIFICATION OF METHODS OF IMPLEMENTING PUBLIC POLICY ON THE ECONOMIC SECURITY OF THE STATE

**Abstract.** The ***purpose of the article*** is to determine the classification of methods of implementing public policy on the economic security of the state.

***Results.*** The scientific article defines the essence of methods of implementing public policy on economic security. The study analyses such concepts as: "method", "control", "supervision", "persuasion", "coercion". The methods of implementing public policy on economic security are classified and defined. It is noted that they are grouped into: statutory, regulatory, ordering, managerial and economic, control, supervision, persuasion, coercion. It is revealed that specificities of public administration methods are as follows: 1) they reflect public interest; 2) they are implemented in the process of public administration; 3) they express the orderly influence of public administration on the behaviour of the actors of society and the content of this influence; 4) the methods of public administration always contain the leading will of the state, manifested in the juridical prescriptions of public administration; 5) they are used by public administrators as a means of ensuring the implementation of the competence assigned to them; 6) they have their form; 7) they are an external manifestation.

***Conclusions.*** It is concluded that the methods of implementing public policy on economic security, in our opinion, should be considered as ways and means, used by makers of public policy on economic security within the scope of their competence provided by legal acts to prevent, detect and address threats to economic security. The classification of methods of implementing public policy on economic safety includes regulatory, statutory, managerial, economic, control, supervisory, coercion, persuasion methods. The specificities of the methods of implementing public policy on economic security are: 1) they are of public character, provided for by the public interest; 2) they are implemented in the process of prevention, detection and addressing of threats to economic safety; 3) they have legal form: they find their expression in the bylaws of makers of public policy on economic security; 4) makers of public policy on economic security shall use them as a way or a means for exercising the competence granted to them by the state.

**Key words:** methods, classification, public policy, public policy on economic security of the state, classification of methods of public policy on economic security of the state.

## 1. Introduction

Economic security is one of the priorities of any state. The solution of the relevant issue in the country depends on the instruments, including special means, methods, legal resources, accompanying the activities of the executive authorities in ensuring the economic security of the state.

Issues of determining methods of ensuring economic security have recently become of a special importance, because now the focus of Ukraine is on ensuring economic security, under the terms of the coronavirus disease pandemic and Russia's aggression against the territorial integrity of Ukraine. Therefore, the scientific analysis of methods and their classification will to some extent provide an understanding of the part of the system of public administration, of the aspects of organisational management (the key thereof is the method) in the field of economic security and will give an idea about the theoretical definition of a category "methods of making public policy on economic security of the state".

The study of the classification of methods of implementing public policy on the economic security of the state generally or fragmentarily within the broader issue has been under focus

by domestic scientists such as: V.B. Averianov, O.F. Andriiko, O.M. Bandurka, O.I. Bezpalova, V.T. Belous, Yu.P. Bytiak, O.M. Bondarevska, V.M. Harashchuk, Z.V. Hbur, O.V. Dzhafarova, T.O. Kolomoiets, D.O. Koshykov, S.I. Lekar, V.I. Melnyk, O.M. Rieznik, O.V. Skoruk, T.V. Tsvihun, A.H. Chubenko, and others.

The purpose of the article is to determine the classification of methods of making public policy on economic security of the state.

**2. The essence of the methods of implementing public policy on the economic security of the state**

To clarify the essence of the issue under study, the priority task, in our opinion, is to clarify the essence of category "method". Therefore, in the "Academic Explanatory Dictionary of the Ukrainian Language", "method" is a technique or a system of techniques used in any field of activities (Bilodid, 1973). From a philosophical perspective, the method is a way of substantiation and construction of the system of philosophical knowledge; a combination of methods and operations of practical and theoretical development of activities (Averintsev et al., 1989, p. 358).

In Ye.I. Bilokur's opinion, the method is a way of organising influence in relations between objects and actors of management (Bilokur, 2015, p. 47).

According to V.B. Averianov, the methods should be understood exactly as ways of practical realisation by executive authorities and other public administrators of the managerial influence on the objects under control, which correspond to the character and scope of functions and powers (competence) granted to these actors, as well as peculiarities of the objects under control (Averianov, 2004, p. 298).

O.M. Bandurka argues that from the perspective of public administration and management, the methods of public administration are the set of operations, means, procedures of preparation and adoption, organisation and control of execution of decisions, authorised actors (Bandurka, 1998, p. 38).

Following V.Ya. Malynovskyi, the method of public administration is a way of practical realisation of administrative functions through managerial influence of the administrator on behaviour and public activities of the controlled object in order to achieve the managerial goals (Malynovskyi, 2003, p. 365).

Furthermore, the literature review reveals a notable statement by K.L. Buhaichuk that "methods" in public administration should be considered from two perspectives: 1) a combination of techniques, operations and procedures for preparation and adoption, organisation and control of managerial decisions made by participants in the process. A part of the method is the procedure considered as the corresponding action consistent with the managerial task (Syniavska, 2017; Buhaichuk, 2018); 2) universal and special means and techniques used by state bodies in the implementation of certain functions of public administration or in the process of development, adoption and implementation of decisions concerning influence on objects under control (Dziundziuk et al., 2011, p. 103).

According to V.A. Lipkan's scientific substantiation of methods of administration, this is scientifically justified, allowed by law way of action directed at the object of administration for the most correct operative solution of managerial tasks and achievement of maximum efficiency of administration (Lipkan, 2007, p. 276).

It should be noted that M.I. Koziubra defines the legal regulatory methods as a combination of means and techniques of legal influence on public relations (Koziubra, 2015, p. 100).

In V.K. Kolpakov's opinions, methods of public administration are certain ways of practical execution by public administrators of their administrative duties, which are conditioned by the scope of competence granted to them (Kolpakov et al., 2012).

Furthermore, V.V. Halunko argues that the methods of public administration are ways, techniques of purposeful influence of provisions of administrative law on behaviour of participants in administrative-legal relations aimed at public provision of rights and freedoms of man and of the citizen, normal functioning of civil society and the state (Halunko, 2015, p. 151).

It should be noted that, relying on scientific statements, scientists interpret "methods" almost equally as ways to express certain actions by the state authorities in the performance of state functions and their powers. Moreover, the scientists have defined specificities of public administration methods are as follows: 1) they reflect public interest; 2) they are implemented in the process of public administration; 3) they express the orderly influence of public administration on the behaviour of the actors of society and the content of this influence; 4) the methods of public administration always contain the state's governing will, manifested in the juridical prescriptions of public administration; 5) they are used by public administrators as a means of ensuring the implementation of the competence assigned to them; 6) they have their form; 7) they are an external manifestation. This means that the legal force of the methods is always within the scope of powers of the body that uses them (Kolomoiets, 2004).

With regard to the classification of methods, it should be noted that experts in administrative

law have established the classification of methods into imperative and dispositive. Therefore, the imperative legal regulatory method provides for the establishment of unbroken rules and regulations, according to which the person should act. Instead, a dispositive method is used where the provisions of law only outline the possible behaviour, and the participant in legal relations chooses the specific one independently, at own discretion (Koshykov, 2021).

In addition, other classifications of methods can be revealed by the literature review. For example, in his scientific studies V.V. Kovalenko groups methods into: 1) depending on forms: legally binding, provided for in regulatory and individual legal acts and entailing legal effects; non-legally binding characterised by certain organisational actions by a public administrator, for example, training, meetings; 2) according to the degree of authority influence on objects: authorising ones, enabling to carry out certain actions; encouraging ones, implemented through the establishment of incentives to the legal behaviour of actors of administrative law; recommendatory, which contain recommendations on the implementation of certain non-binding actions; imperative, which contain the authority's provisions, which oblige to take necessary actions or behave properly (Kolpakov et al., 2012).

Moreover, Yu.Yu. Chupryna in the scientific study groups administrative and legal regulatory methods into control, persuasion, coercion and encouragement. Moreover, the scientist notes that this category can be specified as follows: substantial; procedural; administrative-legal and administrative-organisational; binding; authorising; encouraging and prohibiting (Chupryna, 2016).

According to T.O. Kolomoiets, three main groups of methods of activity of public administrators are: statutory, ordering, regulatory. Furthermore, the scientist argues that these methods are based on application of legal regulations (instructions, orders, resolutions of executive bodies), are legislative, obligatory, are based on administrative relations such as discipline, responsibility, power, coercion (Kolomoiets, 2004).

With regard to these classifications of administrative regulatory methods, further implied in our issue, we generally support traditional classification of methods on imperative and dispositive. However, it should be noted that there are other approaches based on the understanding of administrative law as the law that regulates relations in the field of public administration, consequently, the varying criteria of methods depend on the perspective of one or another researcher on the different types of administrative legal relations. Most of available groupings of this category do not contain their classification distribution. As a rule, scientists state the existence of a legal regulatory method (Yurovska, 2018, p. 12).

Therefore, to imply this into our study, we propose to characterise the methods of making public policy on economic security, as follows: regulatory, statutory, managerial, and economic. Furthermore, the scientific literature review enables to mention the following methods of making public policy on economic security: control and supervision, coercion and persuasion.

Therefore, considering the regulatory methods of making public policy on economic security, it should be noted that in the studies by T.O. Kolomoiets, the essence of administrative methods in defined. For example, the scientist argues that the regulatory methods imply the establishment of provisions, which are the guiding in administrative activities. The form of regulatory impact is the establishment of limits, restrictions and deviations. Accordingly, a standard, a provision, a limit, a classifier and a guide are a documentary expression of administrative regulatory methods (Kolomoiets, 2004).

Next, the statutory methods establish the composition of the elements of the system and links between them by means of providing for general statutory duties, i.e. the delimitation and establishment of tasks, functions, rights and responsibilities, interrelations. The scientist adds that they are realised by means of provisions, statutes, official instructions and other bylaws, and consist of four main types: general organisational, functional, structural, and official (Kolomoiets, 2004).

Thus, it should be noted that the general organisational statutory methods of making public policy on economic security include: the Economic Code of Ukraine, Law of Ukraine "On the basic principles of state supervision (control) in the field of economic activities" of April 5, 2007 № 877-V, Law of Ukraine "On National Security of Ukraine" of June 21, 2018 № 2469-VIII, Law of Ukraine "On the Bureau of Economic Security of Ukraine" of January 28, 2021 № 1150-IX, National Security Strategy of Ukraine approved by Decree of the President of Ukraine of September 14, 2020 № 392/2020, National Economic Strategy up to 2030 approved by Resolution of the Cabinet of Ministers of Ukraine of March 3, 2021 № 179, etc. In other words, as we see, the general organisational statutory methods of making public policy on economic security are defined in legislative and legal regulations of the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine, which ensure economic security of the country.

The functional statutory methods of implementing public policy on economic security include Regulations on the State Audit Service of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine of February 3, 2016 № 43; Regulations on the State Tax Service of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine of March 6, 2019 № 227; Regulations on the Ministry of Finance of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014 № 375; Regulations on the Ministry of Economic Development, Trade and Agriculture of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine of August 20, 2014 № 459 (amended in September 11, 2019 № 838); Regulations on the Ministry of Foreign Affairs of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine of March 30, 2016 № 281; etc. Therefore, functional statutory methods of making public policy on economic security are defined in the provisions approved by resolutions of the Cabinet of Ministers of Ukraine and determine the status of executive bodies, their powers, functions and tasks in the field of economic security.

An example of structural statutory methods of making public policy on economic security is the Order of the Ministry of Economy of Ukraine "On approval of provisions on structural units of the Department of International Cooperation in the field of economy, trade and agriculture" approves provisions on: department of international trade instruments coordination; department of sectoral international trade instruments; department of bilateral cooperation in agriculture development (Ministry of Economy of Ukraine, 2021). Therefore, structural statutory methods of making public policy on economic security are to ensure proper functioning of the unit, its functions and tasks for economic security.

The official statutory methods provide for development of the staff schedule and job instructions that establish the list of posts and the basic requirements for their replacement, performance of duties (Kolomoiets, 2004). It should be noted that the official regulatory framework is carried out by the heads of the respective executive bodies at both the central and territorial levels (Koshykov, 2021). Nevertheless, we can give an example of Order of the National Agency of Ukraine on issues of civil service "On approval of the Procedure for development of official instructions of public officials of categories "B" and "C" of September 11, 2019 № 172-19.

Moving on to the analysis of the ordering methods, it should be noted that they reflect the current use of established organisational relations, their partial adjustment in case of change of working conditions. The basis of ordering impact is powers of the executive bodies – their rights and duties established in the manner prescribed. The scientist notes that the ordering method can be characterised by active (orders, resolutions, instructions, decisions, directives, rulings, guidelines, etc.) and passive (instructions, information, recommendations, monitoring) types (Kolomoiets, 2004).

Therefore, further determination of the ordering methods of making public policy on economic security should include examples of both active and passive ones. The active ones are:

– Order of the Ministry of Development of Economy, Trade and Agriculture of Ukraine "On the transfer of property" of April 24, 2020 № 780, which provides for a transfer from the competence of the Ministry of Economic Development, Trade and agriculture of Ukraine from the balance of the state enterprise "Ukrainian Centre "Security" under the State Concern "Ukroboronprom" on the balance of the state enterprise "State Kyiv Design Bureau "Luch" of separately individually defined property on the list, according to the appendix;

– Order of the Ministry of Economic Development and Trade of Ukraine "On the transfer of state property from the Ministry of Economic Development from the balance of the state scientific-production enterprise "Electronmash" under the National Police of Ukraine" of December 29, 2015 № 1807, which defines the transfer of immovable property.

Considering the passive form of the ordering method of making public policy on economic security of the state, the development by the Department of Local budgets of the Ministry of Finance of Ukraine and the approval by the Ministry of Finance of the methodical recommendations on mechanisms of public participation in the budgetary process at the local level (Ministry of Finance of Ukraine, 2020).

Moving on to the definition of economic methods it should be noted that they are oriented on achievement of the set goals by means of the economic means and incentives, inherent in administration, having impact on the economic interests of employees. Therefore, these are methods and means of direct action on economic entities by means of introduction of financial and economic laws, creation of monetary and credit relations, aimed at optimal conditions that ensure achievement of high economic results (Kolomoiets, 2012). The types of economic methods are: indicative planning, forecasting and state economic programming, etc. (Mirko, 2011, p. 116).

According to O.I. Bezpalova, the absence of an administrative component is a specificity of a group of economic methods among admin-

istrative ones (Bezpalova, 2014, p. 138).

However, considering economic methods, we should underline their significance in forming the financial component of the state, forming economic relations, which in turn preforms the development of the entire economy. An example of the economic method determined at the legislative level is the provisions of the Tax Code of Ukraine, in particular Article 30 "Tax benefits".

Next, the methods of control and supervision are categories under analysis. According to the "Academic Explanatory Dictionary of the Ukrainian Language", "control" is examination, accounting of activities of someone, something, supervision of someone, something. At the same time, "supervision" is to watch, follow somebody to control, to ensure order (Bilodid, 1973).

In his studies, V.S. Shestak defines control as independent or externally initiated activity of authorised actors aimed at establishing actual data on objects of this control in order to determine its compliance or non-compliance with those legal criteria, which provide for the application of adequate and effective response measures in the manner prescribed by law (Shestak, 2003, p. 25).

From V.Ya. Malynovskyi's perspective, control is the process of ensuring that the organisation achieves its goal, which consists of setting criteria, determining the achieved results and introducing adjustments in the event that the achieved results differ significantly from the established criteria (Malynovskyi, 2003, p. 293).

It should be noted that O.F. Andriiko considers the concept of control as broader one than supervision (Andriiko, 2000, p. 12), and supervision is a kind of control, which represents the form of active surveillance, accompanied by the application of administrative power measures if necessary (Studenikina, 1974, p. 20).

The essence of the supervision is that the higher executive bodies are empowered by the executive authorities regarding the lower bodies, including the right to cancel non-compliance with the law, the administrative acts issued by them (Horbova, 2019, p. 39).

In his research, D.O. Koshykov argues that the control does not only check the systematic compliance with legal regulations and decision making, but also considering its peculiarities as a function of state administration, controlling bodies are empowered to interfere in the operational activity of objects under control in the form of publication of obligatory instructions. On the contrary, the task of supervision is only to detect and prevent violations, to determine the compliance of the activities of objects under control with clearly defined rules. The supervisory bodies do not have the right to interfere in the operational activities or to change the regulations of the governing bodies (Koshykov, 1998, p. 213).

**3. Specificities of classification of methods of implementing public policy on the economic security of the state**

Relying on the scientific literature review, it can be stated that scientists have not differentiated "control" and "supervision", however, both control and supervision are called for to ensure that administrators comply with their rights and duties and have not caused unlawful acts.

For example, powers of the Cabinet of Ministers of Ukraine can be considered as the method of control of making public policy on economic security of the state. Thus, according to article 19, part 2, the Cabinet of Ministers of Ukraine constantly monitors the implementation of the Constitution of Ukraine and other laws of Ukraine by executive bodies, takes measures to eliminate shortcomings in the work of these bodies. Article 20, part 1, paragraph 3, provides for that the Cabinet of Ministers of Ukraine controls compliance with the legislation by executive bodies, their officials, and local self-government bodies on the fulfilment of delegated powers of executive bodies (Verkhovna Rada of Ukraine, 2014a).

Furthermore, the method of control can be considered through the powers of the Ministry of Finance of Ukraine to implement public policy on economic security of the state: "Control of fulfilment of obligations on the agreements on restructuring of overdue debts of economic entities to the state" (Cabinet of Ministers of Ukraine, 2014).

In addition, the current legislation provides for tax control, according to which, in order to control the correctness, completeness and timeliness of the payment of taxes and fees, as well as compliance with legislation on the regulation of cash circulation, settlement and cash transactions, patenting, licensing and other legislation, the supervisory authorities implement the following forms of control: keeping records of taxpayers; checks, reconciliations, and other (Verkhovna Rada of Ukraine, 2010).

With regard to the method of supervision of making public policy on economic security of the state, the functions of the Procurator's Office are a noticeable example. According to the Law of Ukraine "On Prosecutor's Office", article 2, paras. 3, 4, the Prosecutor's Office carries out: "3) Supervision of compliance with the laws by the bodies carrying out operational and investigative activities, inquiry, pre-trial investigation; 4) Supervision of compliance with the law in the execution of judicial decisions

in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens" (Verkhovna Rada of Ukraine, 2014b).

The scientific literature reveals that the method of persuasion is interpreted as a special way of legal influence (Bytiak, 2007, p. 162); prevention of offences due to impact on the consciousness of individuals to comply with legal provisions (Melnyk, 2014, p. 145).

O.V. Sukmanova argues that scientific persuasion is a process of gradual actions, including the following elements: training, suggestion; formation of interest, influence on the consciousness; management of emotions; propaganda, agitation, clarification, exchange of experience (Sukmanova, 2018, p. 107).

Moreover, the scientific literature review reveals that beliefs are defined through a system of legally binding and non-legally binding methods, which are carried out by state and non-state bodies, and expressed in the use of educational, promotional, explanatory measures contributing to awareness among citizens of the need to comply with regulations (Kolomoiets, 2004).

For example, the method of persuasion of making public policy on economic security of the state can be realised through encouragement, such as obtaining "Certificate of Merit" provided for by the Regulations on the Certificate of Merit of the Cabinet of Ministers of Ukraine (Cabinet of Ministers of Ukraine, 2008); to make the public aware of the legislative regulations governing economic security through the Internet, the media, and to raise public awareness through economic education, etc.; inter-departmental measures by the executive authorities; seminars, as follows: in 2015, the Ministry of Economic Development, when establishing the system of state financial support for exports in Ukraine, organised and held a seminar-presentation of the III phase of the project of the German Development Bank (KfW) on providing advisory support "Price Waterhouse Coopers" (PwC) on the development of a regulatory document for the establishment of an export credit agency, as well as state financial support for exports.

The method of coercion, relying on the scientific literature review, is defined as the use of physical coercion by public administrators of a moral, material and material nature in order to prevent and deter offences in order to bring the perpetrators to justice (Halunko, Pravotorova, 2020, p. 206).

A.T. Komziuk states that administrative coercion is the application of measures of moral, property, personal and other nature, provided for by the administrative and legal provisions, by relevant actors to persons, who are not their subordinates, independent of the will and desire of the latter, in order to protect public relations, arising in the field of public administration, by prevention and deterrence of offenses, punishment for their commission (Komziuk, 2002, p. 45).

According to Yu.P. Bytiak, coercion is a system of physical and psychological influences on the behaviour and consciousness of individuals in order to carry out the duties envisaged, to ensure law and order, as well as the development of social relations within the legislative framework (Bytiak, 2007, p. 164).

Consequently, the method of coercion of making public policy on economic security can be considered through the powers of the tax authorities defined by the tax legislation. Thus, according to article 14, para. 14.1.153, of the Tax Code, tax claim is a written request of the supervisory authority to the taxpayer on payment of the tax debt (Verkhovna Rada of Ukraine, 2010). This legal phenomenon can be considered through the tasks of the State Tax Service, which include: to ask and study during inspections the primary documents used in accounting, registers, financial, statistical and other statements, related to the calculation and payment of taxes, fees, payments, compliance with the requirements of legislation, the control of which is entrusted to the STS; to require, during checks, making and providing copies of primary documents, signed by a taxpayer (single contribution payer) or an official and stamped (if any), evidencing violation of tax legislation; to require, during inspections, audited taxpayers to carry out an inventory of fixed assets, inventories, cash, to withdraw balances of goods and material values, cash; to seize, in the manner established by law, during checks from enterprises, institutions, organisations, entrepreneurs and natural persons engaged in independent professional activity, copies of documents confirming undervaluation of wages (income) and other payments for which a single contribution is calculated; etc. (Cabinet of Ministers of Ukraine, 2019).

