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SPECIFICITIES OF JUDICIAL CONSIDERATION OF CASES ON ESTABLISHING FACTS RELEVANT TO THE PROTECTION OF FAMILY RIGHTS AND INTERESTS

Abstract. ***Purpose.*** The purpose of the article is to clarify the specificities of judicial consideration of the cases on establishing facts relevant to the protection of family rights and interests. ***Results.*** The consideration of the case on establishing facts relevant to the protection of family rights and interests on the merits is completed by additional explanations of the persons involved in the case, after hearing which the court decides to complete the clarification of the circumstances of the case and verification of their evidence and proceeds to the court debate. Based on the court decision to make changes, additions or corrections to the civil registry, the relevant changes are made, which are specified in the court decision. In particular, following court decisions on establishing the facts of registration of marriage, divorce, adoption, paternity (maternity), kinship between individuals, birth of a person at a certain time, appropriate changes shall be made to the civil registry of birth, marriage and divorce. In case of submission to the Department of the State Civil Registry Office of a foreign court decision on amendments, renewal, cancellation of the Civil Registry, the issue of its implementation is resolved in accordance with the current legislation of Ukraine and allowing for the requirements of international treaties of Ukraine on the provision of legal assistance, consented by the Verkhovna Rada of Ukraine as binding. ***Conclusions.*** It is concluded that the court decision on establishing a fact relevant to the protection of family rights and interests has prejudicial value not only within the specific purpose established by court, but also in all other cases where it is required to confirm the relevant fact, regardless of the specific circumstances that caused the need to establish it in court, as well as the parties involved in the case. The legal force of a court decision made in cases on establishing facts relevant to the protection of family rights and interests, according to its objective limits, extends to the fact, the presence or absence thereof the court established during the consideration of the case. Therefore, the conclusions of the court on this fact, enshrined in the court decision, have prejudicial value for other cases, including the cases of lawsuit proceedings.

Key words: court decision, family, husband, wife, marriage, state registration.

1. Introduction

A court proceeding in a civil case is the main, central stage of the civil procedure. At this stage of civil procedure development, the court performs the tasks of civil proceedings, which were set before it and consist in fair, impartial and timely consideration and resolution of civil cases in order to protect violated, unrecognised or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, interests of the state.

We advocate the legal literature's perspective that a court proceeding achieves its goal only if it is conducted in strict accordance with the requirements of civil procedure legislation, in compliance with the procedural form, which is a guarantee of justice in civil cases and ensures the protection of the rights and interests of individuals, legal entities, state and public interests (Komarov, Bihun, Barankova, 2011).

2. Court hearing as a procedural form of the judicial consideration of cases

Based on the specifics of a separate proceeding in cases on establishing facts relevant to the protection of family rights and interests, the provisions of civil procedure legislation of Ukraine, according to the rules of which

the court proceeding in such cases is conducted, can be classified into:

1) provisions of civil procedure legislation that regulate the general procedure for judicial consideration of the cases in all categories of cases;

2) provisions of civil procedure legislation that regulate the procedure for judicial consideration of the cases in cases of individual proceedings;

3) provisions of civil procedure legislation regulating the procedure for proceedings in cases of establishing legally relevant facts (Civil Procedure Code of Ukraine, 2004).

Such a three-level regulatory model of proceedings on establishing facts relevant to the protection of family rights and interests determines the procedural features of the court proceeding of relevant cases.

The procedural form of the court proceeding is a court hearing, which should be held only in a specially equipped courtroom – a courtroom. The court hearing as a procedural form of court proceeding consists of several parts: 1) preparatory; 2) consideration of the case on the merits; 3) court debates; 4) making and pronouncement of the court decision.

These components of the court session are aimed at achieving the intermediate goals of the court proceeding and combine the procedural actions of the court and participants in the civil procedure. At each stage of the court proceeding, the court resolves a certain range of issues and performs the tasks set (Bychkova, Biriukov, Bobryk, 2009).

The preparatory part of the court proceeding is intended to check the possibility of considering the case in court at the present time, with the existing composition of the court, the participants of the civil procedure who appeared in court, and the evidence available in the case, as well as to ensure further consideration of the case on the merits (Bilousov, Bohdan, Hetmantsev, 2014).

According to paragraph 20 of the Resolution of the Plenum of the Supreme Court of Ukraine 'On the application of civil procedure legislation in the consideration of cases in the court of first instance' No. 2 of June 12, 2009 (Resolution of the Plenum of the Supreme Court of Ukraine on the application of provisions of civil procedure legislation in the consideration of cases in the court of first instance, 2009), checking the attendance of the persons participating in the case, the court establishes whether those who were not present were notified of the time and place of the court hearing in compliance with the requirements of the law, whether the persons participating in the case were served with summonses within the period specified in Part 4 of Article 74 of the Civil Procedure Code of Ukraine. Moreover, in case of failure to appear at the court hearing of a person participating in the case, duly and in the prescribed manner notified of the date of the court hearing, the issue of the possibility of court proceeding is decided allowing for the requirements of Articles 169, 224 of the Civil Procedure Code of Ukraine.

The peculiarity of the preparatory part of judicial consideration of the cases in cases on establishing facts relevant to the protection of family rights and interests is that, taking into account the personal non-property nature of family legal relations, which, in its turn, determines the inalienability of the relevant rights and interests, allowing for the possibility of considering the case with such appearance of persons, the court at the preparatory part of the court hearing, as a rule, recognises the appearance of persons participating in cases on establishing facts relevant to the protection of family rights and interests, mandatory.

Establishing the identity of the participants in the proceeding, who appeared in court, the court on the basis of the passport, service certificate or other identification document, shall find out their surname, name and patronymic, date of birth, occupation and place of residence. Other information or the scope of powers of certain participants in the proceeding (for example, a representative of a legal entity, witness, expert, specialist) is clarified on the basis of certain rules of procedure legislation in order to ensure the establishment of the presence (absence) of circumstances that exclude the possibility of participation in the proceeding, or family and other relations with the parties, which affect the assessment of evidence (Resolution of the Plenum of the Supreme Court of Ukraine on the application of provisions of civil procedure legislation in the consideration of cases in the court of first instance, 2009).

In addition, as noted in Part 1 of Art. 235 of the Civil Procedure Code of Ukraine, during the consideration of cases of separate proceedings, the court shall explain to the participants in the case, their rights and obligations, to assist in the implementation and protection of the rights, freedoms or interests of natural persons or legal entities guaranteed by the Constitution and laws of Ukraine, to take measures for comprehensive, complete and objective clarification of the circumstances of the case.

Along with the above procedural actions, the court during the preparatory part of the judicial consideration of the cases on establishing facts relevant to the protection of family rights and interests, in accordance with the general

rules of civil proceedings, performs other actions regulated by Articles 163-172 of the Civil Procedure Code of Ukraine. The preparatory part of the court proceeding of such cases is completed by explaining the rights and obligations to other participants in the civil procedure.

Consideration of the case on the merits is the second stage of judicial consideration of the cases to establish facts relevant to the protection of family rights and interests, during which the actual circumstances of the case are clarified.

Relying on the analysis of the provisions of the civil procedure legislation of Ukraine, which regulates the general and special procedures for judicial consideration of cases of special proceedings, including cases on establishing facts relevant to the protection of family rights and interests, it can be argued that the consideration of such cases is essentially characterised by the following features of the procedural form:

1. Conducted both with the participation of the applicant and other persons concerned who provide their explanations regarding the presence or absence of the fact established by the court, guided by the principle of competition, which operates in a somewhat 'truncated' form (Civil Procedure Code of Ukraine, 2004).

In this regard, we should agree with S.N. Abramov that the specificity of consideration on the merits of cases on establishing legally relevant facts is that the principle of adversarial proceedings in such cases is not applied or is applied in a limited form. If no one, except the applicant, is involved in the case, the applicant does not compete with anyone before the court, the consideration of the case on the merits takes place only with the participation of the applicant. When other parties concerned are involved in the case, in these events, although there are elements of competition, but there is no 'competition', which we observe in the cases of lawsuit proceedings. This is due to the fact that in special proceedings other parties concerned do not protect their subjective rights, and the circumstances of the case are not as familiar to them as in civil law disputes. In this state of affairs, the court shall show special initiative and activity in clarifying the actual circumstances of the case (Abramov, 1948).

Therefore, other parties concerned practically make explanations if they know the circumstances of the case. However, this does not mean that in other cases these participants in the proceeding may be deprived of the right to give explanations – they should be given the opportunity to provide their explanations on the case with reference to the evidence, as well as to express their opinion on the explanations and motions of the applicant (Eliseikin, 1973). Furthermore, the content of the explanations of other parties concerned may be different: in their explanations, they can both support the position of the applicant and express objections to the existence of the fact established by the court. However, this does not mean the emergence of a dispute of right. According to S.Ya. Fursa, this can only be a question of determination by the judge of the possibility of a dispute of right' (Fursa, 1997);

2. Aimed at clarifying a two-level group of circumstances that form the subject matter of proof in such cases, and which are determined by the provisions of both procedure and substantive legislation.

Namely: during the consideration of cases on establishing the facts relevant to the protection of family rights and interests on merits, the court shall establish:

1.1) general circumstances that form the subject matter of proof in such cases, such as: a) according to the law, such facts give rise to legal consequences, that is, the emergence, change or termination of personal or property rights of citizens depend on them; b) the legislation in force does not provide for another procedure for their establishment; c) the applicant has no other opportunity to obtain or restore a lost or destroyed document certifying a fact of legal significance; d) the establishment of the fact is not connected with the subsequent resolution of the dispute of right;

2.1) special circumstances that form the subject matter of proof in each particular case, namely:

a) in cases of establishing the fact of kinship between individuals: the existence of the fact of kinship between individuals; the absence of state registration of this fact by the State Civil Registry Office; the reasons for which this fact has not been registered; the purpose for which the applicant needs to establish this fact;

b) in cases of establishing the facts of registration of marriage, divorce, adoption: the fact of registration of marriage, divorce, adoption; the absence of the relevant record in the State Civil Registry Office; refusal to restore it or the possibility of its restoration only on the basis of a court decision; the purpose for which the applicant needs to establish this fact;

c) in cases of establishing the fact of paternity (maternity): the fact of paternity (maternity); the fact of death of a man who was not married to the child's mother (the fact of death of a woman who considered herself the child's mother); making an entry about the father of the child in the Book of Birth Registration by the surname of the mother, and the name and patronymic of the father of the child - at the behest of the mother; making an entry

about the mother of the child whose parents are unknown, by the decision of the guardianship and custody authority; the purpose for which the applicant needs to establish this fact;

d) in cases of establishing the fact of a single household of a man and a woman without marriage: the fact of a single household of a man and a woman without marriage; reasons for the impossibility of obtaining documents certifying the fact of a single household of a man and a woman without marriage; the purpose for which the applicant needs to establish this fact;

e) in cases of establishing the fact of birth of a person at a certain time: the fact of birth of a person at a certain time; impossibility of registration of the fact of birth by the State Civil Registry Office; the purpose for which the applicant needs to establish this fact.

3) Characterised by the 'key' role of written means of evidence, which confirm most of the circumstances of the case, such as:

a) the impossibility of restoring the lost document certifying the 'sought' fact, in most cases of establishing facts relevant to the protection of family rights and interests, shall be confirmed by a relevant certificate;

b) the existence of a civil registry determined by law (of the fact of death of the child's mother (father), the fact of making an entry about the child's father in the Book of Birth Registration under the mother's surname, while the name and patronymic of the child's father – at the instruction of the mother, as well as making an entry of the mother of a child whose parents are unknown, by the decision of the guardianship and custody authority) in cases of establishing the fact of paternity (maternity) shall be confirmed by the relevant certificates of their state registration;

c) the absence in the relevant civil registry of records of marriage, divorce, adoption, birth of a person at a certain time is confirmed by the relevant certificates issued by the State Civil Registry Office.

The consideration of the case on establishing facts relevant to the protection of family rights and interests on the merits is completed by additional explanations of the persons involved in the case, after hearing which the court decides to complete the clarification of the circumstances of the case and verification of their evidence and proceeds to the court debate.

Therefore, *court debates* are the third stage of the judicial consideration of the cases on the establishing facts, relevant to the protection of family rights and interests, during which persons involved in the case make speeches (oral appeals to the court and participants in the process, which contain their assessments and thoughts regarding the course of consideration and resolution of a civil case in court).

According to a widespread opinion, during the court proceeding of cases on establishing legally relevant facts judicial debates are absent (Bilousov, Bohdan, Hetmantsev, 2014), due to the absence of a dispute of right.

We do not advocate this approach. Court debates are a mandatory part of the court hearing, aimed at identifying the final claims of the applicant and parties concerned and summarise the results of the judicial consideration of the case.

The last part of the judicial consideration of the cases on establishing facts relevant to the protection of family rights and interests is the *making and declaration of the court decision*, carried out on the basis of the general rules of civil proceedings, except for the provisions on the content and legal force of such a decision.

According to paragraph 8 of the Resolution No. 14 of the Plenum of the Supreme Court of Ukraine of December 18, 2009 'On the court decision in a civil case' (Resolution of the Plenum of the Supreme Court of Ukraine On a court decision in a civil case, 2009), the decision taken in the case shall be exceptionally complete, clear, precise, set out in the sequence established by Article 215 of the Civil Procedure Code of Ukraine, and shall contain an introductory, descriptive, reasoning and operative parts.

Therefore, the general structure of a court decision in cases on establishing facts relevant to the protection of family rights and interests is classical. In addition, the introductory and descriptive parts do not differ in the specificities of the procedural form. At the same time, the reasoning and operative parts do have such specificities.

For example, the reasoning part should contain an analysis of the evidence collected in the case, a statement of the circumstances of the case, established by the court on the basis of this evidence, as well as references to the provisions of law guiding the court during the consideration of the case. Moreover, the reasoning part of the decision in such cases should not contain a conclusion on the rights and obligations of the persons involved in the case. The court shall limit itself to indicating whether the applicant's request to establish a certain fact is subject to be satisfied and whether such fact is legally relevant (Eliseikin, 1973).

In the operative part, the court states the presence (or absence) of the fact requested by the applicant. An indication of the purpose of establishing the fact may be contained in both the reasoning and operative parts of the decision.

Regarding the prejudicial significance of the purpose of the fact established by

the court, it is commonly believed in the legal literature that a court decision in such cases is characterised as prejudicial within the established specific purpose. However, some facts established by a court decision, which are subject to registration by the State Civil Registry Office, are indirectly prejudicial (Fursa, 1997).

We have a different perspective on this issue. The court decision establishes a specific legal fact. The indication of the purpose of its establishment in the relevant statement is only a confirmation that this fact is of legally relevant. And if this fact gives rise to several legal consequences, the court decision on establishing the fact can be used in all cases where it is required to confirm this fact, regardless of the specific circumstances that caused the need for its judicial establishment, as well as the parties involved in the case. Therefore, for example, a court decision establishing the fact of a single household of a man and a woman without marriage can be used both for inheritance and for other purposes (confirmation of the right of joint ownership of property acquired during cohabitation, confirmation of the emergence of rights and duties for mutual maintenance, etc.

3. Specificities of the court decision on establishing a fact relevant to the protection of family rights and interests

Another issue that should be underlined regarding the making of a court decision on establishing a fact relevant to the protection of family rights and interests is the limits of the legal force of such a decision.

According to Ya.S. Stutin, the statement about the exclusiveness of the court decision, which established a legal fact, is not refuted by the fact that the court is not bound by this decision when considering a civil case on a dispute of right arising from this fact. This is explained by the fact that during the consideration of a case on establishing a legal fact, the court does not touch upon the legal relations associated with it. In addition, the legal force of the court decision on establishing a legal fact applies to the applicant, but cannot be extended to the other party in the civil dispute between it and the applicant because it did not and could not participate in a separate proceeding when the case on establishing a legal fact was considered. If he/she had participated, then there would be no decision itself, since the court would be obliged to terminate the consideration of the case on establishing a legal fact in the manner of a separate proceeding due to a dispute of right related to this fact (Shtutin, 1956).

In this regard, S.V. Byrdina argues that considering the decision of the court on establishing the fact as a court decision, the legal force thereof may be changed by the decision of the same or any other court in the consideration of another case in the course of a claim, we come to the conclusion that one of the basic principles of justice, that is, the principle of objective truth, is not fulfilled when considering cases on establishing facts (Byrdina, 1954).

R.F. Kallistratova adds the following to the above arguments: the supporters of the first perspective argue about the possibility of verification of the fact established in the court decision in the course of a claim, but they say nothing about how the results of such verification should find external expression. Therefore, the court decision on establishing a legally relevant fact shall be irrefutable, exclusive and binding in full (Kallistratova, 1958).

In this discussion we advocate the latter perspective and, along with P.F. Eliseikin's opinion (Eliseikin, 1973), argue: the legal force of a court decision made in cases on establishing facts relevant to the protection of family rights and interests, according to its objective limits, extends to the fact, the presence or absence thereof the court established during the consideration of the case. Therefore, the conclusions of the court on this fact, enshrined in the court decision, have prejudicial value for other cases, including the cases of lawsuit proceedings.

It should be noted that the court's decision in cases on establishing facts relevant to the protection of family rights and interests comes into force according to the general rules specified in Article 223 of the Civil Procedure Code of Ukraine, namely: after the expiration of the deadline for filing an appeal, if the appeal has not been filed. If an appeal is filed, the decision, if not overruled, comes into force after the case is considered by the court of appeal.

After the court decision on establishing facts relevant to the protection of family rights and interests enters into force, it is subject to execution.

According to H.L. Osokina, court decisions in cases of separate proceedings due to their stating nature do not require the issuance of a writ of execution, but are implemented by sending a copy of such a decision, which has entered into force, to the body in which the fact established by the court is subject to state registration, and (or) is the ground for issuing the relevant document (Osokina, 2004).

In connection with the above specificities of implementation of court decisions in cases on establishing legally relevant facts, some scholars emphasise that these court decisions do not have a feature of enforceability.

For example, H.K. Kriuchkov argues that the court issues to the applicant not a writ

of execution, but a copy of the decision, which the applicant submits to the relevant authority competent to resolve issues regarding the applicant's rights arising from the legal fact established by the court (Kriuchkov, 1956). A similar position is advocated by P.F. Eliseikin (Eliseikin, 1973).

Regarding the specifics of the implementation of court decisions on establishing legally relevant facts, S.Ya. Fursa writes: 'Such decisions are characterised by binding nature and are implemented outside the stage of compulsory judicial enforcement. The implementation of decisions in cases of this category by the relevant authorities implies indirect coercion, which differs from the direct coercion for decisions on prescribing the state bodies and notaries to be liable in case of their unlawful refusal to take the necessary actions' (Fursa, 1997).

On the contrary, S. Rakhmonov emphasises that the enforceability of court decisions should be understood not only as the possibility of direct coercive influence on the obliged person, but also the possibility of any implementation of the decision to exercise the rights of parties concerned (Rakhmonov, 1982). One cannot but agree with this.

It should be noted that most of the decisions made in such cases establish the facts subject to state registration in the Civil Registry Offices. For example, these are decisions to establish: the facts of registration of marriage, divorce, adoption; the fact of paternity (maternity); the fact of kinship between individuals; the fact of birth of a person at a certain time.

According to parts 1-3 of Article 9 of the Law of Ukraine 'On the State Civil Registry Office' (Law of Ukraine On The State Civil Registry Office, 2010), the state civil registry is performed in order to ensure the exercise of the rights of an individual and official recognition and confirmation by the state of the facts of birth of an individual and his/her origin, marriage, divorce, change of name, death. The state civil registry is performed by drawing up the civil registry, that is, documents of the State Civil Registry Office, which contain personal information about the person and confirm the fact of state registration of the civil registry.

The procedure for making amendments to the civil registry is regulated by the Rules for making amendments to civil registry, their renewal and cancellation, approved by the Order of the Ministry of Justice of Ukraine No. 96/5 of January 12, 2011 (Order of the Ministry of Justice of Ukraine On the approval of the Rules for making changes to the civil registry, its renewal and annulment, 2011).

On the basis of the court decision to make changes, additions or corrections to the civil registry, the relevant changes are made, which are specified in the court decision. In particular, on the basis of court decisions on establishing the facts of registration of marriage, divorce, adoption, paternity (maternity), kinship between individuals, birth of a person at a certain time, appropriate changes shall be made to the civil registry of birth, marriage and divorce.

In case of submission to the Department of the State Civil Registry Office of a foreign court decision on amendments, renewal, cancellation of the civil registry, the issue of its implementation is resolved in accordance with the current legislation of Ukraine and allowing for the requirements of international treaties of Ukraine on the provision of legal assistance, consented by the Verkhovna Rada of Ukraine as binding.

In the event that the civil registry subject to be amended in connection with establishing the facts of registration of marriage, divorce, adoption, paternity (maternity), kinship between individuals, birth of a person at a certain time, as well as supplementing and correcting the information contained therein was drawn up by the competent authority of a foreign state with which Ukraine has not concluded an agreement on legal assistance and legal relations in civil and family matters, or if the legislation of a foreign state establishes a different procedure for making changes from that provided by the legislation of Ukraine, or if it is impossible to send it by the authorities of a foreign state (natural disaster, military actions, etc.), which is confirmed by the relevant documents, the civil registry is preliminary renewed by the State Civil Registry Office at the applicant's place of residence. The competent authority of the foreign state shall be notified of the renewal of the civil registry and the relevant changes to it (Order of the Ministry of Justice of Ukraine On the approval of the Rules for to the civil registry, its renewal and annulment, 2011).

In accordance with paragraph 2.22 of the Rules for making changes to the civil registry, its renewal and cancellation, after making amendments to the civil registry, the applicant is reissued or sent for delivery to the Civil Registry Office at his/her place of residence a certificate of state civil registry. The certificate is stamped 'Repeatedly'. The State Registration Certificate submitted by the applicant for amendments shall be cancelled and destroyed in accordance with the established procedure.

A different enforcement procedure is provided for court decisions on establishing the fact of a single household of a man and a woman without marriage. This fact is not subject to

state registration, and therefore a copy of such decision shall be submitted by the applicant and other parties concerned to the relevant authority in order to obtain the desired legal result (for example, to a notary to confirm the right to inheritance in the fourth line of heirs by law).

4. Conclusions

The court decision on establishing a fact relevant to the protection of family rights and interests has prejudicial value not only within the specific purpose established by court, but also in all other cases where it is required to confirm the relevant fact, regardless of the specific circumstances that caused the need to establish it in court, as well as the parties involved in the case.

The legal force of a court decision made in cases on establishing facts relevant to the protection of family rights and interests, according to its objective limits, extends to the fact, the presence or absence thereof the court established during the consideration of the case. Therefore, the conclusions of the court on this fact, enshrined in the court decision, have prejudicial value for other cases, including the cases of lawsuit proceedings.

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ОСОБЛИВОСТІ СУДОВОГО РОЗГЛЯДУ СПРАВ ПРО ВСТАНОВЛЕННЯ ФАКТІВ, ЩО МАЮТЬ ЗНАЧЕННЯ ДЛЯ ОХОРОНИ СІМЕЙНИХ ПРАВ ТА ІНТЕРЕСІВ

Анотація. ***Мета.*** Метою статті є з'ясування особливостей судового розгляду справ про встановлення фактів, що мають значення для охорони сімейних прав та інтересів. ***Результати.*** Розгляд справи про встановлення фактів, що мають значення для охорони сімейних прав та інтересів, по суті завершується додатковими поясненнями осіб, які беруть участь у справі, вислухавши які, суд постановляє ухвалу про закінчення з'ясування обставин справи та перевірки їх доказами і переходить до судових дебатів. На підставі рішення суду про внесення змін, доповнень або виправлень в актові записи цивільного стану вносяться відповідні зміни, які зазначені в рішенні суду. Зокрема, на підставі рішень суду про встановлення фактів реєстрації шлюбу, розірвання шлюбу, усиновлення, батьківства (материнства), родинних відносин між фізичними особами, народження особи в певний час в актові записи про народження, про реєстрацію та розірвання шлюбу вносяться відповідні зміни. У разі подання до відділу державної реєстрації актів цивільного стану рішення іноземного суду про внесення змін, поновлення, анулювання актових записів цивільного стану питання про його виконання вирішується згідно з чинним законодавством України та з урахуванням вимог міжнародних договорів України про надання правової допомоги, згода на обов'язковість яких надана Верховною Радою України. ***Висновки.*** Зроблено висновок, що рішення суду про встановлення факту, що має значення для охорони сімейних прав та інтересів, має преюдиціальне значення не тільки у межах встановленої судом конкретної мети, але й в усіх інших випадках, коли вимагається підтвердити відповідний факт, незалежно від того, якими конкретними обставинами була викликана необхідність його встановлення в судовому порядку, а також суб'єктного складу осіб, які беруть участь у справі. Законна сила рішення суду, ухваленого у справах про встановлення фактів, що мають значення для охорони сімейних прав та інтересів, за своїми об'єктивними межами розповсюджується на факт, наявність чи відсутність якого суд встановив під час розгляду даної справи. Звідси слідує, що висновки суду щодо даного факту, закріплені у судовому рішенні, мають преюдиціальне значення для інших справ, у тому числі і справ позовного провадження.

Ключові слова: рішення суду, сім'я, чоловіка, жінка, шлюб, державна реєстрація.

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FOREIGN EXPERIENCE IN ADMINISTRATIVE AND LEGAL FRAMEWORK FOR NOTARIAL SECRECY AND ITS POTENTIAL APPLICATION IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyze the foreign experience of administrative and legal provision of notarial secrecy and the possibility of its use in Ukraine. ***Results.*** The relevance of the article is that the development of a democratic and legal state requires awareness of the peculiarities and features of legal institutions, which have been forming at various stages of society's development. The use of the legal experience of foreign countries enables to improve the regulatory mechanism for certain legal relations. Accordingly, the notarial system in Ukraine, in particular its constituent parts, cannot progress in isolation and should follow the general trends of its development in the European notary system. The Latin notarial system includes more than fifty countries that are united in the International Union of Latin Notaries, which is an international non-governmental organisation created to promote, coordinate and develop notarial activity in the world. It is emphasised that French notaries are lawyers of wide specialisation, and they have a monopoly on the execution of certain acts. These include acts of sale of real estate, division of property upon divorce, inheritance and donation, marriage contracts. In addition, one of the most important functions of notaries in France is consulting in the field of taxation. When clients contact them on these issues, they comprehensively analyse the situation and try to find the best options for its solution in full compliance with French law. ***Conclusions.*** It is clarified that the legislative ambiguity in the United States regarding the regulatory mechanism for notarial activities does not allow us to clearly trace the preservation of notarial secrecy. However, it is certain that this shall be required, as it fully ensures the rights of a person applying for a notarial act. It is concluded that the Anglo-American type of notary organisation is characterised by provisions based on legal customs. Notaries of this legal family mostly perform actions to confirm certain facts (for example, dates), or to store original documents, at the request and consent of the parties concerned. The competence of notaries includes only the certification of documents and signatures. The Anglo-Saxon (Anglo-American) type of notary is characterised by being based on precedents formed by legal practice, and not on codified legal regulations, as well as provides for the possibility of using any evidence.

Key words: notarial secrecy, legislation, notary, notaries, notarial acts.

1. Introduction

A democratic and legal state cannot develop without understanding the peculiarities and features of legal institutions, which have been forming at different stages of the development of society. The use of legal experience of foreign countries enables to improve the regulatory mechanism for certain legal relations. Accordingly, the notarial system in Ukraine, including its components, cannot develop in isolation and should follow the general trends of the development of the European notary system.

The Latin notarial system includes more than fifty countries that are united in the

International Union of Latin Notaries, which is an international non-governmental organisation created to promote, coordinate and develop notarial activity in the world.

The purpose of the article is to analyze the foreign experience of administrative and legal provision of notarial secrecy and the possibility of its use in Ukraine.

2. Administrative and legal regulation of notary activities in Italy, Germany and France

The country with the most effective notarial system is Italy. In essence, the activity of notaries in Italy is to interpret the will of the parties when they intend to draw up a contract in accordance with the law and relevant provisions, which significantly reduces legal risks (Le funzioni del Notaio, 2017). Italy has one of the oldest notary laws in force ("legge notarile", 1913), according to which a notary is an official who performs the functions of accepting or issuing documents. In this regard, the role of documenting and certifying documents performed by the notary is extremely important, thereby protecting the public trust, accurately representing the will of the parties, showing confidence in what has been said and done in his/her presence, reproducing the full identity of what is written in the document (Il ruolo del notaio in Italia e la differenza con l'Inghilterra, 2017).

A notary in Italy is an official authorised by the Italian State to register all types of contracts concluded between legal entities and individuals and to certify the last will of individuals, giving these acts the status of an official document. A notary operates in the field of family legal relations; real estate (purchase and sale of houses and apartments, offices, land, warehouses, workshops, donations, division, mortgage, etc;) establishment and changes in the company's charter (transition to private or corporate form, establishment and closure of firms, amendments to the charter, assignment and lease of the company, etc.) The competence of Italian notaries is subject to strict checks by the state, which contributes to the security of its activities in relation to residents and non-residents of the country (Notarius v Italii – osobennosti professii, 2020).

Italian legislation does not contain a concept of "notarial secrecy". Instead, the Code of Professional Ethics of the notary contains a paragraph entitled "On secrecy", paragraphs 38-39 of which oblige the notary to respect "professional secrecy" in the course of his/her activities, as well as to take all possible actions to preserve it (*Consiglio Nazionale del Notariato, 2008*).

The Spanish legislation pays special attention to the control of compliance with the requirements for admission to the profession of notary. This is due to the fact that Spanish notaries are characterised as "high class" lawyers. They perform purely notarial functions and spend the rest of their time teaching at universities and drafting legislation. The direct drafting of contracts and the provision of additional notarial services is mainly carried out by lawyers. In this regard, Spain has relatively high requirements for candidates for the position of notary. In addition, they shall pass five exams: civil, commercial, mortgage (real estate transactions), notary, administrative law and procedure, each of which includes both theoretical and practical parts. Upon successful passing of the exams, the candidate is allowed to participate in the competition (Kohutych, 2018, p. 155). The winners of the competition receive a diploma of notary on behalf of the King of Spain and the right to practice notarial activity. Control functions over the proper performance of notaries' duties at the central level are concentrated in the National Council of the Spanish Notary, and at the local level - in the regional notary chambers (Martyniuk, 2015, pp. 99).

The modern notarial system in Germany is also the result of a long development. The notarial system in Germany has been formed for a long time, and its specificity is due to the factors of historical formation of the State. For example, the Left Bank of the Rhine applied the French notary system, in Bavaria it was forbidden to simultaneously hold the positions of a notary and a lawyer, in Prussia notarial acts could be performed by notaries-lawyers and notaries, and in the North and Central German lands only lawyers worked as notaries (Rajman, 2004, pp. 50–56).

The specificity of the German notarial system is the absence of a single regulatory act that would regulate the notarial process and the right of notaries to charge tariffs. In addition to the Federal Notary Regulation, there are many special legal regulations that supplement it. The certification process is regulated by the Law on the Establishment of Mandatory Forms of Documentation and the costs and tariffs by the Law on the Costs and the Voluntary Jurisdiction. Both laws, together with the Federal Regulation on Notaries, define the status of the notary in the general legal system (Ilina, 2013, p. 151).

Not only German citizens can be notaries. Notaries can conclude cooperation agreements with each other, according to which they will perform in the same premises. Profit from such activities is received in equal shares. A novice notary is obliged to work for 5 years in the dis-

trict where he/she first registered, and only after that the district can be changed. Acting notaries have an advantage over candidates for registration in the district, so candidates usually first register in a small settlement, and after 5 years try to change the district (Official website of the Chamber of Notaries of Ukraine, (2018).

A notary in Germany has broad powers: certification of documents, signatures of persons and copies of documents; issue powers of attorney, which are entered into a single register; register newly created legal entities, or make changes to the statutory documents of existing ones; certify the conclusion of a marriage contract; provide legal support for real estate transactions.

France played a significant role in the formation of the notarial system. As for the modern French notarial system, its organisational structure consists of three levels. The first level is the national level, represented by the Superior Council of Notaries of France. The second is regional, represented by the Regional Council of Notaries. The regional level is formed in the same regions where there are regional courts of appeal. And the third level is departmental, which characterised by the Notary Chamber of the Department, established in one or more departments of France. A special feature for all the above structures is that they are professional public associations based on compulsory membership of notaries (Ordinance of France on the status of a notary, 1945).

The French model, on the contrary, provides for the initiative of the notary him/herself from the moment the interested person applies to him/her. The notary and his/her numerous assistants fully take care of all the clients' concerns, starting from collecting the necessary documents, negotiating with other interested parties, drawing up and certifying the document and ending with the registration of the notarial act in the competent authorities. The French model is a conveyor belt with an individual approach, where the notary and the employees of the notary office provide the legal result desired by the client. Naturally, such a "flexible" approach is not without its drawbacks. Ignoring formalism sometimes underestimates the public law component of the notary profession, which can become the basis for a one-sided attitude of the notary to the performance of his/her duties (Ilina, 2013, pp. 148–152).

French notaries are lawyers of wide specialisation, and they have a monopoly on the execution of certain acts. These include acts of sale of real estate, division of property upon divorce, inheritance and donation, marriage contracts. In addition, one of the most important functions of notaries in France is consulting in the field of taxation. When clients contact them on these issues, they comprehensively analyse the situation and try to find the best options for its solution in full compliance with French law.

The participation of the notary, who is a fiduciary of his/her clients, is subject to professional secrecy. This obligation, which applies to him/her in the same way as to any employee of his/her office, concerns the drawing up of acts, as well as the exchange of correspondence or oral confidential information. Any breach of this obligation entails criminal, civil and disciplinary sanctions (Organization and role of notaries in France, 2018, p. 22).

French legislation, in particular Law 2004-130 of February 11, 2004, the Monetary and Financial Code in Article L 561-1 CMF protects the secrecy of legal advice provided by a notary, but obliges notaries to notify the public prosecutor of the Republic of the actions taken if they suspect the criminal origin of the funds, used in transactions of purchase and sale of real estate, enterprises, opening bank accounts, trust management, etc. (Ilieva, 2006, p. 218).

The principles of notarial activities in the countries of the Anglo-Saxon legal system (Great Britain, USA, Australia, Singapore, India, etc.) are quite different. Some scholars separately distinguish several subtypes within this type. For example, H.Yu. Hulievska distinguishes countries in which this system exists in parallel with other legal systems (Argentina, Bahrain, Brunei, Egypt, Cuba, Israel, Denmark, Finland, etc.) (Hulievska, 2004, p. 128).