**4. Conclusions**

The thorough consideration of the methods of making public policy on economic security enables to affirm that their application by the maker of public policy on economic security ensures the clear and effective implementation of tasks to protect the economic system. It should be noted that all these methods are interconnected and complementary.

The methods of making public policy on economic security, in our opinion, should be considered as ways and means, used by makers of public policy on economic security within the scope of their competence provided by legal

acts to prevent, detect and address threats to economic security.

The classification of methods of implementing public policy on economic safety includes regulatory, statutory, managerial, economic, control, supervisory, coercion, persuasion methods.

The specificities of the methods of making public policy on economic security are: 1) they are of public character, provided for by the public interest; 2) they are implemented in the process of prevention, detection and addressing of threats to economic safety; 3) they have legal form: they find their expression in the bylaws of makers of public policy on economic security; 4) makers of public policy on economic security shall use them as a way or a means for exercising the competence granted to them by the state.

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# КЛАСИФІКАЦІЯ МЕТОДІВ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ БЕЗПЕКИ ДЕРЖАВИ

**Анотація.** ***Метою статті*** є здійснення класифікації методів реалізації державної політики у сфері забезпечення економічної безпеки держави.

***Результати.*** У статті визначено сутність методів реалізації державної політики у сфері забезпечення економічної безпеки. Проаналізовано поняття «метод», «контроль», «нагляд», «переконання», «примус». Наведено класифікацію та визначено сутність кожного з методів реалізації державної політики у сфері забезпечення економічної безпеки. Зазначено, що вони поділяються на нормативні, регламентаційні, розпорядчі та економічні методи, методи контролю, нагляду, переконання, примусу. З'ясовано, що особливостями методів публічного адміністрування є такі ознаки: 1) у них знаходить своє вираження публічний інтерес; 2) реалізуються у процесі публічного адміністрування; 3) виражають упорядковуючий вплив публічної адміністрації на поведінку суб'єктів суспільства та становлять зміст цього впливу; 4) у методах публічного адміністрування завжди міститься керівна воля держави, яка проявляється в юридично-владних приписах публічної адміністрації; 5) використовуються суб'єктами публічної адміністрації як прийом забезпечення реалізації закріпленої за ними компетенції; 6) мають свою форму; 7) є зовнішнім проявом.

***Висновки.*** Встановлено, що під методами реалізації державної політики у сфері забезпечення економічної безпеки необхідно розуміти прийоми та способи, які використовують суб'єкти реалізації державної політики у сфері забезпечення економічної безпеки в межах наданої їм нормативно-правовими актами компетенції для виявлення й ліквідації загроз економічній безпеці та запобігання їм. Класифікація методів реалізації державної політики у сфері забезпечення економічної безпеки включає нормативні, регламентаційні, розпорядчі, економічні, контрольні, наглядові методи, методи примусу, методи переконання. Особливостями методів реалізації державної політики у сфері забезпечення економічної безпеки є такі риси: 1) мають публічний характер, який передбачений публічним інтересом; 2) реалізуються у процесі виявлення й ліквідації загроз економічній безпеці та запобігання їм; 3) мають юридичне оформлення – знаходять своє вираження в юридично-владних приписах суб'єктів реалізації державної політики у сфері забезпечення економічної безпеки; 4) суб'єкти реалізації державної політики у сфері забезпечення економічної безпеки використовують їх як спосіб або прийом для реалізації наданої їм державою компетенції.

**Ключові слова:** методи, класифікація, державна політика, державна політика у сфері забезпечення економічної безпеки держави, класифікація методів державної політики у сфері забезпечення економічної безпеки держави.

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# SPECIFICITIES OF THE PROCEDURE FOR TERMINATION OF AN INDIVIDUAL ENTREPRENEUR'S BUSINESS ACTIVITY

**Abstract.** The ***purpose of the article*** is to clarify the specificities of the procedure for termination of business activity of an individual entrepreneur.

***Results.*** The purpose of the state registration of termination of business activity of an individual entrepreneur is: 1) to deprive an individual of the status of an entrepreneur; 2) to check the legality of certain facts, actions; 3) to termination of rights and duties of the entrepreneur, and thus to protect the rights and legitimate interests of other private persons and the state; 4) to obtain information of the state statistical accounting for regulatory economic measures; 5) to provide all participants in economic processes, state authorities and local self-government with information about registered business entities.

***Conclusions.*** It is determined that the procedure for state registration of an individual as an entrepreneur and the procedure for termination of business activity of an individual entrepreneur provides for the stages as follows: 1) to submit documents for state registration; 2) to check the submitted documents for the availability of grounds for termination of their consideration or refusal to state registration; 3) to adopt the administrative act on state registration and to perform the corresponding registration action; 4) to appeal the decision on registration (refusal to register). It is established that the mechanism for individual complaints review allowed the Ministry of Justice of Ukraine to respond promptly and give a decisive response to raider attacks that occur in the register. In case of establishing obvious violations of law in the decisions or actions of the state registrar, actors of state registration, the Ministry of Justice of Ukraine as an authorised public administrator in the field of state registration has the opportunity to settle the complaint in the shortest possible time (within a day), having restored the violated rights of natural or legal persons. Of course, such a review algorithm may not be applied to all complaints, because the main body of appeals received by the Anti-raiding Office requires a thorough collegial analysis. An important point, which does not directly concern the state registration of termination of business activity of an individual entrepreneur, but concerns the general procedure for annulment of the status of an individual entrepreneur, is the procedure for termination of registration of such business entity as a taxpayer of taxes on incomes from business activity (single tax or income tax, value added tax).

**Key words:** actors, property rights, corporate rights, control activity.

## 1. Introduction

An individual entrepreneur, having submitted to the state registrar the application on termination of business activity, receives the corresponding administrative act in 24 hours, and in the presence of electronic digital signature it is possible to stop being an entrepreneur in a few minutes. The "Diia" portal in the "IE termination" tab has a 2-minute term at all, but it is noted that "the termination time in the tax service depends on your type of activity".

According to O.S. Dniprov, today Ukraine demonstrates an active development primarily of the electronic government, in particular, introduction of more advanced electronic document management systems using electronic digital signature, rendering services to citizens and businesses through Centres of Adminis-

trative Services, "single window" system etc. the administrative reform has contributed to the intensification of these processes. However, the more powerful the pace of development of the electronic government, the more top officials of the state say about the importance and necessity of implementation of the electronic government, the greater the responsibility of those involved in these processes (Dniprov, 2019).

Consequently, the analysis of actions of the state registrar during the termination of business activity of an individual entrepreneur should be under focus, since his competence, impartiality and integrity contribute to the effectiveness of control measures at the stage of termination of business activity of such person.

**2. The regulatory and legal framework for the state registration of the termination of business activity of an individual entrepreneur in Ukraine**

First, it should be emphasised that the modern science of administrative law and the Verkhovna Rada of Ukraine today have two groups of interrelated tasks: 1) to simplify administrative procedure for the termination of business activity as much as possible, to make appropriate administrative procedures transparent, understandable, consistent, effective, to reduce their term; 2) together with representatives of other sectors of law to develop a mechanism for prevention of fictitious enterprises (Kolomoiets, Halitsyna, 2010).

Secondly, it should be noted that an administrative and legal component in liquidation procedures is not questionable and is recognised by representatives of civil and economic legal sciences, since, according to O.M. Vinnyk, "ensuring the possibility of private initiative and choice of its form requires to exclude the possibility of abuse by dishonest and/or economically strong participants of economic life by establishing appropriate restrictions, duties, and prohibitions. Despite the critical attitude to the state regulatory mechanism, participants in economic life (at least, the overwhelming majority of them) are interested in acting under certain, pre-established rules, which provides them with the definite legal status, and legal opportunities to protect rights and legitimate interests in case of violation of the latter by other participants in market relations. The idea of the excessive state regulatory mechanism in Ukraine popular among entrepreneurs and some scientists is not true: as evidenced by <...> comparative analysis of the degree of validity of regulating corporate relations in Ukraine and countries with traditionally developed market relations. Therefore, the matter is not so much in the degree of state regulatory mechanism as in the stability, substantiation and expediency of the rules established in the field of economy. However, the effectiveness of such rules and, accordingly, the efficiency of the economy and its elements (including economic entities) depends on ensuring stability of these rules, their thoughtfulness and prudence, the clarity and unambiguity of their provisions by the state" (Vinnyk, 2003).

Thirdly, it should be noted that the state registration of establishment and termination of economic entities is the concept of administrative law, and thus can be considered by means of the algorithm of analysis of administrative procedures.

The legal provisions regulating the state registration of termination of IE business activity in Ukraine are composed of:

1. Substantial provisions of civil and economic law, which reinforce the obligatory state registration of IEs. Thus, in accordance with the Civil Code of Ukraine, business activity of natural persons is subject to the legal regulations governing business activity of legal entities, unless otherwise provided by law or unless otherwise follows from the essence of relations (Verkhovna Rada of Ukraine, 2003c), therefore, the business activity of IE is terminated from the moment of entering the corresponding record into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations. A similar provision is contained in the Economic Code of Ukraine, according to Article 59 thereof, termination of a business entity is carried out in the manner prescribed by law (Verkhovna Rada of Ukraine, 2003a).

2. Administrative legal provisions establishing goals, tasks, functions, principles of the procedure for state registration, legal status of their participants.

3. Administrative procedural provisions, which directly determine the procedure for actions of the state registrar at the registration of termination of business activity of the individual entrepreneur (Ministry of Justice of Ukraine, 2016), which are the subject matter of our research.

The purpose of the state registration of termination of IE business activity is: 1) to deprive an individual of the status of an entrepreneur; 2) to check the legality of certain facts, actions; 3) to termination of rights and duties of the entrepreneur, and thus to protect the rights and legitimate interests of other private persons and the state; 4) to obtain information of the state statistical accounting for regulatory economic measures; 5) to provide all participants in economic processes, state authorities and local self-government with information about registered business entities.

**3. Procedures for termination of business activity of an individual entrepreneur**

The stages of the procedure for termination of business activity of an individual entrepreneur are: 1) to submit documents for state registration of termination; 2) to check the submitted documents for the availability of grounds for termination of their consideration or refusal to state registration; 3) to adopt the administrative act on state registration and to perform the corresponding registration action; 4) to appeal the decision on registration (refusal to register).

Consider stage 1. It should be noted at once that currently for the state registration of termination of business activity of an individual entrepreneur (compared with previous periods) the number of appellant is decreased: 1) it is the very individual entrepreneur – in case of the state registration of termination of business activity of an individual entrepreneur on his/her decision; 2) or the state body, relatives (spouse, parents, children, grandchildren, grandfather, grandmother, brothers, sisters) and heirs of a natural person – in case of submission of documents for state registration of termination of business activity of an individual entrepreneur in connection with his/her death, the recognition as missing or the declaration of death (Verkhovna Rada of Ukraine, 2003b).

The documents according to which the state registration of termination of business activity of an individual entrepreneur is carried out are:

1) an application on the state registration of termination of business activity of an individual entrepreneur by his/her decision – in case of state registration of termination of business activity of an individual entrepreneur by his/her decision;

2) a copy of the certificate of death of a natural person, a court decision on recognition of a natural person as missing without any question – in case of the state registration of termination of business activity of an individual entrepreneur in connection with his/her death, recognition as missing or declaration of death (Verkhovna Rada of Ukraine, 2003b).

In this connection several questions arise. First, should the procedure for termination of the business activity of IE on the ground of the court decision on recognition of a natural person as missing be considered interfering in administrative procedure? Secondly, and what shall be done with individual entrepreneurs, who actually correspond to the aggregate of features, in the presence of which it is possible to recognise such person as bankrupt on the ground of the new Code of Ukraine on Bankruptcy Procedures (Verkhovna Rada of Ukraine, 2018), which has come into force since October 2019, but do not agree to the bankruptcy procedure applied to them, while this is possible only if the consent of such individual is given? Third, is forced liquidation of an individual entrepreneur on other grounds, except for non-solvency, now available in Ukraine at all? Fourth, how are the issues of public interest resolved in all of the above cases? Evidently, the answers to these questions are beyond our research, but still the questions should be raised.

Stages 2, 3, 4 are fully in line with the procedure for registration of an individual entrepreneur, and therefore we will stop on the analysis of the work of the Collegium of the Ministry of Justice of Ukraine on consideration of complaints in the field of the state registration for the period from January 16, 2020 (the moment of establishment) to December 29, 2020.

For example, during the whole period of existence, the Collegium has analysed 2 694 cases, of which: 1 104 – satisfied, 1 590 – refused on merits (as a result of collegial consideration), 0 – refused without admission to consideration (Onishchuk, 2021). According to Deputy Minister of Justice for the State Registration O.M. Onishchuk, in the majority of cases (about 58%) the Collegium did not establish the existence of obvious, gross violations of law in the decisions or actions of the state registrar. And even those 42% of complaints satisfied have been far from always justified to talk about "registration" raiding, because cases that contain obvious, gross violation of law, as a rule, are considered by the Ministry of Justice of Ukraine individually (Onishchuk, 2021).

The mechanism for individual complaints review allowed the Ministry of Justice of Ukraine to respond promptly and give a decisive response to raider attacks that occur in the register. In case of establishing obvious violations of law in the decisions or actions of the state registrar, actors of state registration, the Ministry of Justice of Ukraine as an authorised public administrator in the field of state registration can settle the complaint in the shortest possible time (within a day), having restored the violated rights of natural or legal persons. Of course, such a review algorithm may not be applied to all complaints, because the main body of appeals received by the Anti-raiding Office requires a thorough collegial analysis.

Cases, which contain obvious, gross violations of law, are recorded by the Ministry of Justice of Ukraine separately, because they are considered individually. During 2020, 49 complaints in the field of the state registration (41 for business and 8 for real estate) were resolved by this procedure, 19 of which were cases in which there were reports of so-called crimes of electronic keys of access to regis-

ters. The additional user identification tool has helped to solve the problem of electronic registry key crimes. This mechanism, which prevents any unauthorised interference in the work of the registrars, in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (USR) was introduced in November 2020 and became mandatory for all specialists authorised in the field of the state registration of business as of December 12. It was due to the measures to strengthen the security of the data of the USR since November 2020 that no report of the criminal electronic key of the registrar has been received by the Ministry of Justice of Ukraine (Ministry of Justice of Ukraine, 2021).

It should be emphasised that there were no cases when the appellants were deprived of the opportunity to protect their property or corporate rights in the Ministry of Justice of Ukraine due to formal procedural guarantees. In other words, the appellants did not receive the decision of the Ministry of Justice of Ukraine on refusal because of, for example, "the absence of information about the existence or absence of a court dispute". However, all orders on results of case analysis were published in the corresponding section on the official web portal of the Ministry of Justice of Ukraine.

According to the areas of the state registration, statistical proportions of the cases considered are as follows: 2 118 complaints concerning real estate and 576 complaints concerning business. This ratio is compared with the total number of registration actions performed. For example, in 2020, in the State Register of Property Rights to Immovable Property (SRR), 5 250 465 registration actions were carried out, in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations (USR) – 1 163 467. For comparison: in 2019, 5 347 956 registration actions were carried out in the SRR, and in the USR – 1 510 865 (Onishchuk, 2021).

Evidently, the absolute leader in the areas of the state registration is real estate. In addition, the general statistical picture of the state registration sector shows that despite all the challenges of 2020, the number of registration actions has not changed dramatically compared to 2019, unless the activity of the state registration of business has slightly decreased by about 23%. However, the number of registration violations in 2020 has considerably decreased. In 48% of the decisions of the Board on refusal to satisfy the complaint, it was stated that the actions (decisions) conducted by state registrars were in accordance with the legislation. For example: in 2019, there were three times less refusals for such reasons – only 17% (Ministry of Justice of Ukraine, 2021).

In 2020, the Ministry of Justice of Ukraine denied access to the registers of 101 actors: 83 state registrars and 18 notaries, who allowed gross violation of the legislation. In almost 80% of cases, such a strict sanction was applied due to the results of the registration cases consideration: 64 registrars and 15 notaries' access to the registers was denied. In other cases, the Ministry of Justice of Ukraine decided to deny access to the registers due to a check-up of state registrars or state registration actors. It is about 22 termination: this measure was applied to 19 registrars and 3 notaries. If we compare these figures with the total number of specialists working in the field of the state registration, we have the following percentage ratio: 0,3% denied access to the registers in respect of notaries and 5,1% – in respect of state registrars (Ministry of Justice of Ukraine, 2021).

An important point, which does not directly concern the state registration of termination of business activity of an individual entrepreneur, but concerns the general procedure for annulment of the status of an individual entrepreneur, is the procedure for termination of registration of such business entity as a taxpayer of taxes on incomes from business activity (single tax or income tax, value added tax (if IE has been registered as such), a single social contribution (for hired workers, etc.)).

An already former entrepreneur is under such duty after the state registration of termination of his/her business activity and he/she shall carry it out within 10 days by appeal to the State Tax Inspection at the place of registration of the taxpayer, submission of liquidation reports and implementation of other actions envisaged by the legislation.

Thus, it is this stage of termination is aimed at verification of the legality of certain facts, actions, termination of rights and duties of a certain entrepreneur, and thus protection of rights and legitimate interests of other private persons and the state, which allow control proceeding.

**4. Conclusions**

Features of all control proceeding are: 1) actors exercising control powers (state bodies and their officials, citizens' associations, local self-government bodies) are diverse; 2) the overwhelming number of control bodies is granted with a wide range of control powers, including the right to intervene in the operational activities of the entity under control; 3) the activity of entities under control is a direct object of the controlling legal relations; 4) in control proceedings, legal facts alone do not have legal force and act only in the form of actual (legal) composition – the organic combination of several life circumstances; 5) control and procedural provisions do not contain a comprehensive list of means

of preservation and transfer of evidence-based information (in the control process, information about actual circumstances can be obtained from any legitimate source); 6) the results of control activity are officially documented in legal acts – documents which can be referred to both category of law application (as a result of exercising state powers by competent control bodies) and the category of law-enforcement acts (which contain legal evaluation of activity of the entity under control) (Kuzmenko, 2012).

As for the procedure for the removal of the former IE from the accounting as a taxpayer, it should be emphasised that after the state registration of termination of business activity, the individual continues to be registered in the controlling bodies as a natural person – the taxpayer, who received income from the conduct of business.

Individuals who were on the general system, in respect of whom since January 1, 2017 a record on termination of business activity has been entered into the USR, submit liquidation tax declarations on property status and incomes received on the general system of taxation the last time in the reporting period since the day following the day of the end of the previous basic tax (accounting) period until the last day of the calendar month, in which the state registration of termination of business activity was carried out, within 30 calendar days from the date of the state registration of termination of business activity. Individuals under the simplified tax system submit tax declarations the last time for the accounting (tax) quarter, in which the state registration of termination of business activity is carried out, the growing result from the beginning of the year in the terms defined by para. 49.18.2 of the Tax Code of Ukraine (Verkhovna Rada of Ukraine, 2010), within 40 calendar days, following the last calendar day of the accounting (tax) quarter.

A report on the SSC specifying the type of "liquidation" form, where the last reporting period is the period from the date of the end of the previous reporting period to the date of the state registration of termination of business activity, SSC IE payers, including IE – single taxpayers, it is submitted within 30 calendar days from the date of the state registration of termination of business activity. The last period for which a single contribution must be calculated and paid will be the period from the date of the end of the previous reporting period until the date of the state registration of termination. A single contribution is paid within 10 calendar days after the deadline for the submission of the SSC Report, specifying the type of the "liquidation" form (Verkhovna Rada of Ukraine, 2010).

The data on the withdrawal from the registration of IE as a taxpayer and as a taxpayer of the SSC are passed by the controlling body to the USR and published on the portal of electronic services of the USR and only after that it is possible to consider the procedure of termination of the business activity of an individual entrepreneur complete.

Both the procedure for state registration of an individual as an entrepreneur and the procedure for termination of business activity of an individual entrepreneur are determined to provide for the stages as follows: 1) to submit documents for state registration; 2) to check the submitted documents for the availability of grounds for termination of their consideration or refusal to state registration; 3) to adopt the administrative act on state registration and to perform the corresponding registration action; 4) to appeal the decision on registration (refusal to register).

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## ОСОБЛИВОСТІ ПОРЯДКУ ПРИПИНЕННЯ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ ФІЗИЧНОЇ ОСОБИ – ПІДПРИЄМЦЯ

**Анотація.** ***Метою статті*** є з'ясування особливостей порядку припинення підприємницької діяльності фізичної особи – підприємця.

***Результати.*** Метою державної реєстрації припинення підприємницької діяльності фізичної особи – підприємця є: 1) позбавлення фізичної особи статусу підприємця; 2) перевірка законності певних фактів, дій; 3) припинення прав та обов'язків певного підприємця та захист у такий спосіб прав і законних інтересів інших приватних осіб та держави; 4) отримання відомостей державного статистичного обліку для здійснення заходів регулювання економіки; 5) надання всім учасникам господарського обігу, органам державної влади та місцевого самоврядування інформації про зареєстрованих суб'єктів підприємницької діяльності.

***Висновки.*** Визначено, що і процедура державної реєстрації фізичної особи підприємцем, і процедура припинення підприємницької діяльності фізичної особи – підприємця передбачає такі стадії: 1) подання документів для державної реєстрації; 2) перевірку поданих документів на наявність підстав для зупинення їх розгляду або відмови в державній реєстрації; 3) прийняття адміністративного акта про проведення державної реєстрації та здійснення відповідної реєстраційної дії; 4) оскарження прийнятого рішення про реєстрацію (відмову в реєстрації). З'ясовано, що механізм одноособового розгляду скарг дав змогу Міністерству юстиції України оперативно реагувати та давати рішучу відсіч рейдерським атакам, які відбуваються в реєстрах. У разі встановлення наявності очевидних порушень закону в рішеннях чи діях державного реєстратора, суб'єктів державної реєстрації Міністерство юстиції України як уповноважений суб'єкт публічного адміністрування у сфері державної реєстрації має можливість у найкоротші терміни (протягом доби) задовольнити скаргу, відновивши порушені права фізичних або юридичних осіб. Звісно, такий алгоритм розгляду можна застосувати не для всіх скарг,

адже основний масив звернень, які надходять до Офісу протидії рейдерству, потребує ґрунтовного колегіального аналізу. Важливим моментом, який безпосередньо не стосується державної реєстрації припинення підприємницької діяльності фізичної особи – підприємця, проте стосується загального порядку анулювання статусу фізичної особи – підприємця, є процедура припинення реєстрації такого суб'єкта господарювання як платника податків із доходів, отриманих від підприємницької діяльності (єдиного податку або податку на прибуток, податку на додану вартість).

**Ключові слова:** суб'єкти, майнові права, корпоративні права, контрольна діяльність.

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# ADMINISTRATIVE SUPERVISION AS A TYPE OF PREVENTION OF THE NATIONAL POLICE OF UKRAINE

**Abstract.** ***The purpose of the article*** is to form the concept of administrative supervision as a type of prevention of the National Police of Ukraine and to identify its elements that determine conditions for its implementation.

***Results.*** The scientific article defines the concept and content of administrative supervision by the National Police of Ukraine as prevention, highlighting its elements. In order to implement the task, the publications of experts in administrative law who study the problem are analysed. The author focuses on the analysis of the provisions of legislation in force aimed at regulating the supervision by the National Police of Ukraine. The study enables to fomulate the concept of administrative supervision as a type of prevention of the National Police of Ukraine and to identify its elements that determine conditions for its implementation are highlighted. It is underlined that administrative law has developed an approach to the understanding of administrative supervision as a means to ensure legality and discipline in the field of public administration. However, above all, administrative supervision is understood as a special type of law enforcement activities of a number of authorised bodies of the state apparatus, which consists in monitoring the implementation of special rules and requirements, established by laws, government regulations, departmental acts, and the supervisory authorities themselves. This understanding of administrative supervision highlightes its specialisation as one of the main functions of law enforcement bodies. It is established that administrative supervision can be characterised as an element (institution) of the State machinery, endowed with independence, autonomy, some legal form, exercised by the National Police of Ukraine as a specially authorised law enforcement body, which contributes to the implementation of administrative and legal provisions ensuring public order, as a rule entails the use of administrative coercive measures.

***Conclusions.*** Administrative supervision as a type of prevention of the National Police of Ukraine is a universal trend in procedurally regulated prevention of authorised units and police officials in the forms established by the legislation, designed to ensure a continuous influence on an indefinite range of entities under administrative supervision in order to ensure an appropriate level of law and order, resulting in an assessment of the lawfulness of their conduct and the prevention of possible negative consequences.

**Key words:** administrative supervision, National Police of Ukraine, prevention, supervision, lawful conduct.

**1. Introduction**

The implementation of measures defined by law, aimed at ensuring the appropriate state of law and order, legal awareness and legality within the state, guaranteeing the observance and protection of the human and citizen rights, freedoms and interests, is the fundamental task of the National Police of Ukraine. The level of achievement of this task indicates the degree of development of Ukraine as a democratic, socially oriented, and legal State.

One of the ways in which this task is carried out is through administrative supervision, which is one of the preventive activities of the National Police of Ukraine. This type of police activity has always been under focus of scholars in the field of administrative law, who have sought to clarify the essence, constituent elements and tasks of administrative supervision. However, despite the high importance of administrative supervision as a mean to prevent offences, its concepts, essence and tasks have not been properly reflected in the provisions of the Law of Ukraine "On the National Police", which correspondingly reveals the relevance of the study.

The concept and content of administrative supervision in activities of the National Police of Ukraine have been under focus in their scientific works by experts in administrative law such as: D.M. Bakhrakh, O.I. Bezpalova, Yu.P.Bitiak,V.M.Harashchuk,I.P.Holosnichenko, O.V. Dzhafarova, S.V. Kivalov, S.A. Komissarov, A.T. Komziuk, D.M. Ovsianko, B.V. Rossynskyi, V.V. Sokurenko, Yu.N. Starylov, V.A. Troian, D.P. Tsvihun, Kh.P. Yarmaki, and others.

The purpose of the article is to form the concept of administrative supervision as a type of prevention of the National Police of Ukraine and to identify its elements that determine conditions for its implementation.

**2. The legal and regulatory framework for administrative supervision of the National Police of Ukraine**

In Ukraine, law regulates the issue of implementation of various types of supervision and control, such as procuratorial, state, while some scientists argue that "supervision" and "control" are identical concepts, aimed at general goals and results, supporting their vision by the views of the legislator and the provisions of Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity" of April 5, 2007 № 877-V, according to which State supervision (control) is activity of central executive bodies, their territorial bodies, state collegial bodies, executive bodies of the Autonomous Republic of Crimea, local state administrations, local self-government bodies (further – bodies of State supervision (control)), authorised by law, within the scope of the powers provided by law, to identify and prevent violations of the requirements of the legislation by economic entities and to ensure the interests of society, in particular the proper quality of products, work and services, acceptable level of danger to the population, environment (Verkhovna Rada of Ukraine, 2007).

The National Police of Ukraine, as a state body responsible for a high level of law and order in the State, functions on the basis of Law of Ukraine "On the National Police" of July 2, 2015 № 580-VIII, provisions thereof determine the legal basis for the organisation and activities of the National Police of Ukraine, the status of the police, as well as the procedure for service in the National Police of Ukraine, the task of the police and the list of preventive police actions (Verkhovna Rada of Ukraine, 2015). However, its provisions do not define the concept and content of administrative supervision as one of the preventive actions of the National Police of Ukraine, which leads to ambiguity in the understanding of its essence and the absence of a unified scientific opinion on this issue.

According to some scholars, administrative supervision is a type of State control exercised by authorities, is to ensure the rule of law aimed at compliance with special provisions, is systematic, initiated by the authorities and accompanied, if necessary, by administrative coercion (Bakhrakh et al., 2007, p. 462).

The analysis of Law of Ukraine "On the National Police" of July 2, 2015 № 580-VIII reveals the existence in this legislative act of a provision that defines one of the preventive police actions checking compliance with the restrictions established by law for persons, subject to administrative supervision and other categories of persons (Verkhovna Rada of Ukraine, 2015). The issue of administrative supervision of such persons thoroughly regulates the Law of Ukraine "On Administrative Supervision of Persons Released from Places of Imprisonment" of December 1, 1994 № 264/94-BP, article 1 thereof states that administrative supervision is a system of temporary compulsory preventive actions for monitoring and supervising the conduct of individuals released from places of deprivation of liberty by the National Police of Ukraine (Verkhovna Rada of Ukraine, 1994).

This provision significantly limits the concept and scope of administrative supervision only to control the lawfulness of the conduct of persons released from places of deprivation of liberty after serving a sentence.

**3. Approaches to the definition and characteristics of administrative supervision**

According to the authors of the "Dictionary of Administrative Law", administrative supervision is characterised as an activity of specially authorised executive bodies, public officials, designed to ensure observance, uniform application and execution of the state, public, other non-governmental organisations and citizens of special legal provisions and generally binding rules established by laws and other legal regulations (Bachilo et al., 1999, p. 38).

Administrative law has developed an approach to the understanding of administrative supervision as a means of ensuring legality and discipline in public administration. However, above all, administrative supervision is understood as a special type of law enforcement activities of a number of authorised bodies of the state apparatus, which consists in monitoring the implementation of special rules and requirements, established by laws, government regulations, departmental acts, and the supervisory authorities themselves. This understanding of administrative supervision highlightes its specialisation as one of the main functions of law enforcement bodies.

Soviet scholars in the field of administrative law considered administrative supervision as the basis of the activities of the internal affairs bodies, characterising this activity as the systematic observation by the authorities of the precise and strict compliance with the generally

binding rules in order to prevent, suppress their violations, identify and prosecute the violators or to apply means of public influence to them (Razarenov, Kotyurgin, 1979, p. 10).

According to D.P. Tsvihun, administrative supervision is an independent form of control, the content of which is single no matter what supervision bodies perform it; administrative supervision, like that of the prosecutor's office, may not be related to interference with activities of a supervised entiity or a management body, and where such interference occurs, supervision shall give way to control (Tsvihun, 2002, p. 39).

Such perspective gives grounds to determine that administrative supervision is characterised as a dynamic legal phenomenon, which can be transformed depending on the conditions that have developed and are taking place in the modern legal State.

According to Kh.P. Yarmaki's study of the content of the concept of "administrative supervision", the presence of a fundamental feature of this type of activity of State bodies is of importance, namely the lack of organisational subordination of supervisors and supervised objects (Yarmaki, 2006, p. 144).

The absence of such subordination between the supervisors and the supervised object is the basis for S.A. Kommissarov's perspective of administrative supervision.

In his study of the administrative and supervisory activities of the police, the scholar argues that general police supervision is considered as a type of law enforcement activity of the police authorities, implying systematic observation, specially organised on the basis of the substantive and procedural rules of administrative legislation, regulations and individual acts of management, within the scope of its competence (mainly in public places), of compliance by citizens, officials and organisations with the legal regulations governing public relations in the field of public order and security with a view to identifying, preventing and deterring their violations, prosecuting the guilty in accordance with the law (Komissarov, 2018, pp. 69–70).

Therefore, administrative supervision can be characterised as an element (institution) of the State machinery, endowed with independence, autonomy, some legal form, exercised by the National Police of Ukraine as a specially authorised law enforcement body, which contributes to the implementation of administrative and legal provisions ensuring public order, as a rule entails the use of administrative coercive measures.

V.M. Harashchuk emphasizes this. He argues that administrative supervision is aimed not only at preventing unlawful actions, eliminating the causes and conditions conducive to offences, but also at the use of administrative coercive measures, including administrative liability in case of detection of violations of the general mandatory rules (Harashchuk, 2002, p. 42).

In the opinion of the authors' team, on the one hand, administrative supervision of the police is a means of administrative influence, a type of police enforcement activity, and, on the other hand, a means of ensuring the rule of law in police activities. Supervision ensures the protection of relevant social relations and material assets, not only from offences, but also from illegal acts and natural phenomena. It is the primiar duty of the supervisors to prevent, deter harmful effects, to detect the circumstances that may cause them and to take certain measures to eliminate the revealed deviations. In other words, prevention, deterrence of harm are in the first place, and the use of police measures for general and individual prevention of offences in the future is in the second place (Sokurenko, 2017, p. 327).

An analysis of the existing scientific views on the concept and essence of administrative supervision in general, and the National Police of Ukraine in particular, reveals the inherent elements of this type of prevention and the conditions for its implementation.

The first element is precisely the purpose of administrative supervision, that is, to ensure compliance with legal provisions, to prevent negative effects from non-compliance and to detect circumstances conducive to violations.

The second element is the external form of administrative supervision, that is, ways and methods of implementation that ensure compliance with the rule of law and prevent the commission of offences (protection, regulation, control, authorisation, etc.).

The third element is a procedural form of administrative supervision that is clearly regulated by law to ensure its legality.

The fourth element is the result of administrative supervision, which is important for assessing the adequacy of the ways and methods used and the level of prevention of offences.

The fifth element is the prevention of a deterioration in the level of legal awareness and the lawful conduct of the entities under supervision and the use, if necessary, of measures of procedural coercion.

**4. Conclusions**

Thus, administrative supervision can be defined as prevention of the National Police of Ukraine, that is, a universal trend in procedurally regulated prevention of authorised units and police officials in the forms established by the legislation, designed to ensure a continuous influence on an indefinite range of entities under administrative supervision in order to ensure an appropriate level of law and order, resulting in an assessment of the lawfulness of their conduct and the prevention of possible negative consequences.

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## АДМІНІСТРАТИВНИЙ НАГЛЯД ЯК ВИД ПРЕВЕНТИВНОЇ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

**Анотація.** ***Мета статті*** полягає у формуванні поняття адміністративного нагляду як виду превентивної діяльності Національної поліції України та виділенні його елементів, що визначають умови її реалізації.

***Результати.*** Статтю присвячено визначенню поняття та змісту адміністративного нагляду Національної поліції України як превентивної діяльності, виділенню його елементів. З метою реалізації поставленого завдання проаналізовано публікації науковців-адміністративістів, які досліджували окреслену проблему. Приділяється увага аналізу норм чинних законодавчих актів, які спрямовані на регулювання наглядової діяльності Національної поліції України. За результатами дослідження сформовано поняття адміністративного нагляду як виду превентивної діяльності Національної поліції України та виділено його елементи, що визначають умови її реалізації. Наголошено на тому, що в адміністративному праві сформувався підхід до розуміння адміністративного нагляду як одного зі способів забезпечення законності й дисципліни у сфері державного управління. Проте першочергово під адміністративним наглядом розумівся спеціальний вид правоохоронної діяльності низки уповноважених органів державного апарату, який полягає у здійсненні спостереження за виконанням спеціальних правил і вимог, встановлених законами, нормативними актами уряду, відомчими актами, а також самими органами, що здійснюють цей нагляд. Таке розуміння адміністративного нагляду підкреслювало його спеціалізованість як однієї з головних функцій правоохоронних органів. З'ясовано, що адміністративний нагляд можна характеризувати як елемент

(інститут) державного механізму, що наділений самостійністю, автономією, певною правовою формою, реалізується Національною поліцією України як спеціально уповноваженим правоохоронним органом, сприяє реалізації адміністративно-правових норм, які забезпечують громадський порядок, та, як правило, має наслідком застосування заходів адміністративного примусу.

***Висновки.*** Адміністративний нагляд як вид превентивної діяльності Національної поліції України є універсальним напрямом процедурно регламентованої профілактичної діяльності уповноважених підрозділів і посадових осіб поліції у встановлених законодавством формах, що покликаний забезпечити безперервний вплив на невизначене коло піднаглядних суб'єктів адміністративного нагляду з метою забезпечення належного рівня правопорядку, результатом чого є оцінка правомірності їх поведінки та запобігання можливим негативним наслідкам.

**Ключові слова:** адміністративний нагляд, Національна поліція України, превентивна діяльність, наглядова діяльність, правомірна поведінка.

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# FUEL AND ENERGY COMPLEX AS AN ACTOR OF ADMINISTRATIVE JURISDICTION

**Abstract.** ***Purpose.*** The purpose of the article is to conduct a study of the fuel and energy complex as a systemic subject of administrative jurisdiction, its individual differences from an individual subject. ***Results.*** A study of the fuel and energy complex as a systemic subject of administrative jurisdiction and its peculiarities from a single such subject was carried out. Its branches, systems and enterprises, which are determined by the subjects of the administrative jurisdiction of the fuel and energy complex, have been established. The administrative jurisdictional activity of its bodies and the specifics and shortcomings of administrative responsibility for administrative offenses in the oil and gas sector are indicated. It is emphasized that in general, the administrative jurisdiction of the system entity is carried out by a significant number of legislative and by-laws, which regulate the sphere of jurisdiction in various aspects and in accordance with the specifics of its activity. ***Conclusions.*** It was concluded that the administrative powers of the system formation of the subject of administrative jurisdiction are regulated by legal acts of different legal force, including the Code of Ukraine on administrative offenses and separate legislative acts, in various aspects and in accordance with the specifics of the activity. Each separate body of public administration of the subject of administrative jurisdiction has both general powers and principles of activity, as well as specific ones determined by its competence, as well as its own structure and specificity of subordination. The peculiarities of exercising the powers of a subject of public administration, which is a systemic entity, include first of all management activities, close functional connections and direct interaction in achieving a general result, coordination of forms and directions of activity, its adjustment depending on the circumstances of implementation. The activity of subjects of administrative jurisdiction has both an administrative-jurisdictional and an administrative-non-jurisdictional character. Administrative and jurisdictional powers are exercised according to the general principles of special laws and norms of the Code of Ukraine on administrative offenses.

**Key words:** fuel and energy complex, administrative jurisdiction, oil and gas sphere, main pipeline transport, administrative-jurisdictional proceedings.

## 1. Introduction

The actors of administrative jurisdiction are state bodies and their officials, local self-government bodies, their internal structural units, which perform administrative-jurisdictional activity and have the appropriate powers related to the decision of cases on administrative violation and execution of administrative proceeding. The administrative jurisdiction of various public administrators has both common and specific features, which are determined by the sector of activity, the purpose and tasks assigned to the state authorities, responsible for implementing them.

Mostly scientists study actors of administrative jurisdiction such as the court and the National Police of Ukraine. Complex system formations, such as agro-industrial complex and fuel-energy complex (FEC), composed of bodies operating in one field, but have different objective, tasks, functions are not under focus frequently. Therefore, the above-mentioned problem is relevant.

The administrative and legal framework for public policy on the fuel and energy complex is considered by O.Yu. Tkachenko, administrative liability for violations in this field is studied by O.Ye. Kostrpbitska, the mechanisms for its public regulation are studied by A.V. Treskov, administrative and legal principles of main pipeline transport are considered by O.A. Onatskyi, crime in fuel energy and ways of its prevention are under focus by B.M. Holovkin, H.Yu. Darnopykh, I.O. Hrystych. Much less attention is paid to the fuel and energy complex as an actor of administrative jurisdiction.

The purpose of the article is to study the fuel and energy complex as a system actor of administrative jurisdiction, some its differences from the single actor.

**2. Actors of administrative jurisdiction in the fuel and energy complex**

The fuel and energy complex as an actor of administrative jurisdiction is a complex system entity. The researchers define the fuel and energy sector in different ways: as an intersectoral system of energy resources reproduction, the main task of which is to ensure the energy security of the country (Holovkin, Darnopykh, Khrystych, 2013, p. 13); as a field of social relations between economic entities, whose activity is connected with exploration, mining, refining, production, storage, transportation, transfer, distribution, trade, marketing or sale, use of energy products (energy carriers) (Tkachenko, 2016, p. 243); as a complex sector of the economy regulated by law and consisting of structural interdependent parts such as electric power, coal and oil, gas, which meet (extract, produce and supply) public needs of fuel and energy resources (Kostrubitska, 2010). In our opinion, differences in definitions depend on the meaning, broad or narrow, in which it is considered and what features scientists consider to be the most significant.

The fuel and energy complex is divided into branches, systems and enterprises:

1) Extraction: coal mining, oil extraction, gas extraction, extraction of peat and shale, uranium and other nuclear materials;

2) Conversion (refining): coal refining, oil refining, gas refining, peat and shale refining; electric power engineering, nuclear power engineering boiler facilities, local energy sources;

3) Transportation and distribution: transportation of coal, peat and shale, oil pipelines and other ways of transportation of oil and oil products, gas pipelines, transportation of gas tanks, electric networks, including high-voltage power transmission lines and low-voltage distribution power networks, steam and heat pipelines, pipelines of local energy carriers, gas cylinders;

4) Consumption and use: they are present in all fields and at all levels of economy of the country; aimed at providing technological, sanitary-and-technical, and communal-household needs. The energy consumption and use include the industrial energy, transport energy, agriculture energy, communal energy, etc. (Holovkin, Darnopykh, Khrystych, 2013, p. 13).

Each of these sub-systems of the fuel and energy complex has its structure and specificity of subordination, but they are closely connected with each other vertically and horizontally, endowed with certain competence and powers, including the administrative liability for offenses in the fuel and energy complex.

The actors of administrative jurisdiction directly in the fuel and energy complex are: the Ministry of Fuel and Energy, which is the main body in the system of central executive bodies to make public policy in the power, nuclear, industrial and oil and gas complexes; the State Agency on Energy Efficiency and Energy Saving of Ukraine; State Agency for Investments and National Projects of Ukraine, State Nuclear Regulatory Inspectorate of Ukraine; National Energy and Utilities Regulatory Commission (NEURC), State Inspectorate for Energy Supervision of Ukraine, their heads and officials, and other the executive authorities of the FEC with the appropriate administrative and jurisdictional powers.

For example, the NEURC establishes fines, administrative penalties, and sanctions to officials for violations of the law in the form of: 1) caution and/or warning about the need to eliminate violations; 2) imposition of a fine; 3) suspension of the license; 4) revocation of the license (Law of Ukraine On the National Energy and Utilities Regulatory Commission, 2016). Administrative activity of jurisdictional actors of public policy in the fuel and energy sector of Ukraine, for example, the NEURC: 1) is made at four stages within jurisdictional proceedings according to the procedure; 2) results in a law-enforcement regulation (resolution on administrative penalty) (Tkachenko, 2016, p. 243).

Executive authorities, competence thereof includes the administrative jurisdiction of the fuel and energy complex, is a system of interrelated and interacting public administration entities, responsible for coordination and management of the activities of all subsystems of the mentioned field. It should be noted that the functioning of the fuel and energy complex is specific because there is no organisational unity of its sub-systems, in the present conditions there is even more organisational separation of parts of the fuel and energy complex with formation of local economic units (joint-stock companies) with participation of state capital and capital of administrative-production structures. However, the technological unity of production and consumption of fuel and energy resources requires close information links between different parts of the fuel and energy sector, especially in the power industry. A single system of operational management unites all power-generating facilities regardless of the level of management (power stations, networks, systems, United Energy Systems of the country) and forms of ownership (state, joint-stock, collective, private) (Treskov, 2021, p. 25).

Administrative jurisdictional activity of the bodies of the FEC is provided for in many laws of Ukraine quite fully and thoroughly.

However, the analysis of laws of Ukraine "On natural monopolies", "On the market of natural gas", "On oil and gas" of July 12, 2001, "On pipeline transport", "On licensing of types of economic activity", "On use of nuclear energy and radiation safety" of February 08, 1995, "On heat supply" of June 02, 2005, etc.), regulating the fuel and energy complex, shows shortcomings of definition of administrative and jurisdictional proceedings, which cannot but affect the activity of administrative jurisdiction actors.