3. Peculiarities of notarial activity in the countries of the Anglo-Saxon legal system

The main characteristics of the Anglo-Saxon notarial system are: the specifics of the regulatory registration of the notary institution in the respective country; understanding of the definition of "notary"; a list of requirements for applicants for the position of a notary; the procedure for admission to the profession; characteristics of the procedures for performing notarial acts, both general and special; competence of notary bodies (Ilina, 2013, p. 150).

According to R. David and C. Joffre-Spinoza, the United States of America and the United Kingdom are typical representatives of the Anglo-Saxon notarial system (David, Zhoffre-Spinozi, 1999, p. 53).

The peculiarity of the notarial system's organisation in the USA is the absence of a single specialised state legal institution. In general, there is no Federal legislation on notaries in the United States, the main legal aspects of the organisation of notarial activities in the United States are reflected in

the model law of the United States "On Notaries" and in the United States Uniform Law on Notarial Acts, while a specific list of notarial acts, requirements for persons, which intend to perform notarial acts, the legal status of notaries and the peculiarities of the organisation of their activities are regulated by the laws of individual states. This is the reason for the diversity and ambiguity of the notarial institution in the United States (Bondarieva, 2006, p. 153).

Under US law, a notary is any person authorised by the State to perform notarial acts, who exercises his/her or her competence either as the main activity or simultaneously with other types of business activities. In the first case, the notary, as a rule, carries out his/her activities as an employee, and they are aimed at servicing the relevant enterprise or institution. However, even in this case, the notary remains independent in all matters of professional activity and retains the right to perform notarial acts not related to the service of his/her employer in his/her free time. In addition to notaries, powers to perform notarial acts are granted by the laws of certain states to certain officials who can be conditionally divided into two groups: persons whose competence is determined by law and does not require additional confirmation, and persons whose right to perform notarial acts shall be confirmed in each case by local regulations. The first of these groups of officials includes judges, officers of the active military forces of the United States, officers of foreign military forces of the United States, officers of foreign military forces, officials of consular posts of a foreign state in the United States. The second group of persons who have the right to perform notarial acts only if they have a special permit to do so, includes, for example, the head of the federal prison (Bondarieva, 2006, p. 154).

The analysis of the model legislation of the United States allows concluding that the competence of notaries under the United States Model Law on Notaries includes such notarial acts, the performance of which does not require special legal knowledge and special qualifications of the notary: acknowledgement, that is, signing a document in order to give it legal force, jurat, that is, certification of the fact of acceptance of written testimony under oath, affirmation, certification of legal facts, certification of the fidelity of copies of documents, protests of payment documents (Bondarieva, 2006, p. 153–159).

American notaries do not certify the correctness of the facts stated in the document, but only certify the signatures on them. Therefore, such "notarised" documents have no evidentiary value neither in courts nor in state bodies. Such underdevelopment of the notary system, on the one hand, causes a huge burden on the courts, and on the other hand, minimizes state interference in the notary system (Martyniuk, 2015, pp. 99).

Such legislative ambiguity in the United States regarding the regulatory mechanism for notarial activities does not allow us to clearly trace the preservation of notarial secrecy. However, it is certain that this shall be required, as it fully ensures the rights of a person applying for a notarial act.

The organisation of control over notarial activities in Florida is somewhat different from the all-American model. State authorities here are vested with much broader control powers, which is due to the introduction of the civil notary system since 1998 (civil-law notary). Florida notaries have much broader powers than their colleagues from other states: they not only certify signatures on documents, but also provide legal advice, certify the correctness of the document content, execute powers of attorney, etc. (Hulievska, 2004, p. 131).

Relying on the review of the notary system in England, O.O. Vysiekantsev argues (Vysiekanktsev, 2012, p. 412) that notaries can be only persons who have a "certificate of the right to act as a solicitor" or a notarial certificate issued by a state body whose powers include the decision of admission to the performance of notarial acts (Judges of the provincial courts of Canterbury and York). In general, there are three classes of notaries: general notaries ("notaries-scribes"), who have the right to exercise their powers throughout the country, district notaries (solicitors), who have the right to perform notarial acts in the territory of a particular notarial district and church notaries, who work in courts. All court registrars shall be notaries and members of the Ecclesiastical Law Society of England (Bondarieva, 2006, p. 154). Notaries in England and Wales are the third and oldest (notaries began their professional activity in England in 1553) branch of the legal profession, they are the owners of the official seal and documents certified by them have evidentiary value. Notaries in England and Wales are public officials and their duties include the following: preparing and executing private and public authentic acts and legal documents, which are sealed with the notary's signature and official seal and are accepted and recognised throughout the world (The Notaries Society of England and Wales, 2018).

As in the United States, British notaries shall have professional indemnity insurance for the entire period of validity of the certificate of the right to practice notary or solicitor's certificate by concluding insurance contracts

in the amount of at least 100 thousand pounds (Halsbury's Laws of England, 2016, p. 201).

The subject competence of the British notary is determined by its focus on servicing external civil turnover, so the powers of notaries in the UK include the following categories of cases:

drafting and authenticating transactions, including wills, certifying legal facts for their subsequent validity both in the UK and abroad;

certification of authenticity of copies of documents and signature of the person on the document to give them evidentiary value;

keeping records of notarial acts (registers) containing the originals of all certified and authenticated documents; issuing authentic copies of certified and authenticated documents; taking oaths and declarations for further use in court proceedings in the UK and abroad; making protests of bills of exchange; making maritime protests, etc. (Silverman, 2001).

The British notary's competence also includes the certification of copies of documents that are considered by courts and state bodies both in the UK and abroad as original documents; protest of bills of exchange in non-acceptance, certification of non-payment of bills of exchange, preparation of acts of payment (Derhilova, 2017, p. 140).

The basic rules for the performance of notarial acts by British notaries are as follows: prohibition of unjustified refusal to perform a notarial act; the need for fair, adequate remuneration of the notary and the absence of an obligation to act free of charge; impartiality of the notary and prohibition to act in their own interests; impossibility to delegate their powers to another person; the need to act in good faith and in good faith within their own territorial and subject matter competence, etc. (Derhilova, 2017, p. 140).

The procedure for admission to the profession of a notary has certain peculiarities: the professional competence of a candidate for the position of a notary is confirmed by a certificate for the right to carry out the activities of a solicitor or a certificate for notarial practice (Bondarieva, 2006, pp. 153–159).

It is difficult to determine the main aspects of ensuring notarial secrecy in the UK. In general, it should be noted that there is no legislative (statutory) protection of commercial secrets, and, accordingly, there is no clear legal definition of commercial secrets. However, this branch of law, which includes certain elements of regulatory mechanism for real and obligatory rights, has been developing for 150 years on the basis of judicial precedents and was called law of confidence. It regulates, first of all, relations in the field of entrepreneurial activity, but these provisions are also applied to protect state secrets and privacy (Confidential information in the legislation of foreign countries, 2014).

As in the United States, UK notaries are required to have their professional activities insured for the entire period of validity of the certificate by concluding an appropriate insurance contract.

To sum up, it can be stated that the Anglo-American type of notary organisation is characterised by provisions based on legal customs. Notaries of this legal family mostly perform actions to confirm certain facts (for example, dates), or to store original documents, at the request and consent of the parties concerned. The competence of notaries includes only the certification of documents and signatures. The system of the Anglo-American type is characterised by the fact that codified laws are few, the sources of legal norms are mainly precedents formed by legal practice. In order to ensure the basic principle of civil turnover, that is, freedom of transactions, it is possible to use any evidence (Maikut, 2012).

Therefore, the analysis of the above types of notaries reveals that the division of national notaries into Latin notaries and Anglo-Saxon notaries is conditional. There is no universal (single correct) model of both the Latin type notary and the Anglo-Saxon type notary, since they are based on a set of features that distinguish one model of national notary from another model, and, as a rule, are reflected in the sources (forms) of regulatory mechanism for notarial relations in foreign countries.

The rule of notarial secrecy is provided by the legislation of many countries of the world. In particular, according to Art. 23 of the Interim Regulations of the People's Republic of China on Notarization, notaries who perform notarial acts in notary offices are obliged to keep the secrecy of notarial acts. At the conference of national organisations of notaries of the European Union in 1995 in Naples, the Code of Notary Ethics was adopted, which enshrines a set of norms common to all notaries of the European Union. Paragraph 1.2.3 provides that as a fiduciary of his/her clients, the notary is obliged to keep the secrecy of the notarial act in accordance with the applicable national legislation. The obligation to keep the secrecy of notarial acts is imposed not only on the notary, but also on his/her colleagues who work with them in professional partnership, and employees; at the same time, the provisions of the current national legislation shall be observed. Regarding the Code of Ethics, professor H. Schippel argues that without the inclusion of the obligation to keep the secrecy of the notarial act trust between the notary and his/her clients is impossible, and without such trust, in turn, it becomes

impossible for the notary to properly perform his/her official duties of notarisation and advising the participants in legal relations (Shippel', 1997, pp. 11–15).

4. Conclusions

It was concluded that the Anglo-American type of the notarial system's organisation is characterised by provisions based on legal customs. Notaries of this legal family mostly perform actions to confirm certain facts (for example, dates), or to store original documents, at the request and consent of the parties concerned. The competence of notaries includes only the certification of documents and signatures. The Anglo-Saxon (Anglo-American) type of the notarial system is characterised by being based on precedents formed by legal practice, and not on codified legal regulations, as well as provides for the prospect of using any evidence.

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ЗАРУБІЖНИЙ ДОСВІД АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ НОТАРІАЛЬНОЇ ТАЄМНИЦІ ТА МОЖЛИВОСТІ ЙОГО ВИКОРИСТАННЯ В УКРАЇНІ

Анотация. Метою статті є аналіз зарубіжного досвіду адміністративно-правового забезпечення нотаріальної таємниці та можливості його використання в україні. Актуальність статті полягає в тому, що розбудова демократичної та правової держави не може відбуватись без усвідомлення особливостей та ознак правових інститутів, формування яких відбувалось на різних етапах розвитку суспільства. Використання правового досвіду зарубіжних країн дає можливість вдосконалювати регулювання тих чи інших правовідносин. Відповідно, й розвиток нотаріату в Україні, зокрема й його складових частин, не може відбуватись ізольовано та має слідувати загальним тенденціям його розвитку європейської нотаріальної системи. До системи латинського нотаріату входять більше п'ятдесяти країни, які об'єднані у Міжнародний союз латинського нотаріату, який є міжнародною неурядовою організацією, створеною для сприяння, координації й розвитку нотаріальної діяльності у світі. Наголошено, що Французькі нотаріуси – це юристи широкої спеціалізації, причому на оформлення певних актів вони мають монополію. До таких належать акти купівлі-продажу нерухомості, розділу майна при розлученні, успадкування та дарування, шлюбні договори. Крім того, однією з найважливіших функцій нотаріусів у Франції є консультування в області оподаткування. При зверненні до них клієнтів з цих питань вони комплексно аналізують ситуацію і намагаються знайти найоптимальніші варіанти її рішення в повній відповідності з французьким законодавством. З'ясовано, що законодавча неоднозначність в США щодо регулювання нотаріальної діяльності не дозволяє однозначно простежити забезпечення збереження нотаріальної таємниці. Проте певно що, така вимога повинна висуватися, оскільки це повною мірою забезпечує права людини яка звертається за вчиненням нотаріальної дії. Зроблено висновок, що для англо-американського типу організації нотаріату властиві положення, засновані на правових звичаях. Нотаріуси цієї правової сім'ї здебільшого виконують дії щодо підтвердження окремих фактів (наприклад, дати) або зберігання оригіналів документів, за бажанням і згодою зацікавлених осіб. Нотаріус наділений повноваженнями лише щодо посвідчення документів і підписів. Для англосаксонського (англо-американського) типу нотаріату характерним є те, що вона заснована на прецедентах, утворених юридичною практикою, а не на кодифікованих нормативно-правових актах, також передбачає можливість користуватися будь-якими доказами.

Ключові слова: нотаріальна таємниця, законодавство, нотаріат, нотаріуси, нотаріальні дії, нотаріальні дії.

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ISSUES OF THE COLLECTIVE WILL OF LEGAL ENTITIES

Abstract. The ***article aims*** to determine the issues of collective freedom of will of legal entities. The task of research is to find out about the functioning mechanism of the collective will of legal entities and its differentiation from the will of employees and authorised representatives. ***Research methods.*** General scientific and unique scientific methods of cognition are applied: logical (deduction and induction, analysis and synthesis, abstraction and comparison); hermeneutic (regarding the understanding of scientific texts); formal-dogmatic. ***Results.*** In contrast to psychology and philosophy, the study of collective will in law has yet to become widespread. The article analyses signs of a legal entity to show that all of them are related to the collective will of a legal entity. The paper shows that legal entities have a particular form of free will, which is displayed in signs of a legal entity: 1) organisational unity; 2) registration by the requirements of current legislation; 3) availability of civil legal capacity and legal capacity; 4) the opportunity to act as a plaintiff and a defendant in court; 5) property separation of a legal entity; 6) the independent civil liability of a legal entity; 7) participation in civil circulation on one's behalf. ***Conclusions***. The freedom of will of a legal entity is the unification of the will of employees (representatives, founders, members, participants) of a legal entity to represent its interests, make and implement decisions on its behalf regarding participation in civil legal relations by taking actions or inaction, ordering sub-objective civil rights and the performance of duties, as well as the possibility to bear legal responsibility for them. A legal entity's collective will consists of individuals' individual will (representatives, employees, founders, members, and participants). The individual will of a person is absorbed by the collective will of a legal entity when performing official duties and representing interests. Such an individual will be exercised in the interests of a legal entity, in good faith and reasonably. All signs of a legal entity are related to its collective will.

Key words: free will, legal entities, collective will, the autonomy of will, signs of a legal entity, civil legal capacity, legal capacity.

1. Introduction

When studying the issue of free will, jurisprudence, psychology, and philosophy focus on its personification and connection with a specific physical person. Of course, free will is inherent in natural persons and manifests itself during the realisation of their rights and obligations by them. Freedom of will is the basis for all branches of law. Without freedom of will, the principles of freedom of contract, justice, voluntariness, etc., cannot exist. Even public law cannot be imagined without free will: criminal law is directly related to issues of intent and awareness of one's actions, international law is the embodiment of the public will of the state, which is a manifestation of the individual will of citizens by delegating the right to represent the interests of society. However, there is an urgent question about the functioning mechanism of the collective will of legal entities and its differentiation from the will of employees and authorised representatives. The public will of the state is also an embodiment of freedom of will, which the state implements through its organs. All this leads to the need to define the collective free will of legal entities.

In contrast to psychology and philosophy, the study of collective will in law has yet to become widespread. Research on collective cognition is also surging across cognitive sciences and allied disciplines, motivated in part by global challenges such as the pandemic,

spread of misinformation, and climate change and by the unprecedented rate at which digital networking platforms and social media have transformed communication and collaboration (Bak-Coleman & other, 2021; Marsh & Rajaram, 2019).

2. Theoretical principles of defining legal entities' collective will

A legal entity is an organisation created and registered by the procedure established by law, which is endowed with civil legal capacity and legal capacity, can be a plaintiff and a defendant in court and is created by combining persons and (or) property. (Yanovyts'ka & Kucher, 2014, p. 74). The specificity of a legal entity as a participant in civil legal relations is reflected through its characteristics.

The signs of a legal entity include the following: 1) organisational unity; 2) registration by the requirements of current legislation; 3) availability of civil legal capacity and legal capacity; 4) the opportunity to act as a plaintiff and a defendant in court; 5) property separation of a legal entity; 6) the independent civil liability of a legal entity; 7) participation in civil circulation on one's behalf (Tserkovna, 2016, p. 3).

Each of the above signs is related to the collective will of a legal entity. However, first of all, it is necessary to define the conceptual apparatus.

Will is one of the functions of the human psyche, which consists primarily of self-control, control of one's actions, and conscious regulation of one's behaviour. Will is the absence of restrictions, privilege, freedom, and independence. Will is the right to dispose of something at one's discretion. (Volya, 2018).

Skakun O.F. defines will in the legal sense as a socially determined state of mental regulation of the subject's behaviour based on his desire and ability to consciously choose the goal of activity, ways and means of their achievement. Will in law means: a) manifestation of the will of participants in social relations, which, being regulated by law, acquire the form of legal relations; b) an essential element that determines the essence of this type of law as a fixation of fixed or sanctioned voluntary efforts of the ruling forces, reflected in the constitution, laws, and legal norms. (Skakun, 2001, p. 441).

The signs of a legal entity are related to four concepts that are close in meaning: freedom, will, civil legal capacity and civil capacity. These categories are not identical and require determination.

Freedom in law is the possibility of behaviour not prohibited by law and the absence of coercion, except in cases provided for by law.

Will, in law, is the ability to control one's actions and manifestation from the outside, conscious regulation of one's behaviour, which is not limited to the legally defined possibility of behaviour.

Civil legal capacity is a normatively determined possibility of a person to be the bearer of personal rights and obligations.

Civil capacity is the ability to dispose of one's rights and bear responsibilities.

Thus, these concepts can be divided into active and passive. Freedom and civil legal capacity should be classified as passive because they only allow for specific behaviour and potential participation in legal relations. The will and civil capacity are possibilities for active use in one's rights and opportunities. Will is the active use of freedom; legal capacity is the active use of legal capacity.

In a broad sense, free will is reduced to the answer to whether a person is free to make decisions or whether they are predetermined. Freedom of will in civil law is the ability to consciously, freely and independently make and implement decisions regarding participation in civil legal relations by taking actions or inaction, disposing of subjective civil rights and performing duties, and bearing legal responsibility for them.

3. Interrelationship between freedom of will and individual characteristics of a legal entity

After defining the concept of free will, we can establish its meaning for the characteristics of a legal entity.

Organisational unity can be defined as legal opportunities granted by law within the established corporate and legal forms of existence of a legal entity to determine and develop a system of internal ties of the elements that make up its structure to ensure their unity and the ability to act as a subject of civil relations (Blaschuk, 2005, p. 44). Organisational unity, being one of the main features of a legal entity, is a means of ensuring coordination of the interests of persons included in the construction of the internal organisational unity of a legal entity and interested in assigning the results of the legal entity's activity; determines the order of formation of bodies of a legal entity, their competence mediates the unity of elements that make up the internal structure of organisational ties of a legal entity (Romaniv, 2021, p. 119).

The specificity of a legal entity lies in the fact that it is an association of people, a collective, whose activities aim to achieve a common economic goal. Therefore, thanks to organisational unity, the external expression of the will of a legal entity occurs through an authorised person but on behalf of the company. Today, the concept of the autonomy of the will of a legal entity has yet to receive extensive research.

However, attempts to understand it can still be found in the works of Soviet civilians, in particular, O.O. Krasavchikov.

Registration by the requirements of the law is the second sign of a legal entity. The emergence of a legal entity requires the agreement of the will of several participants in the legal relationship. First, the founders' will is agreed upon, which involves determining the name, organisational and legal form, title, founding documents, roles, rights and obligations, and the internal structure of the future business entity. After it, the free will of the founders must be directed to the submission of documents for the registration of a legal entity. All of the above is an active form of free will because it takes place voluntarily and requires a direct expression of will. If the founder of a legal entity is one person, then he is guided only by his own free will. After submitting registration documents, there is a need to reconcile the will of the founder(s) with the public will of the state. The public will of the state is implemented through a system of bodies in state registration: the Ministry of Justice of Ukraine and other subjects of state registration (On state registration of legal entities, natural persons - entrepreneurs and public formations, 2023, Art. 5). This construction can be depicted as follows: the founder(s) express free will in the founding document by applying for state registration of a legal entity, and the state implements public will through the registration authorities by approving or refusing state registration.

The third sign of a legal entity is the presence of civil legal capacity and legal capacity. The specified categories determine the legal personality of a legal entity as a general prerequisite for participation in civil legal relations. According to its role in the mechanism of legal regulation, such legal personality acts as a means of fixing the possibility of the involvement of a legal entity in civil legal relations - recognition of its ability to be the bearer of personal rights and obligations determines its general legal position, which is established by the norms of law (Artykulenko, 2019, p. 6). I.M. Kucherenko emphasises that civil legal capacity and legal capacity are the main features of a legal entity, which allows us to say that this entity (organisation) is the subject of civil legal relations (Kucherenko, 2011, p. 36).

Civil legal capacity is related to equality before the law and ensures that individuals have equal opportunities to possess rights and responsibilities (de Beco, 2021). V.M. Parasyuk and M.V. Parasyuk noted, 'Unlike natural persons, legal entities are not living beings and therefore do not have a genuine will, but they have a united human will and united human power in a specific direction determined by the purpose of creating a legal entity. As a result, the possibility of being a subject of law is recognised as a legal entity' (Parasyuk & Parasyuk, 2018, p. 140). The civil legal capacity of a legal entity assumes that it a priori possesses certain rights and obligations. Civil legal capacity is a passive property that does not require the expression of free will.

When a legal entity participates in civil legal relations, it realises the collective will due to its civil capacity. This active expression of will is aimed at creating rights and obligations. In this case, there is an association with such a sign of a legal entity as participation in civil circulation in one's name.

Let us consider an example. A legal entity concludes a supply contract signed by the director. In this case, the director expresses the will of the company, but in fact, this transaction is an expression of his own will (he can refuse the agreement) and other employees (lawyers expressed their will due to the content of the contract, accountants – due to financial conditions, etc.). The will of a legal entity combined with the free will of all persons related to the contract's conclusion. This is the collective freedom of will of a legal entity. The specificity of the expression of free will in such legal relations is related to the coordination of the individual will and the will of a particular entity, which carries out the collective will of the economic entity through an authorised person.

Let us consider this statement as an example of a credit contract. The parties' free will is aimed at agreeing, but approval depends on the will of the person making the decision. So, the individual will show the collective will of the financial institution. The contract's conclusion depends on which person will represent the counterparty. Moreover, although de jure, the employer's will prevails over the will of his employee (because the party to the contract is the business entity itself), de facto, the conclusion of the agreement depends on the individual will of the institution's representative.

A person authorised to conclude a contract on behalf of a business entity must act in its interests, realising collective will. However, an authorised person can work in his own interests. For example, when he agrees to issue a loan due to corrupt motivation.

A similar situation arises about the possibility of a legal entity acting as a plaintiff and a defendant in court. The ability to be a plaintiff and a defendant in court is one of the elements of a person's civil legal capacity, which the Civil Code of Ukraine defines (Shyska, 2014). When a legal entity acts as a plaintiff or defendant in court, it represents its

interests, not those of the owner or employees. On behalf of a legal entity, its owner or bodies are authorised by his act by the company's charter or other constituent documents (The Economic Code of Ukraine, 2023, Art. 65). However, a legal entity cannot physically participate in the process and therefore does so through its representatives. A body or a person who, according to the founding documents of a legal entity or the law, acts on its behalf and represents its will. However, such a will is subjectivised through the individual will of the representative who independently decides the judicial process. At the same time, the representative's will is not unlimited because he is obliged to act in the interests of the legal entity, in good faith and reasonably, and not to exceed his powers (The Civil Code of Ukraine, 2023, Art. 92).

S. Rajaram said that myriad factors could determine the influence each can have on the other; for example, the characteristics of the individual in a network on the one hand and the properties of the network on the other hand (Rajaram, 2022). We see that the collective will of a legal entity is the total will of the people who represent it. This is a very complex phenomenon because the will of one team member affects another person's will; the process of transformation and change under the influence of external factors begins and becomes part of the collective will of the legal entity.

The ability to bear legal responsibility as a legal entity was called "delict capacity". Tort obligations were introduced to fulfil the legitimate purpose of protecting property and personal non-property rights and interests of individuals and legal entities, the state and other subjects of civil law, which is manifested by establishing the obligation to compensate property and moral (non-property) damage to a person who violated the prohibitions set by statute (Grunko, 2013, p. 101). In this context, we must clearly distinguish the delict capacity of a legal entity and its representatives as separate participants in legal relations. The legal responsibility of legal entities and their ability to act as plaintiff and defendant in court was investigated in detail by V.D. Prumak in work "Civil-legal liability of legal entities" (Prumak, 2005). Generally, a legal entity exercises a collective will in legal disputes, which combines the will of the legal entity, its representatives and the owner(s). Based on the position of V.V. Reznikova and O.V. Rossylna (Reznikova&Rossylna, 2016, p. 160), it should be noted that the procedural "roles" should be distributed as follows: the legal entity is the plaintiff/defendant / third party, and the representative of the legal entity is not a separate party to the process and must reflect the collective will of the legal entity, which determines the vector of its expression of will.

At the same time, a legal entity indemnifies the damage caused by its employee during the performance of their labour (official) duties, and business associations and cooperatives compensate the damage caused by their participant (member) during the performance of entrepreneurial or other activities on behalf of the company or cooperative (The Civil Code of Ukraine, 2023, Art. 1172). This is confirmed by judicial practice, which links the responsibility of a legal entity for its employee with two conditions: 1) causing damage by the employee during working hours; 2) use of the property of a legal entity in the event of damage by an employee (Majorenko, 2019). At the same time, we proceed from the fact that the guilty person is recognised as a legal entity. That is, it was due to the will of the legal entity that the damage was caused. This construction can be explained as follows: a legal entity voluntarily hires an employee. It gave him an official task and property, so the employee will join the legal entity's collective will (when the employee performs official duties). Of course, the legal entity did not directly task the employee to harm someone. Still, it will create the causal link: if the legal entity had not hired the employee, he would not have caused harm as its employee. Even if the employee voluntarily and intentionally caused damage while performing official duties, at that moment, his individual will be realised in the context of the collective will of the employer. The consequence of such a situation may be regressive compensation to the employer. However, such a relationship will be related to the fact that the employee caused damage to the employer, who compensated for the damage caused by the employee to another person.

4. Conclusions. State of scientific development

The scientific doctrine has studied the concept of free will and the nature of legal entities. However, we cannot find any research about legal entities' collective freedom of will. Among the leading academics who studied these questions, it should be noted L. DeHaven-Smith (Collective Will-Formation: The Missing Dimension in Public Administration), O.Errichiello (Collective Forgiveness), J. Wood (The Collective Will and The Law), Alfred R. Mele (Surrounding Free Will: Philosophy, Psychology, Neuroscience), John Baer, James C. Kaufman and Roy F. Baumeister (Are We Free? Psychology and Free Will),

The issue of the collective freedom of will of a legal entity requires more detailed research, but the following conclusions can now be drawn:

1. The freedom of will of a legal entity is the unification of the will of employees (representatives, founders, members, participants) of a legal entity to represent its interests, make and implement decisions on its behalf regarding participation in civil legal relations, by taking actions or inaction, ordering sub-objective civil rights and the performance of duties, as well as the possibility to bear legal responsibility for them.

2. A legal entity's collective will consists of individuals' individual will (representatives, employees, founders, members, and participants).

3. The individual will of a person is absorbed by the collective will of a legal entity when performing official duties and representing interests. Such individual will can be exercised in the interests of a legal entity, in good faith and reasonably.

4. All signs of a legal entity are related to its collective will.

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ПРОБЛЕМАТИКА КОЛЕКТИВНОЇ ВОЛІ ЮРИДИЧНИХ ОСІБ

Анотація. ***Мета.*** Визначити проблематику колективної свободи волі юридичних осіб. Завданням дослідження є з'ясування механізму функціонування колективної свободи волі юридичних осіб та її відмежування від свободи волі працівників та уповноважених осіб. ***Методи дослідження.*** Застосовуються загальнонаукові та спеціальнонаукові методи пізнання: логічний (дедукція та індукція, аналіз та синтез, абстрагування та порівняння); герменевтичний (щодо розуміння наукових текстів); формально-догматичний. ***Результати.*** На відміну від психології та філософії, вивчення колективної волі в праві ще має набути значного поширення. У статті проаналізовано ознаки юридичної особи та доведено, що всі вони пов'язані із колективною свободою волі юридичної особи. У дослідженні показано, що юридичні особи мають особливу форму свободи волі, яка проявляється в ознаках юридичної особи: 1) організаційна єдність; 2) реєстрація згідно з вимогами чинного законодавства; 3) наявність цивільної правоздатності та дієздатності; 4) можливість виступати позивачем і відповідачем у суді; 5) майнова відокремленість юридичної особи; 6) самостійна цивільно-правова відповідальність юридичної особи; 7) участь у цивільному обороті від свого імені. ***Висновки***. Свобода волі юридичної особи – це об'єднання волі працівників (представників, засновників, членів, учасників) юридичної особи для представлення її інтересів, прийняття та реалізації рішень від її імені щодо участі в цивільних правовідносинах, шляхом вчинення дій або бездіяльності, розпорядження суб'єктивними цивільними правами та виконання обов'язків, а також можливість нести правову відповідальність за них. Колективна воля юридичної особи складається з індивідуальної волі фізичних осіб (представників, працівників, засновників, членів, учасників). Індивідуальна воля фізичної особи поглинається колективною волею юридичної особи при виконанні службових обов'язків та представленні її інтересів. Така індивідуальна воля може реалізовуватись в інтересах юридичної особи, добросовісно і розумно. Всі ознаки юридичної особи пов'язані з її колективною волею.

Ключові слова: свобода волі, юридична особа, колективна воля, автономія волі, ознаки юридичної особи, цивільна правоздатність, дієздатність.

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DESCRIPTION OF THE SYSTEM OF STATE TAX POLICY MAKERS IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to define the concept of system of makers of state tax policy and to determine its main features, as well as to identify a certain system of actors of implementation of state tax policy, relying on the scientific perspectives of experts in administrative law and provisions of current legislation. ***Results.*** The scientific article studies the essence of the category "system", as this enables to determine the totality of makers of tax policy of the Ukrainian State. It is emphasised that the system of makers of state tax policy of Ukraine includes participants of administrative and legal relations, one of which is necessarily a public authority or a legal entity of public or private law, to which the relevant full powers have been delegated. It is proved that the system of makers of state tax policy of Ukraine should be understood as an interrelated, interdependent set of state and public institutions, joint by a common goal of achieving an optimal balance between filling the budget and maintaining an enabling environment for economic growth and increasing public welfare. The author focuses on the fact that the list of makers of state tax policy is not exhaustive, since the scope of functional purpose of each maker of state tax policy is different and differs in the range of relevant full powers. ***Conclusions.*** The key features of the system of makers of state tax policy are identified: 1) the existence of a common goal and objectives of functioning; 2) the elements of the system are interrelated to achieve a common goal, which is reflected in the competence of these actors, prescribed by law; 3) the elements of the system constantly interact; 4) the elements of the system are created in order to perform a separate function of making state tax policy of Ukraine, while in the aggregate they ensure the achievement of the goal of an optimal balance between filling the budget and maintaining an enabling environment for economic growth and increasing public welfare, performing social functions.

Key words: system, system of actors, public administrators, tax legal relations, tax policy, making state tax policy, bodies of general competence, bodies of sectoral competence, bodies of special competence, bodies of subject-matter competence in the field of implementation of state tax policy.

1. Introduction

Positive economic changes in the society are impossible without a well-formulated and balanced state tax policy, which has recently been unsystematic and disordered in our country. These processes are affected by many different factors that directly impede its full implementation. One of such important factors is the institutional aspect. Recently, the institutional component has been in a permanent state. The change of power, reforms and reorientation of the vectors of state development towards European standards of human rights observance in general and in the field of taxation have negatively affected the state of affairs in tax policy, as constant changes and instability in the practice of law application hinder its full implementation. One of the key aspects that requires attention is the definition of makers of state tax policy, since the latter are an important chain in its implementation and, as a consequence, the filling of the budget and the implementation of social functions of the state.

It should be noted that the issues of the institutional component of making state tax policy are under focus by both practitioners and scientists, such as: V.B. Averianov, O.O. Bandurka, O.R. Barin, V.T. Belous, Yu.P. Bytiak, O.O. Bryhinets, V.M. Harashchuk, O.V. Dzhafarova, M.P. Kucheriavenko, S.M. Levchuk, N.A. Litvin, I.S. Myronenko, V.I. Melnyk, R.V. Myroniuk, L.A. Savchenko, V.I. Teremetskyi, S.O. Shatrava and many others. The scientists who have studied this issue from the perspective of public administration are: A.V. Lepekha, O.M. Lypchuk, N.A. Lypovska, O.M. Koretskyi,

L.O. Matveichuk, and others. It is necessary to mark that the mentioned scientists have made a certain contribution to the development of scientific approaches to improving the institutional component of the mechanism for making state tax policy, but given the changes in our country, many issues remain unexplored and require scientific substantiation. This also concerns the issue of determining the system of actors of state tax policy implementation, and the scientific article will focus on this issue.

The purpose of the article is to define the concept of the system of makers of state tax policy and to establish its main features, as well as to identify a certain system of actors of implementation of state tax policy, relying on the scientific perspectives of experts in administrative law and provisions of current legislation.

2. The concept and system of making state tax policy

It is essential to start the research with the definition of the essence of the category "system", as the latter enables to determine the totality of makers of tax policy of the Ukrainian State. The concept of "system" has an ancient Greek origin. The review of various scientific and information sources reveals that the perspectives regarding the understanding of the latter are as follows: 1) order caused by the correct, methodical arrangement and mutual connection of parts of something (Wikipedia, n.d.); 2) elements of a multiplicity should have real connections with each other, otherwise it will be an ordered multiplicity, but not yet a system; systems are characterised by the presence of system-forming, i.e. clearly defined, not just any connections; the properties of the system are non-additive with respect to the properties of its elements and subsystems (Tjuhtin, 1968, pp. 48–49); 3) a totality of subsystems, elements, components that form a new integrity and quality in interaction and interconnections (Melnyk, 2010, p. 78). Therefore, the system in general will be considered as a set of individual components, which in totality and interaction with each other enable to effectively perform the tasks set before the latter. If we are talking about the "system of actors", then accordingly these actors are participants of certain legal relations. Before defining the system of actors of legal relations in the field of making state tax policy, let us consider the latter. Since it is impossible to define the system of the latter without understanding the legal nature of relations, the actors of which are the latter.