Here are some examples. Article 51 of the Law of Ukraine "On oil and gas" establishes liability for violations of legislation regulating activities in the oil and gas sector. This provision lists types of offenses, such as: violation of established safety standards, which threatens the safe life of the population and operating personnel; violation of the guard rules of the oil and gas industry facilities; acts of violence, which impede the performance of official duties by operating personnel and officials of the oil and gas industry facilities; violation of the conditions and rules of activity stipulated by the relevant special permit for the use of oil and gas-bearing subsoils and the agreement on the conditions for the use of oil and gas-bearing subsoils; failure to comply with orders, expert conclusions, prescriptions of bodies which exercise state supervision and control over compliance with the current legislation in the oil and gas industry, as well as interference for performance of official duties by representatives of these bodies (Code of Ukraine on Administrative Offenses, 1984). However, it does not specify persons that shall be responsible for such violations.

It should be noted that the responsibility for administrative violations in the fuel and energy complex has its specificity, in particular, for some violations of the legislation in the oil and gas sector, administrative liability is absent.

In particular, for damage of devices of accounting of oil, gas and products of their refining, creation of interference in performance of works connected with maintenance of objects of oil and gas industry, violation of rules of protection of oil and gas industry facilities, violation of established safety standards, which threats safe life of population and operating personnel (The Committee on Fuel and Energy Complex, Nuclear Policy and Nuclear Safety recommends that the Parliament support the proposed changes to the Code of Ukraine on Administrative Offenses regarding liability for violations of legislation in the oil and gas sector, 2021).

**3. Problems of regulatory mechanism for administrative jurisdiction in the fuel and energy complex**

Administrative and jurisdictional proceedings in respect of legal entities in the field of main pipeline transport activity are not regulated enough. The shortcomings of the Law of Ukraine “On pipeline transport” are the unspecified legal nature of the penalties imposed on the enterprises of main pipeline transport; the unregulated procedure for state registration and inventory of main pipelines; incoordination of management bodies in these fields. In most cases, this is made in by-laws and shattered, which leads to uncertainty in a number of issues concerning the terms of the prosecution, the procedure for appealing decisions of the relevant bodies. In this connection, E.A. Onatskyi considers it expedient to develop and adopt a single procedure for administrative and jurisdictional proceedings in respect of legal actors, including legal entities of main pipeline transport (Onatskyi, 2010).

Other legal regulations only specify the right of authorised persons to apply administrative liability to economic entities for violations. For example, Section VI "Responsibility for Violations of the Legislation in the field of Heat Supply" of the General Conditions “On Heat Supply" imposes penalties to be applied by authorised persons to the economic actors for violation. The guilty actions of economic actors are established on ten points, such as for violation of license terms or for production of heat energy, supply of heat energy, parameters of which do not correspond to the approved regulations on heat energy, terms of purchase-sale agreement and others. Cases of fines for violations are considered by the central executive body, which makes public policy on supervision (control) in the field of heat supply, and the state regulatory bodies within their competence and are transferred to the State Budget of Ukraine (Law of Ukraine On Heat Supply, 2005).

There are two administrative-jurisdictional proceedings within activity of the FEC bodies: application of administrative charges to legal entities in accordance with the provisions of the Code of Ukraine on Administrative Offenses; application of administrative charges to legal entities, which is not regulated by the provisions of the CoAO.

Administrative offenses in the field of fuel and energy resources use are established by the CoAO. These are: Article 95 "Violation of the rules and standards of nuclear and radiation safety", Article 98 "Consumption of fuel and energy resources", Article 101 "Violations connected with the use of gas", Article 101-1 "Non-compliance with requirements for efficient use of fuel and energy resources", Article 102 "Violations connected with inefficient opera-

tion of fuel and energy-efficient equipment", Article 103 "Non-readiness for operation of reserve fuel economy", Article 103-2 "Damage of gas pipelines during work". It should be noted that the administrative liability of natural persons is established only by Article 103-2 of the CoAO, other articles establish liability in respect of officials (Article 95 of the CoAO), heads of enterprises, establishments, organisations regardless of the forms of ownership (Article 101-1 of the CoAO), heads, deputy heads, chief engineers, chief power engineers (main mechanics), heads of workshops, heads of administrative and economic services (Article 98 of the CoAO) (Code of Ukraine on Administrative Offenses, 1984). The common features of the penalties are: application of public coercion specifically to the offender, namely, to the responsible officials; material; collected once; carried out during the administrative proceedings.

The FEC is a complex system, and it is regulated by a large number of laws and by-laws, in which the powers of the public administration bodies covered by it are fully and comprehensively established, but there are some shortcomings in the definition of administrative jurisdiction.

In comparison with the single actor of administrative jurisdiction, the FEC fuel and energy complex as a system entity in the appropriate complex has specific characteristics. Comparative analysis of such public administrators has shown that: in general administrative jurisdiction of system-based formation is carried out by a considerable number of laws and by-laws, which regulate the jurisdiction in a diverse way and in accordance with the specifics of its activity; if the administrative jurisdiction is carried out by a public administrator composed of bodies, then in this case each separate state authority has both general powers and principles of activity, and specific ones, determined by its specific competence; the specificities of the exercise of powers of such a public administrator are direct interaction of public administration bodies in the achievement of the general result, coordination of forms and areas of activity, its adjustment under the conditions of realisation.

**4. Conclusions**

Therefore, in general, the administrative powers of the system actor of administrative jurisdiction are regulated by legal regulations of different legal forces, including the CAoO and separate legislative acts, variously and in accordance with the specifics of the activity. Each separate public administration body of the administrative jurisdiction actor has both general powers and principles of activity, and specific, conditioned by its competence, as well as its structure and specific subordination. The specificities of the exercise of powers by a public administrator as a system entity are primarily managerial activity, close functional relations, and direct interaction of public administration bodies in the achievement of the general result, coordination of forms and areas of activity, its adjustment under the conditions of realisation. The activity of actors of administrative jurisdiction has both administrative-jurisdictional and administrative and non-jurisdictional character. General principles of special laws and provisions of the CoAO govern administrative and jurisdictional powers.

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## ПАЛИВНО-ЕНЕРГЕТИЧНИЙ КОМПЛЕКС ЯК СУБ'ЄКТ АДМІНІСТРАТИВНОЇ ЮРИСДИКЦІЇ

**Анотація.** ***Мета.*** Метою статті є здійснення дослідження паливно-енергетичного комплексу як системного суб'єкта адміністративної юрисдикції, його окремі відмінності від одноосібного суб'єкта. ***Результати.*** Здійснено дослідження паливно-енергетичного комплексу як системного суб'єкта адміністративної юрисдикції та його особливості від одноосібного такого суб'єкта. Встановлено його галузі, системи і підприємства, які визначені суб'єктами адміністративної юрисдикції паливно-енергетичного комплексу. Зазначено адміністративну юрисдикційну діяльність його органів та специфіку і недоліки адміністративної відповідальності за адміністративні правопорушення в нафтогазовій сфері. Наголошено, що загалом адміністративна юрисдикція системного утворення здійснюється значною кількістю законодавчих та підзаконних актів, які врегульовують сферу юрисдикції різноаспектно та відповідно до специфіки своєї діяльності. ***Висновки.*** Зроблено висновок, що адміністративні повноваження системного утворення суб'єкта адміністративної юрисдикції регулюються правовими актами різної юридичної сили, у тому числі Кодексом України про адміністративні правопорушення та окремими законодавчими актами, різноаспектно та відповідно до специфіки діяльності. Кожен окремий орган публічної адміністрації суб'єкта адміністративної юрисдикції має як загальні повноваження та засади діяльності, так і специфічні, зумовлені його компетенцією, а також свою структуру та специфіку підпорядкування. До особливостей здійснення повноважень суб'єкта публічної адміністрації, який є системним утворенням, віднесемо насамперед управлінську діяльність, тісні функціональні зв'язки та безпосередню взаємодію в досягненні загального результату, узгодження форм та напрямів діяльності, її коректування залежно від обставин реалізації. Діяльність суб'єктів адміністративної юрисдикції має як адміністративно-юрисдикційний, так і адміністративно-неюрисдикційний характер. Адміністративно-юрисдикційні повноваження здійснюються за загальними засадами спеціальних законів та нормами Кодексу України про адміністративні правопорушення.

**Ключові слова:** паливно-енергетичний комплекс, адміністративна юрисдикція, нафтогазова сфера, магістральний трубопровідний транспорт, адміністративно-юрисдикційне провадження.

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# WAYS OF IMPROVING ACTIONS TO ENSURE ADMINISTRATIVE AND LEGAL STATUS OF THE GUARD POLICE IN UKRAINE

**Abstract.** ***Purpose.*** The aim of the article is to identify ways of improving actions to ensure the implementation of the administrative and legal status of the Guard Police in Ukraine. ***Results***. In order to improve the staffing of the Guard Police, it has been proposed to: – develop new techniques and technologies for the training of Guard Police officers; – reform the system of remuneration for this category of employees, in particular, with regard to the increase in nominal and real wages; – review the content and topics of training sessions for the Guard Police, in particular with a greater emphasis on practical rather than theoretical training; – ensure a continuous exchange of experience between Guard Police officers and other structural units of the National Police of Ukraine; – focus on psychological training of employees. ***Conclusions***. It is concluded that a managerial decision is the basis for the activities of any agency. The quality and effectiveness of managerial decisions directly affect the further activities of the Guard Police, the speed and rapidness of response to socio-economic and political changes in the State, etc. We are convinced that the key to improving managerial decisions is the continuous training of the National Police leadership in general and the Guard Police in particular. In our opinion, this is achieved through the exchange of experience with the leading countries of the world, the introduction of the latest management technologies into the activities of the Guard Police, etc. Thus, to date, actions to ensure the implementation of the administrative and legal status of the Guard Police in Ukraine need to be comprehensively improved, which seems possible only as a result of the legislator's comprehensive action in the above-mentioned areas. We argue that all this will improve the practical implementation of the Guard Police's powers, increase the level of public confidence in it, and then increase its competitiveness in the market of paid services in the field of guard of various entities.

**Key words:** Guard Police, logistics, human rights and freedoms.

**1. Introduction**

In order to implement the administrative and legal status of the Guard Police in Ukraine, it is not enough to create high-quality legislation; we believe that it is important to review actions to ensure this status, in particular its organisational and managerial aspects. In this context, it is necessary to mention the perspective of V.I. Liakhovych, who in his study of the features of organisational and legal support for the implementation of the administrative and legal status of a civil servant, underlines that legal guarantees, which, in the opinion of scholars, should include the entire system of legal provisions in force in the State and the legal means, provided by them, aimed at specifying rights and duties, the procedure for their realisation, protection, etc., are of the most crucial importance for the realisation of the legal status of the person (Vitruk, 1985, p. 39). Undoubtedly, the legal status of the person and the specification of his/her rights and duties should be regarded as an important guarantee of the exercise of that status. Nevertheless, such consolidation alone is not enough. In this regard, we advocate the perspective that rights and duties in legislation are a necessary but far from sufficient condition for the determination of the real status of the person. Experience has shown that without well-functioning guarantees of the rights and freedoms, proclaimed even by the Basic Law, may be a legal fiction (Namiasenko, 2009, p. 73).

As for the very concept of the implementation of the administrative and legal status of the Guard Police in Ukraine, the literature review reveals that implementation is an action implying that something is realis, that is,

exercised, done, applied practically (Shemshuchenko, 2007, p. 1018). According to M.V. Puchkova, the direct realisation of human rights and freedoms is an activity of both the holder of rights and authorised state bodies, local self-government bodies, enterprises, institutions and organisations, their officials, other individuals responsible for certain acts in this area (Puchkova, 1987, p. 13).

**2. Specificities of the administrative and legal status of the Guard Police**

The implementation of the administrative and legal status of the Guard Police requires the full use of its powers by this agency with a view to achieving the ultimate goal of their activities. Therefore, the full exercise ofthecorrespondinglegalstatusrequires"ensuring". In general, "ensuring", according to A.N. Arzamaskin, is a process that guarantees the effectiveness of the tasks aimed at achieving a certain goal (Arzamaskin, 2016, p. 49).

Therefore, the improvement of actions to ensure the implementation of the administrative and legal status of the Guard Police in Ukraine, in addition to legal factors, should include the revision of other aspects. Relying on the analysis of the existing scientific positions, as well as the provisions of the legislation in force, we believe that improvement of the actions to ensure the implementation of the status of the Guard Police requires to:

1) Review the information support for the Guard Police. Information as a substance and energy is the basis of an environment (universe). Any system organised in a certain way contains information. The more complex the organisation of the system, the more information is accumulated in the system. Physical models of substance and energy created by man and transferred by man. However, information as such existed long before the modern humans appeared (Zakharova, Filipova, 2013).

Considering the concept of "information" as a system-wide phenomenon of public relations, T.V. Subina emphasises the following two aspects: 1) the epistemological aspect: information is considered as information, as a qualitative meaning of the content of the message (semantic, qualitative aspect of information). It follows that information is data about reality based on thinking and conclusions of people or solving problems by means endowed with "intellectual" abilities. In the 1960s, directly this issue was dealt with by employees of the All-Union Institute of Scientific and Technical Information, who for the first time in the country published a monograph entitled "Basics of Scientific Information", where they analysed the world and personal experience; and 2) the ontological aspect: information is considered for many meanings of the communication channel bandwidth measure (certainty and ordering (intensity) of the message stream in data transmission networks, called "traffic") and message ordering (organisation of the process of coding/decoding and transmission/reception of information). Information in this aspect is regarded as an ordered substance that can be described mathematically. An ordering system is any algorithmic system with an objectively defined algorithm that can be recognised. This is not about the epistemological (meaningful) aspect of information, but about the possibility of its undistorted transformation-coding for processing in automated systems and moving along communication lines (Marushchak, 2006, p. 8).

Interesting is the scientific perspective of N.V. Kushakova, who, relying on the review of a number of scientific perspectives, came to the conclusion that information is a certain amount of new knowledge over a certain period of time; in this case, the human brain acts in the same way as the device of reception/transfer of this knowledge, that is, an analogue of the modem, the function of which is encoding/decoding of information. The effectiveness of the reception or transfer of information by the brain is characterised primary by its bandwidth and "novelty" of the knowledge obtained. Moreover, the "new" knowledge is the ones that change our previous ideas about objects and their ratios. Of course, this formalised approach to information is no longer new (Kushakova, 2003, p. 15).

With regard to the concept of "information support", many approaches to its interpretation exist in the scientific literature. Relying on the review and critical assessment of the developed scientific perspectives on the definition of the concept of "information support", Yu.A. Korniev formulates the most important characteristics of this scientific category: 1) Information support is a functional complex that provides an organic interaction of technical means, methods and technologies of work with information; 2) Information support is a set of information resources, tools, methods and technologies, contributing to the effective management process; 3) Information support is a tool that generates information that consists of important data and prevents managers from being distracted by redundant and cumbersome information; 4) Information support is a continuous process of continuous availability of data collection, search, grouping, analysis, storage and dissemination among law enforcement officials; 5) Information support is a tool to provide information on the state of affairs in and functioning of certain objects of management; 6) Information support is a man-

agerial technology, as it reflects information on the state of the managed object and is the basis for managerial decision-making; 7) Information support is a specific type of professional activity, because it takes into account the information needs of different actors; 8) Information support is an integral part of the management system and process, expressing the relationship at the inter-subjective level (Kornieiev, 2008, p. 21).

Information support for the Guard Police's activities is a multidimensional phenomenon, which is the accumulation and processing of a certain amount of information that is important for the Guard Police's activities, in particular in the development and adoption of optimal, quality and effective managerial decisions that directly affect the activities of this agency. Thus, the proper implementation of its administrative and legal status is ensured.

It should be noted that today it is quite difficult to assess the state of information support for the Guard Police positively, which is mainly due to the legislative failure to regulate this issue. Consequently, the following are some of the ways to improve the information support for the Guard Police:

– Inadequacy of the procedure for interaction of the various entities, in particular with regard to the sharing of information available to them. In order to address this problem, it is most appropriate to develop a separate by-law regulating the procedural aspects of the exchange of information;

– The approach to the scientific and methodological support for the Guard Police should be reviewed;

– An enabling environment is also required for the effective functioning of the information recording system, ensuring adequate control over its completeness, probability, relevance and security;

– The issue of staffing of information providers should be reconsidered.

2) The next problem, which should be addressed in the framework of improving actions to ensure the implementation of the administrative and legal status of the Guard Police in Ukraine, is the issue of staffing of the Guard Police. According to N.P. Matiukhin, the staffing is a specific, repetitive activity carried out in the process of law enforcement management, the content of which is to provide the bodies and units with the necessary, qualified people, who meet certain requirements, as well as relevant information about it, the introduction of scientific-based methods, selection, placement, training, education, stimulation of personnel, the legal regulatory mechanism for the service and provision of legal protection to personnel of law enforcement bodies of Ukraine (Matiukhina, 1999, p. 308).

According to O.V. Tkachenko, the essence of the staffing in the State is the activities of actors authorised to implement the personnel policy of the State in order to ensure the functioning of the State administration of social, technical, biological entities, carried out in the context of a market economy, taking into account the democratic foundations of building our State, with priority given to ensuring the rights, freedoms and legitimate interests of the person, by staffing the organisational structures of the system of public administration with appropriate professional and qualified personnel, motivating them for effective work, organising their effective use, professional and social development, achieving a rational staff mobility as well as social protection (Tkachenko, 2014, p. 27). In turn, V.I. Felyk, relying on the analysis of a number of scientific perspectives on the interpretation of the category outlined above, writes that the staffing in public administration is characterised by a number of features, such as: 1) It is a continuous dynamic process, with a heterogeneous structure; 2) It is ongoing, from training (period before appointment) to dismissal with further pension or transfer (post-employment); 3) The main period of the staffing begins after appointment; it is carried out by personnel services of the appropriate management structure; 4) Its organisation at a specific enterprise, institution, organisation is regulated by legislation, subordinate legal regulations, as well as local acts; 5) The purpose of staffing is to staff an enterprise, institution or organisation with qualified personnel, constant work with personnel, including promotion, retraining, maintenance of service or work discipline, etc. Therefore, V.I. Felyk generalises that the staffing is an integral part of the management process, as it is included in the management structure, and its state has a direct impact on the effectiveness of management (Felyk, 2017, pp. 248–249).

According to A. Bardadym, the main components of the staffing are intellectual, qualification, professional, personnel, technological and organisational ones. The organisational component of the staffing of the enterprise includes a high organisation and culture of work, implying clarity, rhythm, coordination of labour efforts and high satisfaction of employees with their work. The organisational component of the staffing in many factors determines the effectiveness of the work team as a system in general and each employee in particular, which is connected with the effective use of human resources (Bardadym, 2010, p. 71).

Therefore, we can confidently say that the staffing is undoubtedly one of the most

important aspects of the functioning of any department, because the better personnel is trained, the more effective the implementation of the authority of the entire agency. The training of police officers is organised in accordance with the requirements of the legislation of Ukraine, as well as the Regulations on the organisation of professional training of members of the ranks and superiors of the internal affairs bodies of Ukraine (hereinafter referred to as the Regulations) approved by Order 50 of the Ministry of Internal Affairs of Ukraine of January 26, 2016, Regulations on the organisation of initial professional training of policemen first recruited in the police, approved by Order 105 of the Ministry of Internal Affairs of Ukraine of February 16, 2016, Unified system of professional training of Guard Police officers, approved by Order 109 of the Guard Police Department of July 29, 2016. The main objectives of the in-service training are: to raise the level of knowledge, skills, and competencies of the police officers in order to ensure their ability to perform the tasks of protecting human rights and freedoms, counteracting crime, maintaining public order and security; the study of the legal regulations governing the activities of the National Police of Ukraine; improvement of police management skills by the management of police bodies (institutions, establishments). Approximate forms of in-service training are: in-service group training; a training meeting, that is, a form of in-service training of police officers, which involves improving their professional readiness to perform their duties, conducted on the basis of a training centre or institution (establishment); independent training (carried out throughout the service of a police officer with a view to continuously, systematically enriching and enhancing the knowledge, skills and abilities required for successful performance of duties) (Security training services (training of Guard Police officers), 2020).

It should be noted that in accordance with the Instruction "On the Organisation of Service Activities of the Guard Police during the Implementation of Physical Protection Measures" of August 14, 2017, in order to improve the professional level and ensure the professional development of the personnel of the militarised guard units at their places of work, training (vocational training) should be organised in accordance with the following programme: members of the militarised guard forces who carry out guard actions for the use of firearms – 80 hours per year, without the use of firearms – 40 hours per year. The purpose of the organisation of professional training of members of the militarised guard units is to raise the professional level, raise the level of knowledge, skills, abilities and professional qualities to ensure their ability to perform tasks related to the protection of human rights and freedoms, countering crime, maintaining public order and security; the study of legislative and legal regulations governing the activities of NPU and the Guard Police, standards, organisational requirements for the protection of facilities and the operation of checkpoints and video surveillance posts, service instructions establishing the procedure for the guard of the facility, the access and admission of persons to material and other values, tactical and technical characteristics and rules for the use of security and fire alarm, communication means, other technical security means, a system of warning signs, rules on the use of firearms, special personal protection equipment and active defence, observance of the procedure for administrative detention, personal search, search and seizure of belongings and documents, processing of files on persons who have committed administrative offences, occupational safety, environmental and fire safety standards, first aid procedures (Order of the Ministry of Internal Affairs of Ukraine On the organisation of official activities of the Guard Police to ensure the physical protection of facilities, 2017).

However, despite the fact that the legislator has to date paid quite a lot of attention to the training of the police in general, and the Guard Police in particular, in this area many problems remain to be reviewed. In order to improve the staffing of the Guard Police, we propose to:

– Develop new techniques and technologies for the training of Guard Police officers;

– Reform the system of remuneration for this category of employees, in particular, with regard to the increase in nominal and real wages;

– Review the content and topics of training sessions for the Guard Police, in particular with a greater emphasis on practical rather than theoretical training;

– Ensure a continuous exchange of experience between Guard Police officers and other structural units of the National Police of Ukraine;

– Focus on psychological training of employees.

**3. Some aspects to improve logistics and the quality and effectiveness of managerial decision-making**

3) Another aspect to which we will give attention is the improvement of the logistics of the Guard Police. In this context, it should be emphasised that the problem of logistics is one of the most relevant in the activities of any agency in the current socio-economic conditions. In the most general sense, "material and technical support" is a set of social relations,

governed by legal regulations or contracts on logistics, necessary for a timely and uninterrupted production, processing and sales cycle, as well as for economic, social and other tasks to meet certain needs (Korniienko, 2003, p. 56).

It should be noted that a number of agencies, namely, the Department of Logistics and, which is the only de facto central logistics support unit of the Ministry of Internal Affairs, the Financial and Accounting Department; the Department of Economic Affairs; capital and investment management. The activities of these structural units shall be organised in accordance with the current legislation of Ukraine, Decrees of the President of Ukraine and Resolutions of the Cabinet of Ministers of Ukraine, instructions of the Ministry of Economic Development and Trade of Ukraine, the Ministry of Finance of Ukraine, orders of the Ministry of Internal Affairs of Ukraine, regulations on departments, as well as on independent services of the National Police of Ukraine, responsible for providing the police with certain types of special equipment, equipment and materials (Honchar, 2017).

In our opinion, today the logistics of the National Police in general, and the Guard Police in particular should be improved. We believe that such areas should be:

– First, the modernisation of the technical equipment of the Guard Police, because it directly depends on the speed of the response of these units to emergencies, and as a result and the effectiveness of the performance of their functions;

– Second, the provision of technics and equipment by the State to the Guard Police units requires significant improvements;

– Third, expanding the customer base of the Guard Police.

4) Finally, we will focus on improving the quality and efficiency of managerial decision-making. A managerial decision is primarily a mental-will act of the manager's choice of a particular type of management behaviour. The author notes that the solution formulates the objectives and tasks facing the objects of management, the measure of their authorised behaviour, what resources are needed for the realisation of objectives and tasks (Draganov, 1998, p. 78). In this regard, the managerial decision can be considered as the core content of the management process and an important tool for a systematic approach to the managed object.

**4. Conclusions**

To sum up, a managerial decision is the basis for the activities of any agency. The quality and effectiveness of managerial decisions directly affect the further activities of the Guard Police, the speed and rapidness of response to socio-economic and political changes in the State, etc. We are convinced that the key to improving managerial decisions is the continuous training of the National Police leadership in general and the Guard Police in particular. In our opinion, this is achieved through the exchange of experience with the leading countries of the world, the introduction of the latest management technologies into the activities of the Guard Police, etc.

Thus, to date, actions to ensure the implementation of the administrative and legal status of the Guard Police in Ukraine need to be comprehensively improved, which seems possible only as a result of the legislator's comprehensive action in the above-mentioned areas. We argue that all this will improve the practical implementation of the Guard Police's powers, increase the level of public confidence in it, and then increase its competitiveness in the market of paid services in the field of guard of various entities.

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## ШЛЯХИ ВДОСКОНАЛЕННЯ ЗАХОДІВ ЗАБЕЗПЕЧЕННЯ РЕАЛІЗАЦІЇ АДМІНІСТРАТИВНО-ПРАВОВОГО СТАТУСУ ПОЛІЦІЇ ОХОРОНИ В УКРАЇНІ

**Анотація.** ***Мета.*** Метою статті є визначення шляхів вдосконалення заходів забезпечення реалізації адміністративно-правового статусу поліції охорони в Україні. ***Результати.*** В рамках вдосконалення кадрового забезпечення діяльності поліції охорони запропоновано: розробляти нові техніки та технології професійної підготовки працівників поліції охорони; реформувати систему оплати праці такої категорії службовців, зокрема в частині підвищення номінальної та реальної заробітної плати; необхідно переглянути зміст та тематику занять із професійної підготовки поліції охорони, зокрема робити більший акцент не на теоретичний, а на практичний бік підготовки; забезпечити постійний обмін досвідом між працівниками поліції охорони та іншими структурними підрозділами Національної поліції України; більш суттєва увага має бути приділена психологічній підготовці службовців. ***Висновки.*** Зроблено висновок, що управлінське рішення – це основа для діяльності будь-якого відомства. Саме від якості та ефективності управлінських рішень напряму залежить подальша діяльність поліції охорони, швидкість та оперативність реагування на соціально-економічні та політичні зміни в державі тощо. Переконані, що ключовим фактором на шляху покращення управлінських рішень є постійна професійна підготовка керівництва Нацполіції загалом та поліції охорони зокрема. Це, на нашу думку, досягається шляхом обміну досвідом з провідними країнами світу, запровадженням новітніх управлінських технологій у діяльність поліції охорони тощо. Так, на сьогодні заходи забезпечення реалізації адміністративно-правового статусу поліції охорони в Укра-

їні потребують комплексного вдосконалення, досягнення чого, як видається, є можливим лише в результаті здійснення комплексної діяльності законодавця у зазначених нами вище напрямах. Все це, як видається, дозволить якісно покращити практичну реалізацію повноважень поліції охорони, підвищити рівень довіри населення до неї, а отже, збільшить її конкурентоспроможність на ринку надання платних послуг у сфері охорони різних об'єктів.

**Ключові слова:** матеріально-технічне забезпечення, поліція охорони, матеріально-технічне забезпечення, права і свободи людини.

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# SPECIFICITIES OF CRIME CONTROL UNDER CRIMINAL LAW IN UKRAINE DURING THE PERIOD OF THE NEW ECONOMIC POLICY

**Abstract.** ***The purpose of the article*** is to characterise the specificities of crime control under criminal law in Ukraine during period of the New Economic Policy.

***Results.*** It is established that crime control in Ukraine during the 1920s related to the imposition of the law-making and law-enforcement practice of the Russian Federation on the conquered Ukrainian territories. The Soviet legal system in Ukraine was based on Bolshevik ideologemes, which formed the basis of relevant draft laws. Their content was significantly affected by the large-scale use of violence against political opponents that took place in the internal Russian governorates, first of all, turning into a fierce civil confrontation. It is underlined that in the realities of the creation and development of the Soviet country, crime control under criminal law was complicated by the formation of a system in which, in the context of the general spread of extra-legal influence, a layer was formed to be above the law. The authoritarianism of the leadership in the Bolshevik party, supported by the subordination of ordinary members to the leadership, in the context of intra-party struggle, was transformed into clannishness based on personal loyalty. Moreover, the recognition of certain rules of conduct under party discipline was "compensated" by privileges derived from membership in party structures and determined by a place in the party hierarchy. This led to the formation of groups of individuals whose criminal prosecution became virtually impossible without the decision of party bodies. In turn, this state of affairs created a social demand for party membership as a means of realising their own ambitions and ensuring their career development.

***Conclusions.*** It is concluded that crime control in Ukraine during the 1920s was determined by legislative changes resulting from the transition from the adoption of judicial decisions on the basis of the so-called revolutionary legal consciousness to proceedings under the principle of revolutionary legality and was connected with the formation and development of the Soviet legal order, which was influenced by the events of the First World War and the Ukrainian Revolution of 1917–1921.

**Key words:** control, crime, legal system, Bolsheviks, draft laws.

## 1. Introduction

The penetration of the Bolshevik political regime, exported from Russia, into the territory of Ukraine was accompanied not only by the fact of military expansion, but also by the establishment of strict military control over the overwhelming part of ethnic Ukrainian lands. Having started the hybrid war in Ukraine, which in Soviet historiography necessarily called "civil war", according to the study of the modern domestic historian of the rebel movement V. Shcherbatiuk, armed detachments of the Bolshevik troops captured Ukrainian cities and villages one by one without much resistance (Shcherbatiuk, 2012). According to the modern historian of Ukrainian law P. Zakharchenko, "initiating an openly conquering war with Ukraine, the military units of the Bolshevik Russia overthrew the legitimate authority of the Ukrainian Central Rada, eliminated the roots of the national statehood in the form of the Ukrainian People's Republic". The researcher argues, "Ignoring the provisions of the III Hague Convention of 1907 that the declaration of war did not make the hostilities legal, in these territories they established a puppet government, fully integrated into the system of political power of the aggressor state" (Zakharchenko, 2013).

In the newly Soviet state called "Ukrainian SSR", there was a gap in the legal field that was filled by the unification of the legislation

of Soviet Russia and Ukraine, because since 1919, they were noticeably drifting towards unification, and in December 1922 became two of the four constituent entities of the new federal state, the Union of Soviet Socialist Republics. A few years before, a formalised economic union between Russia and Ukraine directly encouraged the first wave of codification work in the Ukrainian SSR. It was caused above all by an objective need to regulate the legal forms of new social relations, for which commodity-monetary relations and free trade were the basic. In historical literature, this period has come to be called a New Economic Policy, or NEP.

Issues that are important both in theoretical and practical aspects for understanding the crime control process were raised in the works by O. Bandurka, Y. Helfand, L. Davydenko, A. Dolhova, A. Zakaliuk, A. Zelenskyi, O. Lytvak, P. Mykhailenko, and V. 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.

Consequently, the purpose of the article is to characterise the specificities of crime control under criminal law in Ukraine during period of the New Economic Policy.

**2. Legal framework for crime control under criminal law**

The need for the codification of legislation in the Ukrainian SSR was, among other things, dictated by the need to summarise the experience of its establishment in the previous period and, accordingly, the systematisation of legal provisions with a view to eliminating the individual contradictions and gaps identified in the legislation (Terliuk, 2007, p. 674).

The researcher of the first Soviet codification in Ukraine I. Usenko divides this process into two conditional periods: the first and second half of the 1920s (Usenko, 1989). Codification in Ukraine was based on the principle of the unity of Soviet legislation. Its main method was the reception of the legislation of the RSFSR, and later, the legislation of the Union (Ivanov, 2007, p. 447).

Work on the harmonisation of legislation began in late 1921. Just a few years later, a number of branch codes were created, which by the late 1920s symbolised the completion of the systematisation of Soviet legislation. In 1922, in addition to the Regulations on the Judiciary, the Civil and Land Codes, the Labour Code and the National Education Code, the Criminal Code and the Criminal Procedure Code were adopted as the basis for combating crime in Ukraine in general and for crime control in particular.

Crime control in Ukraine during period of the New Economic Policy was determined by changes in legislation, resulting from the transition from the adoption of judicial decisions on the basis of the so-called revolutionary legal consciousness to proceedings under the principle of revolutionary legality and connected with the formation and development of the Soviet legal order, which was significantly influenced by the events of the First World Revolution of 1917–1921, as well as the idea of the formative development of human society.

The ideological basis for the formation of the so-called red law was worked out after the October coup and the overthrow of the Interim Government with the aim of expediting the dismantling of the former state and legal system and the strengthening of the authoritarian hierarchy of Bolshevik rule with the expansion of the territory under its control. In modern times, it has gradually become axiomatic the scientific perspective of the history of the State and law of Ukraine that from the very beginning of the formation of Soviet Ukraine it was actually an integral part of the entire Soviet (Russian) complex, was not a local ethnocultural, but brought from outside, reduced autonomous statehood within the "other" totalitarian statehood and legal system (Terliuk, 2007, p. 52).

Crime control in Ukraine during the 1920s was related to the imposition of the law-making and law-enforcement practice of the Russian Federation on the conquered Ukrainian territories. The Soviet legal system in Ukraine was based on Bolshevik ideologemes, which formed the basis of relevant draft laws. Their content was significantly affected by the large-scale use of violence against political opponents that took place in the internal Russian governorates, first of all, turning into a fierce civil confrontation.

The events of 1917–1921 on the territory of the former Russian Empire, including in Ukraine, once again showed that terror was and is a mandatory element of civil confrontation as such (Polyakov, 1923, p. 177). Previously, the system of hetman rule was a domestic model of authoritarianism, an example of governance of the state under extreme conditions. Along with this, red and white terror became powerful levers of success in the confrontation. Repressive actions were carried out not only by the military, but also by civilian authorities for the proliferation of hostage shootings, public executions and torture, as well as the transfer of military units (especially the Red Army) to "self-sufficiency", which resulted in outright

looting of the civilian population, treated as the defeated enemy. Moreover, the scope of robbery was often limited only to the capacity of transport (Central State Archive of Public Associations of Ukraine, 1917). The robbery of peasants was made a state policy by the Bolsheviks, which provoked a reaction. The greatest activity of peasant armed groups took place in the summer of 1921, when 470 protests were registered (Mikheieva, 2003, p. 48).

The spread of the anti-Bolshevik insurgency in Ukraine due to the peasants' discontent with the surplus appropriation and the prohibition of trade took extreme forms and could not be overcome exclusively by repressive methods. The opposition to the anti-Bolshevik insurgency demanded an amnesty for some of the rebels and the formation of economic relations in which the spread of criminal acts related to violence against the person and large-scale armed actions, would give way to mutually advantageous cooperation for economic entities in a balanced state fiscal policy. That is why the surplus appropriation was replaced by the tax, and those who stopped rebelling until mid-April 1921 were granted amnesty, subject to surrender of weapons and the obligation not to participate in armed demonstrations (Zakharchenko et al., 2000).

The institution of defendants, which had become widespread in Ukraine thanks to the practice of the Russian-Bolshevik occupation forces, was totally unacceptable under international humanitarian law. Under the Hague Convention of 1907, to which Tsarist Russia also subscribed, it was prohibited to punish persons for acts they had not committed in the occupied territory. Nevertheless, the Bolshevik occupiers defiantly ignored the provisions of international law. Suffice it to cite the text of the instruction to all five-house supervisors, *piatykhatnyk,* ta and ten-house supervisors, *desiatykhatnyk*, on the fight against crime, guided by the Podolsk provincial revolutionary committee in the beginning of 1922 to all township executive committees. It indicates the need to divide all villages into districts and appoint a person for every five or ten houses, responsible for "close monitoring the occurrence of the deserter in his district" (Central State Archive of Public Associations of Ukraine, 1917). Indifferent defendants were instructed to be punished with harsher penalties than the deserter by a court martial.

Evidently, crime control under criminal law took the Jesuit forms, according to which the defendants, appointed by voluntarist method from the "Kurkul counter-revolutionary elements" (Central State Archive of Public Associations of Ukraine, 1917), were liable for acts to which they could not a priori oppose and had no possibility of influencing their commission. The flywheel, launched by the Russian Bolsheviks, conducting military mobilisation mainly by repressive methods, intimidation, bribing a local rural people with promises of high wages, sought ways to split peasant environment, which had been unified.

However, the confrontation with the peasants continued until the end of 1922, when in Olexandrivsk, Chyhyryn and Cherkasy counties of the Kiev province, about a hundred rebel detachments, hiding in caves and underground passages, resisted. In the reports of the Extraordinary Committee of the People's Commissariat for Internal Affairs and other repressive structures rebels were recognised as criminals, but with the obligatory adjective "political". The motivation for the activities of the latter included revenge for the extreme brutality of law enforcement officials and military units towards them and their relatives. In such circumstances, the behaviour of military personnel and workers of law enforcement bodies, etc. required significant changes in order to counter the transformation of these groups of persons into a destructive element that contributed to increased conflict in society.

Therefore, in the early 1920s, there was a need to review the whole range of crime control under criminal law in Ukraine. In fact, changes in crime control under criminal law during the 1920s were due to the inability to build and regulate social relations, relying primarily on State coercion and the strengthening of extra-legal measures. However, the implementation of the New Economic Policy as the most important means of preserving the Bolshevik power required the reform of relations between the authorities and society on the legal basis. The main source of criminal law during this period was the so-called revolutionary legal consciousness, which in fact implied the domination of the principle of expediency over the principle of legality. This approach defined the acts or omissions that were considered criminal. In this context, the theory of social functions of law has also led to a trend to reject a specific part of the Penal Code. It was believed that judges, guided by revolutionary legal awareness and the principle of expediency, would be able to try cases solely on the basis of the general part of the Criminal Code. However, the reality rendered such an approach impractical.

**3. Areas of the development of the legal regulatory framework for crime control under criminal law**

The transition of the Soviet republics to the New Economic Policy in 1921 had a significant impact on the development of legislation

that defined the nature of crime control under criminal law. It was addressed as a regulator of public relations after the temporary prevalence of armed force and means of extreme repression. The end of the national liberation struggle for Ukrainian statehood and the transition to the New Economic Policy required all state authorities to implement the foundations of Soviet legitimacy.

That is why the revolutionary consciousness was gradually replaced by the principle of revolutionary legality, which provided for the establishment of a regime of law and order (supposed – *S. S.*), regardless of the will or habits of representatives of the state power or citizens. This should contribute to overcoming the consequences of the famine of 1921, which, according to some Ukrainian researchers, as in 1932–1933, was an artificially provoked phenomenon against the Ukrainians. According to the Ukrainian researcher P. Zakharchenko, the destruction of the Ukrainian people was carried out according to an identical scenario, analogous methods, as in 1932–1933, except for the 1917–1921 wide participation of the armed forces, units of the Soviet Russia, which, hiding behind the "civil war", commanded in the Ukrainian village (Zakharchenko et al., 2000, p. 145).

The view of the Soviet historiography on the New Economic Policy as a transition period from capitalism to socialism does not stand up to any criticism even for purely formal reasons: the New Economic Policy replaced not capitalism, but "military communism". The facts prove that in 1918–1920, the Bolshevik party made the well-planned policy, but it had encountered irreparable difficulties and had therefore been forced to terminate it. The termination of the old policy was accompanied by a chaotic retreat, during which a policy, called new, crystallised gradually over several years (Lytvyn, 2011, p. 159). The same randomness was observed in the formation and justification of measures aimed at the organisation of crime control. According to Harvard University professor R. Pipes, although it is believed that "military communism" was improvisation, and the New Economic Policy was a planned step, in fact everything was the other way around (Pipes, 1997, p. 466). It was the threat of the so-called Kurkul banditry escalating into a war against the multi-million peasants that forced V. Lenin to stop the social and economic transformations envisaged by the programme of the Russian Communist Party (Bolsheviks) approved in 1919 (Lytvyn, 2011, p. 162).

The manner of the crime control organisation in the years of the Soviet Union was largely determined by perceptions of the nature of legal provisions and the role of law in building socialism while maintaining the dominant position of the Bolshevik party, which was considered primarily to express class interests. Furthermore, criminological studies aimed at determining the nature of the spread of crime and the characteristics of the offender's personality were of importance.

In this context, the concept of crime as such and the various aspects of crime control were developed. Law-making was aimed at protecting the regime and expanding its sphere of influence in the world arena. Attempts were made to examine the identity of the perpetrator and the characteristics of the various types of crime, identifying the reasons for their spread in certain circumstances over a certain territory. The first steps in the study of the offender's identity were taken by the Petrograd Criminological Cabinet, established in 1917 at the initiative of the Petrograd Council. The Cabinet of Criminal Anthropology and Forensic Psychological Expertise was established in 1922 in Saratov. The study of the perpetrators was based on a criminal diagnostic card that included sociological, psychological, physical and medical data (Dremin, 2009, p. 23).

During the 1920s, different concepts of understanding and interpretation of the law coexisted in the common line of Marxist-Leninist approaches to the state and law. The dominant concept of the new "revolutionary, proletarian right", which significantly influenced the organisation of crime control, was its interpretation as a means of implementing the dictatorship of the proletariat, expressing the interests of workers and their protection. Advocates of this concept were the first Soviet People's Commissar of justice P. Stuchka and People's Commissar of justice of the USSR D. Kurskyi, who introduced it into the practice of Soviet justice. For example, P. Stuchka considered it necessary to protect the law by the authorities of the dominant class. D. Kurskyi advocated the opinion that law in the conditions of the dictatorship of the proletariat is an expression of its interests (Kurskiy, 1958). At the same time, Deputy People's Commissar of Justice Ye. Pashukanis deduced law from the relations of exchange of commodity owners, considering it the primary cell of the legal matter, legal life of the legal relationship. From his perspective, interpretation of law is a legal negation, a legal nihilism. On the basis of psychological theory of law, M. Reiner argues that each class, according to its position in society and its psyche, creates its real and effective intuitive class law, and the disappearance of classes inevitably leads to the extinction of law.

However, in the realities of the creation and development of the Soviet country, crime

control under criminal law was complicated by the formation of a system in which, in the context of the general spread of extra-legal influence, a layer was formed to be above the law. The authoritarianism of the leadership in the Bolshevik party, supported by the subordination of ordinary members to the leadership, in the context of intra-party struggle, was transformed into clannishness based on personal loyalty. Moreover, the recognition of certain rules of conduct under party discipline was "compensated" by privileges derived from membership in party structures and determined by a place in the party hierarchy. This led to the formation of groups of individuals whose criminal prosecution became virtually impossible without the decision of party bodies. In turn, this state of affairs created a social demand for party membership as a means of realising their own ambitions and ensuring their career development. The need to widen the ranks of the party in order to strengthen its influence and the corresponding social demand for promotion on the social ladder formed in the party structures contributed to the transformation of the Bolshevik party into a hierarchical structure, where the leadership (party nomenclature) was gradually placed above law to a greater or lesser extent. The main measure of "professional suitability" in the party was personal loyalty, readiness to carry out any instructions "along with the party line", thoughtlessly implementing the decisions of the supreme party leadership, the feasibility of which was determined by the place of the individual in the party hierarchy.