According to Wikipedia, tax legal relations are organisational and property social relations between the state/territorial community and taxpayers, as well as other persons regarding the establishment, introduction and collection of tax payments to the state (territorial community), tax control and prosecution for committing a tax offense (Wikipedia, n.d.). In general, without objecting to such an approach, we believe that the latter is too narrow, since it does not cover a whole layer of legal relations that arise in connection with the collection of taxes. The emphasis in the proposed definition is placed on the organisational and property characteristics of the latter, which is debatable, in our opinion. This is only a part of legal relations covered by the proposed definition. For example, the relations arising during the process of making state tax policy have not been covered, as well as the managerial relations regarding the implementation of the latter are not mentioned. In addition, the complex legal nature of the latter should be under focus. Many scholars support the idea of an independent branch of law – tax law, emphasising that the latter regulates tax legal relations by the tax law provisions. We advocate another scientific school, which provides for the division of law into public and private and the absence of complex branches of law. Tax law and, accordingly, tax relations as the basis of the latter is a sub-branch of administrative law, the rules of which regulate the relevant legal relations. In support of our position, T.O. Kolomoiets highlights that legal relations constituting the subject matter of administrative law are formed: 1) in the process of public administration of economic, socio-cultural and administrative-political sectors, as well as in the exercise of full powers by local self-government bodies, public organisations and some other non-governmental institutions – delegated full powers by executive authorities; 2) in the process of activities of executive authorities and local self-government bodies, their officials to ensure the implementation and protection of the rights and freedoms of citizens in the administrative procedure, providing them, as well as legal entities with various administrative (managerial) services; 3) in the process of internal organisation and activity of all state bodies, administrations of state enterprises, institutions and organisations, as well as in connection with public service (civil service or service in local self-government bodies, etc.); 4) exercise of jurisdiction of administrative courts and restoration of violated rights of citizens and other actors of administrative law; 5) as well as during the application of measures of administrative coercion, including administrative liability, against individuals and legal entities (Kolomoiets, 2012, p. 4). Relying on this doctrinal approach, we believe that it is advisable to add to the legal relations that

constitute the subject matter of administrative law the relations related to the formation of public policy in a particular sector of social relations.

Following this perspective, we make an intermediate conclusion that the system of makers of state tax policy of Ukraine includes participants of administrative and legal relations, one of which is necessarily a public authority or a legal entity of public or private law, to which the relevant full powers have been delegated.

In order to form the author's perspective on the "system of makers of state tax policy", we will analyse the existing scientific positions on the understanding of "maker of state policy" in various fields.

For example, V.Ya. Dauhul understands "the system of public administrators in the field of land relations" as the actors of administrative law, endowed with special administrative legal personality, which is determined by the limited nature of opportunities to enjoy rights and perform duties and a specific legislative list of possible areas of activity in the settlement of land relations and is represented by a set of joint, interconnected and interacting with each other public administration bodies, who have legally acquired full powers to make state policy on land relations (Dauhul, 2019, p. 17). Based on the proposed definition, the researcher identifies the categories "public administrator" and "public policy maker". The opinion is interesting, but not without criticism.

Regarding the makers of state customs policy, S.V. Ivanov emphasises that the latter, being endowed with the administrative and legal status inherent in each of them, differ due to this status by their place and role in the regulatory mechanism for customs relations in the state (Ivanov, 2018, p. 404). Analysis of this definition does not fully describe the relevant actors. This definition is general, which makes it difficult to understand the specifics of the "system" of such actors.

According to S.P. Ponomarova, the "system of security and defence sector actors" should be understood as a set of state and non-state bodies, civil society institutions and citizens authorised by law to act in the field of national security, which, within the scope of their full powers, carry out, permanently or temporarily, purposeful and coordinated activities using appropriate forms and methods to ensure the sovereignty and independence, territorial integrity of Ukraine, protection of law and order, protection of human rights and freedoms (Ponomarova, 2018, p. 109). In our opinion, it is quite justified that the proposed definition emphasises the relevant elements that characterise the category "system of actors".

Yu.O. Svitlychna's approach is interesting because of conditional classifying the makers of state policy on foreign investment into two groups: the first group is the actors that exercise the rights and legitimate interests granted to them in the use of foreign investment; the second group is the actors that assist the first group in the implementation of their rights and legitimate interests in the field of investment by creating an appropriate legal framework and consolidating legal instruments for attracting and using foreign investment (Svitlychna, 2018, pp. 33–34). The analysis of this definition reveals that the researcher divides the relevant participants in public legal relations depending on the areas of state policy in this field.

The approach to the definition of the "system of actors of permitting activities in the oil and gas complex", which is a set of joint, interconnected and interacting with each other public administration bodies, which have legally acquired full powers to make the permitting policy in the oil and gas complex, activities thereof are purposeful and relate to ensuring national security and its separate component – environmental safety, seems to be quite interesting (Voronin, 2016, p. 426). The definition proposed by Ya.H. Voronin is quite complete and reveals the content and peculiarities, as well as the scope of responsibility of the latter. Analysis of existing scientific perspectives shows that today no unified definition of the category "state policy maker" exists. The review of the legislation shows that today only the range of actors of the state regional policy is provided by law. For example, according to part 2 of vol. 4 of the Law of Ukraine "On the Basics of the State Regional Policy", the latter include the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, central and local executive authorities, local self-government bodies, their officials (Verkhovna Rada of Ukraine, 2015b).

To sum up, we will propose our approach to the concept and features of the system of makers of state tax policy in Ukraine. The basis of which is O.V. Dzhafarova's approach that one of the principles of the formation of public administration bodies is the principle of institutional division of functions between public administration bodies that provide services and exercise control over the latter, as well as between those involved in policy development and its current administration, etc. (Dzhafarova, 2015, pp. 69–70).

Therefore, the system of makers of state tax policy of Ukraine should be understood as an interrelated, interdependent set of state and public institutions, joint by a common goal of achieving an optimal balance between filling the budget and maintaining an enabling environment for economic growth and increasing public welfare.

The main features of the system of makers of state tax policy include: 1) the existence of a common goal and objectives of functioning; 2) the elements of the system are interrelated to achieve a common goal, which is reflected in the competence of these actors, prescribed by law; 3) the elements of the system constantly interact; 4) the elements of the system are created in order to perform a separate function of making state tax policy of Ukraine, while in the aggregate ensure the achievement of the goal of an optimal balance between filling the budget and maintaining an enabling environment for economic growth and increasing public welfare, performing social functions.

3. The regulatory and legal framework for the implementation of state tax policy

Analysis of the current legislation enables to identify the makers of state tax policy, as follows: 1) the Verkhovna Rada of Ukraine is the maker of such policy; 2) the Cabinet of Ministers of Ukraine, which, in accordance with part 3 of art. 116 of the Constitution of Ukraine, performs the function of ensuring the implementation of financial, pricing, investment and tax policy (Verkhovna Rada of Ukraine, 1996); 3) the Ministry of Finance of Ukraine ensures making of a unified state tax policy (Cabinet of Ministers of Ukraine, 2014b); 4) the State Tax Service of Ukraine is a direct actor of implementation of state tax policy (Cabinet of Ministers of Ukraine, 2014a); 5) local self-government bodies, in terms of making local state tax policy on the establishment of local taxes and fees of clause 24 of art. 26 of the Law of Ukraine "On Local Self-Government" (Verkhovna Rada of Ukraine, 1997); 6) the Bureau of Economic Security of Ukraine, in terms of implementation of policy; 7) military-civilian administrations, in terms of formation and establishment of rates of local taxes and fees in accordance with the Tax Code of Ukraine, if there is no decision of the relevant council on these issues; as well as in terms of implementation, making decisions on granting, in accordance with the law, benefits on payment of local taxes and fees, if there is no decision of the relevant council on these issues (Verkhovna Rada of Ukraine, 2015a; Cabinet of Ministers of Ukraine, 2022); 8) public institutions, in terms of making state tax policy regarding the discussion and examination of draft regulations related to this issue and participation in public councils at the relevant authorities, also the public is the actor of implementation as in the framework of public control reveals the facts of violations in the field of taxation.

The above list of makers of state tax policy is not exhaustive, since the scope of functional purpose of each maker of state tax policy is different and differs in the range of relevant full powers.

In order to form a complete picture of the number of the latter, the classification criterion should be selected to most comprehensively determine the role of each maker of state tax policy.

It should be noted that the most complete list of criteria for classification of public administration bodies in general has been formulated by I.A. Artemenko. For example, the researcher identified the following criteria: a) by functional purpose; b) by the order of creation; c) depending on the presence or absence of full powers; d) depending on the territory of influence; e) according to administrative and procedural legal personality; f) by the actor of formation (the state, territorial community, legal entities and individuals of public and private law); g) by the terms of functioning (permanent and temporary); h) by the range of administrative and procedural relations in which a certain actor participates; i) depending on the procedural form of decision-making and others (Artemenko, 2017). However, among the above criteria for division, a criterion such as the scope and nature of the competence vested in a certain entity to achieve the purpose and functions is absent. Therefore, depending on this criterion, the system of actors of state tax policy implementation is grouped into: 1) bodies *of general competence* for the implementation of state tax policy; 2) bodies *of sectoral competence* in the field of implementation of state tax policy; 3) bodies *of special competence* in the field of implementation of state tax policy; 4) and bodies *of subject-matter competence*, etc.

The bodies of general competence regarding the implementation of state tax policy are the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, military-civilian administrations.

The bodies of sectoral competence are the public administrators, making state policy in a particular sector (industry) in our case, these are the Ministry of Economy of Ukraine, the Ministry of Finance of Ukraine and their territorial units. The bodies of special competence include the State Tax Service of Ukraine,

the Bureau of Economic Security of Ukraine, the State Customs Service, the National Agency for the Prevention of Corruption and other law enforcement bodies. Finally, the bodies of subject-matter competence include territorial bodies of the State Tax Service, which are the bodies of revenues and fees and territorial bodies of the State Customs Service of Ukraine, as well as local governments.

4. Conclusions

To sum up, it should be emphasised that all classification criteria are conditional, but they contribute to the delineation of administrative legal personality of public administration bodies in the implementation of state tax policy, which in general enables to improve the practice of law enforcement in this sector and avoid legal and technical conflicts, etc.

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ХАРАКТЕРИСТИКА СИСТЕМИ СУБ'ЄКТІВ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОДАТКОВОЇ ПОЛІТИКИ В УКРАЇНІ

Анотація. ***Мета.*** Мета роботи полягає в необхідності на підставі наукових позицій учених-адміністративістів і норм чинного законодавства визначити поняття системи суб'єктів формування й реалізації державної податкової політики та з'ясувати її основні ознаки, а також виокремити певну систему суб'єктів реалізації державної податкової політики. ***Результати.*** У статті здійснено науковий пошук щодо визначення сутності категорії «система», оскільки це сприятиме можливості встановити сукупність суб'єктів, які задіяні в реалізації податкової політики Української держави. Наголошено на тому, що система суб'єктів формування й реалізації державної податкової політики України включає в себе учасників адміністративно-правових відносин, одним із яких обов'язково є орган публічної влади або юридична особа публічного чи приватного права, яким були делеговані відповідні повноваження. Доведено, що під системою суб'єктів формування та реалізації державної податкової політики України доцільно розуміти взаємопов'язану, взаємозумовлену сукупність державних і громадських інституцій, які об'єднані спільною метою щодо досягнення оптимального балансу між наповненням бюджету та підтримкою умов економічного зростання й підвищення суспільного добробуту. Акцентовано на тому, що перелік суб'єктів формування та реалізації державної податкової політики не є вичерпним, оскільки обсяг функціонального призначення кожного суб'єкта у формуванні й реалізації державної податкової політики є різним, відрізняється за колом відповідних повноважень. ***Висновки.*** Виокремлено основні ознаки системи суб'єктів формування та реалізації державної податкової політики, зокрема: 1) наявна спільна мета та завдання функціонування; 2) елементи системи взаємопов'язані виконанням спільної мети, що відображається в нормативно закріпленій компетенції цих суб'єктів; 3) елементи системи постійно взаємодіють; 4) елементи системи створюються з метою виконання окремої функції – формування й реалізації державної податкової політики, при цьому вони в сукупності забезпечують досягнення мети її запровадження, а саме оптимального балансу між наповненням бюджету та підтримкою умов економічного зростання й підвищення суспільного добробуту, виконання соціальних функцій.

Ключові слова: система, система суб'єктів, суб'єкти публічної адміністрації, податкові правовідносини, податкова політика, формування та реалізація державної податкової політики, органи загальної компетенції, органи галузевої компетенції, органи спеціальної компетенції, органи предметної компетенції у сфері реалізації державної податкової політики.

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SOME APPROACHES TO ELECTRONIC COURT AS A COMPREHENSIVE WAY OF FAIR AND EFFECTIVE JUSTICE IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyse some approaches of scholars to the electronic court as a comprehensive way of fair and effective justice in Ukraine. ***Results.*** The article analyses some approaches of scholars to the electronic court as a comprehensive way of fair and effective justice in Ukraine. The reform of the judiciary raises many issues related to electronic justice, which will greatly improve the performance of courts, simplify procedures for interaction with other state bodies and citizens, and lead to openness and transparency, will shorten hearings. The main objective of e-justice is to facilitate access for citizens in a more convenient and accessible way. It is underlined that the judiciary, on the way to e-justice, needs a fundamental overhaul of the entire system, which is a major challenge for a state as a legal system. The Council of Europe, in its recommendations to member states on the construction and restructuring of judicial systems and legal information in an economic manner, states that modern information technology has become an indispensable tool in administration of justice and that it thus contributes to the efficient government of the state, which is essential for the normal functioning of democracy. It is revealed that efforts to introduce electronic justice capabilities need to be directed towards improving the internal (case management system) and external (website) court information systems. Furthermore, these efforts should be aimed at increasing interaction with the information systems of other bodies in the field of justice. ***Conclusions.*** The introduction of the electronic court will enable to improve the entire judicial system, to expand the scope of activities not only within the system but also with other state bodies and will lead to openness and transparency and to the accessibility to citizens.

Key words: administrative legal framework, electronic court, efficiency, fairness, justice, courts.

1. Introduction

The reform of the judiciary raises many issues related to electronic justice, which will greatly enhance the work of courts, simplify procedures for interaction with other state bodies and citizens, and lead to openness and transparency, will shorten hearings. The main objective of e-justice is to facilitate access for citizens in a more convenient and accessible way. At the same time, issues of unauthorized access to judicial information, as is the case of law enforcement and other structures, arise which may result in the partial or total loss of such information, such as confidential or secret, and the problem will only deepen with the development of computer technology. The lack of adequate and stable funding prevents the deployment of high technology locally, especially in rural areas where the Internet is not available, and the human factor should be considered, since the courts personnel are mainly over 40 or older persons. All of these factors require further research and a balanced approach to the issue.

The study is based on the works by scientists, such as: B. Averianov, O. Bandurka, O. Bezpalova, O. Bernaziuk, Yu. Bytiak, A. Bryntsev, M. Havryltsiv, V. Halunko, I. Holosnichenko, S. Kivalov, M. Kovaliv, V. Kolpakov, A. Komziuk, A. Kuzmenko, N. Kushakova-Kostytka, A. Kravtsov, N. Lohinova, R. Melnyk, I. Stakhura, A. Shcherbliuk, V. Felik, and others.

The purpose of the article is to analyse some approaches of scholars to the electronic court as a comprehensive way of fair and effective justice in Ukraine.

2. Organisation of courts' performance with regard to the introduction of electronic justice

In the exercise of powers, any state uses information technology. The judicial branch, which is one of the central powers of the state,

should not be excluded. Public policy on "electronic" document flow is aimed at implementing unified public policy on "electronic" document flow; protecting the rights and legitimate interests of "electronic" document flow actors; the legal regulatory framework for technology for processing, creating, transferring, receiving, storing, using and destroying "electronic" documents (Verkhovna Rada of Ukraine, 2003). Partially, we agree with N. Kushakova-Kostytska that the era of "electronic justice" in Ukraine is still a distant prospect, but the first steps in the creation of electronic proceedings have been taken, and we hope that electronic innovations will soon replace the paper-based routine and greatly facilitate citizens' access to court, on the one hand, and make domestic courts less corrupt and more efficient, on the other hand (Kushakova-Kostytska, 2013).

The UN Declaration "Building the Information Society: a global challenge in the new Millennium", proclaims the principles of building the Information Society: 1) the rule of law, accompanied by a supportive, transparent, pro-competitive, technologically neutral and predictable policy and regulatory framework reflecting national realities, is essential for building a people-centred Information Society; 2) the usage and deployment of ICTs should seek to create benefits in all aspects of our daily life; 3) ICT applications are potentially important in government operations and services (United Nations, 2003). Furthermore, these principles are the basis of the Law of Ukraine "On Electronic Trust Services", which states that state regulatory mechanism and administration in the sphere of electronic trust services and electronic identification is governed by the principles of: the rule of law in providing and using electronic trust services and electronic identification; an enabling and competitive environment for the development and operation of the sectors of trust services and electronic identification; free flow of electronic trust services in Ukraine, as well as the possibility of free provision of electronic trust services by providers of trust services located in other states activities thereof meet the requirements of the Law; the protection of the rights and legitimate interests of users of electronic trust services; accessibility and use of electronic trust services for people with disabilities; compliance of e-trust requirements and electronic identification with European and international standards; the interoperability and technological neutrality of national technical solutions, as well as non-discrimination; the protection of personal data processed in electronic trust services and electronic identification (Verkhovna Rada of Ukraine, 2017).

3. Specificities of electronic proceedings

The activities of the judiciary towards electronic justice requires a fundamental overhaul of the entire system, which is a major challenge for a state as a legal system. The Council of Europe, in its recommendations to member states on the construction and restructuring of judicial systems and legal information in an economic manner, states that modern information technology has become an indispensable tool in administration of justice and that it thus contributes to the efficient government of the state, which is essential for the normal functioning of democracy. European states reorganise and replace both court administration and institutional support systems and computerised legal information systems (Zemlytska, 2015). For example, in her study, N. Lohinova argues that e-justice aims at ensuring transparency and accessibility of justice, improving the quality of the work of the courts and significantly saving public funds. The realisation of the "Electronic Court" is one of the areas of increasing the efficiency of justice in Ukraine (Lohinova, 2014). According to A. Bryntsev, the areas of initiating the full electronic proceedings are: 1) a radical reorientation of the entire philosophy of state e-government from the needs of the state apparatus to towards the needs of citizens and business structures; 2) harmonisation of electronic technologies in e-government; 3) access identification (access to information with restricted access and other personalised services should not be linked to the public authority of the information or service provider, but to the person of the citizen or business entity directly concerned by the relevant information or service); 4) fundamental reform of judicial proceedings with a view to increasing the efficiency of the judicial system (the form of electronic proceedings should be the main one and allow the traditional paper form only in exceptional cases and only to a limited extent) (Bryntsev, 2016). We support this perspective and believe that this will solve problems, such as dependence on paperwork, dependence on postal services, about which many questions have been raised recently due to lack of funding, etc.

These issues are highlighted in the Strategy for the development of the judicial system in Ukraine for 2015–2020, which states that information technology is a key tool for improving access to justice, improving the efficiency of the courts and managing court cases. Efforts to introduce electronic justice capabilities need to be directed towards improving the internal (case management system) and external (website) court information systems. Moreover, these efforts should be aimed at increas-

ing interaction with the information systems of other bodies in the field of justice. An important step in this direction will be the reorganisation and consolidation of IP management structures by the outsourcing of most court information services through service contracts. The increased use of electronic justice will enable users to go to court, pay for services, participate in proceedings and receive all relevant documentation by electronic means. In turn, judges will be able to manage their resources effectively and increase their efficiency while balancing work and private life (Council of Judges of Ukraine, 2014).

With the aim of improvement, since 2018 the operation of subsystem "Electronic Court" has been started in test mode started. As it is noted above, all documents should be processed through a single court database. The court will not receive and register the procedural documents sent to the court by the participants in proceedings, will not register and process the procedural documents sent by the participants in proceedings to the court if they are sent other than via electronic addresses (electronic cabinets) established in the Unified Judiciary Informational Telecommunication System. To that end, an instruction on the correct use of the system was developed. In addition, it was noted that under article 6, part 6, of the EPC of Ukraine, lawyers, notaries, judicial experts and state bodies, local self-government bodies, economic entities of the state and municipal sectors of the economy shall register their official e-mail addresses in the Unified Judiciary Informational Telecommunication System (UJITS). Other persons register their official e-mail addresses in the Unified Judiciary Information and Telecommunications System on a voluntary basis (State Judicial Administration of Ukraine, 2018).

With regard to the concept of electronic court, scientists have no unified approach to this issue, in most cases they apply the concepts of "electronic court", "electronic justice". According to O. Bernaziuk, these concepts corelate as follows: "electronic justice" or "electronic proceedings" (used as equivalents) are a comprehensive concept, which means a special form of organisation of judicial power, which is digital-based and aimed at efficiency-enhancing, promptness, accessibility of justice, as well as automation of some internal and external administration processes to ensure the implementation of its primary function – administration of justice based on the rule of law, fairness, openness and transparency, accessibility, etc. Moreover, the researcher argues that the electronic court is an element of the electronic proceedings (justice), which ensures that the case is heard and resolved by means of appropriate information technology. Electronic proceedings (justice) are a unified, coherent and comprehensive information and telecommunication system integrated into the activities of the courts and other judicial bodies, which ensures that the judiciary performs its functions through the use of digital technology, consists of separate elements that can function either independently or in a system with others (Bernaziuk, 2019).

4. Conclusions

Therefore, the introduction of the electronic court will enable to improve the entire judicial system, to expand the scope of activities not only within the system but also with other state bodies and will lead to openness and transparency and to the accessibility to citizens.

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ДЕЯКІ ПІДХОДИ ДО ЕЛЕКТРОННОГО СУДУ ЯК КОМПЛЕКСНОГО СПОСОБУ ЗАБЕЗПЕЧЕННЯ СПРАВЕДЛИВОГО ТА ЕФЕКТИВНОГО ПРАВОСУДДЯ В УКРАЇНІ

Анотація. ***Мета.*** Мета дослідження полягає в тому, щоб проаналізувати деякі підходи науковців до електронного суду як комплексного способу забезпечення справедливого й ефективного правосуддя в Україні. ***Результати.*** У статті проаналізовано деякі підходи науковців до електронного суду як комплексного способу забезпечення справедливого та ефективного правосуддя в Україні. В умовах реформування судової влади виникає багато питань, пов'язаних з електронним правосуддям, що дасть змогу значно підвищити діяльність судів, спростити процедури взаємодії з іншими державними органами та громадянами, приведе до відкритості і прозорості, скоротить час розгляду питань. Основне завдання електронного правосуддя полягає у спрощенні процедур доступу для громадян, становленні правосуддя як більш зручного й доступного. Наголошено на тому, що діяльність судових органів на шляху до електронного правосуддя потребує докорінної перебудови всієї системи, яка є основним викликом у державі, визначає, чи бути їй правовою. Рада Європи у своїх рекомендаціях державам-членам щодо побудови та перебудови судових систем і правової інформації в економічний спосіб вказувала, що сучасні інформаційні технології стали незамінним засобом у сфері здійснення правосуддя, а тому вони сприяють ефективному управлінню державою, що необхідно для нормального функціонування демократії. З'ясовано, що зусилля щодо впровадження можливостей електронного правосуддя необхідно спрямувати на вдосконалення внутрішніх (систем управління судовими справами) і зовнішніх (сайтів) інформаційних систем судів. Також ці зусилля мають бути націлені на підвищення взаємодії з інформаційними системами інших органів у сфері юстиції. ***Висновки.*** Запровадження електронного суду дасть змогу вдосконалити всю суддівську систему, розширити сферу діяльності не тільки всередині системи, а й з іншими державними органами, приведе до відкритості та прозорості, доступності користування громадянами.

Ключові слова: адміністративно-правове забезпечення, електронний суд, ефективність, справедливість, правосуддя, суди.

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CLASSIFICATION OF JUDICIAL PROCEDURES IN ADMINISTRATIVE PROCEEDINGS

Abstract. ***Purpose.*** The purpose of the article is to classify judicial procedures in administrative proceedings according to the selected criteria, allowing for their most essential features. ***Results.*** The scientific approaches to the definition of the essence of judicial procedures in administrative proceedings through the prism of identifying their essential features by means of scientific classification are analysed. The importance of scientific classification in the formation of the author's perspective on the essence of the category "classification of judicial procedures in administrative proceedings" is clarified. The criteria of classification of judicial procedures in administrative proceedings are determined. The author proposes to classify judicial procedures in administrative proceedings according to pre-established, scientifically based classification criteria which indicate the most essential features of both a particular judicial procedure in administrative proceedings and the specific group to which it belongs: the form of administrative proceedings; the type of administrative case within the scope of which judicial procedures are implemented; the participants in the administrative case; the composition of the court that carries out judicial procedures; the procedural stage during which judicial procedures are implemented; the mandatory stage of the administrative procedure; the stage of implementation of the relevant stage of the administrative procedure are chosen to be criteria for classification of judicial procedures in administrative proceedings. ***Conclusions.*** It is concluded that the criteria for classification of judicial procedures in administrative proceedings are as follows: 1) by the form of administrative proceedings, judicial procedures are implemented within them during general action proceedings and simplified action proceedings; 2) depending on the administrative case, judicial procedures can be classified into those that are implemented during consideration of general administrative cases, minor administrative cases, typical administrative cases, exemplary administrative cases, urgent administrative cases, complex administrative cases; 3) depending on the participants in an administrative case, judicial procedures in administrative proceedings are classified into those that are carried out exclusively with the participation of the parties (plaintiff and defendant), with the involvement of representatives of the parties, as a result of the entry into the case of legal successors, with the involvement of third parties and/or their representatives; 4) by the composition of the court, judicial procedures in administrative proceedings are classified into those carried out by a judge alone and a panel of judges; 5) depending on the procedural stage during which the judicial procedures in administrative proceedings are implemented, they can be classified into those that take place at the stage of initiation of an administrative case, preparation of an administrative case for trial, consideration of an administrative case on the merits, settlement of a dispute with the participation of a judge, appeal proceedings, cassation proceedings, review of court decisions on newly discovered or exceptional circumstances, enforcement of court decisions, restoration of lost court proceedings; 6) depending on the mandatory stage of the administrative procedure (the will of the person concerned), judicial procedures are divided into those that are implemented at mandatory stages of the administrative procedure and optional stages of the administrative procedure; 7) depending on the stage of implementation of the relevant stage of the administrative procedure, judicial procedures in administrative proceedings may take place during opening of the case on the merits, clarification of the circumstances of the case and examination of evidence, court debates, adoption of court decisions, etc.

Key words: judicial procedure, administrative proceedings, administrative procedure, administrative trial, administrative case, classification, criterion.

1. Introduction

The complex and multifaceted legal nature of judicial procedures in administrative proceedings is due to a number of factors. Among the latter are unclear legislative references to judicial procedures. For example, the legislator in part 2 of article 1 of the Law of Ukraine "On the Judiciary and the Status of Judges" of June 2, 2016 indicates that judicial power is exercised by judges and, in cases determined by law, by jurors through the administration of justice according to relevant judicial procedures (Verkhovna Rada of Ukraine, 2016). In turn, in the administrative procedure legislation, the judicial procedure can be defined as a separate phase of the procedural stage or a set of certain procedural actions that form it. For example, part 1 of article 185 of the Code of Administrative Procedure of Ukraine as of July 6, 2005 (hereinafter – the CAP of Ukraine) states that the court shall issue a ruling on the dispute settlement procedure with the participation of a judge. In para. 15 of part 1 of article 4 of the CAP of Ukraine the category "procedure" is used to denote the central stage of the administrative procedure: "the decision shall resolve issues related to the procedure of administrative case consideration and other procedural issues". In addition, in a number of provisions of the CAP of Ukraine the category "procedure" is used in relation to certain procedural actions or the consequences that follow them: in part 2 of article 241 of the CAP of Ukraine the legislator uses the term "procedural issues related to the movement of the case in the court of first instance..."; in clause 2 of part 1 of article 266-1 of the CAP of Ukraine – "procedures for liquidation of a bank..."; in clause 2 of part 9 of article 266-1 of the CAP of Ukraine – "procedures for withdrawal of an insolvent bank..."; in part 1 of article 289 of the CAP of Ukraine – "procedures for expulsion or readmission..."; in part 2 of article 321 of the CAP of Ukraine – "procedural issues related to the movement of the case, petitions and statements of the participants in the case..." (Verkhovna Rada of Ukraine, 2005); etc.

Taken together, the above aspects are one of the main reasons for the lack of a unified perspective on the understanding of the essence of the category "judicial procedures" by legal scholars, regardless of their scientific interests. As it is noted above, the essence of judicial procedures can be revealed from both a broad and a narrow perspective. Moreover, the previously proposed approach to understanding the phenomenon under study does not claim to be absolute, but is aimed at deepening its understanding, which will be reflected further. For example, one of the most important factors contributing to the improvement of understanding of the relevant phenomena, especially through the prism of their complex nature and multidimensionality, is their scientific classification. The scientific classification of judicial procedures in administrative proceedings is no exception.

A number of scholars, such as V.M. Bevzenko, M.T. Havryltsiv, M.V. Dzhafarova, M.V. Kovaliv, D.V. Kuznetsov, R.S. Melnyk, V.B. Pchelin, M.I. Smokovych, I.B. Stakhura, Y.I. Tsvirkun, A.O. Chernikova, and others studied the formation of administrative justice, the legal and organisational framework for administrative proceedings, the legal nature of the judicial administrative procedure, the issue of proof in administrative justice, etc. However, the issue of judicial procedures in general and in administrative proceedings in particular remains insufficiently studied. Namely: no unanimous approach to the definition of the category "judicial procedure", identification of their types and features inherent in administrative proceedings exist.

The purpose of the article is to classify judicial procedures in administrative proceedings according to the selected criteria, allowing for their most essential features.

2. Classification of judicial procedures in administrative proceedings depending on the type of proceeding

Any classification is not a simple aggregate of groups of objects and phenomena being studied, but something holistic, which has a number of general properties, specific functions that obey the same laws. That is why the scientific classification is of great importance for theoretical and practical human activity: it enables to group objects, phenomena depending on the most diverse needs of human cognitive activity and thereby provides solutions to various theoretical and practical tasks (Rusetskyi, 2019, pp. 222–223). Classification of a certain phenomenon, activity or process enables to understand their meaning most deeply. At the same time, such classification should be based on the criteria that will most significantly reflect the features of the relevant classification group. After all, the question of the criteria (grounds) of classification is the most important in the problem of constructing a classification of relevant phenomena, since the criterion is an indicator of the theoretical and practical significance of the classification in general, the goals and objectives that are set for it (Pchelina, 2014, p. 267). In this context, we propose to understand the classification of judicial procedures in administrative proceedings according to pre-established, scientifically based classification criteria which indicate the most essential

features of both a particular judicial procedure in administrative proceedings and the specific group to which it belongs.

Therefore, one of the most important criteria for classifying judicial procedures in administrative proceedings is the type of proceedings within which they are implemented. Scientists note that administrative proceedings are a set of procedural actions consistently performed by the competent authority and procedural decisions taken to consider and resolve an administrative case, which ends with the adoption and, where necessary, enforcement of the adopted act (Loiuk, 2018, p. 126). It should be considered that the difference between the types of the same proceedings is in the sequence (manner) of procedural activities. Thus, Y.I. Tsvyrkun argues that the procedural form in administrative proceedings enables to distinguish between different proceedings within the judicial administrative procedure, as well as different types of the same proceedings that differ in procedural manner (Tsvyrkun, 2019). Therefore, when determining the first criterion of classification of judicial procedures in administrative proceedings, it is more correct to designate it as a form of administrative proceedings.

The analysis of the procedural legislation enables M.I. Smokovych and V.M. Bevzenko to conclude that the forms of administrative proceedings should be grouped into: general action proceedings (articles 12, 257, 264, 265, 267 of the CAP of Ukraine); simplified action proceedings (articles 12, 257–263 of the CAP of Ukraine); court hearing (articles 192–256 of the CAP of Ukraine); written proceedings (paragraph 10 of Part 1 of Section 4, part 9 of article 205, articles 262, 263 of the CAP of Ukraine); participation in the court hearing by videoconference (article 195 of the CAP of Ukraine) (Smokovych, Bevzenko, 2021, p. 224). In general, we agree with the position of the above scientists, but it should be noted that this list of forms of administrative proceedings, in our opinion, requires some clarification. In particular, as follows from its analysis, along with the forms of administrative proceedings, it also contains certain stages of the administrative procedure, as well as possible forms of their implementation. In this case, the court hearing and the possibility of participation in it via videoconference are considered. According to article 192 of the CAP of Ukraine the case is considered in court. In this case, it is actually about the central stage of the administrative procedure – consideration of the case on the merits, subject to Chapter 6 of the CAP of Ukraine (Verkhovna Rada of Ukraine, 2005). At this stage, as follows from the analysis of article 195 of the CAP of Ukraine, individual participants in the case may participate in the videoconference. Therefore, this rule states that the parties to the case have the right to participate in the court hearing via videoconference outside the court premises, provided that the court has the appropriate technical capabilities, which the court indicates in the decision to open the proceedings, unless the appearance of this participant in the court hearing is recognised by the court as mandatory (Verkhovna Rada of Ukraine, 2005).

Relying on the review of the above positions, we argue that the forms of administrative proceedings are general or simplified proceedings. Such conclusion corresponds to the requirements of the current procedural legislation. In particular, article 12 of the CAP of Ukraine stipulates that administrative proceedings are subject to the rules provided by the CAP of Ukraine, in the manner of action proceedings (general or simplified). Moreover, simplified action proceedings are intended for consideration of cases of insignificant complexity and other cases for which the priority is a quick resolution of the case. In turn, the general action proceedings are intended for consideration of cases that, due to complexity or other circumstances, are inappropriate to be considered in simplified action proceedings (Yakovets, 2006). Therefore, according to a criterion such as the form of administrative proceedings, judicial procedures within them should be divided into those that are implemented within the scope of general or simplified action proceedings.

Therefore, judicial procedures in administrative proceedings can be implemented in different ways, allowing for the specifics of the administrative case being considered. Firstly, so-called general administrative cases should be noted, during the consideration of which the administrative court judicial procedures are implemented according to the general rules within the relevant court proceedings. Secondly, judicial procedures take place during the consideration of certain categories of administrative cases. Such administrative cases can be named due to the analysis of the provisions of article 4, chapter 10 "Consideration of cases according to the rules of simplified action proceedings" and chapter 11 "Specificities of action proceedings in certain categories of administrative cases" of the CAP of Ukraine: a minor case (an administrative case of insignificant complexity); typical administrative cases; exemplary administrative case; urgent administrative cases; complex administrative cases, an exhaustive list of which is given in articles 264–267 of the CAP of Ukraine (Verkhovna Rada of Ukraine, 2005).