**4. Conclusions**

Therefore, crime control in Ukraine during the 1920s was determined by legislative changes resulting from the transition from the adoption of judicial decisions on the basis of the so-called revolutionary legal consciousness to proceedings under the principle of revolutionary legality and was connected with the formation and development of the Soviet legal order, which was influenced by the events of the First World War and the Ukrainian Revolution of 1917–1921.

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# ОСОБЛИВОСТІ КРИМІНАЛЬНО-ПРАВОВОГО КОНТРОЛЮ ЗА ЗЛОЧИННІСТЮ В УКРАЇНІ В ПЕРІОД НОВОЇ ЕКОНОМІЧНОЇ ПОЛІТИКИ

**Анотація.** ***Метою статті*** є характеристика особливостей кримінально-правового контролю за злочинністю в Україні в період Нової економічної політики.

***Результати.*** З'ясовано, що контроль за злочинністю в Україні впродовж 1920-х рр. пов'язувався з насадженням на завойованих українських територіях правотворчої та правозастосовної практики Російської Федерації. Радянська правова система в Україні ґрунтувалася на вироблених більшовиками ідеологемах, які лягли в основу відповідних законопроєктів. На їх зміст суттєво впливало масштабне застосування насильства стосовно політичних опонентів, що мало місце насамперед у внутрішніх російських губерніях, перетворившись на запекле громадянське протистояння. Наголошено на тому, що в реаліях створення й розвитку радянської країни кримінально-правовий контроль за злочинністю ускладнювався формуванням системи, за якої в умовах загального поширення позаправового впливу утворювався прошарок, який був поставлений над законом. Авторитарність керівництва в більшовицькій партії з опертям на підкорення рядових членів керівництву в умовах внутрішньопартійної боротьби трансформувалася у клановість на основі особистої відданості. При цьому визнання певних правил поведінки в межах партійної дисципліни «компенсувалося» привілеями, що випливали із членства в партійних структурах і визначалися місцем у партійній ієрархії. Це приводило до формування груп осіб, притягнення яких до кримінальної відповідальності ставало практично неможливим без відповідного рішення партійних органів. Своєю чергою такий стан формував соціальний попит на членство в партії як засіб реалізації власних амбіцій і забезпечення кар'єрного зростання.

***Висновки.*** Зроблено висновок, що контроль за злочинністю в Україні впродовж 1920-х рр. визначався змінами законодавства, зумовленими переходом від ухвалення судових рішень на основі так званої революційної правосвідомості до судочинства за принципом революційної законності, та пов'язувався з формуванням і розвитком радянського праворозуміння, на яке чинили вплив події Першої світової війни та Української революції 1917–1921 рр.

**Ключові слова:** контроль, злочинність, правова система, більшовики, законопроєкт.

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# DEFINITION OF THE CONCEPT "ORGANISED CRIME": A CRIMINOLOGICAL ASPECT

**Abstract.** The ***purpose of the article*** is to analyse domestic and foreign approaches to the definition of the concept "organised crime" as a criminological category and the study of the essence of this socio-legal phenomenon. In order to achieve the purpose, the following task has been set: to review various scientific and criminological approaches to understanding organised crime, to identify the most successful of them and to propose the author's perspective on the concept, which successfully combines both criminological and criminal-legal aspects.

***Results.*** The article defines the concept of organised crime, in particular the criminological aspect of such a definition. The article establishes that an effective response to organised crime is directly related to the development and formation of an optimal definition of this social and legal phenomenon, which would simultaneously consider both criminal-legal aspects and criminological ones. The author reveals different scientific and criminological approaches to the definition of "organised crime". The article underlines that organised crime is a complex phenomenon of public life with many levels and complex structure. This phenomenon has arisen against the background of the desire of part of society to change, necessarily in an illegal, criminal way, the legal order in the interests of personal enrichment, obtaining maximum profit and actual authority over a certain region or sphere of life.

***Conclusions.*** To sum up, organised crime is a stable, independent, hierarchical organisation of criminal environment, characterised by a clear structure, coordinated criminal actions, criminally liable as provided by legal regulations, long-term goals and the aim to gain permanent significant profits, turning their own trading into "illegal entrepreneurship" and significant risks for the state well-being due to the symbiotic connection of criminal networks with corrupt officials. Organised crime in the current Ukrainian reality is becoming extremely widespread, resulting in an insufficient understanding of this social and legal phenomenon. Given its significant threat to the democratic principles of life in the State, it is required to take a more detailed approach to organised crime, and to disclose its essence, considering the criminological aspects.

**Key words:** organised crime, criminal organisations, corruption, illicit enterprise, money laundering, criminology.

## 1. Introduction

It is well known that organised crime is an extremely negative phenomenon, which has arisen in the course of the evolution of social relations and due to a purposeful destructive influence on the whole complex of State institutions, it has gradually become one of the most acute and serious problems of mankind in the 21st century. Despite the common stamps and clichés that shape the image of organised crime as a diverse group of repeat offenders with a criminal past and a maximally antisocial way of life, the latter are increasingly represented by the so-called "white collar workers", closely connected with political and business circles. Such migration from a purely criminal field to a formally legal one, allowed big businessmen and officials to actively use criminal schemes as a certain leverage to achieve their own goals.

Ukraine also suffers greatly from the destructive pressures of organised crime, because people feel cheated for years ahead as a result of total mutual responsibility and the inequitable distribution of resources. Moreover, in domestic realities, organised crime is characterised by a high differentiation. For example, O.Yu. Busol argues that organised crime in the capital mainly concerns construction and real estate, in Dnipro

or Donetsk, focuses on clan wars with a high proportion of contract killings and blackmail, while Odessa, criminal history of which dates back to ancient times, is still "well" known for smuggling, prostitution, illegal trafficking of drugs and weapons (Busol, 2019, pp. 60–61). In this regard, it seems logical that the Head of the National Police of Ukraine, in his report on the results of the agency's work in 2019, identified the fight against organised crime as a priority for 2020.

As of today, most domestic criminologists argue that an effective response to organised crime is directly related to the development and formation of an optimal definition of this social and legal phenomenon, which would simultaneously consider both criminal-legal aspects and criminological ones. However, despite a sufficient number of relevant studies, including serious monographic works, it seems difficult to provide an exhaustive interpretation of the definition of "organised crime".

To a large extent, this situation has been affected by a number of gaps specific to Ukrainian criminology. For example, N.Ye. Miniailo notes that the term under study is actively used without proper methodological substantiation of its essence (Miniailo, 2015, p. 75). Moreover, we should not ignore the general problem of Ukrainian legal doctrine, which manifests itself in the systemic trend to excessive vagueness of the terminological apparatus when legal language turns into a certain cipher for secret communication.

Given that the effectiveness of response to organised crime is directly dependent on an understanding of the content of the phrase, the relevance of this work does not require additional arguments.

The study of organised crime was studied in the works by scientists, such as: O.M. Bandurko, Ye.M. Blazhivskyi, V.D. Hvozdetskyi, V.V. Holina, I.M. Danshyn, O.M. Dzhuzha, A.I. Dolhov, V.M. Dromin, O.M. Lytvynov, N.Ye. Miniailo, S.V. Morozenko, V.V. Remskyi, M.I. Havroniuk, I.S. Yakovets, and others.

The purpose of the article is to analyse domestic and foreign approaches to the definition of the concept "organised crime" as a criminological category, and the study of the essence of this socio-legal phenomenon. In order to achieve this purpose, the following task has been set: to review various scientific and criminological approaches to understanding organised crime, to identify the most successful of them and to propose the author's perspective on the concept, which successfully combines both criminological and criminal-legal aspects.

**2. The content of the concept "organised crime"**

Modern scientific literature abounds with definitions of "organised crime", numbering more than four dozen unique approaches. At the same time, the keynote of all opinions in this regard is the mandatory caution of the extreme threat of organised crime to the democratic foundations and constitutional order of the state. For example, Doctor of Law, Professor I.M. Danshyn proposes to consider organised crime as a stable association of criminal environment, characterised by a structured, focused on long-term criminal activity aimed at gaining stable, substantial profits and posing significant risks to public welfare through the symbiotic relationship of criminal networks with corrupt officials (Holina, 2009, p. 239). In addition, the author argues that organised crime is an autonomous phenomenon, outside the scope of group or repeat crime known to criminal law. Similarly, the Russian researcher A.I. Alekseev argues, noting that the systematisation of the commission of criminal acts, stability, coherence, hierarchy and clarity in the distribution of responsibilities among members of a criminal group enable to regard organised crime as a qualified form of complicity of criminal organisations (groups), distinguishing it from common group crime where crime is a committed by several perpetrators without prior agreement or prior arrangement (Alekseev, 2005, pp. 189–190). Evidently, somewhat different opinions on the comparison of organised and group crime exist. For example, O.O. Kvasha believes that organised crime is a form of group crime with a number of specific features (Kvasha, 1999, p. 9). However, such conclusions look a certain artificial narrowing of the essence of organised crime as a social and legal phenomenon and characterise the feature of "being organised" on the part of technical and managerial functionality, which is inherent in any group with a role distribution.

It also seems somewhat erroneous to equate organised crime with the criminal activities of organised criminal groups, such as gangs, networks of robbers or representatives of classic and notorious racketeering. According to V.D. Hvozdetskyi, the latter reproduce a specific degree of organisation of the criminal world, while organised crime is the highest form of implementation of criminal practices, covering not only the criminal component of social life, but also the political, economic and official. Using corruption as a driving force and "energy catalyst", organised crime penetrates deeply into the state apparatus, the institutions of civil society and, pursuing an exclusively self-serving goal, forms a stable, hierarchical antisocial phenomenon with a firm foundation of perverse values (Hvozdetskyi, 1997, pp. 12–16). In other words, organised crime is the tip of the iceberg under the conditional name "crime" (the highest degree of this generic concept).

Furthermore, relying on the analysis of the domestic criminological vector of thinking on this topic, such as the works by P.O. Melnyk, it should be noted that a significant feature of organised crime is the possibility of reverse criminalisation. It is implied that a certain social community, which has been originally formed without a criminal purpose, for a number of reasons, resorts to collective criminal activity and demonstrates the violation of traditional channels of criminalisation in the usual pattern, in the form of the evolution of successive criminal acts to the formation of a criminal organisation, which manifests itself in the algorithm: social organisation – criminal actions of individuals (with the subsequent transformation into an organised crime) (Melnyk, 2018, p. 70). Eloquent examples can be a hypothetical situation where an organised criminal group, composed of a notary, a specialist of the Department of the Ministry of Justice of Ukraine and several other citizens will commit actions on appropriation of social benefits of pensioners from the temporarily occupied territories or a situation where the leadership of a state enterprise in collusion with private entities (persons) implements theft of state wealth (gas, oil or amber). In both cases, the original non-criminal social institution, through the criminal actions of individuals, becomes an organised criminal society has all the characteristics of organised crime.

Going back to the definition of the term "organised crime", proposed in works by I.M. Danshyn, it should be noted that it is objectively imperfect. The main criticism of the proposed definition is no comment on the mandatory existence of an appropriate article of the Criminal Code of Ukraine for any manifestation of criminal activity. Given that the criminological aspects of organised crime are closely related to criminal legal ones, ignoring one of them may lead to errors in understanding the very content of the phenomenon.

Therefore, the interpretation of organised crime as a phenomenon of public life with many levels and complex structure, which has arisen against the background of the desire of part of society to change, necessarily in an illegal, criminal way, the legal order in the interests of personal enrichment, obtaining maximum profit and actual authority over a certain region or sphere of life (Zakaliuk, 2007, p. 184). In general, organised crime is characterised by a combination of members of the criminal world with shadow economic structures, leaders taking on managerial and ideological functions, as well as a high level of secrecy.

According to O.M. Dzhuzha, organised crime is a complex of criminal acts, systemically connected with each other and committed by participants of strong, hierarchical criminal structures, coordinating their activities in order to maximise the profits from their trading in the area or territory controlled by such entities (Dzhuzha, 2006, p. 165).

It should be noted that despite the real threat to the national security of Ukraine from the activities of organised crime and its objective existence, during the lively discussions around the interpretation of the concept of "organised crime", more and more doubts about the appropriateness of the very term arise. Some researchers argue that there are a number of strong grounds for refusing to use the phrase "organised crime". First, organised crime as a social construct is hardly perceptible (it obviously exists, but is mostly in an amorphous state); second, disorganised crime cannot exist at all, because the feature of organisation is inherent in any system (social, biological, economic, etc.) by default; third, in modern realities, the activities of criminal structures are so closely connected with public and private institutions that it is quite difficult to determine exactly where "organised crime" ends and "social reality" begins (Ortynskyi, 2004, p. 146). However, in the author's opinion, to consider organised crime as an ordinary, routine concept is a dead end, since the statistical data and practical activities of law enforcement bodies clearly demonstrate the existence of coordinated criminal activity in Ukrainian life, which is constantly improving, rapidly adapting to changes, disseminating its criminal influence on various spheres of life and is gradually being legalised, undermining the foundations of national security.

**3. Criminological characteristics of organised crime**

The Nobel laureate J.M. Buchanan's perspective that organised crime could even be useful in a certain proportion is a rather specific understanding of organised crime. This seemingly seditious opinion was explained by the scholar in terms of the economic analysis of crimes. The fact of the matter is that the production monopoly is axiomatically considered as a constraint on the efficiency of the market of goods and services due to the reduction of supply. At the same time, this applies more to essential and important goods. With regard to negative products, the monopoly of their production can have positive consequences, as output (supply) is reduced. Therefore, organised crime, as a criminal monopoly, can reduce the number of individual criminal manifestations, ensuring a constant level of criminality in society. Organised crime is inevitably linked to a tough criminal discipline, minimising various types of gang feuds, which, under certain conditions, meets in the public interest. In addition,

in a sense, organised crime protects the trade interests of citizens, resolves social conflicts and provides for the accumulation of primary capital (subsequently legalised, invested in business, that is, in fully legal enterprises) taking over some public functions (Buchanan, 1999). However, the opposite effect is also possible, when organised crime implies solely criminal activities, which demonstrates the flaws of the researcher's opinions.

By the way, the consideration of organised crime as a kind of trading or a certain business is not so rare for domestic criminology. It is not uncommon for organised crime to be seen as a form of risky entrepreneurship that adapts as much as possible to legal social institutions. In general, this approach is logical, because representatives of organised crime commit not only criminal acts, but also other actions designed to ensure the smooth functioning of a criminal organisation, such as the establishment of legal firms, business. Moreover, criminal groups have a large number of schemes for the investment of criminal proceeds in the legal sphere, which enable to form an image of good and respectable entrepreneurs (Shatov, 2019, p. 150). Therefore, the criminological characteristic of modern organised crime such as formality manifests itself in the existence of commercial structures in criminal networks. Now, the leaders of organised criminal groups have up to a dozen law firms, using their rights and smoothly entering the international arena. With this in mind, both criminal and non-criminal elements can be found in organised crime (Khristyuk, 2010, p. 109).

Organisation should be recognised as another strong criminological feature of organised crime. S.O. Yefremov, in his reflections, goes even further, calling criminal organisation the priority, determinant and almost the only feature that allows to group individual criminal acts into a certain aggregate. Organisation is one of the criteria that demarcates the activities of organised criminal groups from situational groups that resort to criminal activity by prior conspiracy (Yefremov, 2003, pp. 59–60). However, on the other hand, the characteristic of organisation is inherent in other types of crime, reflecting a high level of organisational and managerial level within the criminal group. For example, it is difficult to deny that some degree of organisation is involved in economic or professional crime. This does not automatically enable to classify the manifestations of such criminal acts as global organised crime. Therefore, N.Ye. Miniailo underlines that along with the characteristic of organisation for organised crime, it is necessary to have corruption connections and selfish motives. In this context, it is fundamentally important that the corruption link should be permanent (i. e., corrupt officials are in constant contact with the criminal world) and not limited to individual acts of bribery (Miniailo, 2016, p. 163). To give a fuller picture of organised crime, the following features should be added: high level of latency, top-down hierarchy, existence of certain rules of conduct, application of intelligence techniques, large-scale money management, recruitment of new members of criminal groups, establishment of control over banking activities, money laundering and, finally, creation of the "light" image in the information field, usually through the mass media.

Upon the works by foreign criminologists regarding the definition of the term "organised crime", it should be noted that the dominant perspective is a consolidated one, that is, organised crime is equated with business, illegal entrepreneurship. O.Yu. Shostko writes that American criminology considers organised crime as a network of complex criminal structures similar to those of large corporations that exist under their own laws, seek total control at the regional or national level and control entire spheres of social life, trying to maximise profits through a number of criminal operations (Shostko, 2006, p. 183). Some American scientists even suggest replacing the term "organised crime" with the term ("illicit enterprise"). This proposal is explained by the fact that criminal organisations, in fact, work in the same way as legal holdings, ensuring the demand of the population for illegal, prohibited goods, using analogous organisational models. The American perspective is supported by the Dutch criminologists, who point out that the concept of "organised crime" is not conceptually defined, and therefore it is more appropriate to use a "criminal enterprise". Similar suggestions are found in the scientific and law enforcement field in the UK and Germany.

It should be noted that, in foreign law application, each case of criminal activity is determined to be organised crime individually by the relevant law enforcement authorities. For example, in Poland the final classification of the act is entrusted to the court, while the "criminal association" is considered from two perspectives: general criminal and economic.

**4. Conclusions**

To sum up, in the author's opinion, the most logical definition of the concept of "organised crime", which simultaneously consider both criminological and criminal-legal aspects is as follows: organised crime is a stable, independent, hierarchical organisation of criminal environment, characterised by a clear structure, coordinated criminal actions, criminally liable as provided by legal regulations, long-term goals and the aim to gain permanent significant profits, turning their own trading into "illegal

entrepreneurship" and significant risks for the state well-being due to the symbiotic connection of criminal networks with corrupt officials.

In conclusion, it should be noted that the concept "organised crime" in the current Ukrainian reality is becoming extremely widespread, resulting in an insufficient understanding of this social and legal phenomenon. Given its significant threat to the democratic principles of life in the State, it is required to take a more detailed approach to organised crime, and to disclose its essence, considering the criminological aspects.

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# ВИЗНАЧЕННЯ ПОНЯТТЯ «ОРГАНІЗОВАНА ЗЛОЧИННІСТЬ»: КРИМІНОЛОГІЧНИЙ АСПЕКТ

**Анотація.** ***Метою статті*** є детальний аналіз вітчизняних та іноземних підходів до визначення поняття «організована злочинність» як кримінологічної категорії та дослідження сутності цього соціально-правового феномену. Задля досягнення поставленої мети необхідно виконати такі завдання: здійснити огляд різних науково-кримінологічних підходів до розуміння організованої злочинності, визначити найбільш вдалі з них та запропонувати авторське бачення цього терміна, яке вдало поєднувало би в собі як кримінологічні, так і кримінально-правові аспекти.

***Результати.*** Статтю присвячено визначенню поняття «організована злочинність», зокрема його кримінологічному аспекту. У статті встановлено, що ефективна протидія організованій злочинності прямо пов'язана з розробленням і формуванням оптимального визначення цього соціально-правового явища, яке одночасно враховувало би як кримінально-правові, так і безпосередньо кримінологічні аспекти. Автором розкриваються різні науково-кримінологічні підходи до визначення поняття «організована злочинність». У статті також звертається увага на те, що організована злочинність являє собою складний феномен суспільного життя з багатьма рівнями та складною структурою. Цей феномен виник на тлі прагнень частини соціуму змінити правову впорядкованість (причому неодмінно в незаконний, кримінально караний спосіб) в інтересах особистого збагачення, отримання максимальної наживи та фактичної влади над певним регіоном чи сферою життя.

***Висновки.*** Унаслідок проведеного дослідження визначено, що організована злочинність – це стійке, самостійне, ієрархічно побудоване об'єднання кримінального середовища, яке характеризується чіткою структурою, злагодженими злочинними діями, за які нормативно-правовими актами передбачена відповідна кримінальна відповідальність, довготривалими цілями та переслідує мету у вигляді здобуття постійних, значних доходів, перетворюючи власний промисел на «нелегальне підприємництво», а також передбачає суттєві ризики для державного благополуччя з вини симбіотичного зв'язку кримінальних кіл із корумпованими посадовцями. Організована злочинність у сьогоденних українських реаліях наповнюється екстремально широким змістом, наслідком чого є недосконале розуміння зазначеного соціально-правового явища. Необхідно якомога детальніше підходити до питань, пов'язаних з організованим криміналітетом, з огляду на його суттєву небезпеку щодо демократичних засад життя в державі та розкривати його сутність із неодмінним урахуванням кримінологічних аспектів.

**Ключові слова:** організована злочинність, злочинні організації, корупція, нелегальне підприємство, легалізація доходів, кримінологія.

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# LEGAL AND THEORETICAL FRAMEWORK FOR SEARCH ACTIVITIES TO DETECT CRIMINAL OFFENCES RELATED TO ILLEGAL CONTENT ON THE INTERNET

**Abstract.** ***The purpose of the article*** is to study the legal and theoretical framework for search activities to detect criminal offences related to illegal content on the Internet.

***Results.*** The article considers and analyses the level of ensuring the regulatory and legal framework for the prevention of illegal content on the Internet, in particular in social networks, the creation of a security mechanism to prevent the impact of illegal content on children, as well as the identification of persons who distribute illegal content. The article reviews scientific researches on tactics of detection of criminal offenses, carried out in several areas, and proves that mainly researchers in tactics of detection of criminal offenses distinguish two levels: operative-search and investigative, in accordance with which they consider the methodology of pre-investigative operative-search acquisition and accumulation of primary (intelligence) information to initiate an investigation (about criminal activities) and direct investigation methodology.