Accordingly, judicial procedures in administrative proceedings can be implemented depending on the type of administrative case considered by the relevant administrative court: general administrative cases, minor cases, typical administrative cases, exemplary administrative cases, urgent and complex administrative cases. In each of the above-mentioned types of administrative cases, judicial procedures within administrative proceedings will find certain specificities of their implementation, which can be identified in a number of factors: the procedure for applying to an administrative court; terms of such application; the participants in an administrative case; the mandatory nature of their participation; court decisions that may be made; etc.

3. Classification of judicial procedures in administrative proceedings depending on the participants

In addition, judicial procedures in administrative proceedings can be classified depending on a criterion of the participants in the judicial process. This criterion of classification of judicial procedures in administrative proceedings requires to emphasise the fundamental difference between participants in administrative procedure and actors of administrative procedural relations. In particular, studying the essence and features of the actors of administrative procedural relations, V.B. Pchelin notes that the concept of "actors of administrative procedural legal relations" is broader than the concept of "participants in administrative procedure", since, in addition to such participants, it also includes the administrative court (Pchelin, 2015, p. 180). Moreover, the professional literature states that the names of the participants in the trial are reserved for them regardless of the stage of the trial. However, at the stage of enforcement of court decisions in administrative cases, there are such participants as the debt collector and the debtor. A person who submits an application to the court, for example, a plaintiff who requests the recusal of a judge, is called an applicant. Although it is not provided by the CAP of Ukraine, in practice there are cases when participants in the case – plaintiff or defendant – depending on the stage of the process are disclosed in court decisions as "appellant" (Ruling of the Kyiv Administrative Court of Appeal of April 2, 2018 in case № 826/15436/17) or "cassator" (Ruling of the Supreme Court composed of the panel of judges of the Administrative Court of Cassation of January 10, 2018 in case № 826/18378/16) (Yasynka, 2018, p. 77).

As for the actors of administrative procedural relations, in addition to the court, they may also include persons who are not directly related to the procedural activity but provide its support in certain areas. For example, these may be: law enforcement bodies; the High Qualification Commission of Judges of Ukraine; the National School of Judges of Ukraine; judicial self-government bodies; the State Judicial Administration of Ukraine; the court apparatus and its separate structural units (Pchelin, 2017, p. 211). As a criterion for classification of judicial procedures in administrative proceedings, we have chosen the participants in the judicial process, and not the actors of administrative procedural relations, since the activities of the latter may not relate to such procedures at all, but be aimed solely at the organisational and legal aspects of such proceedings. In view of this, we consider it necessary to narrow this criterion even further and limit ourselves to mentioning only the participants in the case, who compose the participants in the trial. In this case, other participants in the trial, such as an assistant judge, a secretary of the court session, a court administrator, a witness, an expert, a legal expert, a translator, a specialist, are excluded (part 1 of article 61 of the CAP of Ukraine (Verkhovna Rada of Ukraine, 2005)). In this case, by the participants in the case, judicial procedures in administrative proceedings can be classified into those that are carried out: exclusively with the participation of the parties (plaintiff and defendant); with the involvement of representatives of the parties; as a result of the entry into the case of legal successors; with the involvement of third parties and/or their representatives.

With regard to an administrative court itself as the actor of administrative procedural legal relations, its composition should be a separate criterion for classification of judicial procedures in administrative proceedings. The analysis of para. 4 of part 1 of article 4 of the CAP of Ukraine reveals that according to the legislator, a court is a judge of an administrative court, who considers and decides an administrative case individually or a panel of judges (Verkhovna Rada of Ukraine, 2005). Consideration and resolution of an administrative case by a judge individually or by a panel of judges entails certain peculiarities of judicial procedures in administrative proceedings, which will have its impact on the implementation of certain stages of the administrative procedure, as well as on the implementation of certain stages and the performance of relevant procedural actions.

Another important criterion for classification of judicial procedures in administrative proceedings of Ukraine should be the stage of the administrative procedure within which they find their manifestation. From the

perspective of administrative procedure, a procedural stage is a set of homogeneous procedural actions of participants in administrative procedural legal relations, which are carried out within a relatively defined period of time in order to achieve a single specific procedural goal (Komziuk, Bevzenko, Melnyk, 2007, pp. 523–524). According to the professional literature, the entire set of procedural actions taken in connection with the consideration and resolution of a public law dispute (administrative case) can be represented by the following stages of the administrative procedure (procedural stages): initiation of an administrative case (opening of proceedings in an administrative case); preparatory proceedings (preparation of an administrative case for trial); settlement of a dispute with the participation of a judge; consideration of an administrative case on the merits; appeal proceedings; cassation proceedings; review of court decisions due to newly discovered or exceptional circumstances; enforcement proceedings (enforcement of court decisions); restoration of lost court proceedings (Smokovych, Bevzenko, 2021, p. 181).

Furthermore, the stages of administrative procedure can be considered allowing for their occurrence due to the will of the person concerned. In this case, these are mandatory and optional stages of administrative procedure and, accordingly, the criterion of classification of judicial procedures in administrative proceedings. For example, scientists understand mandatory stages of administrative procedure as stages that must necessarily precede the adoption of a court decision (resolution), which resolves the requirements of an administrative action (Pchelin, 2017, p. 194), and optional stages as those that arise solely by the will of the participants in such a process and in the absence of such will may not arise at all. These stages are carried out only when necessary due to the circumstances of a particular administrative case. The stages that are completely dependent on the will, initiative of the participants in the process and, as a result, may or may not become the subject matter of consideration by a higher instance cannot be considered mandatory (Komziuk, Bevzenko, Melnyk, 2007, p. 57). These stages of the administrative procedure are characterised by a significant number of features related to the implementation of the relevant judicial procedures within them.

4. Conclusions

Therefore, one of the most important and paramount aspects of a comprehensive understanding of both theoretical and practical aspects of judicial procedures in administrative proceedings is their scientific classification. They are classified according to pre-established, scientifically based classification criteria which indicate the most essential features of both a particular judicial procedure in administrative proceedings and the specific group to which it belongs. The criteria for classification of judicial procedures in administrative proceedings are as follows:

1) by the form of administrative proceedings, judicial procedures are implemented within it during general action proceedings and simplified action proceedings;

2) depending on the administrative case, judicial procedures can be classified into those that are implemented during consideration of general administrative cases, minor administrative cases, typical administrative cases, exemplary administrative cases, urgent administrative cases, complex administrative cases;

3) depending on the participants in an administrative case, judicial procedures in administrative proceedings are classified into those that are carried out exclusively with the participation of the parties (plaintiff and defendant), with the involvement of representatives of the parties, as a result of the entry into the case of legal successors, with the involvement of third parties and/or their representatives;

4) by the composition of the court, judicial procedures in administrative proceedings are classified into those carried out by a judge alone and a panel of judges;

5) depending on the procedural stage during which the judicial procedures in administrative proceedings are implemented, they can be classified into those that take place at the stage of initiation of an administrative case, preparation of an administrative case for trial, consideration of an administrative case on the merits, settlement of a dispute with the participation of a judge, appeal proceedings, cassation proceedings, review of court decisions on newly discovered or exceptional circumstances, enforcement of court decisions, restoration of lost court proceedings;

6) depending on the mandatory stage of the administrative procedure (the will of the person concerned), judicial procedures are divided into those that are implemented at mandatory stages of the administrative procedure and optional stages of the administrative procedure;

7) depending on the stage of implementation of the relevant stage of the administrative procedure, judicial procedures in administrative proceedings may take place during opening of the case on the merits, clarification of the circumstances of the case and examination of evidence, court debates, adoption of court decisions, etc.

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КЛАСИФІКАЦІЯ СУДОВИХ ПРОЦЕДУР В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ

Анотація. ***Мета.*** Метою дослідження є здійснення класифікації судових процедур в адміністративному судочинстві за виокремленими критеріями з урахуванням їхніх найсуттєвіших ознак. ***Результати.*** Здійснено аналіз наукових підходів до визначення сутності судових процедур в адміністративному судочинстві крізь призму виокремлення їхніх суттєвих ознак шляхом здійснення наукової класифікації. З'ясовано значення наукової класифікації у процесі формування авторського бачення сутності категорії «класифікація судових процедур в адміністративному судочинстві». Визначено критерії класифікації судових процедур в адміністративному судочинстві. Запропоновано класифікувати судові процедури в адміністративному судочинстві за наперед встановленими науково обґрунтованими класифікаційними критеріями, які вказують на найбільш суттєві ознаки як окремо взятої судової процедури в адміністративному судочинстві, так і видової групи, до якої її віднесено. Як критерії класифікації судових процедур в адміністративному судочинстві вибрані форма адміністративного судочинства; вид адміністративної справи, у межах розгляду якої реалізуються судові процедури; коло учасників адміністративної справи; склад суду, який здійснює судові процедури; процесуальна стадія, у межах якої реалізуються судові процедури; обов'язковість стадії адміністративного процесу; етап реалізації відповідної стадії адміністративного процесу. ***Висновки.*** Зроблено висновок, що класифікація судових процедур в адміністративному судочинстві

здійснюється за такими критеріями: 1) за формою адміністративного судочинства судові процедури реалізуються в його межах під час загального позовного провадження та спрощеного позовного провадження; 2) залежно від адміністративної справи судові процедури можуть бути класифіковані на ті, що реалізуються в межах розгляду загальних адміністративних справ, малозначних адміністративних справ, типових адміністративних справ, зразкових адміністративних справ, термінових адміністративних справ, складних адміністративних справ; 3) залежно від кола учасників адміністративної справи судові процедури в адміністративному судочинстві поділяються на такі, що здійснюються виключно за участю сторін (позивача та відповідача), із залученням представників сторін, унаслідок вступу у справу правонаступників, із залученням третіх осіб та/або їх представників; 4) з огляду на склад суду судові процедури в адміністративному судочинстві поділяються на ті, що здійснюються суддею одноосібно та колегією суддів; 5) залежно від процесуальної стадії, у межах якої реалізуються судові процедури в адміністративному судочинстві, вони можуть бути класифіковані на ті, що мають місце на стадії порушення адміністративної справи, підготовки адміністративної справи до судового розгляду, розгляду адміністративної справи по суті, урегулювання спору за участю судді, апеляційного провадження, касаційного провадження, перегляду судових рішень за нововиявленими або виключними обставинами, виконання судових рішень, відновлення втраченого судового провадження; 6) залежно від обов'язковості стадії адміністративного процесу (волевиявлення зацікавленої особи) судові процедури поділяються на ті, що реалізуються на обов'язкових стадіях адміністративного процесу та факультативних стадіях адміністративного процесу; 7) залежно від етапу реалізації відповідної стадії адміністративного процесу судові процедури в адміністративному судочинстві можуть мати місце в межах здійснення відкриття розгляду справи по суті, з'ясування обставин справи й дослідження доказів, судових дебатів, ухвалення судових рішень тощо.

Ключові слова: судова процедура, адміністративне судочинство, адміністративний процес, адміністративне провадження, адміністративна справа, класифікація, критерій.

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MONITORING AS A FORM OF PUBLIC CONTROL

Abstract. ***Purpose.*** The purpose of the article is to analyse the state of affairs in implementation of public monitoring in Ukraine and note its positive impact on improving the activities of public authorities and to identify some shortcomings of implementation. ***Results.*** The article considers public monitoring as a form of public control. Its definition in draft laws and scientific literature, consideration in scientific manuals is given. The relevance and effectiveness of public monitoring are argued. Active work on public monitoring of customs, assessment of air quality, certain problems in the implementation of monitoring and evaluation in the field of social services are noted. It is emphasised that public monitoring is carried out in many areas of functioning of public authorities, it focuses on their bodies, on activities and actions or inaction of public officials; public monitoring of the use of budget funds; public monitoring of the implementation of state, regional and sectoral programs, public monitoring of the electoral process; public monitoring of health care; public monitoring of environmental protection, etc. ***Conclusions.*** It is concluded that the use of public control in the form of public monitoring is a prerequisite for its improvement. It should be noted that in some sectors of public life, public monitoring is actively practiced, while in others it still needs to be effectively implemented. Various aspects of public control are mostly considered at the theoretical level, while practical recommendations contained in textbooks are more understandable for specialists. In order to disseminate and apply public monitoring in various sectors of public life, it is necessary to promptly adopt a law on public control, develop methodological proposals in a form accessible to public activists, and organise training courses for them. Simultaneous state and public monitoring and implementation of its results in the work of controlling entities will contribute to greater efficiency of their activities.

Key words: public control, draft law, public monitoring, state monitoring, procedure.

1. Introduction

The public control procedures are divided into general and special procedures. General procedures mainly include: 1) hearing of performance reports; 2) public hearings; 3) public monitoring. Special procedures of public control include: 1) public expertise; 2) public inspections; 3) public investigations. Among the general procedures, public monitoring should be highlighted as an important and relevant form of public control, but today it is not always actively implemented, which is a consequence of the lack of a law on public control, lack of effective dialogue between public authorities and the public. Moreover, the legal literature contains a sufficient number of studies on the conduct and implementation of state control, educational and methodological manuals, which can become the basis for scientific developments in the field of public control in a more simplified and accessible version for public activists.

Scientists consider public monitoring from the research perspective of its implementation in various fields. The impact of public monitoring on the process of providing administrative services is studied by N.I. Ilchaninova. She states that public monitoring ensures minimisation of abuses by the authorities, analysis of public opinion, objective research, bringing service providers closer to the recognition of public needs. In her opinion, the system of monitoring and evaluation of the effectiveness of providing services, if successfully implemented, has all chances to become the basis for improving the mechanism of administrative services (Ilchaninova, 2018, p. 135). T. Semyhina, analysing the regulatory framework and foreign experience, among other forms of public control (citizens' appeals, public expertise, public hearings), points to monitoring of activities and control (raid) inspections at the objects of public control (Semyhina, 2020).

Researchers have prepared manuals that cover methodological, organisational, ethical aspects of preparation and conduct of public monitoring of the activities of executive authorities, local self-government bodies, as well as

analysis of the results and report on the results of monitoring, evaluation of the results of public monitoring, etc. The review of the textbook by V. Kuprii and L. Palyvoda enables to conclude that it has a sufficient methodological basis for public monitoring, but the persons who will be engaged in this work should have certain knowledge and skills (Kuprii, Palyvoda, 2011).

The procedure for public monitoring of public procurement is contained in the scientific development by O.O. Budnyk, V.A. Tarnai, A.Yu. Marusov, H.O. Kanievskyi. They reveal the stages of public monitoring and control over public procurement; guarantees of public control provided by the legislation on public procurement; regulatory mechanism for access to information on public procurement; sources of information for checking compliance with anti-corruption provisions of procurement legislation; recommendations for finding procurement information; overview of typical violations during public procurement. Scientists define the public moratorium as a research process. In our opinion, it is more possible to implement the proposed public moratorium of this level by competent specialists than by representatives of public organisations (Budnyk, Tarnai, Marusov, Kanievskyi, 2014, pp. 46–58).

The purpose of the article is to analyse the state of affairs in implementation of public monitoring in Ukraine, to note its positive impact on improving the activities of public authorities and to identify some shortcomings of implementation.

2. Concept and functions of monitoring

The legal literature provides somewhat different definitions of monitoring and public monitoring. The *Great explanatory dictionary of the modern Ukrainian language* defines monitoring as a continuous observation of any process in order to determine its compliance with the desired result (Busel, 2004, p. 539). In the Draft Law on public control (registered in the Verkhovna Rada of Ukraine on April 14, 2014 under No. 4697) public monitoring is defined as a general procedure for public control over continuous regulated supervision over the compliance of the activities of the objects of public control with the public interest by the actors of public control (Article 3, paragraph 4) (Draft Law on Public Control, 2014). D. Arabadzhyiev defines public monitoring as a means of observing, tracking general trends and changes in society that is a necessary component of establishing a dialogue between the government and the public, as well as offers the structural and functional characteristics of public monitoring developed (Arabadzhyiev, 2012, pp. 82). According to L.R. Nalyvaiko and O.V. Savchenko, the theoretical and legal aspect of public monitoring is a manifestation of real and effective democracy, one of the forms of cooperation with public authorities (Nalyvaiko, Savchenko, 2017, p. 101).

Public monitoring is an activity that is a set of tools for obtaining certain information about a specific object of public control. It synthesises the implementation of three functions: diagnostics, pragmatisation and prognostication, as well as aims to implement the correction function based on the data obtained. Being a multifunctional phenomenon, public monitoring is implemented by a network of actors, including both central and territorial organisations operating at the regional and local levels (Arabadzhyiev, 2012, p. 87).

Public monitoring is carried out by the decision of a non-governmental organisation, in this case, the actors of public control have the right to apply for the necessary information to the object under observation and analysis of its activities. Based on its results, an appropriate conclusion is drawn up on the compliance of the object of public control with the legislative provisions regarding its activities; proposals to eliminate shortcomings and omissions, prevent corruption, ensure the rights and interests of individuals and legal entities. The conclusion is submitted to the object of monitoring and to the higher state authority or higher local self-government body.

Public monitoring is carried out in many areas of functioning of public authorities, it focuses on their bodies, on activities and actions or inaction of public officials; public monitoring of the use of budget funds; public monitoring of the implementation of state, regional and sectoral programs, public monitoring of the electoral process; public monitoring of health care; public monitoring of environmental protection, etc.

3. Monitoring in public life.

In some sectors of public life, public monitoring is quite active. For example, the Institute for Economic Research (IER) conducted a public monitoring of customs' performance in 2021 to assess certain aspects of customs' performance and provide recommendations for its improvement. Public monitoring was the result of cooperation of the IER with partner organisations that conducted research in their regions and co-authored the analytical report on its results: "Public monitoring of Odesa, Halytska and Kyiv customs", Association of Customs Brokers of Ukraine; "Public assessment of the work of Volyn and Polissia customs of the State Customs Service", NGO "Agency for International Cooperation"; "Public" Sfero", "Public assessment of the performance of the Northern customs of the State Customs Service in Cherni-

hiv region", PO "Association of Regional Mass Media". The analytical report on the results of public monitoring contains the results of the study, as well as recommendations for solving the problematic issues that were identified during the analysis (Institute of Economic Research and Political Consultations, 2021).

However, the implementation of monitoring and evaluation of social services in practice is only at the initial stage: mainly internal monitoring and evaluation according to the generalised criteria defined by the methodological recommendations are carried out mainly by territorial centres of social services (provision of social services). The monitoring includes: identification, analysis and evaluation of actual parameters, established by law, regarding quality of public services to citizens and organisations, including time and financial costs for obtaining the final result of administrative services; development and implementation of measures, aimed at improving the processes of providing public services and improving the quality of their provision; tracking the dynamics of the parameters of quality and accessibility of public services and monitoring the effectiveness of measures aimed at improving the satisfaction of citizens and organisations with the quality of social services (Nykolaieva, 2020, p. 113).

Over the past three years, an increasing number of public organisations and commercial projects have appeared in Ukraine, which not only raise the issue of implementing legislative initiatives in the field of air quality monitoring, but also those that create separate IT products aimed at improving the situation in the field of air quality information. One of the current projects implemented by POs in Ukraine is the project EcoInfo. The mission of the project is to inform the public about the state of air quality in the location of the site user. But despite the technical and visual attractiveness of this project, it does not indicate the methodology used to measure air quality. In this form, this system cannot be called a monitoring system and has nothing to do with the state of the air in these places, it cannot be used to make political or managerial decisions in the environmental sector (Koltsov, Shevchenko, 2018, p. 12).

Moreover, a simultaneous public and state moratorium should be announced. For example, today 46 air quality monitoring sensors have been installed in all districts of Kyiv. Unlike the public control sensors, the indicative sensors installed by the city and analysing the air for more indicators, are certified, more accurate and informative. The state moratorium system relies on the city's LoRaWAN wireless network for data transmission. To make it work, 295 base stations were installed in each district of Kyiv (Website of the Kyiv City State Administration, 2021).

The legal literature review reveals that a considerable number of forms of public control now exist mainly at the theoretical level, since the regulations do not define the procedure for their implementation in practice, and the correction of this situation should become one of the top priorities of our state (Skvirskyi, 2013, p. 226). Problematic issues that require clarification in the area under analysis are: 1) the absence of a customer and consumer of public monitoring within the country today; 2) ensuring a high professional level of monitoring activities (Arabadzhyiev, 2012, p. 83).

4. Conclusions

Therefore, the use of public control in the form of public monitoring is a prerequisite for its improvement. It should be noted that in some sectors of public life, public monitoring is actively practiced, while in others it still needs to be effectively implemented. Various aspects of public control are mostly considered at the theoretical level, while practical recommendations contained in textbooks are more understandable for specialists. In order to disseminate and apply public monitoring in various sectors of public life, it is necessary to promptly adopt a law on public control, develop methodological proposals in a form accessible to public activists, and organise training courses for them. Simultaneous state and public monitoring and implementation of its results in the work of controlling entities will contribute to greater efficiency of their activities.

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МОНІТОРИНГ ЯК ФОРМА ГРОМАДСЬКОГО КОНТРОЛЮ

Анотація. ***Мета.*** Мета статті полягає у здійсненні аналізу стану впровадження громадського моніторингу в Україні, зазначити його позитивний вплив на покращення діяльності органів державної влади та виявити окремі недоліки реалізації. ***Results.*** Розглянуто громадський моніторинг як форму громадського контролю. Наведено його визначення в законопроєктах та науковій літературі, розгляд в наукових посібниках. Аргументовано актуальність та ефективність проведення громадського моніторингу. Зазначено активну роботу з громадського моніторингу митниць, оцінки якості атмосферного повітря, певні проблеми щодо упровадження моніторингу та оцінювання у сфері соціальних послуг. Наголошено, що громадський моніторинг здійснюється у багатьох напрямках функціонування органів державної влади, його об'єктом є їх органи, діяльність та дії або бездіяльність державних службовців; громадський моніторинг використання бюджетних коштів; громадський моніторинг реалізації державних, регіональних та галузевих програм, громадський моніторинг виборчого процесу; громадський моніторинг охорони здоров'я; громадський моніторинг охорони навколишнього середовища та ін. ***Conclusions.*** Зроблено висновок, що застосування такої форми громадського контролю, як громадський моніторинг, є необхідною умовою його удосконалення. Зауважимо, що в одних сферах суспільного життя громадський моніторинг активно практикується, в інших – ще потребує свого дієвого впровадження. Різнобічні аспекти громадського контролю у більшості розглядаються на теоретичному рівні, практичні рекомендації, котрі містяться у навчальних посібниках, є більш зрозумілими для фахівців. З метою поширення та застосування громадського моніторингу в різних сферах суспільного життя потрібно оперативне прийняття закону про громадський контроль, розробка методичних пропозицій у доступній для громадських активістів формі, організація для них підготовчих курсів. Одночасне проведення державного і громадського моніторингу та впровадження їх результатів у роботу контролюючих об'єктів буде сприяти більшій ефективності їх діяльності.

Ключові слова: громадський контроль, законопроєкт, громадський моніторинг, державний моніторинг, процедура проведення.

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FOREIGN EXPERIENCE IN ADMINISTRATIVE AND LEGAL FRAMEWORK FOR MAKING HUMANITARIAN POLICY AND WAYS OF ITS APPLICATION IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to determine some features of foreign experience in administrative and legal framework for making humanitarian policy and ways of its application in Ukraine. ***Results.*** The study examines international legal regulations governing protection of public morality and its potential application in Ukraine, as well as the relevant experience of some foreign countries. It is noted that among the EU countries, the issue of social networks is almost not regulated at the legislative level, and the best practices of Germany are revealed, where in 2017 a federal law on social networks, called Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG), was adopted. It is indicated that this law applies to service providers who operate Internet platforms for profit, and these platforms for users to exchange, share content (text, video or audio), such social networks under German law are: Facebook, Google, YouTube, Snapchat, Instagram, Twitter, Telegram, TikTok and others. Instead, platforms designed for sales or online gaming, professional networks, specialised portals, email or messengers are not subject to the Law on Social Networks. ***Conclusions.*** It is proposed, on the basis of the German experience, to adopt in Ukraine the Law "On Compliance with Ukrainian Legislation in Social Networks", in which the conceptual and categorical apparatus of the problem will be defined in separate sections, in particular, the concept of "social network", "owner of a social network", "illegal content", "complaint about illegal content", the target audience of its provisions (providers, i.e. owners who provide TV-media services and manage a social network, namely an Internet platform for profit, which are intended for distribution of information of any content between users and such platform is publicly available) the procedure for filing a complaint and its consideration by the owners and administrators of the social network, the rules on the executive body that will supervise compliance with Ukrainian legislation in social networks, etc.

Key words: foreign experience, international acts, social networks, provisions of law, control, monitoring.

1. Introduction

Humanitarian public policy covers a wide range of various social (first of all, public law) relations from education and science to information security. Moreover, world history knows many examples of building state systems that in civilisation terms belonged to the so-called "socialist camp" or "Western democracies". For a number of reasons, including the unsustainability of the state system and the inefficiency of the distribution of social benefits, we will not consider the Soviet socialist example of humanitarian policy (although, of course, it can be studied in the context of "how not to do"). Therefore, for the most part, firstly, the foreign experience is analysed among the states-representatives of the so-called Western world, and secondly, the experience of these states will relate to a certain sector of humanitarian policy such as social security, education and science, protection of public morality or strategic planning of human capital development.

The humanitarian sector of the country and the specificities of its proper administrative and legal framework have always been under focus by domestic legal scholars,

among whom the greatest basis for the formation of the conceptual foundations of public and legal framework for the humanitarian development of Ukrainian society was made by Yu.V. Klymchuk, V.I. Diachenko, I.V. Chekhovska, O.V. Zakharova, N.B. Novytska, V.O. Morozova, V.V. Karlova, O.A. Zadykhailo, I.H. Ihnatchenko, Yu.V. Yakymets, V.S. Shestak, Yu.L. Yurynets and other scientists. Despite the significant theoretical and practical contribution of scientific works, their fragmentation and incomplete analysis of the consistency and integrity in the formulation of the conceptual framework for humanitarian public policy of Ukraine made it impossible to cover all the features of administrative and legal framework for its formation and implementation.

The purpose of the article is to determine some features of foreign experience in administrative and legal framework for making humanitarian policy and ways of its application in Ukraine.

2. International legal regulatory framework for the protection of public morality

A rather specific but important aspect of foreign experience in humanitarian policy is the protection of public morality. The world community has developed many legal regulations concerning the norms of public morality. The Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, defined that the following acts shall be a punishable offence: for purposes of or by way of trade or for distribution or public exhibition to make or produce or have in possession obscene objects; for the purposes abovementioned, to import, convey or export any of the said obscene matters or things, or in any manner whatsoever to put them into circulation; to sell, or to deal in them in any manner whatsoever, or to distribute them or to exhibit them publicly or to make a business of lending them; to advertise or make known by any means whatsoever the said obscene matters or things in order to encourage their circulation or trade (Zakharova, 2019, pp. 118–120).

Some regulations in this field are recommendatory, defining measures to protect children from dangerous and harmful information: Recommendation No. R (87) 7 of the Committee of Ministers of the Council of Europe concerning principles on the distribution of videograms having a violent, brutal or pornographic content of 22 April 1989 (Recommendation No. R (89) 7 of the Committee of Ministers of the Council of Europe "On principles on the distribution of videograms having a violent, brutal or pornographic content adopted by the Committee of Ministers at the 425th meeting of deputy ministers, 1989), Recommendation No. R (97) 19 of the Committee of Ministers of the Council of Europe on the portrayal of violence in the electronic media of 30 October 1997 (Recommendation No. R (97) 19 of the Committee of Ministers of the Council of Europe "On the portrayal of violence in the electronic media": adopted by the Committee of Ministers at the 607th meeting of the Deputy Ministers, 1997).

Furthermore, these regulations contain recommendations on the development of a national policy framework to prevent the spread of harmful information in the electronic media, to establish independent regulatory bodies for electronic media in states, with proper rights and opportunities to regulate the portrayal of violence at the national level, to enable citizens to lodge complaints about unacceptable (from their point of view) content with the relevant authorities; to include among licensing conditions for broadcasters certain obligations concerning the portrayal of violence, accompanied by dissuasive measures of an administrative nature, such as non-renewal of the licence when these obligations are not respected) (Recommendation No. R (97) 19 of the Committee of Ministers of the Council of Europe "On the portrayal of violence in the electronic media": adopted by the Committee of Ministers at the 607th meeting of the Deputy Ministers, 1997). In Ukraine, the National Council of Ukraine on Television and Radio Broadcasting are responsible for similar issues, empowered to supervise the observance of legislation on the protection of public morality by television and radio organisations (Law of Ukraine On the National Council of Ukraine on Television and Radio Broadcasting, 1997). It should be noted that the issue of regulation and control over the activities of the media, any electronic sources, is specific and requires special care, because in the case of granting certain public administration significant powers, such an institution will become an instrument of censorship of any information that goes against the ideology, for example, the "Russian world". It should also be noted that the development of the Internet, technologies related to the Internet and the exchange of information between people is going on at a frantic pace, and the acts of 1997, especially 1989 on the dissemination of information on the Internet and in general in the media. In Recommendation No. R (87) 7 of the Committee of Ministers of the Council of Europe on the principles of distribution of videograms having a violent, brutal or pornographic content of 22 April 1989, governments are invited to create classification and control systems for videograms through the professional sectors

or public authorities, or to institute systems that combine self-regulatory with classification and control systems or any other systems compatible with national legislation (Recommendation No. R (89) 7 of the Committee of Ministers of the Council of Europe "On principles on the distribution of videograms having a violent, brutal or pornographic content adopted by the Committee of Ministers at the 425th meeting of deputy ministers, 1989). Now billions of people are registered in social networks, which include functions of viewing, storing and sharing videos, photos, etc. mostly they are regulated at the level of content moderation by the administrators-owners of the resources themselves, that is, social networks such as Facebook, Instagram or TikTok (that is, some users mark certain material as unacceptable or cruel by sending a complaint about a particular content, and such content can be deleted or restricted in viewing rights.

In the context of the issue of regulating the dissemination of inappropriate information on the Internet, and especially in social networks, the obsolescence of some international acts, another question arises: are there any provisions in national laws or by-laws that regulate such social relations? Analysis of Ukrainian national legislation shows that such relations are almost not regulated. The legislation does not contain, especially in the field of protection of public morality and monitoring and supervision of compliance with the legislation in the field of protection of public morality, such concepts as social networks, account, content of social networks, inappropriate content, etc. The concept of a social network can be "tied" to the concept of a "website", and an account to a "web page", which is contained in the Law of Ukraine "On Copyright and Related Rights".

For example, "a website is a set of data, electronic (digital) information, other objects of copyright and (or) related rights, etc., interconnected and structured within the website address and (or) account of the owner of this website, accessed through the Internet address, which may consist of a domain name, directory or call records and (or) a numerical address according to the Internet protocol; a web page is a component of a website that may contain data, electronic (digital) information, other objects of copyright and (or) related rights, etc." (On copyright and related rights: Law of Ukraine, 1993). V. Prokopenko asks a reasonable question: who is responsible for the content posted in the account, and notes that the legislator separately distinguishes the owner of the website (in our case, a social network) and the owner of the web page (account), and this also applies to the responsibility for posting information on social networks. For example, in November 2018, one prosecutor was found liable and subject to disciplinary sanction in the form of dismissal from the prosecutor's office for activity and information on her own page in the social network "Odnoklassniki". The Grand Chamber of the Supreme Court by its Resolution in case No. 9901/998/18 of June 19, 2019 upheld the complaint of the dismissed prosecutor against the said disciplinary sanction. The court found that the sole subject of the publications and marks excludes their accidentality and indicates their deliberate placement on the page, and also rejected the dismissed prosecutor's reference to the hacking of the page, given that the plaintiff did not change her login and password and did not delete the relevant publications and marks from the web page" (Prokopenko, 2021, p. 13).

The phrase "social network" is also mentioned in the Law "On ensuring the functioning of the Ukrainian language as the state language", where Article 27 states that user interfaces of computer programs and websites (including websites, pages on social networks), that are used as online representations of state authorities, local self-government bodies, enterprises, institutions and organisations of state and communal forms of ownership, mass media registered in Ukraine, as well as business entities, registered in Ukraine, that sells products in Ukraine including informational Internet resources, shall be in Ukrainian. Along with the Ukrainian-language version of online representations (including websites, pages on social networks), there may be versions in other languages. The version of the Internet representation in the state language should have no less information than the foreign language versions and be loaded by default for users in Ukraine (Law of Ukraine On ensuring the functioning of the Ukrainian language as a state language, 2019). However, it does not define the content of the concept of social network, only mentions the need to use the state language in social networks by official institutions, etc. (which is also a progressive legal novelty). Therefore, no authority is responsible for supervising the observance of legislation in the field of protection of public morality in social networks (of course, allowing for the activities of law enforcement bodies, their departments for combating crimes against public morality, which detect the facts of criminal offenses on the Internet), while millions of Ukrainians now spend most of their lives in social networks, legal provisions do not provide for the concepts of social network, account, unacceptable content, etc.

3. German experience in the administrative and legal framework for making humanitarian public policy

Among the EU countries, the issue of social networks is almost not regulated at the legislative level, and the best practices of Germany are revealed, where in 2017 a federal law on social networks, called Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG), was adopted. (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, 2017). This law applies to service providers who operate Internet platforms for profit and these platforms allow users to exchange, share content (text, video or audio). According to German law, such social networks include: Facebook, Google, YouTube, Snapchat, Instagram, Twitter, Telegram, TikTok and others. Instead, platforms designed for sales or online gaming, professional networks, specialised portals, email or messengers are not subject to the Law on Social Networks (Opryshko, 2021).

According to Article 2 of the Law, if social network providers receive more than 100 complaints about illegal content during a calendar year, they are obliged to report on the handling of complaints every six months. The report is prepared in German and published in an official German periodical (such as *The Government Gazette*). The report shall contain the following information: general information on the efforts made by the social network provider to prevent criminal offenses on the platforms; mechanisms for filing complaints about illegal content and the criteria provided for deciding on the removal and blocking of illegal content; the number of complaints about illegal content received during the reporting period; the organisation, staffing, technical and linguistic competence of the working units responsible for handling complaints, training and support of persons responsible for handling complaints; the number of complaints for which consultations with an external body (consultant) were held in order to prepare a decision; the number of complaints that led to the removal or blocking of the disputed content during the reporting period; the time between the social network's receipt of the complaint and the removal or blocking of the illegal content, with distributing complaints from complaint handling bodies and users, by the reason for the complaint, and according to the periods "within 24 hours"/"within 48 hours"/"within a week"/"later"; measures to inform the complainant and the user for whom the disputed information is stored about the decision concerning the complaint (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, 2017). In addition, the Law defines the procedure for filing complaints, establishes what constitutes illegal content, obliges social network providers to remove illegal content. The law also defines the executive authority responsible for supervising compliance with the law by providers (owners) of social networks.