***Conclusions***. According to the results of scientific research, the subject of which were separate issues related to the detection system of the analyzed category of criminal offenses, forensic support for the investigation of criminal offenses committed with the use of information and telecommunication systems, the issue of legal protection of social relations in the field of the undisturbed functioning of such systems, as well as operational provision of combating the specified types of criminal offenses, it is worth concluding about the need for further research and scientific resolution of theoretical and organizational tasks that arise during the detection of criminal offenses related to the circulation of illegal content on the Internet.

**Key words:** Internet, illegal content, circulation, criminal offences, detection, legal framework, theoretical substantiation.

## 1. Introduction

Information and communication technologies are one of the most important factors influencing the formation of priority trends in development of the XXI century, which are the achievements of mankind in practical implementation of new electronic information technologies. The processes of informatisation are developing, related to the expansion of access to information resources and means of their production of all categories of population (Dovhan, Doronin, 2017, p. 4). Although modern global trends in development are based on the widespread introduction and application of information and communication technologies, they simultaneously actualise the problem of information security and cyber security (Cabinet of Ministers of Ukraine, 2017). One of the criminal activities that is rapidly progressing with the development of communication computer systems is the criminal use of the Internet through the posting of illegal content. For example, in 2016, there were 124 criminal offences related to illegal content on the Internet; in 2017 – 141; in 2018 – 196; in 2019 – 163; in 2020 – 235 (i. e. in recent years their absolute number almost doubled). Thus, the share of cyber-threats is growing and this trend will increase as information technology develops and converges with artificial intelligence technologies in the next decade. However, the legal literature lacks a unified assessment of the real threats due to the placement of illegal content on the Internet: the positions

of experts on the characterisation of this type of activity are opposite from excessive "blowing up" of negative consequences of the use of such content to statement that the person is free to choose what kind of content on the Internet to perceive. This trend is due in part to the considerable latency of criminal acts; the fact that there is no uniform approach to the need to actively search for facts of criminal offences, causing illegal content posted on the Internet; inability in some cases to calculate causal relationships of illegal content and causing harm in the commission of individual illegal acts due to the placement of said content. Although cyber security processes find gradually legal substantiation, almost no scientific, theoretical perspective on search activity as a result of the adoption of a number of legal regulations in this field, aimed at implementing the provisions of these regulations effectively, exist. This situation calls for an analysis of the existing theoretical rationale for searching activities regarding the detection of criminal offences related to illegal content on the Internet.

The scientists have developed a methodology of detection of individual criminal offences, highlighting elements of search activities: Yu.O. Yermakov has identified certain elements of search: objects as material traces and objects of search activities when detecting criminal offences (Yermakov, 2020, pp. 177–181). Part of the researchers believe that the detection of criminal offences refers only to operative-search activities (Belkin, 2001, p. 792); the same situation continued in modern conditions, for example, A.A. Shapovalov identifies the legal framework for operative search (Shapovalov, 2015, pp. 147–151); sphere and place of search activities (Shapovalov, 2018, pp. 304–314). A number of scholars argue that the detection of criminal offences is the prerogative of all law enforcement bodies. For example, M.B. Borchakovskyi consistently builds a system for detecting criminal offences (Borchakovskyi, 2018, pp. 17–19); persons as objects of search activities (Borchakovskyi, 2017, pp. 57–60); search features of latent criminal offences (Borchakovskyi, 2019, pp. 117–119).

Procedures for the detection of criminal offences related to illegal content on the Internet in the context of their legal and theoretical framework have been largely unsubstantiated.

The purpose of the article is to study the legal and theoretical framework for search activities to detect criminal offences related to illegal content on the Internet.

**2. Legal and regulatory framework for countering cybercrime**

Given the almost unlimited amount of Internet resources containing illegal, open-access content, law enforcement bodies can acquire and use it to counter crime. Law enforcement practice shows that offenders actively use social media as a platform for committing criminal offences, exert psychological influence on Internet users, manipulate their behaviour, finally, turning them into victims of crime. Therefore, the search for illegal content and the use of criminologically significant information on the Internet is of great importance for the detection and investigation of criminal offenses. An effective response to these offences requires the legal framework to clearly define the actors involved in countering and their functions to actively search for signs of criminal offences related to illegal content on the Internet. On the basis of these regulations, the necessary scientific research on their further practical implementation should be carried out.

Considering the need for active response to cybercrime, a strategic planning document was adopted on March 15, 2016, the Cyber Security Strategy of Ukraine (President of Ukraine, 2016). Later, the Laws of Ukraine, such as "On Basic Principles of Cyber Security of Ukraine" (Verkhovna Rada of Ukraine, 2017), "On National Security of Ukraine" (Verkhovna Rada of Ukraine, 2018), were adopted and legitimised the status of the Cyber Security Strategy. In the development and adoption of the Strategy, the leadership of the State took into account the trends in global security policy, since over the past five years, such strategies as strategic planning documents, have been adopted in virtually all States of the world (Dovhan, Doronin, 2017). Law of Ukraine "On Basic Principles of Cyber Security of Ukraine" (Verkhovna Rada of Ukraine, 2017) in its content and essence is a concept of the development of cyber security and cyber protection, defines the categorical and conceptual apparatus, objects, actors and principles of cyber security, objects of cyber protection, the structure of the National Cyber Security System and tasks of its main components, mechanisms of public-private and State-public partnership. The content of the provisions of the Law defines the legal and organisational framework for the provision of protection in cyberspace; the main objectives, areas and principles of public policy; the powers of the actors and the basic principles of coordination of their activities (Verkhovna Rada of Ukraine, 2017). The Strategy identifies the sphere of "ensuring cyber security and information resources security" out of "ensuring information security" and determines its priorities: development of the information infrastructure of the State; creation of a cyber security system, development of a Computer Emergency Response Team (CERT); monitoring

of cyberspace with a view to timely detection, prevention and neutralisation of cyber-threats; development of law enforcement investigative capabilities (it should be noted that investigation itself, not detection – *O. T.*) cybercrime; ensuring the security of objects of critical infrastructure, state information resources from cyberattacks, protection of state information resources, electronic government systems, technical and cryptographic protection of information. Both the Strategy and the Law identify elements of the cyber security system, their common functions and tasks, but the organisation of their interaction is almost undefined, that is, it is implied that this should be governed at the level of legal regulations (in particular by-laws) of executive authorities. In view of this, it should be noted that although the Cyber Security Strategy, its general issues have already been addressed and are in the process of being implemented, but a number of practical implementation issues remain unaddressed, given the near absence of a system to detect both general criminal offences committed in cyberspace and those committed in the flow of illegal content on the Internet.

It can be stated that the legal framework for countering cybercrime is established but the important (given the latency of criminal offences related to illegal content on the Internet) issue of active search for their signs remains.

Information on these criminal offences can be obtained from different sources. This may include statements and reports from citizens, enterprises, institutions and organisations, officials, and authorities on the preparation of a criminal offence. In some cases, such information may lead to criminal proceedings for preparation of a criminal offence. However, given that only 10% of the facts of these actions become known to law enforcement bodies, the spread of these criminal offences can have serious, and sometimes even irreparable consequences for the state. The latency of criminal offences related to illegal content on the Internet requires adequate measures to detect them. These factors necessitate the development and scientific substantiation of tactics for detecting the signs of these offences.

**3. Features of detection of criminal offences related to illegal content on the Internet**

In recent decades, the main source of primary information on the illegal activities of individuals has been the use of confidential information, as well as the acquisition of information from open sources through personal searches by operational units. In the future, the sources of information on illegal activities of persons have included the application of measures on audio and video control of a person, removal of information from transport telecommunication networks, removal of information from electronic information systems, locating of the radio electronic device, etc. However, these means of obtaining information are used either as part of operative-search activities (grounded on the existence of information about a criminal offence being prepared), or as part of covert investigative (search) actions during the pretrial investigation (grounded on the availability of information on the criminal offence that has been or is being committed). That is, the need of law enforcement bodies to use tools that do not restrict the constitutional rights of citizens does not meet the possibilities of obtaining primary information. These features determine the meaningful content of each of search elements when detecting criminal offences related to illegal content on the Internet.

Research on tactics of detection of criminal offenses, carried out in several areas. Basically, researchers in tactics of detection of criminal offenses distinguish two levels: operative-search and investigative, in accordance with which they consider the methodology of pre-investigative operative-search acquisition and accumulation of primary (intelligence) information to initiate an investigation (about criminal activities) and direct investigation methodology. N.P. Yablokov substantiates this theory and argues that the investigation is preceded by a different in terms of time operative search examination of criminal activities, which ends with the transferring of the collected primary information to the investigative bodies or the operation to apprehend suspects (Filippov, 2007, pp. 315–316). According to V.A. Nekrasov, the search activities contain interrelated systems: a well-founded system of features indicating the presence of a certain type of criminal offenses; a system of overt and covert investigative (search) actions to detect such criminal offences (Nekrasov et al., 2008, p. 51). V.H. Petrosian asserts that search activities include the following components: detection of information (data) about committed criminal offenses or preparations for their commission; detection (establishment) of documents and objects, indicating the content of criminal activities or containing indications of such activities; detection (establishment) of persons (incl. legal) who are involved in the commission or preparation of criminal activities, or who may be identified as suspects, witnesses or victims (Petrosian, 2012, p. 129).

Research developments on the topic of our article, that is, detection of criminal offences related to illegal content on the Internet, have been carried out sporadically, as part of the study of other topics.

The first area is their identification in the context of countering illegal actions in high technology, which is revealed in the context of the scientific substantiation of cyber security: O.O. Bakalinska, O.O. Bakalynskyi analyse the prerequisites and features of the formation of the legislation of Ukraine in the field of cyber security, identify the challenges and prospects for its further development in terms of assessing existing risks and threats, highlight the areas of adaptation of domestic cyber security legislation to EU standards under the Association Agreement between Ukraine and the EU (Bakalinska, Bakalynskyi, 2019, pp. 100–109); V.Yu. Bykov, A.Yu. Burov, N.P. Dementiievska consider the cyber security processes from the technical aspects of identifying threats to the protection of information resources (Bykov et al., 2019, pp. 313–331).

A number of scholars consider the procedures for detecting criminal offences by means of criminal technology of illegal content on the Internet: plastic payment cards (Nikolaiuk et al., 2007); computer fraud (Komar, 2013, pp. 168–175) (during which certain elements of the search activity are identified, in particular persons as the object of search activity (Komar, 2011, pp. 146–148).

No more modern research on the basic issues of the theory of detection of criminal offences related to illegal content on the Internet, except one by the author (Tarasenko, 2021), has been carried out, because other scientists use the existing studies, extrapolating them into their own research.

**4. Conclusions**

Therefore, the regulatory and legal framework for the prevention of illegal content on the Internet, in particular in social networks, the creation of a security mechanism to prevent the impact of illegal content on children, as well as the identification of persons who distribute illegal content have been provided. Moreover, the consideration and analysis of scientific studies on selected issues related to the system of detection of the investigated category of criminal offences, forensic support for the investigation of criminal offences committed with the use of information and telecommunication systems, legal protection of public relations in the field of the inviolable functioning of such systems, as well as the prompt response to these types of criminal offences reveals the need for further research and scientific solution of theoretical and organisational tasks arising in the detection of criminal offences related to illegal content on the Internet.

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## ПРАВОВЕ ТА ТЕОРЕТИЧНЕ ЗАБЕЗПЕЧЕННЯ ПОШУКОВОЇ ДІЯЛЬНОСТІ ЩОДО ВИЯВЛЕННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ З ОБІГОМ ПРОТИПРАВНОГО КОНТЕНТУ В МЕРЕЖІ ІНТЕРНЕТ

**Анотація.** ***Мета статті*** – дослідити правове та теоретичне забезпечення пошукової діяльності щодо виявлення кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет.

***Результати.*** У статті розглянуто та проаналізовано рівень забезпечення нормативно-правового регулювання недопущення обігу протиправного контенту в мережі Інтернет, зокрема в соціальних мережах, створення безпекового механізму недопущення впливу протиправного контенту на дітей, а також виявлення осіб, які поширюють протиправний контент. Розглянуто наукові дослідження стосовно тактики виявлення кримінальних правопорушень, які здійснювалися за декількома напрямами, та обґрунтовано думку про те, що дослідники в тактиці виявлення кримінальних правопорушень здебільшого виокремлюють два рівні (оперативно-розшуковий і слідчий), відповідно до яких розглядають методику дослідчого оперативно-розшукового здобування та нагромадження первинної (розвідувальної) інформації, що дає можливість почати розслідування (про злочинну діяльність), і методику безпосереднього розслідування.

***Висновки.*** Згідно з результатами наукових досліджень, предметом яких були окремі питання, що стосувалися системи виявлення аналізованої категорії кримінальних правопорушень, криміналістичного забезпечення розслідування кримінальних правопорушень, які вчиняються з використанням інформаційно-телекомунікаційних систем, питання правової охорони суспільних відносин у сфері непорушного функціонування таких систем, а також оперативного забезпечення протидії зазначеним видам кримінальних правопорушень, варто зробити висновок про необхідність подальшого дослідження й наукового розв'язання теоретичних та організаційних завдань, які виникають під час виявлення кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет.

**Ключові слова:** мережа Інтернет, протиправний контент, обіг, кримінальні правопорушення, виявлення, правове забезпечення, теоретичне обґрунтування.

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# FOOD SECURITY MODERN INTERNATIONAL LAW AND RULE-MAKING PRIORITIES OF UKRAINE

**Abstract.** ***The purpose of the article*** is to cover both international law and rule-making priorities of Ukraine in regional and national food amidst Sustainable Development Goals and largescale warfare in the territory of Ukraine determining key trends and barriers in exporting domestic agricultural products.

***Research methods.*** Ontological research component determined its epistemological approaches to applying a set of relevant methods aimed at providing both analytical and forecasting function of law science, in particular situational analysis, cognitive modelling, trend extrapolation, and scenario building.

***Results.*** Despite requirements of the National Security Strategy of Ukraine adopted in 2020, there is still a gap in Ukraine's legislation on food security which shall be eliminated in the period of post-war recovery by adopting a specific legislative act taking into account negative and positive experience accumulated during the war. It is discovered the significance of preferential arrangements introduced with special Regulation of the European Parliament and of the Council on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement and argued that Ukraine is interested in complying in good faith with all of its conditions in order not to cause suspending in whole or in part such arrangements until June 5, 2023 which is the term of this legal instrument of European Union secondary legislation validity.

Conclusions. Such factors as warfare in the territory of Ukraine and deliberate naval blockade of Ukrainian Black Sea ports breaking the logistic export chains of agricultural products of Ukraine confirmed its important status and role as an integral component within the system of regional and global food security. Tripartite Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports is an international law instrument which is extremely necessary for a number of countries in the different regions of the world but, at the same time, it is unreliable from a prognostic standpoint concerning both compliance with the agreements reached by all parties and automagical prolongation under the initially agreed terms.

**Key words:** food security, naval blockade, Black Sea Grain Initiative, European Union legislative support.

## 1. Introduction

Ensuring food security belongs to immanent internal and external functions of states and is the competence of a range of international, global and regional organizations.

Not only for Ukraine but also for many countries – importers of Ukrainian agricultural and food products, the relevant problem has acquired a previously unknown and extreme severity in a bid to unilaterally change the world order and law enforcement in their interests by bringing the domination of the principle of "the right of force over the force of law", which seems to sink into oblivion for the whole civilization, back. As for our country, it was manifested in the violation of the fundamental principles of international law, the inadmissibility of using military force, the inviolability of bor-

ders, the imperative of respect for sovereignty and territorial integrity, as well as the laws and customs of war.

One of the most difficult challenges to Ukraine was the deliberate blocking of Black Sea ports, which were the channels for the vast majority of exported Ukrainian products of the agro-industrial complex. It presented a large-scale threat, the essence of which is recognized throughout the world and which was succinctly and deeply formulated by Charles Michel, President of the European Council, in September 2022, namely: "Food security is the major global challenge today" (European Council, Council of the European Union, 2022).

An important component of the general problem is not only the adverse impact on the status of Ukraine as one of the world leaders in exporting certain types of grain and oilseeds (Ukraine's rating on exports on international markets: sunflower oil – 1st place; corn – 3rd place, barley – 4th place, and wheat – 6th place), but the sale of the grown and harvested crops and the receipt of foreign exchange earnings is crucial for the economic interests of Ukraine. The underlying problem touches upon not only legal but also moral aspects: it lies in the deliberate provocation and use of the threat of, if not particularly global, regional famine in countries (e. g., Africa and Asia, which have relied on imports from Ukraine for many years) as a tool of hybrid warfare.

In this context, it is essential to carry out an analytical revision of the "peaceful" legal tools regarding the efficiency of preservation of its regulatory influence on social relations in the field of food security in de-facto war, de-jure – the legal regime of martial law and the temporary occupation of the territories of Ukraine, as well as implementation of the prognostic function of law.

At the same time, the central issue of the research objective is to determine priority international-conventional and rule-making guidelines in regional and national food security in peacetime and under martial law, which define the main trends in the export of competitive domestic products of the agro-industrial complex.

The multifaceted nature of food security necessitates its research in many fields of knowledge by specialists who cover in their scholarly contributions the nature and prerequisites of the social phenomenon (the global problem of starvation and food security), generalize its main features in the relevant definitions, establish the factors of the current state and dynamics of processes in the specific area of national security, the general principles of legislative regulation, etc. The achievement of the above goal is facilitated by an appeal to the United Nations (hereinafter – UN) analytical and information materials, legislative acts of Ukraine and the European Union (hereinafter – EU), and publications of legal experts, economists, practitioners, namely B. Kormych, T. Averochkina, O. Varaksina, A. Stavnitser, L. Goetza, H. Gretheb, and others.

**2. Food security international law and legislative priorities**

The segment of the Ukrainian legislation, which is intended to ensure food security in peacetime and under martial law, is mainly represented by a subsystem of by-laws. It is worth noting the following in performing a kind of incorporation as one of the forms of systematization of the mentioned acts, which are distinguished and united by a chronological criterion.

One of the strategic goals of our state in ensuring sustainable development on a global scale in general and national security, in particular, is to accomplish food security, which is provided for by the Decree of the President of Ukraine "About the Sustainable Development Goals of Ukraine for the period until 2030" dated September 30, 2019 № 722/2019.

The chronological and global context for adopting the Presidential Decree can be considered the Summit on Sustainable Development, which took place in September 2015 within the framework of the 70th session of the UN General Assembly. In the outcome document under the ambitious title "Transforming our world: the 2030 agenda for sustainable development", 17 Sustainable Development Goals were approved. In order to establish the strategic boundaries of the national development of Ukraine for the period until 2030 according to the principle of "Leaving no one behind", an inclusive process of adjusting the specified global Goals was initiated (United Nations, 2015–2022).

As emphasized in the UN information analysis materials, to feed people going hungry, whose number now stands at 795 million and will increase by 2 billion in 2050, there is a need for significant changes in the global food and agricultural system (United Nations, 2015). Specifying the above general principles at the sub-legislative level, the Decree of the President of Ukraine dated "National priorities in the transformation of food systems in Ukraine" February 7, 2022 № 41/2022 was adopted. Under its provisions, such national priorities cover four areas, which are not exhaustive: 1) healthy nutrition; 2) eco-friendly production; 3) resistance to market instability; 4) food availability for all groups of the population.

Turning from the general to the particular, we note that under the National Security Strategy of Ukraine approved by another

Decree of the President of Ukraine, namely "On the Decision of the National Security and Defense Council of Ukraine dated September 14, 2020 № 392/2020, the ways and tools for its implementation should be available in some documents in relevant specific areas, including the Food Security Strategy.

Given the close correlation of food security issues with such integral components of national security as economic and environmental security, it is worth mentioning that Ukraine currently has the Economic Security Strategy for the period up to 2025 and the Environmental Security and Climate Adaptation Strategy until 2030 approved by the National Security and Defense Council of Ukraine.

Moreover, as of the date of article completion, there is no Food Security Strategy approved in laws or by-laws, although there was an attempt in 2011 to adopt the Law of Ukraine "On the Fundamentals of Food Security", which did produce a beneficial effect in policy-making activities.

A month after the beginning of the war, it was adopted the Law of Ukraine (Verkhovna Rada of Ukraine, 2022) which directly concerns food security in terms of land relations, while a good deal of topical issues regarding rent, emphyteusis, superficies, land easement, and other aspects drive the practicability of considering the specific issue in an individual scholarly article.

In this context, it is remarkable that in 2020, a draft ordinance of the Cabinet of Ministers of Ukraine "On the Approval of the Food Security Strategy for the Period up to 2030" was formulated, and, as experts emphasize, the Government of Ukraine "failed" to implement the strategy (Hot Agricultural Policy, 2022).

Having studied the main aspects and factors shaping national food security, O. Varaksina rightly recognizes foreign trade as one of the basic aspects in their system. It renders the interrelation between the world and domestic agricultural markets, which is characterized by indicators of the volume of imports and exports of each product; balances of imports and exports of agricultural products and food; prices for different agricultural products and food of domestic and foreign production, the ratio of their level on the domestic and world markets; variables of the situation in foreign markets for agricultural products and food, etc. (Varaksina, 2013, p. 72).

Returning the logic of material presentation from local to global, one more Presidential Decree deserves attention which experts sometimes omit. The point at issue is the Decree of the President of Ukraine "On the Decision of the National Security and Defense Council of Ukraine dated July 30, 2021 "On the Strategy of Foreign Policy Activity of Ukraine" dated August 26, 2021 № 448/2021, which reasonably specifies the global factors determining the status of our state in the food security sector. Thus, clause 14 of the Decree carefully states that the role of Ukraine in overcoming challenges to food security is increasing. There are prerequisites for the recognition of Ukraine as a guarantor of food security in the context of, firstly, the COVID-19 spread and, secondly, the global economic recession, which, by the way, is very likely to translate into a new global financial and economic crisis. Given such challenges, it is quite logical to designate, following clause 14 of the Decree, a boost in exports of domestic agricultural products with a high degree of raw materials processing as one of the priority areas of expanding Ukraine's participation in ensuring not just food security but the "global" one, which can and must be implemented by strengthening of our state's position in world food markets.