Relying on German experience, we consider it expedient to adopt in Ukraine the Law "On Compliance with Ukrainian Legislation in Social Networks" to determine the conceptual and categorical apparatus of the problem in separate sections, in particular, the concept of "social network", "owner of a social network", "illegal content", "complaint about illegal content", the target audience of its provisions (providers, i.e. owners who provide TV-media services and manage a social network, namely an Internet platform for profit, which are intended for distribution of information of any content between users and such platform is publicly available), the procedure for filing a complaint and its consideration by the owners and administrators of the social network, the provisions on the executive authority responsible for supervising compliance with the provisions of Ukrainian legislation in social networks, etc.

In addition, the powers of the National Council of Ukraine on Television and Radio Broadcasting shall be expanded as follows:

First, to add to the supervisory powers of the National Council in Article 13 of the Law of Ukraine "On the National Council of Ukraine on Television and Radio Broadcasting" (Law of Ukraine On the National Council of Ukraine on Television and Radio Broadcasting, 1997) the paragraph *"supervision over the observance of legislation in the field of protection of public morality by the owners of social networks";*

Second, to enable the National Council of Ukraine on Television and Radio Broadcasting to submit requests to owners to respond to violations of the law. Alternatively, a separate executive body can be created and the Law "On Compliance with Ukrainian Legislation in Social Networks" shall provide for its powers and tasks to supervise compliance with Ukrainian legislation in social networks.

Furthermore, the review of international acts reveals that international legal standards regarding the observance of public morality should be considered in two aspects: firstly, these are certain requirements formed by the civilised world through the sources of international law

to ensure the moral foundations of society; secondly, these are a system of principles and provisions with binding requirements for states to apply coercion to violators of public morality. Moreover, public morality is a complex issue and local civilisation and regional peculiarities should be taken into account when adapting international legislation.

Therefore, in general, a systematic analysis and a comprehensive sociological study of strategic trends in effective public administration of the humanitarian sphere from among foreign strategies that would be effective for their implementation in Ukraine, enables to outline several promising European strategies with an emphasis on a particular sphere of public life, and hence on a corresponding aspect of humanitarian policy, for example:

1. Polish Social Capital Development Strategy 2020 (based on the assertion that social capital is an important factor in the development of the country and needs to be strengthened, so measures should contribute to increasing mutual trust between Poles and strengthening trust in institutions and public authorities) – 73,5%.

2. French Strategy for International Cooperation in the field of health care (intensification of efforts aimed at combating the emergence and spread of infectious and non-communicable diseases, which will lead to the balance of the country's health care system) – 64,7%.

3. German Strategy for Internationalisation of Education, Science and Research (aimed at responding to global challenges not only in Germany, but also beyond its borders, and the solution of these issues is possible only through cross-border cooperation in these areas) – 51,7%.

4. Czech National Youth Strategy 2014-2020 (improving the quality of life of young people, in particular through the development of each individual in order to adequately respond to the constantly changing situation, to realise their creative and innovative potential) – 41,6%.

5. Turkish Information Society Strategy and Action Plan 2015-2018 (communication and information component of the humanitarian sector in the international arena) – 30,9%.

6. Irish Culture Strategy 2017-2020 (overall mission, strategy and priorities of culture) – 19,1%.

7. Equally important in making humanitarian policy is international cooperation and international cooperation of Ukraine with other states, which is supported by many respondents – 46.1%.

4. Conclusions

The scientific analysis of foreign experience of administrative and legal framework for making humanitarian public policy enables to find ways of its application in Ukraine, in particular in terms of: – improvement of the provisions of the Law of Ukraine "On Ratification of the European Charter for Regional or Minority Languages"; – allowing for the state's interests in the activities of international organisations as much as possible based on the recognised status of a country with a market economy; – adoption of agreements on cooperation between educational institutions of different countries in matters of humanitarian policy; – stimulating the attraction of investments to Ukraine to solve humanitarian problems; – fulfilment of obligations regarding Ukraine's membership in international organisations and participation in international treaties; – in the context of the Association Agreement with the EU to ensure the implementation of tasks on the adoption of a number of laws on the recognition of non-formal education, modernisation of social services, improvement of legislation in the field of access to public information, harmonisation of legislation in the field of prevention and combating discrimination with EU law; – application of German experience in regulating the issues of enforcement of German legislation in social networks and the need to develop and adopt the Law of Ukraine "On compliance with Ukrainian legislation in social networks", to legislate the definition of social networks, owners of such networks, illegal content, etc., the extension of the law, the procedure for filing and reviewing complaints about content that violates Ukrainian legislation on public morality, etc.

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ЗАРУБІЖНИЙ ДОСВІД АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ РЕАЛІЗАЦІЇ ГУМАНІТАРНОЇ ПОЛІТИКИ ТА ШЛЯХИ ЙОГО ЗАПОЗИЧЕННЯ ДЛЯ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є визначення деяких особливостей зарубіжного досвіду адміністративно-правового забезпечення реалізації гуманітарної політики та шляхів його запозичення в Україні. ***Результати.*** В дослідженні розглянуто міжнародні правові акти, що стосуються норм захисту суспільної моралі та можливість його запозичення в Україні, також відповідний досвід висвітлюється щодо окремих зарубіжних країн. Зазначається, що серед країн ЄС майже не врегульовано також питання соціальних мереж на законодавчому рівні, наводиться передовий досвід Німеччині, де у 2017 р. було прийнято федеральний закон про соціальні мережі, що має назву «Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG)». Вказано, що цей закон поширюється на провайдерів послуг, які керують інтернет-платформами з метою отримання прибутку, й ці платформи дозволяють користувачам обмінюватися, ділитися контентом (текстовим, відео або аудіо, до таких соціальних мереж належать згідно німецького законодавства: Facebook, Google, YouTube, Snapchat, Instagram, Twitter, Telegram, TikTok та інші. Натомість платформи, призначені для продажів або для онлайн-ігор, професійні мережі, спеціалізовані портали, електронна пошта чи месенджери не підпадають під дію Закону про соціальні мережі. ***Conclusions.*** Запропоновано на основі німецького досвіду прийняття в Україні Закону «Про дотримання українського законодавства в соціальних мережах», в якому окремими розділами пропонується визначити понятійно-категоріальний апарат проблеми, зокрема поняття «соціальна мережа», «власник соціальної мережі», «незаконний контент», «скарга на незаконний контент», цільову аудиторію поширення його норм (на провайдерів, себто власників,

які надають телемедійні послуги і керують соціальною мережею, а саме інтернет-платформою з метою отримання прибутку, які призначені для розповсюдження між користувачами будь-якого змісту інформацією, й така платформа знаходиться в публічному доступі), процедуру подання скарги та її розгляду власниками і адміністраторами соціальної мережі, норми про орган виконавчої влади, що буде здійснювати нагляд за дотриманням норм українського законодавства в соціальних мережах тощо.

Ключові слова: зарубіжний досвід, міжнародні акти, соціальні мережі, норми права, контроль, моніторинг.

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PRINCIPLES OF PREVENTION OF THE NATIONAL POLICE IN THE FORM OF ADMINISTRATIVE SUPERVISION

Abstract. ***Purpose.*** The purpose of the article is to define, using means of analysis, the concept of the principles of administrative supervision as a type of prevention of the National Police, to identify their specificities and to classify them. ***Results.*** The article emphasises that the principles of administrative supervision, as fundamental rules and ideas, form the basic component of the functioning of the authorised units of the National Police of Ukraine, in the course of preventive measures aimed at deterring offenses and encouraging lawful conduct of an indefinite range of participants in public relations. In addition, it is noted that the principles of administrative supervision are aimed not only at determining the framework for its implementation, but also at continuous improving the procedure for such police prevention. It is underlined that the principles of administrative supervision enable to reflect the specifics of preventive police measures, to reveal their content and procedure, specificities; to regulate relations between the authorised actor and the object of regulatory influence; to protect legitimate rights, freedoms and interests of a person guaranteed by the legislation in force. The principles of administrative supervision are aimed not only at determining the framework for its implementation, but also at continuous improving the procedure for such police prevention. ***Conclusions.*** During the implementation of administrative supervision as a type of prevention of the National Police, relying on the content of the legislation in force and the tasks of preventive measures, the following principles are applied: the rule of law; legality; observance of human rights and freedoms; impartiality; compliance with procedural requirements; openness and transparency; objectivity and fairness; systematic and comprehensive; political neutrality; public trust and public support; interaction and cooperation; priority of preventive measures. The content of each principle individualises it, thus emphasising the equal legal significance of each of them for achieving the ultimate goal of prevention.

Key words: principles, fundamental ideas, preventive measures, administrative supervision, National Police.

1. Introduction

Administrative supervision as an area of prevention of the National Police is one of the priorities of Ukraine as a legal, democratic state. For the proper implementation of prevention, the state focuses on improving the efficiency of the police in this area.

The regulatory basis for any relations arising in society are certain principles, fundamental rules and ideas that should guide the authorised actors in the performance of their functional duties, while respecting the rights and interests of other participants in this group of relations.

Undoubtedly, activities related to the implementation of administrative supervision, including the activities of the police, should be based on certain legislatively stipulated fundamentals, main provisions, key rules, that is, on principles.

In addition, the principles of administrative supervision as police prevention remain poorly studied by exerts in administrative law and require further research.

The analysis of existing scientific works reveals that the research of the issue raised in this paper is fragmented, in particular by the following scientists: V.B. Averianov, O.M. Bandurka, V.V. Halunko, M.P. Hurkovskyi, A.V. Denysova, O.V. Dzhafarova, V.O. Ilnytskyi, O.F. Kobzar, S.V. Kivalov, Ya.M. Kohut, A.M. Kolodii, T.O. Kolomoiets, A.T. Komziuk, R.V. Myroniuk, D.H. Overchenko, S.V. Pietkov, Ye.Yu. Sobol, S.O. Shatrava, and others.

The purpose of the article is to define, by means of analysis, the concept of the principles of administrative supervision as a type of prevention of the National Police,

to identify their specificities and to classify them.

2. Prevention of the National Police

Fulfilment of the tasks facing the prevention units of the National Police involves the implementation of principles based on the recognition of universal human values, respect for human rights and freedoms, recognition of their priority in relations with the state (Ulianov, Nikolaiev, Koniev, Bakhchevan, 2017, p. 39).

According to O.F. Andriiko, the principles are one of the conditions for the effectiveness of control activities and proper focus on the implementation of its tasks (Andriiko, 1999, p. 11).

Therefore, the purpose of the study requires to define the essence of the concept of "principle" at the general theoretical level.

"Principle" is the basic starting point of any scientific system, theory, ideological trend, etc.; the basic law of any exact science; a feature underlying the creation or implementation of something; a way of creating or implementing something; a rule underlying the activities of any organisation, etc. (Busel, 2005, p. 1125).

The *Encyclopedic Dictionary of Public Administration* characterises "principle" as the basic starting point of any theory or doctrine, the fundamentals of explanation or guidance for action; fundamentals, basic ideas characterised by universality, general significance, higher imperative and reflecting the essential provisions of theory, doctrine, science, system of law, state system, etc. They are inherent in the property of abstract reflection of the laws of social reality, which determines their special role in the structure of a wide range of phenomena (Surmin, Bakumenko, Mykhnenko, 2020, pp. 561).

According to A.M. Kolodii, the emergence of principles is due to the needs of social development, which reflect the laws of social life, and the main sources of these principles are politics, economics, morality, ideology and social life (Kolodii, 2012, p. 42).

M.V. Onyshchuk emphasises that the principles of law have become one of the primary objective manifestations of law since its inception. Initially, they embodied the moral, ethical and religious ideals of mankind since the transformation of pre-state society into a state. Over time, the principles of law began to concentrate the ideas of the society and its individuals about "right" and "wrong", valid and desirable law, and with the distinction of law into private and public, national and international, substantive and procedural principles of law became the ideological embodiment of the essence of social relations that were the subject matter of these components of law. For example, even in classical Roman law, the formula "Principium est porissima pars cujugue rei" (The principle is the most important part of everything) was widespread (Onyshchuk, 2007, p. 146).

In D.M. Pereverziev's opinion, the principles of law are undoubtedly its main mechanisms, main constructions. Regarding law, it should be borne in mind that the principle is primarily an idea, but not only. Just as law itself is not reduced to ideas, but covers both norms and social relations, so its principles go beyond ideas and acquire regulatory and law enforcement content. In other words, the principles of law are primarily ideas that in the process of development acquire external forms of legal provisions and relations (Pereverziev, 2021, p. 70).

Given that administrative supervision as a type of prevention of the National Police is a universal trend in procedurally regulated prevention of authorised units and officials of the police, in the forms established by law, which is designed to provide continuous impact on an indefinite range of actors subject to administrative supervision in order to ensure an adequate level of law and order, resulting in the assessment of the legality of their conduct and prevention of possible negative consequences, it has specific principles.

In addition, it is noted that the principles of administrative supervision are aimed not only at determining the framework for its implementation, but also at continuous improving the procedure for such police prevention.

V. Ilnytskyi improves the definition of the principles of administrative procedure of the National Police, as follows: these are the main ideas, initial provisions enshrined in administrative procedure legislation; they are of general importance, higher imperative (command); they reflect the essential provisions of the procedural activity of the National Police (Ilnytskyi, 2017, p. 3).

The principles of administrative supervision carried out by the police in various sectors of public life function in a certain system and have a clear focus on ensuring public safety and order, road safety, proper functioning of the licensing system and the level of legal awareness of persons released from prison, etc. Moreover, this determines the essence and content of the principles of police prevention.

The principles under study enable to reflect the specifics of preventive police measures, to reveal their content and procedure, specificities; to regulate relations between the authorised actor and the object of regulatory influence; to protect legitimate rights, freedoms and interests of a person guaranteed by the legislation in force; are the basis of police prevention.

Under the regulatory framework, the principles of activity of the preventive service units of the National Police of Ukraine, as well as the entire system of executive authorities, should be considered as the most general initial provisions (legal requirements, ideas) that prevail in the state, the basic principles, guidelines that define the most important rules by which this activity is organised and carried out, enshrined in legal regulations (provisions) (Volokitenko, 2016, p. 196).

According to A.V. Denysova, the principles of administrative supervision are objective interrelated and interdependent rules that reflect the regularities of the implementation of procedures for the implementation of the competence of administrative supervision actors, including in procedural form, concerning both the application of preventive measures and measures of legal protection and defence in order to ensure law and order in a certain sphere of life of the population (Denysova, 2017, pp. 83–84).

Therefore, the principles of administrative supervision as a type of prevention of the National Police are the content of interrelated guiding and fundamental ideas, aimed at an objective reflection of the needs and interests of society in order to ensure the proper conduct of procedures in the field of public safety and order, road safety, permit system and supervision of persons released from prison, in certain legal forms and within the competence of the entity authorised to carry out administrative supervision.

Thus, the system of principles of administrative supervision is a certain set of regulatory orders of the highest legal force, endowed with relative autonomy and stability, which ensure interaction with other elements of the legal system in order to fully implement the tasks faced by the police in the course of prevention.

3. Specificities of the legal mechanism for ensuring constitutional rights and freedoms of man and of the citizen

In the legal mechanism for ensuring constitutional rights and freedoms of man and of the citizen, the principles of police activity constitute a complex, holistic, multilateral and multilevel system of elements. Every principle has inherent functions to make a purposeful, effective impact on social relations in the field of realisation (protection and defence) of constitutional rights and freedoms of man and of the citizen (Hurkovskyi, 2017, p. 171).

All the principles of administrative supervision of the police are logically interconnected, their mutual dependence does not allow singling out one of the most important among them. The principles, endowed with the property of universality, ensure the internal unity of the functioning of police units in the field of preventive police measures, while violation of one of them will inevitably lead to violation of others. However, their interconnectedness and action in a certain system do not lead to the loss of specificity of each principle and individuality of its content.

The content of each principle individualises it, thus emphasising the equal legal importance of each of them for achieving the ultimate goal of prevention.

Frequently, exerts in administrative law form a system of principles at their own discretion, allowing for the content of the legislation in force, scientific perspectives on this issue, providing appropriate justifications.

According to S.S. Vitvitskyi, the content of the category "principle" is formed on the basis of general theoretical provisions and specifics of a certain phenomenon, the specificities of which are reflected in special principles. Therefore, it is appropriate to talk about general and special principles of the existence of a certain phenomenon (material or procedural) (Vitvitskyi, 2016, p. 163).

In D.H. Overchenko's opinion, the police, in the course of implementing the functions of prevention, is guided by the following principles: the rule of law, respect for human rights and freedoms, legality, openness and transparency, political neutrality, interaction with the public on the basis of partnership; continuity (Overchenko, 2018, p. 17).

Relying on analysis of the activities of the police and the principles of its implementation, Y. M. Kohut believes that the principles, based on the rule of law, are as follows: courtesy, tolerance and respect for the individual, immediate elimination of mistakes, solidarity, mutual assistance and discipline, professionalism, competence, scientific, honesty and justice, maintaining positive traditions (Kohut, 2015, p. 138).

4. Conclusions

In our opinion, during the implementation of administrative supervision as a type of prevention of the National Police, relying on the content of the legislation in force and the tasks of preventive measures, the following principles are applied: the rule of law; legality; observance of human rights and freedoms; impartiality; compliance with procedural requirements; openness and transparency; objectivity and fairness; systematic and comprehensive; political neutrality; public trust

and public support; interaction and cooperation; priority of preventive measures. The content of each principle individualises it, thus emphasising the equal legal significance of each of them for achieving the ultimate goal of prevention.

It should be noted that these principles of administrative supervision imply an educational aspect that contributes to ensuring public safety, increasing the level of law and order and raising the level of legal awareness of citizens.

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ПРИНЦИПИ ПРЕВЕНТИВНОЇ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ У ФОРМІ АДМІНІСТРАТИВНОГО НАГЛЯДУ

Анотація. ***Мета.*** Мета статті полягає у визначенні, шляхом аналізу, поняття принципів адміністративного нагляду, як виду превентивної діяльності Національної поліції, виділити їх характерні особливості та здійснити їх класифікацію. ***Результати.*** В статті наголошується, що принципи здійснення адміністративного нагляду, як основоположні правила та ідеї, формують базисну

складову функціонування управомочених підрозділів Національної поліції України, в ході реалізації превентивних заходів, направлених на попередження правопорушень та спонукання до правомірної поведінки невизначеного кола суб'єктів суспільних правовідносин. Крім того відзначається, що принципи здійснення адміністративного нагляду мають на меті не тільки визначення основних засад його реалізації, а й запровадити постійне вдосконалення процедури такої превентивної діяльності поліції. Звертається увага на те, що завдяки принципам адміністративного нагляду забезпечується можливість відображення специфіки превентивних поліцейських заходів, розкривається їх зміст та процедура провадження, характеризуючі риси; регулювання відносини між управомоченим суб'єктом та об'єктом регулюючого впливу; здійснення захисту законних прав, свобод та інтересів особи, гарантованих чинним законодавством. Принципи здійснення адміністративного нагляду мають на меті не тільки визначення основних засад його реалізації, а й запровадити постійне вдосконалення процедури такої превентивної діяльності поліції. ***Висновки.*** в ході реалізації адміністративного нагляду, як виду превентивної діяльності Національної поліції, з урахуванням змісту норм чинного законодавства та завдань превентивних заходів, знаходять своє застосування наступні принципи: верховенства права; законності; дотримання прав і свобод людини; неупередженості; дотримання вимог процедурності; відкритості та прозорості; об'єктивності та справедливості; системності та комплексності; політичної нейтральності; суспільної довіри та підтримки громадськості; взаємодії та співпраці; пріоритетності профілактичних заходів. Зміст кожного принципу індивідуалізує його, тим самим підкреслюючи рівну юридичну значимість кожного з них для досягнення кінцевої мети превентивної діяльності.

Ключові слова: принципи, основоположні ідеї, превентивні заходи, адміністративний нагляд, Національна поліція.

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RIGHTS AND DUTIES OF THE GUARD POLICE IN UKRAINE AS ELEMENTS OF THE ADMINISTRATIVE AND LEGAL STATUS

Abstract. ***Purpose.*** The purpose of the article is theoretical analysis of the rights and duties of the Guard Police in Ukraine as elements of the administrative and legal status. ***Results.*** Relying on the scientific position of many scientists, subjective law is a system of legally established, fixed and admissible options of an individual actor's behaviour used to interact with the national legal reality. By and large, subjective rights depend on the social role of the actor. For example, the set of rights of an ordinary citizen will be significantly different from the rights of the same citizen, but who is bound by labour relations with the law enforcement body of the state, and accordingly is entrusted with additional powers defined by law. In addition, regarding the subjective right in the aspect of the work of the Guard Police, it should be noted that it implies not the capabilities of any person, but the rights of the whole body defined and enshrined by law. That is, unlike a person who possesses a set of both legally stipulated and a number of natural, inalienable capabilities granted from birth, the rights and duties of the authority are conditioned by the powers that are assigned to it by regulatory documents at the time of creation. It is determined that the rights of the Guard Police in Ukraine are formally defined, legally established, guaranteed legal capabilities of the Guard Police as an elementary component of the National Police of Ukraine in terms of the competence assigned to it by law. ***Conclusions.*** It is concluded that today regarding activity of the Guard Police, no legal regulation defines the main rights and duties assigned to it. Currently, the rights and duties of the Guard Police of Ukraine consist of two groups of certain opportunities and requirements, general and special. The former are the rights and duties of the Guard Police as a component of the National Police of Ukraine in general, the latter are ones of an independent body within its competence. In order to clarify the legal status and increase the efficiency of legal regulation of the activities of the Guard Police in Ukraine, in our opinion, the rights and duties of this body at the legislative level in targeted legal regulations should be further clearly defined.

Key words: rights, regulatory framework, legal basis, Guard Police, National Police.

1. Introduction

The fundamental element of the administrative and legal status of a public authority is its rights and duties. They best show the competence and purpose of the authority, determine its place in the system of the state apparatus and law enforcement bodies.

Law regulates absolutely all the human life foundations in the territory of our state, including in the field of police protection. Moreover, law is not homogeneous in nature and includes separate types. For example, law coming from the state regulates the most important social relations in various fields. Along with it, the right of individual subjects is expressed in the totality of their legally guaranteed capabilities.

2. The rights of the Guard Police as an element of the administrative and legal status

According to V.A. Vasylieva, subjective right is a permission of the highest category and is a capacity, and necessarily legal. The authorised person is given a scope of permitted behaviour to satisfy his/her interests. While interest is not included in the content of subjective right, the moment of interest is necessary for the very existence of this right. Interest is an external, motivating factor that leads to entry into a legal relationship of law application. However, the dynamics of social relations sometimes encourages actors to seek assistance in exercising their subjective rights to other persons (intermediaries), authorising them to take certain actions. Unlike the authoriser,

the intermediary shall behave not in his/her own interests, but in the interests of another subject. From the perspective of the holder of a subjective right, the exercise of this right is the individual interest. Accordingly, the purpose of the legal relationship, which ensures a certain behaviour of the obliged persons, is ultimately reduced to the service of the interest, the satisfaction of which the subject seeks. Therefore, the interest induces the emergence of legal relations, but is beyond their limits (Vasylieva, 2006, pp. 164–165).

S.S. Alekseev argues that the subjective right is a scope of permitted behaviour, which is provided by legal duties of other persons and belongs to the person authorised to satisfy his/her interests. The word "scope" in the definition of a subjective right means that the legal capacity assigned to a person is not unlimited, it is clearly specified in content, and within these limits a person can behave (Alekseev, 1982, p. 114). M.S. Strohovich understands subjective right as a capacity enshrined in the provision to use the relevant good, to perform actions and to demand from others to perform appropriate actions, behaviour, concessions established by the legal provision (Strogovich, 1966, pp. 171).

O.S. Mazur concludes that subjective right includes several powers regardless of its content and branch: first, the capacity for rights to possess the relevant good; second, the capability to perform appropriate actions; third, the capacity enabling the subject to demand a legal duty from another participant of legal relations; fourth, in case of violation of a subjective right, non-fulfilment by the other party of its duties stipulated by the legal relationship, there is the competence to apply for protection to the judicial authority (Mazur, 2008, p. 30).

Therefore, subjective law, relying on the scientific position of many scientists, is a system of legally established, fixed and admissible options of behaviour of an individual actor to interact with the national legal reality. By and large, subjective rights depend on the social role of the actor. For example, the set of rights of an ordinary citizen will be significantly different from the rights of the same citizen, but who is bound by labour relations with the law enforcement body of the state, and accordingly is entrusted with additional powers defined by law.

In addition, regarding the subjective right in the aspect of the work of the Guard Police, it should be noted that it implies not the capabilities of any person, but the rights of the whole body defined and enshrined by law. That is, unlike a person who possesses a set of both legally stipulated and a number of natural, inalienable capabilities granted from birth, the rights and duties of the authority are conditioned by the powers that are assigned to it by regulatory documents at the time of creation.

Thus, the rights of the Guard Police in Ukraine are formally defined, legally established, guaranteed legal capabilities of the Guard Police as an elementary component of the National Police of Ukraine in terms of the competence assigned to it by law.

Moreover, we deliberately emphasise the structural relationship of the Guard Police to the National Police of Ukraine, because this aspect determines the specific comprehensive rights of the authority being investigated. Therefore, its rights include both common rights of the National Police in general and a number of special rights directly related to the competence of the Guard Police. In addition, the Guard Police's rights are neither clearly defined nor listed in any document that currently regulates their activities.

For example, based on the provisions of Law 580-VIII of Ukraine "On the National Police" of July 02, 2015 and Resolution 877 of the Cabinet of Ministers of Ukraine "On Approval of the Regulations on the National Police" of October 28, 2015, the Guard Police, as a component of the National Police in general, has rights as follows:

1. To perform preventive and prophylactic activities aimed at deterring the commission of offenses.

2. To identify the causes and conditions that contribute to the commission of criminal and administrative offenses, to take measures within their competence to eliminate them.

3. To take measures to ensure public safety and order in streets, squares, parks, public gardens, stadiums, railway stations, airports, sea and river ports and other public places.

4. To use databases (banks) of the Ministry of Internal Affairs of Ukraine and other state authorities.

5. To perform information search and analytical work.

6. To perform information interaction with other state authorities of Ukraine, law enforcement bodies of foreign countries and international organisations.

7. To apply, within the scope and forms defined by the legislation of Ukraine, police measures – actions or a set of actions of a preventive or coercive nature that restrict certain human rights and freedoms and are applied by police officers in accordance with law to ensure the implementation of the powers vested in the police.

8. To provide independently or through established institutions: installation, repair,

maintenance of security equipment, weapons, transport, communications equipment, premises provided to the National Police for the performance of its tasks, control over the proper use of material and technical resources by territorial bodies, enterprises, institutions and organisations that subject to its management; construction, reconstruction and overhaul of facilities under the jurisdiction of the National Police; ensuring proper working conditions.

9. To receive, in accordance with the procedure established by law, from state and local self-government bodies, enterprises, institutions, organisations regardless of their form of ownership and their officials, as well as citizens and their associations, information, documents and materials necessary for the performance of its tasks.

10. To use the relevant information databases of state bodies, the state system of government communication and other technical means;

11. To convene meetings, form commissions and working groups, hold scientific conferences, seminars on issues within the competence of the National Police, etc. (Law of Ukraine On the National Police, 2015).

Next, the special rights of the Guard Police, based on the mentioned above, as well as a number of other regulatory documents, such as Order 577 of the Ministry of Internal Affairs of Ukraine "On the organisation of the Guard Police service on ensuring the physical protection of objects" of July 07, 2017 are:

1) To protect the objects of state property in cases and in the manner prescribed by law and other legal regulations, as well as the implementation of state guard.

2) To guard on a contractual basis individuals and objects of private and communal property, as well as to take technical security measures in the cases and in the manner prescribed by law or other legal regulations.

3) To interact with the main departments of the National Police of Ukraine in the Autonomous Republic of Crimea and the city of Sevastopol, regions and the city of Kyiv and their territorial (separate) units, territorial (separate) units of the Patrol Police Department and other bodies and subdivisions of the National Police of Ukraine on the prevention, detection and deterrence of offenses within the posts and routes of guard, protection of objects of guard in case of complication of the operational situation, elimination of the consequences of emergencies (events), during preventive measures and special operations (introduction of operational plans), during joint trainings.

4) To form and control the activities within the scope of the Guard Police units defined by the legislation.

5) To use technical security equipment (alarm systems and complexes, systems, devices, technical surveillance equipment, lighting, technical control equipment) in their activities to increase the efficiency of the service to organise the guard of objects.

6) To use service vehicles and detection dogs in their activities to increase the capabilities of Guard Police units to detect and detain offenders, detect drugs, explosives and devices, protect certain areas and facilities, perform other tasks, etc. (Law of Ukraine On the National Police, 2015).

3. Duties of the Guard Police as an element of the administrative and legal status

In addition to the rights, the duties, which are of significance in the administrative and legal status of the Guard Police, are also characterised by certain specifics. In the general dictionary sense, a duty is:

1. something that must be unconditionally adhered to, that must be performed without fail in accordance with the requirements of society or based on one's own conscience;

2. a scope of work, a set of cases, limits of responsibility and so on, determined by the relevant rank, position, marital status, etc. (Bilodid, 1974).

V.M. Korelskyi and V.D. Perevalov argue that duty is a measure of socially necessary, proper human behaviour, which, together with rights and freedoms, ensures balance, stability and dynamics of the legal regulatory mechanism (Boush, 2005, p. 69). Frequently, the scientific literature distinguishes general social and legal duties. General social duties are socially recognised necessity of certain behaviour of individuals (a measure of proper, useful), which is objectively conditioned by the needs of existence and development of other individuals, social groups, nations, mankind.

In turn, the content of legal duties is somewhat broader. For example, O.Ye. Kostiuchenko defines a legal duty as a scope of necessary behaviour provided for the obligated subject of a certain branch of law and provided with the possibility of state coercion, which he/she should be guided by in the interests of the authorised actor (Kostiuchenko, 2009, pp. 9–10).

According to V.M. Fesiunin and a number of other scholars, a legal duty is an objectively necessary scope of proper behaviour established by law. The primordial nature of duties is such that they are intended to be the reverse side of subjective law as incentives. The functional purpose of duties is to ensure the very existence and implementation of rights. Rights and duties are inseparable from each other, interdependent and cannot exist in isolation.

M. Maslennikova emphasises that a legal duty is a scope of proper, socially necessary behaviour of a participant in legal relations provided for by law. It is an authoritative form of social regulatory mechanism, based on the "force", that is, on the potential state coercion. Unlike subjective law as a form of potential behaviour, legal duty expresses a mandatory scope of proper, socially necessary behaviour established by law. The ratio of rights and duties of subjects of law is the ratio of their potential and necessary behaviour, which reflects the ratio of public and dispositive in the legal field (Maslennikova, 2000, pp. 356–357).

Y.A. Vediernikov and A.V. Papirna believe that a legal duty is a scope of the necessary behaviour of a participant in legal relations provided for by law. In other words, it is a scope of proper behaviour of the obligated party in the interests of the authorised person. The key features of a legal duty include: the need for certain behaviour; imposition of duty only on the obligated person; imposition to satisfy the interests of the authorised person; presence only in legal relations; a scope of necessary behaviour; presence only in accordance with subjective law; being established by law; being provided (guaranteed) by the state (Vediernikov, Papirna, 2008).

Therefore, a legal duty reveals a legally established requirement expressed in a command to perform or refrain from performing certain actions, conducting specific behaviour, etc. Based on this, it is appropriate to define the duties of the Guard Police as statutory requirements for the implementation of actions by this law enforcement body in accordance with its competence.

Similar to rights, the duties of the Guard Police are neither defined nor listed in the regulatory framework governing the activities of the latter. At the same time, analysis of the legal framework for the activities of the Guard Police gives grounds to similarly distinguish two groups of duties, namely: general and special (Law of Ukraine On the National Police, 2015). General ones characterise the Guard Police as a component of the National Police and consist of the requirements for:

1. To ensure the observance of the rights and freedoms of citizens guaranteed by the Constitution and laws of Ukraine during the performance of official tasks.

3. To take measures to detect criminal and administrative offenses.

4. To terminate detected criminal and administrative offenses.

5. To take measures aimed at eliminating threats to the life and health of individuals and public safety that have arisen as a result of a criminal or administrative offense.

6. To timely respond to applications and reports of criminal, administrative offenses or events.

7. To convey, in cases and in the manner prescribed by law, of detained persons suspected of committing a criminal offense and persons who have committed an administrative offense.

8. To take measures to ensure public safety and order in streets, squares, parks, public gardens, stadiums, railway stations, airports, sea and river ports and other public places.

9. To take all possible measures to provide emergency, in particular pre-medical and medical, assistance to persons who have suffered as a result of criminal or administrative offenses, accidents, as well as to persons who have found themselves in a situation dangerous to their life or health.

10. To take measures to identify persons who are unable to provide information about themselves due to health, age or other circumstances, etc. (Law of Ukraine On the National Police, 2015).

Additional, special duties of the Guard Police are related to the implementation of targeted, security activities by the units that belong to it. These duties include:

1. Quality and continuous service to customers of guard services.

2. Prompt response to alarm notifications of technical security equipment.

3. Organisation of prompt response to reports of offenses and complications of the operational situation at the facilities to be guarded.

4. Organisation of operational interaction between the Guard Police and patrol police crews, the leadership of the Main Directorate of the National Police, the Patrol Police Department and other bodies and units of the NPU.

5. Notification of the territorial bodies of the National Police in case of detection of offenses.

6. Providing assistance to victims, identifying witnesses (eyewitnesses), ensuring the guard of the scene, the environment, traces, tools of crime and other material evidence to preserve them in their original state.

7. Providing information to the bodies of the State Emergency Service in case of detection of signs of threat or occurrence of emergencies, fires and dangerous events at the facilities to be guarded.

8. Ensuring the guard of facilities at the appropriate level, using plans for their defence in case of information about the possibility of an attack on them (Law of Ukraine On the National Police, 2015).

4. Conclusions

Therefore, these are, in our opinion, the key rights and duties of the Guard Police of Ukraine. Obviously, the above list expresses only a separate theoretical opinion based on the study of many other scientific perspectives and current legislation. In addition, this analysis is complicated by the fact that to date regarding activity of the Guard Police, no legal regulation defines the main rights and duties assigned to it.

Currently, the rights and duties of the Guard Police of Ukraine consist of two groups of certain opportunities and requirements, general and special. The former are the rights and duties of the Guard Police as a component of the National Police of Ukraine in general, the latter are ones of an independent body within its competence.

In order to clarify the legal status and increase the efficiency of legal regulation of the activities of the Guard Police in Ukraine, in our opinion, the rights and duties of this body at the legislative level in targeted legal regulations should be further clearly defined.

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ПРАВА ТА ОБОВ'ЯЗКИ ПОЛІЦІЇ ОХОРОНИ В УКРАЇНІ ЯК ЕЛЕМЕНТИ АДМІНІСТРАТИВНО-ПРАВОВОГО СТАТУСУ

Анотація. ***Мета.*** Метою статті є теоретичний аналіз прав та обов'язків поліції охорони в Україні як елементів адміністративно-правового статусу. ***Результати.*** Суб'єктивне право, виходячи із наукових позиції багатьох вчених, – це система юридично встановлених, закріплених та допустимих можливостей поведінки конкретного суб'єкта, за допомогою яких він взаємодіє із національною правовою реальністю. За великим рахунком суб'єктивні права залежать від суспільної ролі самого суб'єкта. Так, набір прав звичайного громадянина буде суттєво відрізнятись від прав такого ж громадянина, але який зв'язаний трудовими відносинами з правоохоронним органом держави, у зв'язку із чим на нього покладаються додаткові повноваження визначені законодавством. До того ж, говорячи про суб'єктивне право в аспекті роботи поліції охорони, також слід зауважити, що мова йде не про можливості якоїсь особи, а про нормативно визначені та закріплені права цілого органу. Тобто, на відміну від людини, яка володіє комплексом як законодавчо обумовлених, так і рядом природних, невідчужуваних можливостей, наданих їй від народження, права і обов'язки органу вла-

ди обумовлюються тими повноваженнями, які на нього покладаються нормативними документами в момент створення. Визначено, що права поліції охорони в Україні – це формально визначені, законодавчо встановлені, гарантовані юридичні можливості поліції охорони як елементної складової Національної поліції України в частині покладеної на неї законодавством компетенції. ***Висновки.*** Зроблено висновок, що на сьогодні в сфері діяльності поліції охорони не видано нормативно-парового акта, який би визначав основні покладені на нього права та обов'язки. На даний момент права та обов'язки поліції охорони України складаються з двох груп визначених можливостей та вимог, загального та спеціального характеру. Перші з яких виражають права та обов'язки поліції охорони як складового елементу Національної поліції України загалом, другі – як самостійного відомства в межах його компетенції. Для уточнення правового статусу та підвищення ефективності правового регулювання діяльності поліції охорони в Україні, на наш погляд, в майбутньому доречно чітко визначити права та обов'язки даного відомства на законодавчому рівні в межах цільових нормативно-парових актів.

Ключові слова: права, нормативна база, правова основа, поліція охорони, Національна поліція.

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COMPARATIVE ANALYSIS OF CRIMINAL, CIVIL AND ADMINISTRATIVE LIABILITY IN THE FIELD OF TELECOMMUNICATIONS

Abstract. ***Purpose.*** The purpose of the article is a comparative analysis of criminal, civil and administrative liability in the field of telecommunications. ***Results.*** An offense under the contract for the provision of services in the field of telecommunications is defined as unlawful behaviour of a party to the contract, which has violated the rights of the other party or caused property damage and/or non-pecuniary harm to the other party. In general, this unlawful behaviour is depicted in non-compliance by the parties with the terms of the contract and is actually expressed in illegal actions that may result in property damage or non-pecuniary harm to the parties to the contract for the provision of telecommunications services. The general conditions for bringing the parties to the contract for the provision of services in the field of telecommunications to civil liability for committing a civil offense are: unlawful behaviour; harmful consequences; causal link between unlawful behaviour and harmful consequences; guilt. Under the contract for the provision of telecommunications services, the most common type of civil liability for violation of the contract for the provision of telecommunications services is the payment of a penalty. The terms, procedure for payment and the amount of the penalty are provided for by the provisions of legislation and contracts. ***Conclusions.*** It is concluded that in practice it is quite difficult to find and punish the person guilty of committing these crimes. The complexity and specificity of the search for criminals of these crimes and evidence of the offenders' guilt is due to the characteristic features (transnationality) of the Internet. Both search and destruction of computer viruses are difficult. Despite the fact that specialists in the development of antivirus programs search for the latest viruses and improve the protection of antivirus programs, their complete destruction is not possible, because viruses change, develop, spread, and their new varieties are constantly formed. This is due to the fact that viruses and other software provide an opportunity to make profits not only to those who create them, but also to those who produce software to combat them. Despite a rather significant role of telecommunication services in human life, the issue of protection of violated consumer rights in relation to telecommunication services and the specificities of liability of the parties to the contract for the provision of telecommunication services in Ukraine has not been fully studied.

Key words: civil liability, compensation for damages, provision of services, telecommunications.

1. Introduction

Legal liability is an important element of the regulatory mechanism for social legal relations, the content thereof can be described as a targeted impact on individual behavior through legal means. This complex influence enables to fully regulate relations in society, to give them the appropriate features of stability and consistency, to implement the principles of social justice and to avoid aggravation of social conflicts. At all times, the existence of law in the form of a regulator of relations of society is directly conditioned by the need to maintain law and order in a heterogeneous society, filled with internal contradictions, in order to prevent any deviations and violations of the established rules of conduct.

Legal liability as an independent and necessary component of the legal regulatory system can be characterised by three specific features:

– It is a type of state coercion.

– The exclusive ground for legal liability is an offence.

– This legal category is implemented and functions by taking appropriate remedies against persons who have committed offences (Hrek, 2010, p. 42).

The category of legal liability is classified on various grounds. In practical terms, the most appropriate classification is considered to be based on the nature of sanctions and the sectoral feature. According to the latter, it is customary to distinguish the types of legal liability, such as criminal, administrative, disciplinary, civil, constitutional and international legal liability.

The purpose of the article is a comparative analysis of criminal, civil and administrative liability in the field of telecommunications.

2. Specificities of criminal liability in the field of telecommunications

The Criminal Code of Ukraine contains articles establishing criminal liability in the field of telecommunications (Articles 360, 361, 361^1, 361^2, 362, 363, 363^1 of the Criminal Code of Ukraine) (Criminal Code of Ukraine, 2001).

Article 360 establishes liability for intentional damage to communication lines (cable, radio relay, overhead type), wire broadcasting or structures/equipment that are part of them, in the event that it has temporarily stopped communication in the form of:

1) a fine of 100 to 200 tax-free minimum incomes of citizens;

2) correctional labour up to 1 year;

3) deprivation of liberty up to 2 years.

Those subject to liability under this Article may be not only employees of telecommunications operators, but also other persons who have committed these actions, including using their official position.

Article 361 of the Criminal Code of Ukraine establishes liability for unauthorised interference with computers, automated systems, computer or telecommunication networks. Liability under this Article shall be incurred in case of commission of this offense, which resulted in loss, forgery, leakage, information blocking, distortion of information processing procedure or violation of the procedure of its routing. Liability under this article is imposed in the form of:

1) fines from 600 to 1000 tax-free minimum incomes;

2) deprivation of liberty from 2 to 5 years;

3) imprisonment for up to 3 years, with or without a ban on holding certain positions or engaging in certain activities for up to 2 years.

Qualifying features are repeated commission of the crime or its commission by a group of persons by prior conspiracy, in case of significant damage, which entails a sentence of imprisonment for 3 to 6 years.

Article 361^1 of the Criminal Code of Ukraine contains provisions on the crime of creating for the purpose of use, sale or distribution of malicious software or hardware intended for unauthorised interference with computers, automated systems, computer and telecommunication networks. Liability under this article is imposed in the form of:

4) fines from 500 to 1000 tax-free minimum incomes;

5) correctional labour up to 2 years;

6) imprisonment for up to 2 years.

For the same actions committed for the second time, or by a group of persons by prior conspiracy, or in case of causing significant damage, the perpetrators shall be imprisoned for up to 5 years.

Article 361^2 of the Criminal Code of Ukraine regulates liability for unauthorised sale or dissemination of restricted information stored in computers, automated systems, computer networks or data carriers, in particular, a fine of 500 to 1000 tax-free minimum incomes or imprisonment for up to 2 years. Qualifying features are actions committed for the second time, or by a group of persons by prior conspiracy, in case of significant damage, for which the perpetrator is imprisoned for 2 to 5 years.

The next crime under the Criminal Code of Ukraine (Article 362) is unauthorised actions committed by a person who has the right to access information processed in computers or their networks, automated systems, or stored on data carriers. For unauthorised alteration, destruction or information blocking, the guilty person shall be fined from 600 to 1000 tax-free minimum incomes or punished by correctional labour for up to 2 years. For unauthorised interception or copying of data processed in computers and their networks, automated systems, or stored on the carriers of such data, if the above has led to their leakage, the guilty person shall be punished by imprisonment for up to 3 years with deprivation of the right to hold certain positions or engage in relevant activities for the same term.

For the same actions committed for the second time, or by a group of persons by prior conspiracy, or in case of causing significant damage, the perpetrators shall be imprisoned for 3 to 6 years with deprivation of the right to hold positions and engage in relevant activities for up to 3 years.

Article 363 of the Criminal Code of Ukraine regulates liability for violation of the rules of computer operation, as well as automated systems, computer networks and telecommunications or the procedure/rules for the protection of information processed in them in the event of significant damage, in the form of:

7) a fine of 500 to 1000 tax-free minimum incomes;

8) deprivation of liberty for up to 3 years with restriction of the right to hold certain positions or engage in relevant activities for the same period.

The offenders of this crime are persons responsible for the operation of automated systems, computer networks and telecommunications.

Finally, the article that regulates the issue of criminal liability is Article 363^1, which covers the crime of interfering with the operation of computers, their networks and telecommunication networks, automated systems, by deliberately disseminating telecommunication messages without the prior consent of the addressees. For this crime, in accordance with Part 1 of Article 3631 of the Criminal Code of Ukraine, the perpetrator shall be punishable by a fine of 500 to 1000 untaxed minimum incomes or imprisonment for up to 3 years. According to part 2 of the article, qualifying features are the same actions committed for the second time or by a group of persons by prior conspiracy, in case of causing significant damage, which entails deprivation of liberty or imprisonment for up to 5 years, with deprivation of the right to hold relevant positions or engage in relevant activities for up to 3 years.

3. Specificities of administrative liability in the field of telecommunications

The Code of Administrative Offences contains a special Chapter 10 "Administrative Offences on Transport, Road Facilities and Communications" (Kaliuzhnyi, Komziuk, Pohribnyi, 2008), part of which regulates telecommunications issues, such as:

1. Violation of the rules and conditions governing the activities in the telecommunications sector and in the use of radio frequency resources of Ukraine provided for by permits and licenses – Art. 145 of the CoAO.

2. Violation of implementation, operational rules of radio electronic means and devices of radiating nature, as well as the use of radio frequency resources of Ukraine – Art. 146 of the CoAO.

3. Violation of the rules of protection of communication lines and structures – Art. 147 of the CoAO.

4. Damage to a payphone – Art. 148 of the CoAO.

5. Violation of the rules of providing and receiving telecommunications services – Art. 148^1 of the CoAO.

6. Violation of the terms and procedure for the provision of communication services in public networks – Art. 148^2 of the CoAO.

7. Use of communication means for the purpose contrary to the state interest, violation of public order and violation of honor and dignity of citizens – Art. 148^3 of the CoAO.

8. Use of technical means and equipment used in communication networks of general use, in the absence of a document confirming compliance – Art. 148^4 of the CoAO.

9. Violation of rules for interconnection of public telecommunications networks – Art. 148^5 of the CoAO.

Analysis of the provisions of both procedural and substantive law directly related to the provision of telecommunication services proves that almost all the main types of liability provided for by Ukrainian legislation are used in this field (with the exception of disciplinary measures, which are specific to labour relations). This means that in case of violations related to the procedure of providing telecommunication services, measures of criminal, administrative and civil liability are applied (Kabalkin, 1984).

Some provisions of the CoAO and the CC of Ukraine have been considered above, and now it is proposed to consider the provisions of the Civil Code of Ukraine (CCU) and analyse civil liability in the telecommunications industry.

First of all, the focus should be on the issue of civil liability of telecommunication operators and providers, who are service providers, and liability of consumers (legal entities and individuals), who are customers of telecommunications services.

4. Specificities of civil liability in the field of telecommunications

Civil liability of telecommunication entities arises for violation of regulations and agreements on the provision of services in the field of telecommunications. Its grounds, conditions and amount may be provided for by the general provisions established by the Civil Code (in particular, Chapter 63 and Articles 633, 634 of the CCU), the special Law "On Telecommunications". Depending on the parties, the provisions of the Law "On Consumer Protection" are additionally applied (if the consumer is a natural person). In addition to the provosopns provided for by the peremptory laws, the parties may clarify and change certain provisions on liability in the contract, as well as establish additional liability not provided for by law for violation of certain terms of the contract.

It should be noted that civil liability should be understood as only those sanctions that are associated with additional burdens on the offender, that is, it is an appropriate punishment for the committed legal violation (Sergeev, Tolstoi, 1997, p. 254).

In other words, civil liability is the use of state-type coercive measures against an offender who commits an offense provided for by a contract or legislation – additional civil liabilities of a property nature (sanctions). It is a remedy for the participants in civil law relations, which is determined by the limits of permissible and necessary behavior (Borysova, Spasybo-Fatieieva, Yarotskyi, 2014, pp. 268–271).

O.S. Ioffe argues that civil liability is a sanction for legal violations, which entails negative consequences for the guilty person in the form of deprivation of civil rights of actors or imposition of new or additional civil obligations (Ioffe, 1975, p. 97).

Next, the concept of "legal grounds for civil liability in the contract for the provision of telecommunication services" should be considered. For example, they are understood as real circumstances that, under the terms of the contract or law, are associated with depriving the party, which has violated obligations, of its subjective civil rights, or with imposing new or additional civil obligations on it. In fact, the legal ground for civil liability of the parties to the contract for the provision of telecommunications services should be understood as their unlawful acts, which indicate the improper use of their own subjective rights and fulfillment of legal obligations. In other words, the legal ground for civil liability of any of the parties to the contract for the provision of services in the field of telecommunications is a legal fact, that is, the commission of an offense (Borysova, Spasybo-Fatieieva, Yarotskyi, 2014).

An offense under the contract for the provision of services in the field of telecommunications is defined as unlawful behaviour of a party to the contract, which has violated the rights of the other party or caused property damage and/or non-pecuniary harm to the other party. In general, this unlawful behaviour is depicted in non-compliance by the parties with the terms of the contract and is actually expressed in illegal actions that may result in property damage or non-pecuniary harm to the parties to the contract for the provision of telecommunications services.

The general conditions for bringing the parties to the contract for the provision of services in the field of telecommunications to civil liability for committing a civil offense are:

– unlawful behaviour;
– harmful consequences;
– causal link between unlawful behaviour and harmful consequences;
– guilt.

The legal consequences of committing a civil offense under a contract for the provision of services in the field of telecommunications are considered to be the imposition of certain burdens on the party responsible for this, which are depicted as an additional obligation or deprivation of subjective rights. In accordance with Part 3 of Article 40 of the Law "On Telecommunications", Article 549, Article 906 of the Civil Code, this obligation is:

1) compensation for actual damages;
2) compensation for lost profits;
3) compensation for non-pecuniary damages;
4) payment of a penalty;
5) the use of other property measures, which are regulated by the contract for the provision of services in the field of telecommunications.

At this point, the general provisions that are relevant to this form of civil liability in the form of compensation for damages should be considered before its consideration in relation to the provision of services in the telecommunications industry.

Neither the provisions of the current law "On Telecommunications", nor the law "On Communications", which has ceased to be in force, establish uniform requirements for full or limited liability. It should be noted that the legal relations of telecommunications operators and providers with consumers are subject to full liability established by the laws in force.

According to the Law "On Telecommunications", damages may be compensated to each party to the contract for the provision of services in the field of telecommunications, because each party may violate the right of the other and cause damage to the other party. Part 4 of Article 36 of the Law "On Telecommunications" states that if damage to the telecommunications network caused by the fault of the consumer is detected, the costs of repairing the damage to the administrative and telecommunications operator, compensation for other losses (including lost profits) are borne by the consumer.

Part 3 of Article 40 of the Law "On Telecommunications" stipulates that compensation for actual damages, non-pecuniary damage, lost profits incurred by consumers in case of improper performance of obligations under the contract for the provision of telecommunications services by the telecommunications operator and provider shall be resolved in court.

In general, the most typical civil liability for breach of a telecommunications services contract is payment of a penalty. Under the contract for the provision of telecommunications services, the most common type of civil liability for breach of the contract for the provision of telecommunications services is the payment of a penalty. The terms, procedure for payment and the amount of the penalty are provided for by the provisions of legislation and contracts.

The penalty can be in several forms: a fine (which, according to Part 2 of Article 549 of the Civil Code, is a penalty calculated as a percentage of the amount of improperly or unfulfilled obligation), penalty (which, in accordance with Part 3 of Article 59 of the Civil Code, is defined as a penalty calculated as a percentage of the amount of untimely fulfilled mone-

tary obligation for each day of delay), which the debtor shall pay to the creditor in case of breach of obligation.

Frequently, the fine is a measure of liability under the contract for the provision of services in the field of telecommunications in accordance with paragraph 1 of part 1 of Article 40 of the Law "On Telecommunications" (Law of Ukraine on Telecommunications, 2003).

According to the contract on the provision of services in the field of telecommunications, the parties also use the payment of a penalty, in case of long-term violation depending on the expiration of the relevant time in accordance with paragraph 3 of Part 1 of Article 40 of the Law "On Telecommunications".

5. Conclusions

The above crimes are socially dangerous and unlawful acts that encroach on public relations in the field of security of computer information and the normal functioning of computers, their networks and systems, as well as telecommunication networks, causing them harm or threatening to cause such harm.

However, in practice it is quite difficult to find and punish the person guilty of committing these crimes. The complexity and specificity of the search for criminals of these crimes and evidence of the offenders' guilt is due to the characteristic features (transnationality) of the Internet. Both search and destruction of computer viruses are difficult. Despite the fact that specialists in the development of antivirus programs search for the latest viruses and improve the protection of antivirus programs, their complete destruction is not possible, because viruses change, develop, spread, and their new varieties are constantly formed. This is due to the fact that viruses and other software provide an opportunity to make profits not only to those who create them, but also to those who produce software to combat them.

Despite a rather significant role of telecommunication services in human life, the issue of protection of violated consumer rights in relation to telecommunication services and the specificities of liability of the parties to the contract for the provision of telecommunication services in Ukraine has not been fully studied.

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ПОРІВНЯЛЬНИЙ АНАЛІЗ КРИМІНАЛЬНОЇ, ЦИВІЛЬНОЇ ТА АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ У СФЕРІ ТЕЛЕКОМУНІКАЦІЙ

Анотація. ***Мета.*** Метою статті є порівняльний аналіз кримінальної, цивільної та адміністративної відповідальності у сфері телекомунікацій. ***Результати.*** Правопорушенням у рамках договору про надання послуг в галузі телекомунікацій визначається протиправна поведінка сторони договору, через яку порушено права другої сторони чи іншій стороні завдано майнових збитків та/або немайнової шкоди. Загалом дана протиправна поведінка зображується в недотриманні сторонами умов договору та фактично виражається в протиправних діях, в результаті котрих може бути

завдано майнових збитків чи немайнової шкоди сторонам договору про надання послуг у галузі телекомунікацій. Загальними умовами притягнення сторін договору про надання послуг в галузі телекомунікацій до цивільної відповідальності за вчинення правопорушення цивільного типу є: поведінка протиправного характеру; наслідки шкідливої природи; причинний зв'язок протиправної поведінки й шкідливих наслідків; вина. За договором щодо надання послуг в галузі телекомунікацій найтиповішим різновидом цивільної відповідальності за порушення договору щодо надання послуг в галузі телекомунікацій є оплата неустойки. Умови, порядок сплати та розмір неустойки передбачено положеннями законодавства й договорів. ***Висновки.*** Зроблено висновок, що на практиці досить важко віднайти й покарати особу, що є винною в скоєнні даних злочинів. Складність та особливість пошуку злочинців даних злочинів й доказів вини правопорушників зумовлена характерними рисами (транснаціональністю) Інтернету. Видається важким як пошук, так і знищення комп'ютерних вірусів. Незважаючи на той факт, що спеціалісти щодо розробки програм антивірусного типу роблять пошук новітніх вірусів й здійснюють вдосконалення захисту антивірусних програм, повноцінне їхнє знищення не є можливим, адже віруси змінюються, розвиваються, поширюються, й постійно утворюються їх нові різновиди. Це обумовлене тим, що віруси та інше програмне забезпечення надають змогу одержувати прибутки не тільки тим, хто їх створює, а й тим, хто виробляє програмне забезпечення для боротьби із ними. Незважаючи на досить значну роль послуг в рамках телекомунікацій в житті людини, питання захисту порушених споживацьких прав щодо послуг в галузі телекомунікацій й особливості відповідальності сторін договору щодо надання послуг в галузі телекомунікацій в Україні не повноцінно досліджено.

Ключові слова: цивільна відповідальність, відшкодування збитків, надання послуг, телекомунікаційна.

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DISCRETIONARY POWERS OF THE ENERGY REGULATOR IN UKRAINE

Abstract. The article analyzes the discretionary powers of the National Commission for State Regulation of Energy and Utilities in Ukraine, including in the field of setting tariffs for electricity. In order to achieve the specified goals, the task was set, namely, to investigate the essence of discretionary powers and trace the application of the norms of granting discretionary powers to the Regulator; to study their impact on the functioning of electricity market entities; to determine ways to eliminate shortcomings. The issues discussed in the article are extremely relevant for Ukraine as its energy sector is undergoing a transition from the Soviet model of state control and management to the European (market) one. On the way towards changes and transformations, the position and approaches of the Regulator play a decisive role. Legislation on energy and control of the Regulator's activities is far from perfect and contains many contradictions within its structure. Contradictions and imperfections are also manifested in the activities of the Regulator itself and its approaches to the regulatory process. On the one hand, the Regulator has a very significant and wide range of powers in the energy sector and the ability to influence energy market participants regarding the approval of tariffs, investment programs, network development programs, etc., including the possibility of noticeably worsening the position of one participant and considerably improving the position of another through the mechanisms of inspections and approvals, while on the other hand not showing real principles, a professional approach and orientation to effective regulation to reduce tariffs for socially important services of natural monopolies. Under martial law, the Regulator increasingly resorts to manual regulation of specific processes and procedures, thereby delaying changes and transformations. For example, the issue of electricity theft in our country is within the competence and responsibility area of distribution system operators, which, following current legislation, shall detect the facts of electricity theft, record them, and seek compensation for damages caused by violators. At the same time, under the European approach to settling the issue concerned, the function of the energy distribution company is only to reveal such facts, and everything else is within the jurisdiction of law enforcement agencies. In order to change approaches to dealing with energy issues, the Regulator's standpoint should be more active and professional. ***Purpose.*** The purpose of the article is to analyze and identify shortcomings in exercising discretionary powers by the Regulator when making decisions on setting tariffs. ***Research methods***. The following scientific methods were used: methods of system analysis and generalization, formal-logical method (to defined the concept of discretionary powers), comparative legal method (to compare the legislation of different countries on decision-making on tariff setting by the regulator, statistical method (to analyse statistical information on court decisions), as well as functional-legal method. ***Results.*** The research analyses the broad statutory regulation of the Regulator's discretion and the lack of regulatory limits and a legislative mechanism to control the implementation of the Regulator's discretionary powers in tariff setting, evidenced by numerous court cases under which the National Commission for State Regulation of Energy and Public Utilities is the defendant. The research consists of separate parts that are aimed at achieving a common goal: 2. Terminological definitions; 3. Regulatory definition of the limits of the Regulator's discretion; 4. Powers of the Regulator to set tariffs. ***Conclusions.*** As a result of the study, the author has urged to legislate a mechanism for the individual responsibility of the Regulator's members for their decisions. Furthermore, the regulatory decisions of the national energy regulatory authorities have to be made under the principle of sole management or individual responsibility. The principle ensures greater efficiency in decision-making because it does not require the separate standard organisational procedures that always accompany collegial decision-making.

Key words: energy regulator, discretionary powers, regulator's control, legality, reasonableness.

1. Introduction

The issues of energy tariffs and their regulation are among the main social issues of any country in the world. The Regulator's decisions in the area concerned inevitably and directly affect the living standards of citizens and business profitability. For Ukraine, the energy issue is of increased relevance. In addition to its legal significance in balancing the interests of consumers, economic agents, and the state, it also has great political, geopolitical, and fundamental importance for the existence of Ukraine as a state. Specialists in economics, security, political science, and law have dealt with energy security issues.

In 2016, Ukraine adopted Law No. 1540-VIII, "On the National Commission for State Regulation of Energy and Public Utilities." Among the regulatory challenges at that time, one was to "create the prerequisites for the sustainability of state regulatory influence on the activities of natural monopolies in the energy sector through the Regulator's decision. It would avoid abrupt fluctuations in the economic management of entities and make such activities predictable over a longer period. This is one of the main levers for the efficient functioning of the energy sector as the basic sector of Ukraine's economy, ensuring energy security and balancing the interests of consumers, energy entities, and the state", as the explanatory note to the draft law "On the National Commission for State Regulation of Energy and Public Utilities" says. The challenge of achieving a permanent state of regulatory influence, linked to the principle of legal certainty, is part of the rule of law, a necessary condition for the effective functioning of economic sectors.

Unfortunately, over the five years that the Law has had a regulatory effect on social relations, these challenges remain. This is evidenced not only by the general dissatisfaction of citizens and economic entities with the performance of the National Commission for State Regulation of Energy and Public Utilities (hereinafter referred to as the Regulator) but also registered petitions on the website of the President of Ukraine for liquidation of the Regulator and revocation of its competence (Pro likvidatsiyu rehulyatora taryfiv NKREKP; Likviduvaty antynarodnu Natsional'nu komisiyu).

The above provides rationale for further study of the statutory regulation of discretionary powers, control over the Regulator's activity and the legality and reasonableness of the decisions taken for further improvement and optimisation. Accordingly, the purpose of the article is to analyse and identify shortcomings in exercising the discretionary powers by the National Commission for State Regulation of Energy and Public Utilities and decision-making on electricity market regulation in Ukraine and to put forward proposals for their elimination. In order to achieve the specified purposes, we set the objective to investigate the essence of discretionary powers and to trace, through the application of the rules granting discretionary powers to the Regulator, their impact on the functioning of electricity market entities and to identify ways to eliminate deficiencies in the current legislation.

Following the research purpose, we used the following scientific methods: methods of system analysis and generalization, formal-logical method (to define the concept of discretionary powers), comparative legal method (to compare the legislation of different countries on decision-making in tariff setting by the Regulator), statistical method (to analyse statistical information on court decisions), and functional-legal method.

Since the issue of the powers of the National Commission for State Regulation of Energy and Public Utilities has recently become relevant, scientific papers devoted to the Regulator's powers have appeared in the Ukrainian specialised literature in recent years. The lead researcher is Yulia Vashchenko, who in 2015 defended her doctoral thesis "State Regulation in the Energy Sector of Ukraine: The Administrative and Legal Aspect." (Vashchenko, 2015, pp. 22–26). Her more recent works concern the normative regulation of the general legal status of regulators not only in the energy sector but also in other areas (Vashchenko, 2010, pp. 22–26; Vashchenko, 2014, pp. 211–220) and administrative and tort relations in the energy sector (Vashchenko, 2016, pp. 13–18).

Benedyk Yana's writings deal with the requirements of international organisations and international legal provisions in the field of energy regulation (Benedyk, 2015, pp. 122–126). In her writings, the researcher focuses on the need to maintain correlation and balance between the national legal order and Ukraine's obligations arising from the Association Agreement and the Energy Community Treaty. Therefore, she argues for an appropriate level of autonomy for the Regulator by amending the Constitution of Ukraine and defining its legal status similar to that of the National Bank of Ukraine (Benedyk, 2020, pp. 62–69).

Experts also carry out studies on the effectiveness of exercising powers by the Regulator, and the results appear in the media and within relevant platforms (Grytsyshyna, 2021; Formaghey, 2020).

As for the study of discretionary powers, the following scholars have covered the gen-

eral issues of discretion in modern Ukrainian jurisprudence: Averyanov V.B., Andriyko A.F., Barabash Yu.Gh., Bytyak Yu.P., Guivan P.D., Ziller J., Kobylnik D.A., Kolomoyets T.O., Kolpakov V.K., Kuybida R., Lobach O.M., Lojuk I.A., Melnik R.S., Omeljan V., Khanova N.O. and other researchers.

A number of studies were devoted to the exercise of discretionary powers by some authorities. Thus, Diana Krasowska (Krasowska, 2020) and Iryna Loyuk (Loyuk, 2016, pp. 115–120) examined the discretionary powers of the National Bank of Ukraine. Unfortunately, the issue of exercising the discretionary powers by the National Commission for State Regulation of Energy and Public Utilities regulating the electricity market remains obscure. In this regard and considering the issue's topicality, this aspect requires further scientific research and the identification of ways to eliminate the identified shortcomings.

2. Terminological definitions

The Great Ukrainian Law Encyclopedia defines discretionary powers as a set of rights and obligations of the subjects of public administration authorizing, based on administrative discretion, to fully or partially determine one of the alternatives of public administration, which is most acceptable in specific public relations with specific parties involved (Velyka ukrayins'ka yurydychna entsyklopediya: u 20 t., 2020, p. 303).

To interpret the term 'discretion', scholar Barabash Yu. Gh. suggests referring to the English version of 'discretion', translated as 'common sense' or 'freedom of discretion' (Barabash, 2007, p. 50). Therefore, discretion must be implemented on the basis of "common sense" (i.e., it must correspond to the objective circumstances of the case and be reasonable), and thus, its implementation must also be a manifestation of statutory framed freedom in the exercise of their powers by public authorities (Khanova, 2018, p. 155). In this context, it seems correct to suggest that the primary concept of 'discretion' is the idea that within a particular area of power, an official should act in accordance with objectives and then determine tactics and strategies to achieve them. This can be discretion in clarifying and interpreting objectives; discretion in the tactics, standards, procedures necessary to achieve certain, defined objectives (Savchyn, 2015, p. 165).

According to researchers Tseller E., Kuybida R., Melnyk R., in their report "Administrative discretion and judicial review of its implementation," discretionary powers enable a state authority, a local government authority as well as other subjects of administrative activity to make the most balanced and fair decisions during law enforcement. But when political expediency takes precedence over legality and fairness, discretionary powers can be applied quite differently in the same situations, putting the subjects of legal relations in an unequal position. The judiciary has a particularly important role in verifying the use of discretionary powers by power entities (Tseller, Kuybida, Melnyk, 2020).

At the same time, information available on the official website of the National Commission for the State Regulation of Communications and Informatisation correctly notes that the list of corruption risks includes discretionary powers, as the ability to act at one's discretion is what creates the environment for corruption offences (Dyskretsiyni povnovazhennya, yak holovna prychyna vynyknennya koruptsiynoho seredovyshcha v publichniy sluzhbi). The reason for this is that discretion contains limits, and law is such a limit: public administration authorities "must be guided by the criteria laid down in the law and the task assigned to them and assess these limits within the limits of their powers." (Schmidt-Assmann Eberhard, 2009). Consequently, there are requirements for the law quality, which must specify both the limits of discretion and the manner they are exercised, taking into account the legitimate aim of a particular action.

However, despite corruption risks and potential threats for arbitrary action, legal provisions cannot avoid the wording to define discretion and enshrine discretionary powers. As scholars point out, the purpose of administrative discretion comes down to the fact that, firstly, discretion ensures individualisation and fairness in the resolution of certain cases, as they are considered within the specific circumstances that can be regarded by the relevant entity; secondly, such powers contribute to administrative flexibility, allowing administrative decision-makers to adapt to changing circumstances and priorities (while respecting the limits of legality and reasonableness) and promote efficiency (rationality) and responsiveness in management; thirdly, discretion allows the fullest possible consideration of the rights, freedoms and interests of the private person and especially when they are considered against the public interest (Tseller, Kuybida, Melnyk, 2020, p. 27).

3. Regulatory definition of the limits of the Regulator's discretion

In Ukraine, the regulatory definition of the concept of "discretionary powers" is not regulated by law but is enshrined in the decree of the Ministry of Justice of Ukraine from 24.04.2017 no. 1395/5. In accordance with the decree's provisions, discretionary powers

are the totality of rights and obligations of state and local governments, persons authorized to perform the functions of the state or local government, which allow determining at their discretion the type and content of management decisions that are taken fully or partially, or the ability to choose at their sole discretion one of several options of management decisions provided for by a regulatory legal act or a draft regulatory legal act. This definition of discretionary powers does not contain an indication of the limits of discretion due to the fixation of the whole and objectives, so it is a prerequisite for the manifestation of arbitrariness in the actions of power entities.

The definition of "discretionary powers" given in the draft Law on Administrative Procedure No. 3475 dated 14.05.2020, which was adopted by the Verkhovna Rada of Ukraine in the first reading on September 2, 2020 and is now submitted for the second reading in the Parliament, positively differs from the given definition. In this case, a power is defined as discretionary, when it allows an administrative body to act at its own discretion in deciding or choosing one of the possible solutions in accordance with the law and the purposes for which such a power has been granted. In the event that the law on administrative procedure is adopted in the wording prepared for the second reading, the range of discretionary authority of the power entities will be significantly expanded, but its limits will be clearly delineated by the law limits and the objective framework. This is important because the power entity exercises administrative discretion by weighing the law goals and basic principles against the specific powers granted by the legislature (Karabin, 2019, p. 128).

The court practice has also formed certain definitions of discretionary powers. They are, in particular, such powers, within the limits defined by law, an administrative body is able to independently (at its own discretion) choose one of several options of a particular lawful decision (Case No. 826/14033/17).

To establish the scope and limits of discretionary powers of the National Commission for State Regulation of Energy and Public Utilities as a regulator of the electricity market and their role in the overall mechanism of regulation of the electricity market in Ukraine, it is first necessary to highlight the existence of such powers and the fact of discretion.

The existence of the Regulator's discretionary power is established by law. According to the provisions of Article 3 of the basic law, the Regulator carries out state regulation in order to achieve a balance of interests of consumers, economic entities operating in the field of energy and public utilities, and the state, to ensure energy security, European integration of electric energy and natural gas markets of Ukraine. The regulator carries out state regulation via: 1) legal regulation in cases where the relevant powers are given to the regulator by law; 2) licensing of activities in the field of energy and utilities; 3) formation of pricing and tariff policy in the energy and utilities sectors and implementation of the relevant policy in cases where such powers are granted to the regulator by law; 4) state control and enforcement measures; 5) using other means provided by law. The same Law stipulates that the Regulator acts independently in the performance of its functions and powers, and the decisions of the Regulator are not subject to approval by public authorities, except in special cases.