**3. Ukrainian Food Export Trends and Legal Restrictions**

As noted in the National Report of the National Institute for Strategic Studies: Ukrainian agricultural products are in repute in almost 200 countries of the world, and the agro-industrial complex of Ukraine is now the guide link in the national economy, which largely determines social and economic development, forming 14% of the gross value added and more than 40% of the country's exports. The agricultural sector is currently almost the only locomotive of the Ukrainian economy (National Institute for Strategic Studies, 2022).

In our opinion, it is a good thing that the domestic economy has that sort of "locomotive". The only question is whether it – the so-called optimistic statement of the National Report – captures an externally programmed focus on the irreversible deindustrialization of Ukraine in the future vector of its economy. The implementation of the above hypothesis will mean the direction of Ukraine's "development" towards not a post-industrial society dominated by the tertiary sector with an option of allocating a quaternary IT sector, together with civilized countries that have chosen an innovative and technological development model, but a return to its agrarian past.

International organizations, agreements of which relate to international economic law, have a significant regulatory impact on relations in the field of global food security.

The general orientation of the WTO multilateral agreements on the liberalization of international trade does not exclude the sovereign

right of the member states of the international economic organization to introduce export restrictions, including for food products. Such legal restrictions will be recognized as lawful and, at the same time, somewhat legitimate due to the refusal of some states, primarily recipients of such goods, which are dependent on their import at the global or regional level.

The COVID-19 pandemic exacerbated the problem under consideration, and concurrently, at the end of 2020, there was not reached consensus on its international-legal solution within the WTO framework. In January 2021, the situational deadlock was overcome through global humanitarian responsibility in the form of a Joint Statement. The document without international treaty obligations, which will be highly likely implemented by WTO member states, provides for the voluntary non-application of restrictions or prohibitions on exporting food products if they are purchased for non-commercial humanitarian purposes under the United Nations Food World Programme, the world's largest humanitarian organization.

The accession of Ukraine to that consolidated position of the states was justified enough in peacetime. At the same time, the war is a process-trigger, which not only can but must adjust the priorities and legislative principles of state policy on global food security and, first of all, the food security of Ukraine. In this context, the adoption of the Order of the Cabinet of Ministers of Ukraine "On approval of a plan of measures to ensure food security under martial law" of April 29, 2022 № 327-p deserves support.

One of the main tasks within the mentioned action plan, under its para. 7, is to fill the domestic market with goods of own production and maintain export demand, the implementation of which involves the regulation of agricultural exports in general and the approval of the list of goods whose exports are subject to quotas and licensing in particular.

When implementing the Government's order, measures to limit the export of buckwheat, oats, and rye, which are critical for the stable functioning of the baking industry, should be recognized as justified. In addition, export licensing was introduced for wheat and sugar and, concurrently, there is no need to urgently introduce non-tariff measures to prohibit or restrict the export of agricultural products, harvest and availability of which on the domestic market of Ukraine cause their excess that concerns, first of all, sunflower oil and corn.

Hypothetically speaking, a representative of the business community rather than the scientific one A. Stavnitser – a capital interest holder in TIS, the leading private stevedore in Ukraine which owns the largest domestic terminal "TIS-Grain" – pragmatically emphasized on the eve of the war, in January 2022, that Ukraine is a key player in the global food security system. Many grain shipments are tied to Black Sea ports, where military operations literally threaten food shortages to many millions of people around the world (Stavnitser, 2022). Thus, as stated in the review of food security and policy: "Only two decades ago Ukraine's grain exports were equivalent to feeding 40 mln people, and already more than 400 mln today" (Kyiv School of Economics, 2022).

Just a month later, the hypothetical model became a reality, and an extremely negative scenario was realized for the all-out military blockade of the Ukrainian Black Sea ports. It draws attention to the fact that in the modern world, which is significantly institutionalized and should rely on the principles and norms of international law, primarily humanitarian and maritime, there was a lack of international entities which could stem the tide of the specific scenario in the next five months before concluding the international grain agreement in Turkey.

**4. Black Sea Grain Initiative and Law Forecasting**

Only on July 22, an international agreement concluded in Istanbul, the essence of which is absolutely clear following its name "Initiative on the Safe Transportation of Grain and Foodstuffs from Ukrainian Ports", were signed by Ukraine, Turkey and the United Nations (hereinafter – Initiative).

Pursuant to section "C" of the Initiative, "the parties have agreed that any attacks will not be carried out on merchant ships or port infrastructure". At the same time, on the next day, July 23, missile strikes were launched at the port of Odesa – one of the three ports that shall be "untouchable" under para. 3 of the Initiative. Russia's violation of the newly adopted international treaty obligations caused a negative response, in particular, in European countries – France, Austria, and Switzerland (Yevropeiski krainy vyslovylysia shchodo rosiiskoi ataky portu Odesy, 2022). Therefore, the textbook conclusion of Otto von Bismarck expressed almost 100 years ago in the context of Russia's violation of the peace and border treaty with Georgia "No treaty with Russia is worth the paper on which it is written" remains relevant to this day.

Despite all the actual military risks and threats, according to the Ministry of Infrastructure of Ukraine, as of September 20, 2022, more than 4 million tons of grain were exported from the three main ports: Odesa, Chornomorsk, and Pivdenny (Ministry of Infrastructure of Ukraine, 2022). The figure increased

to 6 million tons in October. As for the volume of exports, it can be said that it is better than nothing; nevertheless, it is distinctly different from peacetime, when 90% of Ukrainian exports were conducted through Black Sea ports.

The initiative is not indefinite, so it is crucial to predict its continuation in the short term. This is a difficult task in the methodological and applied aspects, since, as rightly stated in the UN information and analytical materials on the Black Sea grain initiative, "there is no clarity about the end of the war, the future remains uncertain" (United Nations, 2022).

A methodological hypothesis, which will be further confirmed or refuted, is the opportunity to consider the above prognostic task through the prism of the system of methods of analysis, modeling, and forecasting. As it was already mentioned, the most effective ones in terms of the research purpose are systemic and situation analysis, cognitive modeling, trend extrapolation, and scenario forecasting. Without delving into the theoretical and methodological fundamentals of the above methods and the peculiarities of their use in applied legal research, we will present only the key results obtained and substantiated as a result of the integrated application of their elements.

From the perspective of the legal fact of the conclusion of the tripartite Initiative, it is crucial to identify the factors that led to the splitting of Russia's internal volition and external will, which caused the Initiative's conclusion and determine the nature of their mutual influence.

It is seen that under object-oriented cognitive analysis, such factors as the threat of global and regional hunger in Asia, Africa, and the Middle East – importers of Ukrainian agricultural products, on the one hand, and the willingness to block exports through the Black Sea ports of Ukraine, on the other, are in a direct link of causality, not weakening but strengthening. It means that the higher the likelihood of famine, the better for Russia that boosted its readiness for further blocking. Consequently, such human-centric factors as threats of restricting both physical and economic access to Ukrainian food in many countries in different regions of the world due to the provoked price advance on international markets, in particular for wheat, could not significantly influence Russia's intentions to conclude an international agreement on the grain initiative.

The development of another type of cognitive map, i. e., subject-oriented, makes it advisable to make a conceptual notice. It can be reasonably assumed that the geopolitical decision to activate the plan for the military takeover of Ukraine for the sake of further global changes in the world order relies on a good part of irrational things, the coverage of which goes beyond the limits of legal research. One of the motivations for Russia's contractual capacity in July 2022, which is based on the ratio principles, could be an effort to weaken the restrictive influence of international sanctions and advance in the volume of exports of Russian grain and fertilizers to the world food market. In addition, it is worth mentioning that no condition in the Initiative's text would legally fix the correlation between Ukrainian and Russian export of grain and fertilizers.

Therefore, Russia's interests derive from military goals, which can be described through the conceptual prism of geo-economic wars. Since Ukraine and Russia are competitors in the global and regional markets, primarily grain, blocking Ukrainian ports via military means provides the latter with economic benefits in obtaining larger volumes of export foreign exchange earnings.

One should pay attention that Russia's volition and implied expression of will have been and will remain focused on the maximum possible blockade of the Black Sea ports of Ukraine. At the same time, it can be recognized as a minimum task since its strategic geo-economic goals highly likely involve the complete deprivation of Ukraine of maritime state status driven by the blocking of its access to the Black and Azov Seas by military means – the creation of the so-called Novorossiya. The only obstacle at the current historical stage of accomplishing these goals is the lack of resources in Russia – military, diplomatic, financial, and information. Assuming that Russia's characteristic tactics are to try to exploit energy and humanitarian problems, particularly cold and famine – such a threat to Ukraine and the importing countries of Asia, Africa, and the Middle East will be real-life, permanent, and strategic.

Within the framework of cognitive analysis, it is also essential to mark that, along with the factor of states – apologists for European integration – a factor of international organizations, where the decorative and symbolic role of the UN Secretary-General declaratively mentioned in para. 1 of the Initiative is hardly worth taking into account, turned out to be almost insignificant. The before mentioned indicates a profound crisis of the institutional component of the international security system, the subjects of which were unable to influence Russia in the context of the joint provision of global food security based on international humanitarian law.

Given the importance of the subjective factor in initiating the blocking of ports, there remains an extremely high level of risks not only of main-

taining constant tension around the implementation of the Black Sea grain initiative but also of its termination. To prove the general thesis and the high probability of Russia's withdrawal from the agreement, we can cite the position of the Permanent Representative of Russia to the UN and other international organizations in Geneva, who stressed that a letter was sent to the UN Secretary-General with complaints about obstacles to the export of Russian grain and fertilizers and the relevant requirements (Farge, 2022).

The above shows that the future fate of the Initiative will be determined in a variable field of alternative scenarios upon which Russia's "quit" will represent an extremely adverse scenario for Ukraine and importing countries; moreover, it may be legal and rely on the Initiative's norms. Within the theoretical and methodological tools of modern forecasting, there are various conceptual approaches and methods for constructing search and normative scenarios. However, in the context of the Initiative, it is unlikely that there is a need to construct abstract scenario models. The rational limits of constructing alternative scenarios, which are exhaustive, are determined by the norms of the Initiative – there are three alternatives. Therefore, the positive scenario provides for the automatic prolongation of the Initiative for the next 120 days, the negative – the notification of termination of the Agreement by at least one of the parties, and the "compromise" – the articulated intention of one of the parties to discuss amendments to the terms of the Initiative.

Despite complaints of sanctions pressure, it is essential to mark that the European Union has officially consolidated its position on avoiding any measures that can lead to global food insecurity. This general rule means that no regulatory and legal restrictive measures against Russia are applicable amidst international trade in agricultural and food products, including grain and fertilizers (European Council, 2022).

Determining the level of probability of implementation of each of the three possible scenarios, we assume that the least likely is the above favorable scenario. In turn, it is likely that there could be a "compromise" scenario, negotiations on which Russia could theoretically initiate in accordance with clause "H" to amended the Initiative's conditions in its favor under the threat of starvation in many countries due to the termination of the Initiative. In practical terms, the most likely there will be a negative scenario for the implementation of which any reason, even artificial like "illegal actions of Ukraine", will be found.

In general, such tactics and strategy are quite typical for the state concerned which, as domestic legal scholars B. Kormych & T. Averochkina emphasize: "has continued the practice of neglecting or specifically interpreting the norms of international humanitarian law applicable to armed conflicts at sea" (Kormych. Averochkina, 2022, p. 24). At the same time, the prognostic assessment of the colleagues from Odesa, which covers both the war period and the post-war recovery of Ukraine, is valid and lies in the fact that "Given the Russian navy's command of the sea, the unblocking of Ukrainian ports before the end of hostilities looks unlikely. Moreover, the threat of floating mines could delay the start of shipping for an even more extended period" (Kormych. Averochkina, 2022, p. 25).

The ultimate devaluation of the role of international organizations is prevented by the European Union, which takes legal and logistical measures to promote Ukrainian exports by land.

**5. EU Legislative and logistic support of Ukraine**

Amidst blocking Ukrainian exports by sea, the European Union provided both logistical and legal assistance. Thus, as of September 2022, the EU and its member states have optimized the land routes of Ukrainian exports, primarily by rail, which export more than 60% of agricultural and food products.

In addition, such an act of subsidiary legislation and an instrument of unification within EU acquis as the Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement (European Parliament, European Council, 2022), which may remain valid until June 5, 2023, deserves attention in the legal aspect.

As emphasized by the Ministry of Economy of Ukraine: "The Regulation was developed in response to Ukraine's request to facilitate export conditions in wartime as much as possible to deepen trade relations with the EU and continue exports to other countries" (Ministry of Economy of Ukraine, 2022).

The Regulation contains a set of norms aimed at liberalizing international trade, among which the problems of legal support for food and foreign economic security are such that they provide for suspension: firstly, the application of the system of input prices for fruits and vegetables, and secondly, all quotas for agricultural products that allows imports to the EU without any duties.

The system of input prices was introduced in the EU a long time ago. Its essence, as European experts say, is to limit the import of certain food products at a price below a predetermined

one since the EU protects those agricultural producers who grow 15 types of fresh fruits and vegetables from international competition (Goetza, Gretheb, 2009).

Such provisional measures at the level of the EU act should be considered in the broader context of the provisions of Title IV "Trade and Trade-related Matters" of the Association Agreement on the legal regime for the functioning of the Deep and Comprehensive Free Trade Area in general and Annex I-A "Abolition of Duties" in particular.

The direct link between the liberalization of importing Ukrainian food products into the EU single market and the baseless use of military force against Ukraine does not mean that the period of such trade liberalization will be directly related, including the end of the war. Indeed, according to Art. 4 of the Regulation on the safeguard clause, the EU reserved the right to restore at any time the customs duties provided for in the Association Agreement, in the event that imported products originating in Ukraine cause damage or threaten the performance of European producers of similar or competing products.

**6. Conclusions**

The above allows the formulation of the main conclusions in the legal and institutional realm.

Proper legal regulation of social relations in food safety requires systematic improvement of private-law and public-law instruments. In wartime, the parity application of both components is apriori impossible since the dominant idea objectively shifts towards the public field, first of all, international law – humanitarian, maritime, economic, etc.

In turn, under such conditions, the role of entities of private law relations with a foreign element in general and exporters and importers, in particular, is also significantly inferior to priorities of the role of entities of public international law, primarily states that acquire the status of regional leaders. It refers to Turkey, the resource potential and state will of which proved capable of contributing to maintaining regional and global food security and "voluntarily" engaging Russia in implementing the Black Sea Grain Initiative.

Focusing exclusively on the specifics of the legal regulation of food security would be a methodologically vulnerable approach devoid of an appropriate level of consistency and complexity, because it should be considered in close correlation with other integral areas of national security. At the same time, the problems of scientific development of mechanisms for the legal regulation of food security can not only be identified as a separate equal subject of research but also analyzed through the analytical prism of the subordination ratio, where food security is recognized as an integral part of the economic or environmental security of Ukraine.

Regardless of the chosen conceptual-legal approach, scientific research in the areas concerned will preserve the organic connection and strategic importance under the legal regime of martial law and in the post-war period of Ukraine's reconstruction.

In the system of legal documents that shall be adopted in Ukraine in order to specify and implement the provisions of the National Security Strategy, there is still a gap in the missing Food Security Strategy, which can be regarded balanced without excessive demagogic criticism. In general, the issue of food security has not ignored by the Head of State and executive authorities that leads to the improvement of Ukrainian legislation at the level of by-laws in the context of global sustainable development goals. The Food Security Strategy, developed but not approved in peacetime by the Cabinet of Ministers of Ukraine, is highly likely to be adopted and implemented during the post-war reconstruction of Ukraine, taking into account the positive and negative experience forcedly gained by the state, subjects of the agro-industrial complex, and other subjects of the export ochain, including Black Sea ports, as well as citizens of Ukraine during de-facto war, de-jure – the legal regime of martial law.

In such a general and local socially significant dimension, it is crucial for society to intensify expert and legal activities to assist state authorities in the rule-making process on the part of the specialized establishments (institutions) of the National Academy of Sciences of Ukraine and the National Academy of Legal Sciences of Ukraine. At the same time, several alternative models that can provide synergy of intellectual potentials of the relevant units of the national academies are considered effective. Thus, it is quite expedient to establish an inter-academic Center for Problems of Legal Support of National Security or an inter-structural Center with a similar name and competence within National Academy of Legal Sciences of Ukraine with the leading participation of the *State Scientific Institution "Institute of Information, Security and Law of the National Academy of Legal Sciences of Ukraine". In turn,* Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, which the article's authors have the honor to represent, is about to take part in the implementation of alternative models of scientific and expert activity and take on the mission and responsibility for the elaborating scholarly problems of improving legal

support in priority areas of national food security of Ukraine in terms of its private law spectrum with the appropriate assistance of the *State Scientific Institution "Institute of Information, Security and Law of the National Academy of Legal Sciences of Ukraine"*.

Along with the international-legal and institutional components, the formation of state policy on national security in terms of food security, the very problem presentation necessitates the implementation of multidisciplinary research with the application of modern methodology of Future Studies, in particular, foresight. Such a paradigmatic approach will create favorable conditions for the implementation of not only the diagnostic and analytical function of law, which is characteristic of domestic scientific-legal research in various specialties, but also the prognostic function of law, which is a promising vector of scientific support of the state both in theoretical-methodological and applied realms.

The implementation of the predictive function of law allows shaping a proactive vision of the future regarding the prospects for keeping the international Agreement on the Black Sea Grain Initiative and the EU regulation on the liberalization of imports of food products originating from Ukraine to the single market, which are important for the export of Ukrainian agricultural and food products to preserve regional food security.

A positive scenario for Ukraine and the countries of Asia and Africa, which depend on Ukrainian imports, in the form of automatic prolongation of the Agreement for the next 120 days is assessed as the least likely. Consequently, Ukraine and its international partners will have to fight for the preservation of the Agreement, the termination of which is more likely. An acceptable alternative would involve keeping the Agreement in force through additional negotiations and amending, which is one of the three scenarios, conditionally – "compromise", provided directly by the norms of the Agreement; the likelihood of its implementation is actual, but, it is less than in the negative scenario.

Liberalization of the legal regime in the form of duty-free import of products of the domestic agro-industrial complex to the single EU market within the deep and comprehensive free trade zone provided for by the Association Agreement is dependent on Ukraine's compliance with a set of conditions-requirements recorded in the relevant act of ssubsidiary EU legislation. The critical importance of that legal assistance from the EU makes it possible to predict that Ukraine will most conscientiously comply with all the conditions provided for in the relevant regulation, which will allow maintaining a favorable regime for domestic imports in accordance with the norms of the regulation, at least until the beginning of June 2023.

Along with the need to improve the legal regime to increase the level of realization of Ukraine's export potential for global and regional food security, the import component of foreign economic activity, which concerns the problem of food independence or import independence of Ukraine, is crucial for Ukraine that deserves further research and presentation of its outcomes in the following scholarly article.

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# СУЧАСНІ МІЖНАРОДНО-ПРАВОВІ ТА НОРМОТВОРЧІ ПРІОРИТЕТИ УКРАЇНИ У СФЕРІ ПРОДОВОЛЬЧОЇ БЕЗПЕКИ

**Анотація.** ***Метою статті*** є розкриття міжнародно-договірного та нормотворчого інструментарію України у сфері регіональної і національної продовольчої безпеки в контексті Цілей сталого розвитку та з урахуванням умов, що виникли в результаті широкомасштабних військових дій на території України, які визначають основні тренди й бар'єри у сфері експорту вітчизняної продукції агропромислового комплексу.

***Методи дослідження.*** Онтологічний складник дослідження зумовив гносеологічні підходи щодо застосування системи релевантних методів, спрямованих на реалізацію як аналітичної, так і прогностичної функцій права, зокрема ситуаційного аналізу, когнітивного моделювання, екстраполяції трендів, побудови сценаріїв.

***Результати.*** Попри вимоги Стратегії національної безпеки України, прийнятої у 2020 р., донині зберігається прогалина в законодавстві України у сфері продовольчої безпеки, яка має бути усунена шляхом прийняття спеціального нормативно-правового акта в період післявоєнного відновлення України на підставі набутого як негативного, так і позитивного досвіду війни. З огляду на важливість преференційного режиму, запровадженого спеціальним регламентом Європейського Парламенту та Європейської Ради про тимчасову лібералізацію торгівлі, що доповнює торгові поступки, які застосовуються до української продукції відповідно до Угоди про асоціацію, Україна зацікавлена в добросовісному дотриманні всіх умов, передбачених у регламенті, що має убезпечити від повного або часткового призупинення дії зазначеного режиму в межах строку чинності цього акта вторинного законодавства Європейського Союзу до 5 червня 2023 р.

***Висновки.*** Такі чинники, як військові дії на території України та свідома морська блокада портів на Чорному морі, що порушили логістичні ланцюги експорту продукції агропромислового комплексу України, підтвердили її важливий статус і роль невід'ємного складника в системі регіональної та глобальної продовольчої безпеки. Тристороння Чорноморська зернова ініціатива є міжнародно-правовим інструментом, що вкрай необхідний для багатьох країн у різних регіонах світу, проте водночас настільки ж ненадійний у прогностичній площині в частині як дотримання всіма її сторонами досягнутих домовленостей, так і автоматичної пролонгації зі збереженням раніше узгоджених умов.

**Ключові слова:** продовольча безпека, морська блокада, чорноморська зернова ініціатива, законодавча підтримка Європейського Союзу.

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**НОТАТКИ**