It is evident that such law provisions declare a high degree of independence and autonomy of the state regulator, i.e., they provide for a wide range of discretionary powers within the subject of regulation.

The National Commission conducts state regulation, monitoring, and control over the activities of state-owned enterprises in the energy sector, in particular, regulating production, transmission and distribution activities, supply of electricity, organising the purchase and sale of electricity on the day-ahead market and the internal market, ensuring the purchase of electricity at a "green" tariff, trading activities, etc. In general, the scope of competence of the energy regulator is wide. The list of competences is available in Article 6 (3) of the Law on Electricity Market, which consists of 22 clauses.

4. Powers of the Regulator to set tariffs

Undoubtedly, the main issues regulated by the National Commission involve setting tariffs for services and goods in the energy sector, approval of investment programmes of transmission system operator and distribution system operators, licensing of economic activities in the electricity sector, and control over compliance with the licensing conditions of economic activities. However, more detailed attention and analysis should be given to the regulator's competence of tariff setting given the importance and complicated nature of implementation.

Parts 1 and 2 of Article 277 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other, provide that the regulatory authority must be legally distinct and functionally independent from any public or private enterprise and sufficiently empowered to guarantee effective competition and efficient market

operation. The decisions and procedures used by the Regulator must be unbiased in relation to all market participants.

Under the provisions of clause 7 of part 3 of the Article 6 of the Law, the National Commission for State Regulation of Energy and Public Utilities is entitled to set tariffs for universal service provider, supplier of last resort, tariff for dispatch (operational and technological) management services, tariffs for electricity transmission services, tariffs for electricity distribution services. The Law also stipulates that electricity market tariffs regulated by the state (including connection fees) must be non-discriminatory transparent, set with regard to the integrity of the UES of Ukraine, economically justified and transparent costs of the relevant electricity market participant and an appropriate level of profit margin.

Journalism states that from 1 July 2019, the Regulator has lost its power to set electricity prices for household consumers (Larina, 2021). It is based on the fact that at that time the Cabinet of Ministers of Ukraine set a flat rate for households for electricity consumption of up to 100 kWh/year at 0.9 UAH/kWh/year and 1.68 UAH/kWh/year for consumption of more than 100 kWh/year. But it was abolished at the end of December 2020. From 2021, the fixed price was set for all consumers at 1.68 UAH/kWh and remains the same until now. This transitional price should cushion the transition to market-based pricing, which would lead to a sharp increase in the household tariff to at least 3.30 UAH/kWh. However, after the abolition of the fixed tariff for electricity supply to household consumers and the transition to market prices, the part of the tariff regulated by the NKREKP will amount to an average of 20% to 40% of the cost of 1 kilowatt of electricity. Accordingly, regulatory issues and the Regulator's discretionary power in tariff setting will not lose its relevance.

In 2019, the Accounting Chamber audited the actual legality, timeliness and completeness of management decisions related to the activities of the Regulator. According to the Report on the Audit of the Performance Efficiency of the National Commission for State Regulation of Energy and Public Utilities of the state regulation of electricity generation, transmission, distribution and supply activities, it was found that during the tariff regulation in the electricity sector during 2016–2018, the Regulator did not consider the interests and financial performance of all electricity producers (Decision of the Accounting Chamber No. 6-2 dated 19.03.2019). When processing justified tariff proposals submitted for approval by different enterprises, it was mainly reduced for state-owned generators (nuclear, hydro and hydro) and not for private producers (TPS and CHP). For example, for NAEK Energoatom and Ukrhydroenergo, the NKREKP systematically reduced the tariff by almost a third of the level calculated by the companies. At the same time, for private producers of CHP, it was not more than 10 percent. Such artificially induced financial shortages for state-owned enterprises have resulted in a lack of funds for nuclear fuel purchases, a wage freeze, an exodus of skilled personnel, and stunted modernisation and development of production capacity. As a result of the NKREKP's pricing and tariff policies in the electricity sector, private producers operated under more favourable conditions than public sector producers.

Distribution System Operators (hereinafter referred to as DSOs), which ensure the transportation of electricity from the main power grids to consumers' meters, constitute natural monopolies that provide consumers with resource supply services critical for proper functioning. The operation of natural monopolies is regulated by a set of legislative acts, including the Law of Ukraine on Natural Monopolies, which aims to ensure the efficient operation of natural monopoly markets by balancing the interests of society, the subjects of natural monopolies and the consumers of their goods.

The efficiency of the operation of the DSOs is ensured by a specific mechanism, one of the most important components of which is the electricity distribution service tariff. It is the price of the electricity distribution service that primarily determines the income level of the operators and hence is the driving force that establishes the extent of cost reimbursement incurred after providing consumers with resource delivery services. Thus, it is the mechanism and the tariff that have a decisive influence on the functioning of the electricity distribution infrastructure.

Actions and decisions of the Regulator in setting the DSO's electricity distribution tariff are often subject to litigation in claims by the DSOs.

Therefore, in the decision of the Seventh Administrative Court of Appeal (Vinnytsia) dated June 22, 2021, in case 120/1950/20-a, the Court found violations of the Regulator in establishing economic coefficients of predicted process costs of electricity networks of voltage classes 1 and 2 for 2020 regarding the approval of economic coefficient of predicted process costs of electricity networks of voltage class 2 for Vinnytsiaoblenergo Joint Stock Company. The decision annulled the relevant decision of the Regulator that approved such coefficients and effectively obliged NKREKP to recalculate

the electricity distribution tariff in the manner prescribed by law. In decision No. 120/1950/20-a, the Court stated: "Transparency in administrative procedures is an effective safeguard against state arbitrariness. A reasoned decision demonstrates to a party that it has been heard and gives the party an opportunity to appeal against it. Only through a reasoned decision, a proper public and, in particular, judicial review of the administrative acts of the power entity can be ensured." At the same time, the Court dismissed part of the claim, namely regarding the obligation of NKREKP to approve economic coefficients in a specific amount, determining that this is the Regulator's discretion, and such issues should be decided at its meeting in accordance with the procedure set out in the applicable legislation.

Cases No. 480/3100/20 on the claim by Sumyoblenergo Joint Stock Company and No. 360/2013/20 on the claim by Lugansk Energy Association LLC are similar in substance to the subject matter of the claims, and the Court also sided with the claimants and partially satisfied the claims of the DSOs, recognising a violation by the Regulator when setting tariffs for electricity distribution. These cases have not been reviewed by the Supreme Court, so we can only predict the final position of the highest court in such cases.

If we take as an analogy the decision of the Supreme Court in the cases No. 826/13735/18, No. 826/7112/18, No. 640/2694/19 concerning finding unlawful the inaction of the Regulator to revise the tariff for natural gas transportation by natural gas distribution pipelines towards economically justified, in these cases the Court clearly sided with the claimants and obliged the Regulator to set economically justified tariff for natural gas distribution to claimants. In particular, the Court included in the costs the amounts specifically identified in the claim, noting: "The power of the defendant to take relevant decisions, including tariff setting, is, by its legal nature, discretionary. At the same time, justice is by nature recognised as such only if it meets the requirements of fairness and ensures effective redress (paragraph 10 of point 9 of the Decision of the Constitutional Court of Ukraine dated 30 January 2003, no. 3-rp/2003). Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (right to an effective remedy) guarantees that everyone whose rights and freedoms recognised in this Convention are violated shall have an effective legal remedy in a national authority, even if the violation has been committed by those exercising their official functions. At the same time, an effective remedy (method) must be understood as one that leads to the desired results, consequences, and has the greatest effect. That is, an effective remedy must ensure restoration of the violated right and be adequate to the circumstances." In the cases in which the DSOs were the claimants, the courts of the first and appellate instances recognised the discretionary power of the NKREKP in setting the tariff and denied part of the claim regarding the Regulator's obligation to approve the tariff with specific coefficients, referring only to the procedure under which the NKREKP must approve such tariff. Meanwhile, in cases involving claims by entities on natural gas distribution, the Supreme Court upheld the position of the lower courts, which effectively interfered with the discretionary powers of the NKREKP and obliged the latter to approve the natural gas distribution tariff on the basis of specific monetary indicators.

Thus, the existence of a large number of court cases in which the NKREKP is a defendant, including tariff setting issues, the existence of deficiencies in legislation on the activities of the National Commission for State Regulation of Energy and Utilities indicates the risks associated with the activities of such an authority, given the current provisions of the Law, which grants the Regulator a wide range of discretionary powers.

Apart from the unresolved problem of the wide range of the Regulator's discretionary powers that sometimes are used without any supervision, a common question of the legitimacy of the body, linked to the organisation of its activities, has also recently arisen. Thus, as noted by a member of the National Commission for State Regulation of Energy and Utilities, 2018-2019, Formaghey O., "the legality of the NKREKP members' status in 2020 has been the subject of judicial challenge both in the Constitutional Court of Ukraine and in the District Court of Kyiv, which creates legal uncertainty and reduces the authority of the body as a whole. The body's legitimacy has also been affected by the novelty of clause 3 of Section II of Law 394-IX, whereby the members temporarily appointed for three months have been legally transformed into permanent members with six-year terms of office, avoiding the general competitive selection procedures and thus changing the rules of the game in their favour, against the public interest of conducting a transparent selection of the Regulator members to ensure fair regulation" (Formaghey, 2020).

5. Conclusions

An analysis of the discretionary powers of the National Commission for State Regulation of Energy and Utilities has led to the following conclusions.

Firstly, there is the overly broad statutory regulation of the Regulator's discretion and the lack of regulatory limits.

Secondly, there is a lack of a statutory mechanism to control the exercise of the Regulator's discretionary powers in tariff setting, as evidenced by numerous court cases under which the National Commission for State Regulation of Energy and Public Utilities is the defendant.

Thirdly, there is the need to legislate a mechanism for the individual responsibility of the Regulator's members for their decisions. Such a position is also evident in the final report "Institutional Reform of Ukraine's Energy Sector in the Context of its Integration into the EU Market," where a group of international experts and consultants who, in the context of proposals for Ukraine to reform the national energy regulatory authority, suggested that Ukraine should depoliticise the formation of key management personnel and the activities of the national energy regulatory authority to ensure the best performance its functions (Instytutsiyna reforma enerhetychnoho sektoru Ukrayiny. 2016). Furthermore, the experience of most countries of the Visegrad Group shows that their national energy regulatory authorities make relevent decisions following the principle of sole management or individual responsibility. This principle ensures greater efficiency in decision-making because it does not require the separate standard organisational procedures that always accompany collegial decision-making. The principle of sole management does not create the preconditions for 'blurring' responsibility.

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ДИСКРЕЦІЙНІ ПОВНОВАЖЕННЯ РЕГУЛЯТОРА У СФЕРІ ЕНЕРГЕТИКИ В УКРАЇНИ

Анотація. У статті проведено аналіз дискреційних повноважень Національної комісії, що здійснює державне регулювання у сферах енергетики та комунальних послуг України, у т.ч. у сфері встановлення тарифів на послуги в сфері електроенергетики. Для досягнення визначених цілей поставлено завдання, а саме дослідити сутність дискреційних повноважень та простежити шляхом застосування норм надання дискреційних повноважень Регулятору, вивчити їх вплив на функціонування суб'єктів ринку електричної енергії та визначити шляхи усунення недоліків. Питання, про які йде мова у статті, є вкрай актуальні для України, оскільки сфера енергетики в Україні проходить етап переходу з радянської моделі державного контролю та управління до європейської (ринкової). На цьому шляху змін та трансформацій позиція та підходи Регулятора виконують визначальну роль. Законодавство у сфері енергетики та регулювання діяльності Регулятора є в значній мірі недосконале, містить у структурі своїй значну частину протиріч. Протиріччя та недосконаліть також проявляється у діяльності самого регулятора та його підходів до процесу регулювання. З одного боку, регулятор у сфері енергетики має дуже значне та широке коло повноважень та можливість впливу на учасників ринків енергетики щодо затвердження тарифів, інвестиційних програм, програм розвитку мереж тощо, у т.ч. можливість значно погіршити через механізми перевірок та погоджень становище одного учасника та значно покращити становище іншого, при цьому, з іншого боку, не проявляючи дійсної принциповості, професійного підходу та орієнтації на ефективне регулювання з метою зниження тарифів на соціально важливі послуги у сферах природніх монополій. В умовах воєнного стану Регулятор все більше вдається до ручного регулювання тих чи інших процесів та процедур, затягуючи тим часом процеси змін та трансформацій. Для прикладу, процеси крадіжки електричної енергії у нашій країні є компетенцією та задачами операторів системи розподілу, які чинним законодавством зобов'язані виявляти факти розкрадання електричної енергії, фіксувати їх та добиватися компенсації порушниками завданих збитків. При цьому у європейському підході вирішення цього питання, функція енергорозподіляючої компанії полягає тільки у виявленні таких фактів, все інше – це питання правоохоронних органів. Для зміни підходів у вирішенні тих чи інших питань у сфері енергетики позиція Регулятора має бути більш активна та професійна. ***Мета.*** Метою статті є аналіз і виявлення недоліків у процесі реалізації Регулятором дискреційних повноважень під час прийняття рішень щодо встановлення тарифів. ***Методи дослідження.*** У статті використовувалися такі наукові методи: методи системного аналізу та узагальнення, формально-логічний метод (для встановлення сутності поняття дискреційних повноважень), порівняльно-правовий метод (для порівняння законодавства різних країн щодо прийняття рішень регулятором у сфера тарифоутворення), статистичний метод (для аналізу статистичної інформації щодо судових рішень), а також функціонально-правовий метод. ***Результати.*** У статті проведений аналіз широкого законодавчого регулювання дискреційних повноважень Регулятора та відсутність нормативних обмежень, а також відсутність нормативного механізму контролю за виконанням дискреційних повноважень Регулятора при тарифоутворенні, про що свідчить низка судових справ, у яких відповідачем є НКРЕКП. Дослідження складається з окремих частин, які спрямовані на досягнення спільної мети: Термінологічні визначення; Нормативно-правове визначення меж дискреційних повноважень Регулятора; Повноваження Регулятора щодо встановлення тарифів. ***Висновки.*** У результаті дослідження автор призвів до необхідності законодавчого закріплення механізму індивідуальної відповідальності членів Регулятора за свої рішення. Крім того, регуляторні рішення національних органів регулювання енергетики повинні прийматися на основі принципу одноосібного управління або індивідуальної відповідальності. Цей принцип забезпечує більшу оперативність у прийнятті рішень, оскільки не вимагає окремих стандартних організаційних процедур, які завжди супроводжують колегіальне прийняття рішень.

Ключові слова: Регулятор у сфері енергетики, дискреційні повноваження, контроль регулятора, законність, обґрунтованість.

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FORMATION OF INTERNATIONAL LEGAL STANDARDS FROM ANCIENT TIMES TO THE FIRST HALF OF THE XX CENTURY

Abstract. ***Purpose.*** The purpose of the article is to analyse the formation of international legal standards from ancient times to the first half of the XX century. ***Results.*** The law of nations was governed by such concepts of law such as law of war, law of captivity, law of slavery, law of peace treaties, law of ambassadorship, law of prohibiting marriages with foreigners, etc. That is, relevant rules, principles, prohibitions that governed and regulated the diversity of social relations arose both at the intersection of international law and the general Roman law, which was born on the basis of the Empire. Greece developed the law of international treaties, of which there were about twenty different types. These were treaties of peace, alliance, mutual assistance, as well as non-aggression, borders, arbitration, marriage with foreigners, trade, legal assistance, etc. During the heyday of the feudal period of human development, the improvement of trade relations had a positive impact on the development of the law of international treaties, on the basis of which numerous alliances for the purpose of trade emerged. It is revealed that in 1885 for the first time the idea of the expediency of creating a special international bureau of labour was expressed and the draft statute of such a bureau was introduced by a group of working-class deputies in the French Chamber of Deputies. In 1888, the idea of the expediency of establishing a special international society in the field of international labour standardisation was first expressed. At the state level, the first official steps to implement the idea of the international legal regulatory mechanism for labour were taken by the Swiss government in 1881 and in 1889. In 1881, the Swiss government addressed the governments of six European states on the possibility of concluding international agreements in the field of labour law and received a positive response only from Belgium. ***Conclusions.*** It is concluded that the prerequisites for introducing international legal standards originated long ago with the understanding of the need for legal regulatory mechanism for peace, war, the status of participants in international relations, and since the mid-nineteenth century - with the justification of the need for the international legal regulatory mechanism for labour, as well as other important sectors of life, such as international relations, military conflicts, etc. This is the first stage of the formation of international legal standards.

Key words: League of Nations, Assembly, Secretary General, financial responsibility.

1. Introduction

The emergence of international legal standards was due to the collective awareness of their importance, which, as noted in the literature, has been developing gradually and represents nowadays a rich and interesting chronology of historical events involving societies and states from different regions of the planet (Nalyvaiko, Stepanenko, 2019).

For example, the researchers emphasise that the germs of the formation of international legal standards can be traced back to the Manu Laws, an ancient Indian code of moral and legal precepts, created in the IX century BC, which formulated provisions aimed at protecting the victims of war. Similar provisions were in Ancient Greece (polis cities) and in Ancient Rome. Moreover, the ancient Greek institution of proxenia, which proclaimed the protection of foreigners, later had analogues in Roman law.

Issues related to the concept, characteristics, classification of international standards were considered by scientists, such as M.O. Baimuratov, V. Bryntsev, S.M. Liakhivnenko, D.P. Martynovskyi, M. Rabinovych, K.O. Savchuk, and V.V. Shamrai.

However, the issue of international standards evolution is not sufficiently studied, and therefore the purpose of the article is to analyse the formation of international legal standards from ancient times to the first half of the XX century.

2. History of the formation of international legal treaties

Experts in legal history note that during the period of slavery, the Roman law of peoples or the law of the Peregrines significantly influenced not only the development of Roman (Quirite) law, but also the development of international law. First of all, ancient Roman lawyers created rules capable of regulating the legal situation of the peoples conquered by Rome. The reason for this was the need to introduce certain elements of self-government convenient for such a large empire as Rome. Later it turned into the Law of Nations (*jus gensium*). Praetorian law was one of the important institutions of this law, as it regulated the legal status of foreign citizens.

The law of nations was governed by such concepts of law such as law of war, law of captivity, law of slavery, law of peace treaties, law of ambassadorship, law of prohibiting marriages with foreigners, etc. That is, relevant rules, principles, prohibitions that governed and regulated the diversity of social relations arose both at the intersection of international law and the general Roman law, which was born on the basis of the Empire.

The principle of *pacta sunt servanda*, still in force, i.e. "Agreements must be kept", is based on the thesis of Roman lawyers "A word given even to an enemy must be kept". Roman law used the services of conciliation commissions, which were created to resolve all disputes.

In the slave period, the conclusion of international treaties was widely used. For example, these events took place in 3100 BC between the rulers of the Mesopotamian cities of Lagash and Umma.

With the further development of states, the position of sovereigns was equalised, which influenced the nature and spread of the practice of treaties between states. Treaties on neutrality, borders, exchange of disputed border territories, trade, etc. began to be concluded.

Thus, Greece developed the law of international treaties, of which there were about twenty different types. These were treaties of peace, alliance, mutual assistance, as well as non-aggression, borders, arbitration, marriage with foreigners, trade, legal assistance, etc.

During the heyday of the feudal period of human development, the improvement of trade relations had a positive impact on the development of the law of international treaties, on the basis of which numerous alliances for the purpose of trade emerged.

The events of the XVII century, including the decision of the Peace of Westphalia of October 24, 1648, significantly influenced the development of international law. In addition, it is important to allow for the consequences of the first bourgeois revolutions in Europe (in the Netherlands and England, etc.).

The struggle of the North American colonies for independence from England and France was of great importance, as it ended with the proclamation of the United States in 1776. It was a huge step in the progressive development of international law of that time. Furthermore, the U.S. treaties with Russia, France and other countries have become a legal and de facto recognition of the right of the nation to self-determination, independent development and formation of a sovereign state.

The Great French Revolution of 1789–1793 made a great contribution to the development of international law. Its democratic ideas marked the beginning of a new period of development of international law, the era of classical international law. In 1793, Abbot Gregoire, a member of the French Republican Convention, presented the "Declaration of the Rights of Peoples" to the Convention, where Article 21 emphasised that all peoples are obliged to live in peace, and good should prevail over evil. Even in times of war, the sea and other inexhaustible objects should belong to all, and not be the property of only one nation. Based on this Declaration, conclusions were made about the equal rights of all peoples, the equality of all states. Gregoire stressed the need for mandatory compliance with international treaties. The Declaration also put forward requirements for the humanisation of human relations. On the basis of this document, we can conclude about the importance of humane treatment of prisoners of war, inviolability of private property, consideration of the rights of civilians. The war should have been waged between politicians with the help of troops and as little as possible to touch the peaceful people, who have always been the resource of existence of any state. That is, the performance of states in military conflicts, through the application of international treaties, should be reduced to the observance and implementation of the relevant rules of conduct (Martynovskyi, 2020).

It should not be overlooked that international legal standards gradually crystallised from various philosophical theories, currents about justice, people, their place in society, the role of the state, rulers of countries in ensuring the welfare of the people and peace in the world, etc. In this regard, we can recall

the works by Aristotle, Socrates, Plato, later Friedrich Hegel, Thomas Paine, John Stuart Mill, Machiavelli, Jean-Jacques Rousseau, Voltaire, Melieu, Diderot, Thomas More, John Locke, Montesquieu and others, who in their treatises promoted human rights, equality of people, the need to introduce a just government, the achievement of ideal forms of interaction between man and society with the state, trying to link the law with ethical qualities of a person.

In turn, the philosophical works by these and many other thinkers contributed to the fact that in the Middle Ages in the states there were regulations that began to define the general rules of conduct of people in society, the state and set limits to the omnipotence of the rulers. Magna Carta in England (1215), the Twelve Articles in Germany (1525), the Bill of Rights in England (1689), the Scottish Bill of Rights (1689), the US Declaration of Independence (1776), the Declaration of the Rights of Man and Citizen in France (1789) and other legal acts became the first legal documents that laid the foundations of the concept of human rights, created the basic prerequisites for further establishment of freedom and the rule of law in the life of European societies (Nalyvaiko, Stepanenko, 2019).

3. Legislative consolidation of international legal standards

From the practice of developed democracies, we know that soon the USA (1787), France (1791), Poland (1791) and then in other countries introduced constitutions that at the highest legislative level enshrined the forms of government of these countries, clearly defined the mechanism of state power of a particular country, the powers of the authorities, proclaimed the first human rights and freedoms, guarantees of their provision. Normalisation at the constitutional level of the general principles of functioning of the state and society contributed to the awareness both at the level of individual states and at the international level of the importance of legal definition of certain sectors of human, social and state life. Due to this, legal regulations appeared, which at the national level began to regulate the procedure for the formation of representative bodies of public power, the organisation of work of different segments of the population, etc. For example, in England in 1802, the Health and Morals of Apprentices Act was developed and adopted, which banned the work of parish pupils under the age of nine in paper weaving and wool spinning factories and limited the working day of children aged nine to 13 to eight hours, and adolescents under 18 to 12 hours a day. In 1819, the Cotton Mills and Factories Act was passed to extend the provisions of the 1802 Act to all minors employed in the cotton industry. In addition, it was forbidden to employ children under the age of nine in factories (N.d., 1972). Later, the law of 1824 in England enshrined the right of workers to protect their interests in the form of the right to strike and form trade unions.

In 1840 in this country, it was forbidden to work for women and for children under the age of 10 underground. In 1847, the Act to limit the Hours of Labour of Young Persons and Females in Factories provided for that in the textile industry for women and adolescents from the age of 14 the working day should not exceed 10 hours. The duration of the working week was set at 63 hours by the second section of the Law. From July 1, 1847 it was reduced to 58 hours. The Factory Acts Extension Act of 1867 extended the new health and safety regulations to iron, steel and paper mills, as well as to all other businesses and factories employing more than 50 workers on a permanent basis. It should be noted that work at a particular factory for at least 100 days a year was recognised as a permanent basis.

Adopted in 1878, the Factory Act 1878 was issued with the aim of consolidating all previously issued laws regulating labour in factories and factory workshops. It systematised all the main provisions of the previously issued factory laws. According to Section 6 of this law, restrictions on working hours and working conditions now applied to all branches of the factory industry. According to the Act 1878, any underage worker, regardless of which factory he worked in, could not work more than 10 hours a day, regardless of the shift schedule.

Later, the 1908 Act established in England an 8-hour working day in the coal industry) or for some categories of workers and employees (for railway workers, miners, postal workers). In the second half of the XIX century, the first laws providing for compensation to workers in case of occupational injuries appeared in England. The Workmen's Compensation Act of 1897 provided for financial liability for occupational injuries.

Other countries, in particular France, Germany, followed the path of England in regulating the issues of labour organisation of different social groups and in different sectors of economy (Kryzhevskyi, Derii, 2019). However, it should be noted that the legislative consolidation of these issues in the countries differed, which put on the agenda the need for their certain unification.

According to researchers, scientific substantiation of the need for the international legal regulatory mechanism for labour devel-

oped in Europe in the 30–40s of the XIX century, mainly within political economy. Almost simultaneously, in the late 30s – early 40s of the XIX century, this was done by the French economist Jerome Adolphe Blanqui and the entrepreneur from Alsace Daniel Le Grand.

In the second half of the XIX century, the idea of the international legal regulatory mechanism for labour was actively discussed at international congresses of labour organisations in France, Germany, England, Belgium and other countries. However, concrete steps to sign an agreement on the international legal regulatory mechanism for labour were made only in the late nineteenth century (Kryzhevskyi, Derii, 2019).

According to the literature review, three countries became the founders of the idea of the international legal regulatory mechanism for labour: France, where the idea of the international legal regulatory mechanism for factory labour conditions arose, Germany, where the idea received the most thorough theoretical coverage, and Switzerland, where the federal government supported this idea in its practical implementation (Kravchenko, 1913).

Furthermore, in 1885 for the first time the idea of the expediency of creating a special international bureau of labour was expressed and the draft statute of such a bureau was introduced by a group of working-class deputies in the French Chamber of Deputies. In 1888, the idea of the expediency of establishing a special international society in the field of international labour standardisation was first expressed.

At the state level, the first official steps to implement the idea of the international legal regulatory mechanism for labour were taken by the Swiss government in 1881 and in 1889. In 1881, the Swiss government addressed the governments of six European states on the possibility of concluding international agreements in the field of labour law and received a positive response only from Belgium. In 1889, the Swiss government again initiated an international conference and sent proposals to 14 European countries, of which only Russia responded with a strong refusal due to radically different working conditions, while eight states accepted the proposal in full or with reservations, Spain limited itself to notifying the receipt of the note, four states, including Germany, did not respond.

However, on February 8, 1890, on the initiative of Emperor Wilhelm II, an Intergovernmental Conference on the conclusion of an international convention on the improvement of labour relations was held in Berlin, which resulted in resolutions to improve working conditions in mines, establishing age limits for employment, reducing the working day for children, adolescents and women, and establishing Sunday as a mandatory day off, as well as the establishment of the International Labour Law Association, which was to facilitate the conclusion of a number of bilateral agreements, mainly on the working conditions of foreign workers. Unfortunately, the Association did not work in practice, so the idea of such an organisation was implemented at the Brussels Congress in 1897, where the statute of the International Association for the Legal Protection of Workers was drafted, and in Paris at the International Congress on Labour Law held during the World Exhibition in 1900, where it was established with an executive body - the International Labour Office (formed on September 27, 1901), with headquarters in Basel (Kryzhevskyi, Derii, 2019).

The International Association for the Legal Protection of Workers was the predecessor of the International Labour Organisation, which was established on April 11, 1919 under the Treaty of Versailles. The purpose of the organisation was to promote international cooperation to ensure lasting peace in the world, eliminate social injustice by improving working conditions, ensure minimum standards in all countries of the world, and extend international labour standards to all climatic zones. Initially, the founders of the ILO were 29 states that signed the Treaty of Versailles, the same status was granted to 13 more states. Among the founders of the ILO there were 17 American (except the USA), 16 European, five Asian, two African states, Australia and New Zealand. The ILO's activities in the early years of its existence were focused on the problems of the international legal regulatory mechanism for labour of women, children and adolescents and the development of universal international standards in this field. Primarily, these are standards that determine the minimum age for employment, working conditions for women and young people in various jobs, night work, medical examination and social insurance (Kryzhevskyi, Derii, 2019).

In parallel with the introduction of the ILO, the Paris Peace Conference in 1919-1920 considered the establishment of the League of Nations, the first international intergovernmental organisation, which was founded to develop cooperation, peace and security among nations. When it was introduced, the main tasks of this organisation were to respect the rights of national minorities and to resolve territorial conflicts in the world after the First World War.

According to the Covenant of the League of Nations, its founders were the victorious states in the First World War, as well as newly

created countries, such as the Polish Republic, Czechoslovak Republic and the Kingdom of Hijaz. Initially, 44 countries became members of this organisation, later their number increased to 52. The authority of the League of Nations was recognised so much that its charter was a part of all post-war peace treaties.

The main working body of the League of Nations was the Assembly of Representatives of all members of the organisation, which convened annually. Moreover, representatives of each state had one vote at the meetings of the Assembly, regardless of the population and size of the country's territory. The decisions of the Assembly were made unanimously, except as specifically stipulated. In addition, there was the Council of the League of Nations, which consisted of four permanent members (Great Britain, the French Republic, the Kingdom of Italy, the Empire of Japan) and four non-permanent members, who were re-elected annually, and a permanent secretariat headed by the Secretary General. The headquarters of the League of Nations was located in Geneva (Wikipedia site, 2021).

4. Conclusions

Therefore, the prerequisites for introducing international legal standards originated long ago with the understanding of the need for legal regulatory mechanism for peace, war, the status of participants in international relations, and since the mid-nineteenth century - with the justification of the need for the international legal regulatory mechanism for labour, as well as other important sectors of life, such as international relations, military conflicts, etc. This is the first stage of the formation of international legal standards.

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СТАНОВЛЕННЯ МІЖНАРОДНИХ ПРАВОВИХ СТАНДАРТІВ ВІД НАЙДАВНІШИХ ЧАСІВ ДО ПЕРШОЇ ПОЛОВИНИ XX-ГО СТОРІЧЧЯ

Анотація. ***Мета.*** Метою статті є аналіз становлення міжнародних правових стандартів від найдавніших часів до першої половини XX-го сторіччя. ***Результати.*** Право народів керувалось такими інститутами права, як право війни, право полону, право рабовласництва, право мирних договорів, посольське право, право заборони шлюбів із чужоземцями тощо. Тобто вже можна говорити про виникнення відповідних правил, принципів, заборон, що регламентували та регулювали розмаїття суспільних відносин, котрі виникали як на стику міжнародного права, так і в рамках загального Римського права, що народжувалось на засадах Імперії. У Греції розвивалось право міжнародних договорів, яких нараховувалось близько двадцяти різних типів. Серед них були договори про мир, союз, взаємодопомогу, а також про ненапад, кордони, арбітраж, про шлюби з іноземцями, про торгівлю, про правову допомогу тощо. Під час розквіту феодального періоду розвитку людства покращення торговельних зв'язків позитивно впливало на розвиток права міжнародних договорів, на основі яких виникали численні союзи з метою торгівлі. З'ясовано, що в 1885 р. вперше була

висловлена думка про доцільність створення спеціального міжнародного бюро з питань праці і проект статуту такого бюро було внесено групою депутатів з робітничого класу у французьку палату депутатів. У 1888 р. вперше висловлюється думка про доцільність утворення особливого міжнародного товариства в галузі міжнародного нормування праці. На державному рівні перші офіційні кроки до реалізації ідеї міжнародно-правової регламентації праці вжив уряд Швейцарії в 1881 і в 1889 роках. У 1881 р. уряд Швейцарії звернувся до урядів шести європейських держав з питання про можливість укладення міжнародних угод у галузі трудового права і отримав позитивну відповідь лише від Бельгії. ***Висновки.*** Зроблено висновок, що передумови запровадження міжнародних правових стандартів зародилися давно з розумінням необхідності правового врегулювання питань миру, війни, статусу учасників міжнародних відносин, а з середини XIX ст. з обґрунтування необхідності міжнародно-правової регламентації праці, а також інших важливих сфер життєдіяльності, таких як міжнародні відносини, питання військових конфліктів і т. ін. Це є перший етап становлення міжнародних правових стандартів.

Key words: Ліга Націй, асамблея, генеральний секретар, матеріальна відповідальність.

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REFORM OF THE JUDICIARY AND ITS IMPACT ON THE ORGANISATION OF CRIME CONTROL UNDER CRIMINAL LAW IN THE FIRST HALF OF THE 1920S

Abstract. ***Purpose.*** The purpose of the article is to study the process of reforming the judiciary and its impact on the organisation of crime control under criminal law in the first half of the 1920s. ***Results.*** It is revealed that the criminal legislation provided for the weakening of repressions against persons of proletarian or semi-proletarian origin and their strengthening against representatives of the "exploiting classes", which testified to the struggle of the authorities primarily against Kurkuls. In addition, the possibility of mitigating the punishment of a criminal on the basis of the definition of "social origin and class affiliation" provided for pardon regardless of the sentence already served by the convicted person if the person of proletarian origin showed signs of correction. Crime control under criminal law in the segment of prescriptions contained in the Criminal Code and the Criminal Procedure Code of 1922 testifies not only to the emergence of opportunities for making unjust sentences, but also to the creation of an attractive, but, in fact, illusory picture of combating crime for the general public. It is emphasised that the position of the Bolshevik authorities in Ukraine on their self-preservation is most clearly manifested through the acquaintance with the corpus delicti of counter-revolutionary crimes. On pain of criminal reprisals, it was forbidden to finance the bourgeois mass media, to call for non-compliance or opposition to the orders of the central or local authorities, to spread false rumours that could cause distrust in the government or discredit it. ***Conclusions.*** It is concluded that in the late 1920s, the ongoing process of dispossession required changes in criminal and criminal procedural legislation, which would legalise large-scale repressions simultaneously with the seizure of products from agricultural producers in order to obtain the necessary funds for forced industrialisation. Therefore, the process of crime control was deformed in its essence due to the search for "class enemies" and the proclamation of enemies of entire social groups, whose "fault" was the unwillingness to transfer the results of their work to the state for free and to work for free.

Key words: Bolshevik authorities, counter-revolutionary crimes, repressions, mass media, opposition, local authorities.

1. Introduction

The Communist Party and state nomenclature in the USSR was formed as a group separated by various privileges from the rest of society. In this context, so-called judicial privilege is of great importance because they implied that court cases against communists had to be considered first by the party instance, and only after such consideration could they be transferred to court if necessary (Pashin, Bogdanov, 2006). Moreover, the privilege of the party nomenclature due to the existence of the "judicial privilege" contributed, among other things, to the criminalisation of employees of the party apparatus and Soviet bodies. Their positioning as an "exemplary part of society" contradicted the privileged position that entailed a sense of impunity for any actions if they were in line with the "party line".

The issues that are important both in theoretical and practical aspects for understanding the crime control process were raised in the works by O.M. Bandurka, Y.A. Helfand, L.M. Davydenko, A.I. Dolhova, A.P. Zakaliuk, A.F. Zelenskyi, O.M. Lytvak, P.P. Mykhailenko, and V.M. Popovych. The role and importance

of the scientific heritage of Ukrainian and foreign scientists, their proposals and recommendations on the organisation of counteraction to crime 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.

Thus, the purpose of the article is to study the process of reforming the judiciary and its impact on the organisation of crime control under criminal law in the first half of the 1920s.

2. Organisation of judicial bodies and its impact on the organisation of crime control under criminal law

The formation of the renewed composition of the judiciary was very difficult. The decision on such renewal was motivated by the desire to change the composition of the judiciary, since in 1921 75.3% of the people's courts were staffed by "free professionals", employees of old pre-revolutionary legal institutions, and therefore the people's courts often made decisions that did not correspond to the general line of the Soviet government.

The Resolution of the All-Ukrainian Central Executive Committee (AUCEC) "On strengthening and raising the authority of judiciary" of September 14, 1921 stated that the transition to peaceful construction required harmonisation of the activities of the authorities with the law. Local justice bodies were of importance in the entire structure of the state apparatus in the fight against illegal actions and crimes. For this purpose, it was planned to staff the justice bodies with the best personnel, the most experienced and reliable employees. However, the documents of Soviet bodies noted that even in the mid-1920s the qualification of judges was very low due to the inefficiency of provincial attestation commissions (Website of the Central State Archive of Public Associations: *cdago.gov.ua*). This state of affairs was revealed in the course of inspections of the work of courts and judges, which resulted in the arrest of 9 out of 13 judges of Kharkiv on charges of bribery (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

Along with the DPU bodies, a whole system of emergency bodies operated in Ukraine, although the resolution of the Central Executive Committee of August 23, 1922 "On the Enactment of the Criminal Code of the Ukrainian SSR" provided for the liquidation of extrajudicial bodies. The extraordinary judicial bodies were: the Military Collegium of the Supreme Tribunal of the Ukrainian SSR, extraordinary sessions of military departments of revolutionary tribunals, Special cassation in the rights of extraordinary sessions of district courts, which acted as part of the cassation board for criminal cases of the Supreme Court of the Ukrainian SSR. Additionally, an extraordinary session of the Supreme Court of the Republic was created, with which the DPU bodies closely cooperated. Extraordinary sessions considered cases of banditry and certain counter-revolutionary crimes. The activities of extraordinary sessions were not covered by a number of articles of the Criminal Procedure Code of the Ukrainian SSR. For example, the presentation of the investigation materials to the accused was considered optional, and only the prosecutor could decide on the termination of the investigation (Arkhiiereiskyi, Bazhan, Bykova, 2002). These circumstances contributed to the spread of bribery, as the fate of the accused could actually be decided not solely on the basis of proof of guilt.

The problem for the organisation of the work of the judicial authorities of Ukraine was insufficient funding, which led to improper storage of material evidence, its falsification and substitution for the purpose of obtaining bribes. Moreover, vodka was often used as a bribe (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

In the letter of the First Secretary of the Central Committee of the CP(b)U E. Kvirinh to the Central Committee of the RCP (b) of November 20, 1924, it was noted that even in Kyiv, almost all communist judges were bribe-takers, and in the county towns the situation is generally terrible. Analysing the reasons for this phenomenon, he pointed to the low level of material support of judges. His appeal to J. Stalin contained the statement that the determination of the salary of judges in the amount of 80–90 rubles did not allow them to live normally in Kharkiv, which led to a tendency to bribery, which was also facilitated by the low cultural level and "communist instability" (Website of the Central State Archive of Public Associations: *cdago.gov.ua*). In order to increase the level of financial support for judges, E.Kvirinh proposed to resume the production of vodka, the sale of which could provide the necessary funds (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

According to the Appeal to all Regional Bureaus of the Central Committee, the Central Committee of the National Communist Parties, Regional Committees, Oblast Committees, Provincial Committees and District Committees of the RCP (b) "On combating violations of revolutionary legality" of January 19, 1925, signed by the Secretary of the Central Committee L. Kahanovych, the quality composition of the court and prosecutor's office

required improving, using for this purpose the re-election of people's judges and chairmen in order to eliminate persons inappropriate for the position and to introduce non-party peasants from among the poor and active middle class and women peasants into the courts and people's assessors. Local party organisations also had to intensify their work to "familiarise workers and peasants with the principles of revolutionary legality", involving employees of the judiciary and prosecutors, especially at times of re-election of judges and people's assessors (Website of the Central State Archive of Public Associations: *cdago.gov.ua*.).

The process of forming a new system of law and judiciary in the Ukrainian SSR was rather slow. Only in 1922–1923, codified legal acts began to be created and enacted, and the unified judicial system of the republic was established only in January 1923. The staffing remained a problem, as evidenced by the spread of bribery in many courts of Ukraine (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

On January 30, 1922, a Resolution of the Council of People's Commissars of the Ukrainian SSR "On the liquidation of concentration camps" was adopted. Concentration camps were transformed into Houses of forced labour (so-called BUPRs). In addition, the comrades' courts, which had the right to punish a person to serve a sentence in concentration camps, were also liquidated. The relatively short period of existence of the comrades' courts (about two years) was one of evidence of the ill-conceived policy of the Bolsheviks in the field of judicial reform. Moreover, the desire to unify all spheres of life in the Soviet republics entailed the fact that in many cases the legislation of Soviet Ukraine was generally replaced by the Russian one, which significantly limited the possibility of developing and implementing its own legislation.

Furthermore, it the Russian "Guidelines on Criminal Law of the RSFSR" (officially enacted on the territory of Ukraine on August 4, 1920), as well as the regulations adopted by the government of the Ukrainian SSR during 1921, aimed at combating banditry (the Resolution "On measures to combat banditry"), official crimes (the Resolution "On Measures to combat official crimes"), bribery (the Resolution "On measures to combat bribery"), became the basis for the creation of the Criminal Code of the Ukrainian SSR, which reflected the state criminal law (Terliuk, 2007).

3. Specificities of enshrinement of the corpus delicti of counter-revolutionary crimes

On August 23, 1922, the All-Ukrainian Central Executive Committee approved the Criminal Code of the Ukrainian SSR, which came into force on September 15, 1922. It was based on the corresponding Russian Code with the preservation of the numbering of articles and consisted of General and Special parts. According to Article 6 of the Code, a crime was defined as any socially dangerous act or omission that threatened the foundations of the Soviet system and law and order established by the workers' and peasants' authorities during the transition to communism. This indicated that the Code was aimed at solving socio-political problems faced by the Bolsheviks in strengthening their power. The Code also established liability for failure to report state crimes. The crimes were as follows: state (counter-revolutionary), against the order of government, official (service), violation of the rules on the separation of church and state, economic, against life, health, freedom and dignity of the person, property, military, criminal violations of public health, as well as crimes against public safety and public order. Terms of imprisonment ranged from 6 months to 10 years. Moreover, capital punishment could be applied by revolutionary tribunals.

The Criminal Code of the Ukrainian SSR defined 36 corpus delicti that provided for capital punishment – execution, which could be applied for counter-revolutionary crimes, as well as under 7 articles of the Section on the order of government (for participation in mass riots, banditry, evasion of military service in wartime, provoking ethnic hatred in a military situation, counterfeiting of currency, resistance to authorities, illegal transportation of goods across the border in the form of fishing); under 6 articles of the Chapter on official crimes (for abuse of power with the use of violence, misappropriation of money or other valuables, passing a clearly illegal sentence, bribery, provocation of bribery); under 2 articles of the Chapter on economic crimes (for malicious failure to fulfil duties under the contract, for mismanagement in a combat situation); under 2 articles of the chapter on property crimes (for embezzlement in especially large amounts and robbery); and under 6 articles on war crimes (Mironenko, Benko, 1992).

We state that the position of the Bolshevik authorities in Ukraine on their self-preservation is most clearly manifested through the acquaintance with the corpus delicti of counter-revolutionary crimes. On pain of criminal reprisals, it was forbidden to finance the bourgeois mass media, to call for non-compliance or opposition to the orders of the central or local authorities, to spread false rumours that could cause distrust in the government or discredit it (Boiko, 2013, p. 350). We advocate the reasonable statement of the modern Ukrainian researcher

P. Zakharchenko that "by formulating so broadly and vaguely the elements of counter-revolutionary crimes, the state tried to eliminate not only dissent, but also the slightest criticism of its actions" (Zakharchenko, 2004, pp. 309).

Moreover, the criminal legislation provided for the weakening of repressions against persons of proletarian or semi-proletarian origin and their strengthening against representatives of the "exploiting classes", which testified to the struggle of the authorities primarily against the Kurkuls. In addition, the possibility of mitigating the punishment of a criminal on the basis of the definition of "social origin and class affiliation" provided for pardon regardless of the sentence already served by the convicted person if the person of proletarian origin showed signs of correction.

In order to understand the nature of unjust decisions regarding their political and other opponents, who in a few years would become the main actors of the so-called counter-revolutionary crimes, the provisions that authorised the use of analogy of the law were of importance in the Code (Article 10 of the Criminal Code of the Ukrainian SSR of 1922). In practice, this principle was implemented in the following manner: the court, having established the presence of public danger in the actions of the defendant, the grounds and limits of liability for them, cannot establish the crime on the relevant grounds due to their absence in the criminal law. In this case, the justice body was obliged to determine the signs in accordance with those articles that contain the closest elements of the crime. That is, the body of inquiry, investigator, court was given the right to qualify any actions not directly provided for by the criminal law under such articles. Moreover, the court was not entitled to terminate the criminal prosecution against the defendant on the grounds that the criminal law does not contain the signs of a crime identified during the investigation and court proceedings (Iermolenko, Shmalenia, 2009, p. 297).

The Criminal Codes adopted in 1922 and then in 1927 were excessively politicised and served as an instrument of totalitarianism in Ukraine. For the first time since the judicial reform of 1864, carried out under an absolute monarchy, the Soviet government with a republican form of government abandoned the general democratic institution of the presumption of innocence, as the latter stood in the way of the introduction of illegal repressions against political and other opponents of the regime.

Therefore, the conscious or unconscious gaps made by the legislator when adopting the Criminal Code of the Ukrainian SSR in 1922 opened a wide scope for abuse and gave rise to a distorted picture of criminal law control of crime. Dissent, with the adoption of the Code, actually fell under criminal prosecution, however, prosecution was veiled by qualifying another type of crime that was not political in nature.

On November 1, 1922, in accordance with the Resolution of the Central Executive Committee "On the Enactment of the Criminal Procedure Code of the Ukrainian SSR" of September 13, 1922 and the amendments to the Resolution of the Central Executive Committee "On Extraordinary Sessions of the Military Departments of the Regional Military Tribunals" of July 17, 1922, the military departments of the regional military courts were liquidated, and the cases that were in the proceedings of the liquidated bodies were liquidated, transferred to the jurisdiction of extraordinary sessions of provincial courts in accordance with the Resolution of the Central Executive Committee "On extraordinary sessions of Provincial Courts".

According to experts and researchers, the Criminal Procedure Code of the Ukrainian SSR of 1922 confirmed the democratic principles of criminal procedure, initiated by the Judicial Reform of 1864, namely: competition, equality of the parties, the right of the accused to defend, etc. The provision that deprivation of liberty and taking a person into custody can be carried out only in cases specified in the law and in the manner prescribed by law was of importance. The activities of the bodies of inquiry and preliminary investigation were regulated in detail, the publicity of all court hearings was proclaimed, except for cases that required the preservation of military or state secrets. However, practice showed that the proclaimed principles of criminal procedure were not always implemented. For example, the CPC of the Ukrainian SSR of 1922 did not provide for the participation of a defender in the preliminary investigation. A number of its articles did not apply to cases that were considered by provincial revolutionary tribunals, in particular, the indictment was not handed over, but only announced to the accused against a receipt one day before the trial. A researcher of the history of Ukrainian law P. Muzychenko aptly notes that as in the Middle Ages, the queen of evidence was the confession of a crime (Muzychenko, 2001).

Thus, the crime control under criminal law in the segment of prescriptions contained in the Criminal Code and the Criminal Procedure Code of 1922 testifies not only to the emergence of opportunities for making unjust sentences, but also to the creation of an attractive, but, in fact, illusory picture of combating crime for the general public.

On September 5, 1923, the Central Executive Committee adopted a Resolution "On Extraordinary Measures to Protect the Revolutionary Order", which provided for the possibility of introducing an exceptional or martial law in the republic or its individual regions. This right was granted not only to higher authorities and governments, but also to provincial executive committees and their presidiums. After the decision on the introduction of exceptional or martial law was made, all power was concentrated in the hands of permanent meetings, which included: the head of the executive committee, the senior military commander, one of the members of the executive committee, the head of the DPU and the chief of the police (Arkhiiereiskyi, Bazhan, Bykova, 2002).

In October 1923, corpus delicti of the counter-revolutionary crime, according to the resolution of the Central Executive Committee, was expanded. It was considered an attempt on the main political or economic gains of the "proletarian revolution". The article on economic counter-revolution was added to the Criminal Code of the Ukrainian SSR. For the organisation of armed uprisings, invasion of Soviet territory, attempts to seize power, to tear off part of the territory from the Ukrainian SSR forcibly or to break treaties concluded by it, incitement of a foreign state to invade, assistance to the international bourgeoisie in subversive activities, incitement to mass disorders, opposition to the normal activities of Soviet institutions and enterprises, participation in terrorist acts, sabotage, espionage, calls for the overthrow of the Soviet government in wartime, unauthorised return to the Ukrainian SSR after exile abroad were punishable by death. While at the time of the adoption of the Criminal Code of the Ukrainian SSR, only tribunals could sentence to death since April 1923 this could have been done by the Supreme Court of the Ukrainian SSR and even provincial courts. After the adoption of the all-Union Constitution in 1924, the "Basic Principles of Criminal Legislation of the USSR and Union Republics" were adopted to reflect the need to strengthen criminal repression and unify criminal law provisions as the basis of criminal law policy in the USSR, Criminal legislation of Ukraine not only practiced more severe sanctions, but also expanded the types of crimes and their corpus delicti (Arkhiiereiskyi, Bazhan, Bykova, 2002). According to the Regulation on the Judicial System of the Ukrainian SSR of 1925, special courts were recognised as permanent. Military and military transport tribunals were initially withdrawn from the control of the Supreme Court of the Ukrainian SSR.

4. Conclusions

Therefore, in the late 1920s, the ongoing process of dispossession required changes in criminal and criminal procedural legislation, which would legalise large-scale repressions simultaneously with the seizure of products from agricultural producers in order to obtain the necessary funds for forced industrialisation. Therefore, the process of crime control was deformed in its essence due to the search for "class enemies" and the proclamation of enemies of entire social groups, whose "fault" was the unwillingness to transfer the results of their work to the state for free and to work for free.

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РЕФОРМА СУДОВИХ ОРГАНІВ ТА ЇЇ ВПЛИВ НА ОРГАНІЗАЦІЮ КРИМІНАЛЬНО-ПРАВОВОГО КОНТРОЛЮ ЗА ЗЛОЧИННІСТЮ У ПЕРШІЙ ПОЛОВИНІ 1920-Х РР.

Анотація. ***Мета.*** Метою статті є дослідження процесу реформування судових органів та його вплив на організацію кримінально-правового контролю за злочинністю у першій половині 1920-х рр. ***Результати.*** З'ясовано, що у кримінальному законодавстві передбачалося послаблення репресій проти осіб пролетарського або напівпролетарського походження і їх посилення щодо представників «експлуататорських класів», що свідчило про боротьбу влади насамперед із куркульством. Крім того, можливість пом'якшення покарання злочинця на підставі визначення «соціального походження і класової приналежності» також передбачала помилування незалежно від терміну покарання, який уже відбув засуджений у випадку, якщо особа пролетарського походження демонструвала ознаки виправлення. Кримінально-правовий контроль за злочинністю у сегменті приписів, що містилися в Кримінальному та Кримінально-процесуальному кодексах 1922 р., свідчить не лише про появу можливостей ухвалення неправосудних вироків, а й про створення привабливої для широкого суспільного загалу, а, насправді, ілюзорної картини протидії злочинності. Наголошено, що найяскравіше виявляється позиція більшовицької влади в Україні щодо свого самозбереження через ознайомлення зі складами контреволюційних злочинів. Під страхом кримінальних репресій заборонялося фінансувати буржуазні засоби масової інформації, закликати до невиконання чи до протидії розпорядженням центральної або місцевої влади, поширювати неправдиві чутки, що могли би викликати недовіру до влади чи дискредитувати її. ***Висновки.*** Зроблено висновок, що наприкінці 1920-х років продовження процесу розкуркулення вимагало змін карного та карно-процесуального законодавства, яке б легалізувало проведення масштабних репресій одночасно із вилученням продукції у сільгоспвиробників з метою отримання необхідних коштів для здійснення форсованої індустріалізації. Тому процес контролю за злочинністю деформувався за своєю суттю за рахунок пошуку «класових ворогів» та проголошення ворогами цілих соціальних груп, чия «вина» полягала у небажанні безкоштовно передавати державі результати своєї праці та працювати безоплатно.

Key words: більшовицька влади, контреволюції злочини, репресії, засоби масової інформації, протидія, місцева влада.

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OBJECTS AND MEASURES OF SEARCH DURING THE DETECTION OF CRIMINAL OFFENSES RELATED TO ILLEGAL CONTENT ON THE INTERNET

Abstract. ***Purpose.*** The purpose of the article is to identify the objects and measures of search during the detection of criminal offenses related to illegal content on the Internet. ***Results.*** It is noted that the objects of search during the detection of criminal offenses related to illegal content on the Internet include persons, items, documents and an optional object – electronic information. During detection of criminal offenses related to illegal content on the Internet, mainly measures involving the use of certain technical means and software, search algorithms (sources, means, search areas, tools and search procedures) and enabling the use of open sources and search services in order to collect information on illegal content on the Internet are applied. It is determined that the effectiveness of search for information that the searcher can use to detect, investigate an illegal act and expose the perpetrators is determined by two factors: effectiveness of the search engine used in the search process; experience of the person conducting the search (the experience of the person depends crucially on his/her awareness of modern search tools and techniques, as well as the skills of their effective use when working with search engines). ***Conclusions.*** It is concluded that the objects of search during the detection of criminal offenses related to illegal content on the Internet include persons, items, documents and an optional object – electronic information. During detection of criminal offenses related to illegal content on the Internet, mainly measures involving the use of certain technical means and software, search algorithms (sources, means, search areas, tools and search procedures) and enabling the use of open sources and search services in order to collect information on illegal content on the Internet are applied.

Key words: Internet, illegal content, circulation, criminal offenses, detection, search objects, search measures.

1. Introduction

According to the materials of the International Forums in Davos (2018–2019), the problem of cybersecurity, which affects almost all sectors of human life and activities, is increasingly acute (Bykov, Burov, Dementiievska, 2019, p. 313). The large-scale virus attack "WannaCry", which took place on May 12–13, 2017, affected tens of thousands of computers around the world: in the UK, a number of medical institutions across the country were forced to refuse to provide services to patients even in emergency cases due to the failure of most computer systems; in Spain, the Ministry of Energy and a telecommunications company were attacked; in Germany, the computers of the railway concern's dispatch centres were infected, resulting in the failure of dispatch control systems; in France, the automaker "Renault" was subjected to a large-scale cyberattack; in Portugal, the largest provider of telecommunication services "Portugal Telecom" suffered; computer systems of shopping and office centres, networks of hospitals and gas stations, postal service, railway stations, as well as government agencies were attacked (Dovhan, Doronin, 2017, p. 41). These actions become possible due to the uneven development of cybercrime capabilities (which in turn are based on the rapid spread of computer technology) and scientific, technical and legal support for the search activities of law enforcement agencies. Detection of illegal content and the use of criminologically significant information on the Internet is important

for the detection and investigation of criminal offenses. Given the virtually unlimited amount of Internet resources that contain illegal content in the public domain, law enforcement agencies can acquire and use it to combat crime. Relying on the analysis of the system of detection of criminal offenses related to illegal content on the Internet, it can be argued that law enforcement officers can already perform the task of searching for information on the Internet in the following areas: the search for information about the event (confirmation or refutation of information about the event, the search for the author of the information); the search for information about the person (identification of the person based on the available information, the search for the location of the identified person); systematic tracking of changes in the accounts of individuals or groups, comments to articles, publications, news, posts; systematic survey of Internet users (based on own and their anonymity) (Sumskyi, Romanko, 2016, p. 113). A number of issues remain unresolved related to the specification of search measures permitted in the detection of these offenses and the targets of these detective measures.

Previous research was carried out in two main areas. In the first area, scientists considered ways to detect certain criminal offenses in the field of computer technology: N.S. Kozak investigated the types and methods of tactical and forensic techniques for detecting computer crimes (Kozak, 2011); V.V. Poliakov systematised high-tech methods ensuring more effective conduct of investigative actions (Poliakov, 2008); D.M. Tsekhan came to the conclusion that the introduction of high information technologies in the practice of operational units determines the use of a technological approach to the detection of high-tech crimes (Tsekhan, 2011). In another area, scientists have developed a methodology for detecting individual criminal offenses, highlighting the elements of search activities: Yu.O. Yermakov singled out certain elements of search: items as material traces and objects of search activities during the detection of criminal offenses (Yermakov, 2020), documents evidencing criminal activity as an object of search for criminal offenses (Yermakov, 2020), methods of search activities during the detection of criminal offenses (Yermakov, 2019); O.O. Shapovalov identifies the objects of search activities (Shapovalov, 2018); persons of operational interest as the object of operational search (Shapovalov, 2016). As for the objects and search measures in the context of detecting criminal offenses related to illegal content on the Internet, no research has been carried out.

2. Categories of objects of search related to illegal content on the Internet

In our opinion, the objects of search during the detection of criminal offenses related to illegal content on the Internet include persons, items, documents and an optional object – electronic information (Tarasenko, 2021, pp. 284–294).

Allowing for the perspectives of scientists and the specifics of detecting criminal offenses related to illegal content on the Internet, we conditionally group persons (as an object of search activities) into the following categories:

1. Persons who may be involved in criminal activities: those who, due to the appropriate "criminal specialisation", can commit (commit) actions to create and/or disseminate illegal content on the Internet; who, as a result of their professional activities, have acquired knowledge in the field of computer technology and can apply them for the criminal purpose of committing offenses related to illegal content on the Internet; persons who have access to electronic computing equipment, through the use of which actions to create and/or disseminate illegal content on the Internet (such persons should be considered by subcategories (information managers (on the basis of a contract or on behalf of the owner of the information); system owners; system administrators (on the basis of the concluded agreement or on behalf of the system owner); users (consumers of information and telecommunication services); who, due to their professionalism, have the opportunity and motivation to commit actions to create and/or disseminate illegal content on the Internet.

2. Persons who, by virtue of their skills, abilities can assist in obtaining primary information, as well as assist law enforcement officers in identifying actions to create and/or disseminate illegal content on the Internet: professional programmers who develop software (white and black hackers); who maintain the Internet page, physical or virtual server; who study in the specialties "Cybersecurity", "Software Engineering", "Computer Engineering", "Computer Science", etc. (that is, these are persons who, if they have individual, professional skills, knowledge or skills, may have information about the commission of a criminal offense related to illegal content on the Internet, as well as provide advice on finding, fixing, removing illegal content).

3. Persons who, according to their functional duties, are responsible for detecting and recording illegal actions to create and/or disseminate illegal content on the Internet: who, according to their functional duties, are responsible for

detecting and recording illegal actions; who have relevant information, the analysis of which determines the effectiveness of detection; who, by virtue of their professional activities, may receive information about the commission of criminal offenses related to illegal content on the Internet: administrators of the Internet service provider (ISP); employees of service institutions for software configuration of information systems; employees of advertising companies that create content on Internet resources; employees of cinemas that control the implementation of illegal video recording of audiovisual works, which can be further posted on Internet resources), etc. (that is, these are persons who, due to the specifics of their work, are faced with the facts of committing illegal actions that may indicate the commission of an offense or the consequences of these actions may lead to the commission of the criminal offenses under investigation).

4. Persons who may have information about the facts of criminal activity: who may be aware of certain circumstances of the commission of criminal offenses (for example, from among the persons who were present during the commission of a criminal offense) and who can be further considered as witnesses (for example, who were present at certain actions, but were not aware of this fact); who have access to information about sources and ways of creating illegal content; who may have the necessary information: (individuals, representatives of a legal entity); representatives of regulatory authorities; witnesses of the illegal activities of the suspect, working with him/her at the same enterprise, but in other departments, have information about the activities of criminals, their lifestyle, social circle, episodes of criminal activities.

The next type of detection objects is documents. These documents can be conditionally grouped into:

1. Documents that contain content illegally distributed by anyone on the Internet.

2. Documents evidencing the performance of the actor whose technical capabilities or information resources were used in the process of creating and/or disseminating illegal content (copies of the entitlement document of the Internet provider and the agreement on the provision of access to the Internet, as well as materials related to the committed criminal offense (log files; statistics on the download of the dedicated channel of the provider; certificates on who was allocated the established dynamic (or static) IP addresses during the recorded illegal actions, etc.

3. Documents proving that certain technical, hardware and software means belong to certain persons (confirming the right of ownership, i.e. the right to own, dispose of or use computer information, computer, computer system or their network: a written contract for the receipt of Internet services, telecommunications by a specific subscriber number or bank card service in a particular financial institution; a document on the right of ownership (use) of computer software, database, electronic resource of the Internet; documents containing personal data of the person who owns a particular mobile number; certificate from the telecommunications operator or Internet service provider on belonging to the circle of subscribers served; contracts for the provision of telecommunication services and access to the Internet; bills for the communication services provided; technical documentation reflecting the facts of the subscriber's appeal on the services provided to him/her (applications for line repair, etc.).

4. Documents that reflect the actor's work with specific content – the subject matter of a criminal offense, computer or computer system (computer operator's logs, electronic logs of operations, electronic register of subscriber connections in the computer network or telecommunications (Internet); accounting journals (working hours, access to computer equipment, its failures and repairs, registration of users of a computer system or network); license agreements and contracts for the use of computer software products, hardware and their development; password books for access to the automated system; orders and other documents regulating the use of the automated system, etc. (Nikolaiuk, Nykyforchuk, Tymchenko, 2007, pp. 46).

5. Documents confirming the fact of concluding a contractual relationship with a mobile operator (contract for the provision of communication services, additional agreement to the contract, according to which mobile operators are provided with discounts on mobile phones); certificates from Internet providers about the client who uses a certain place of Internet access; relevant documentation on time accounting and payment for Internet services; contract for Internet services; receipt of payment for Internet services.

The list of these documents can be significantly expanded depending on the forms of criminal activity and the way illegal content is used in the commission of a particular criminal offense.

3. Specificities of items as objects of detection of criminal offenses related to illegal content on the Internet

The items as objects of detection include:

– Hardware and technical means: computers; laptops; various machine media; resources of network service providers (Internet provid-

ers) and information services provided by them (e-mail, www-service); special technical means of obtaining information; various types of printing devices (printers, thermal printers, imprinters); various machine data carriers (floppy disks, disks, magnetic tapes of payment cards); keyboard (fingerprints); external storage devices; individual data carriers (CDs, floppy disks, flash memory devices, etc.).

– User manuals for components and devices; software description.

– Items that were directly used in the preparation and commission of illegal actions (for example: a mobile phone, which is an item that can be identified with a sufficiently high level of confidence, and therefore this circumstance can be used both to prove that the mobile device belongs to a certain person and to prove the fact of content dissemination using a particular phone).

– Items that are the result of criminal actions and can be divided into two blocks: money and material values obtained as a result of a criminal offense; items that indicate the receipt of funds or material values.

– Items that contain signs of a criminal offense (notebooks of criminals with information about computer devices, account numbers, etc., printouts from the printer with similar information; sheets with the offender's notes (names, passwords, addresses, etc.) (attached to the monitor, near the keyboard, under it, in the garbage, etc.); flash cards; components, parts that were used to create special technical means.

– Items that indicate the creation and purpose of using illegal content.

– Software tools used for content processing and manipulation (computer data carriers with software), stolen databases; malicious programs used for unauthorised access to databases or other information resources; software for the operation of peripheral equipment; Internet protocols, most commonly used website and e-mail addresses, e-mail messages (Osyka, 2006, pp. 44).

– Items that indicate appropriate intellectual preparation for the commission of a criminal offense (methodological literature; expert advice; addresses of accomplices (these can be both physical addresses and e-mail, ICQ numbers, etc.), including addresses of any sites and forums where offenders specialising in committing criminal offenses of this type communicate, their correspondence (letters in paper or electronic form) (Reutskyi, 2009, p. 156).

In our opinion, search measures during the detection of criminal offenses related to illegal content on the Internet include:

– Analysis of official reports of state bodies, appeals of citizens about illegal actions.

– Analysis of materials of criminal proceedings on criminal offenses, during the commission of which illegal content was used.

– Study of the information contained in the trace pattern (upon receipt of a report of a criminal offense related to the use of illegal content) (traces on the media used by the offender (hard drives, magnetic and optical media, etc.); traces on "transit" magnetic media, through which the offender directly established a connection with information resources; traces on the victim's magnetic media, namely traces of unauthorised access and unauthorised influence on software and information resources).

– Media monitoring.

– Monitoring of the Internet (Ukrainian sector).

– Obtaining information directly from mobile operators.

– Analysis of information from mobile operators on individual legal entities with whom a contract for the use of a cellular number has been concluded.

– Obtaining information from service providers (if the subject is a temporary user of the network or telecommunications facilities (for example, in PLMN – roaming; in telephone systems – UPT and telephone cards; in Internet services – remote access through other service providers, etc.); when an entity can use certain features to route a communication to other telecommunication services or equipment, including a communication that passes through more than one network operator/service provider before being terminated (Borysova, 2007, p. 106).

– Computer intelligence on the Internet. Given that the information posted and circulating in this network is not subject to legal regulation, computer intelligence can be formally carried out both directly by the forces and means of the CID and through business entities. If conducted by own forces, intelligence programs, which differ from other search and analytical programs in the presence of specific functions aimed at solving purely intelligence tasks, are used (Ovchinskij, 2011, p. 326).

– Analysis of "sites" on the Internet with information on the availability of technologies for creating and using illegal content for committing criminal offenses with further identification and verification of persons who have accessed these sites.

– Data search in telecommunication systems, which consists in detecting data stored in computer memory and is carried out using system functions or special computer programs.

– Use of special programs that during the work of a person monitor the protocols of his/her actions and receive data on the

IP address of this person's access to the Internet, provide an opportunity to obtain a list of contacts of this person and files of his/her communication history with the content of incoming and outgoing messages (Anapolska, 2011).

– Submission of requests using the capabilities of Interpol NCB (such requests may provide information on network addressees, names of domains and servers of organisations and users, electronic information blocked in the manner of operational interaction, providers and distributors of network and telecommunications services, individuals and legal entities involved in criminal offenses (official name of legal entities registered abroad, their legal address, number, date of registration; areas of activities, size of the authorised capital, current financial condition of the legal entity; surnames and names of individuals-managers (founders, shareholders); information on illegal activities of individuals and legal entities, etc.) (Anapolska, 2011, p. 95).

The effectiveness of the search for information that the searcher can use to detect, investigate an illegal act and expose the perpetrators is determined by two factors: effectiveness of the search engine used in the search process; experience of the person conducting the search (the experience of the person depends crucially on his/her awareness of modern search tools and techniques, as well as the skills of their effective use when working with search engines).

4. Conclusions

It is concluded that the objects of detection of criminal offenses related to illegal content on the Internet include persons, items, documents and an optional object – electronic information. During detection of criminal offenses related to illegal content on the Internet, mainly measures involving the use of certain technical means and software, search algorithms (sources, means, search areas, tools and search procedures) and enabling the use of open sources and search services in order to collect information on illegal content on the Internet are applied.

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ОБ'ЄКТИ ТА ЗАХОДИ ПОШУКУ ПІД ЧАС ВИЯВЛЕННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ З ОБІГОМ ПРОТИПРАВНОГО КОНТЕНТУ В МЕРЕЖІ ІНТЕРНЕТ

Анотація. ***Мета.*** Мета статті – виокремити об'єкти та заходи пошуку під час виявлення кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет. ***Результати.*** Зазначено, що до об'єктів пошуку під час виявлення ознак кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет, належать особи, предмети, документи та факультативний об'єкт – електронна інформація. У процесі виявлення кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет, застосовуються переважно заходи, що передбачають використання певних технічних засобів, програмного забезпечення, алгоритмів пошукових дій (джерела, засоби, напрями пошуку, інструментарій та процедури пошуку) та забезпечують можливість використання відкритих джерел та пошукових сервісів з метою здійснення збору інформації про обіг протиправного контенту в мережі Інтернет. Визначено, що результативність пошуку інформації, яку суб'єкт пошуку може використати для виявлення, розслідування протиправного діяння та викриття винних осіб, визначається двома чинниками: ефективність пошукової системи, використовуваної в процесі пошуку; досвідченість особи, яка здійснює пошук (досвідченість особи визначальним чином залежить від її обізнаності в сучасному інструментарії й прийомах пошуку, а також у навичках їх ефективного використання під час роботи з пошуковими системами). ***Висновки.*** Зроблено висновок, що до об'єктів виявлення ознак кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет, належать особи, предмети, документи та факультативний об'єкт – електронна інформація. У процесі виявлення кримінальних правопорушень, пов'язаних з обігом протиправного контенту в мережі Інтернет, застосовуються переважно заходи, що передбачають використання певних технічних засобів, програмного забезпечення, алгоритмів пошукових дій (джерела, засоби, напрями пошуку, інструментарій та процедури пошуку) та забезпечують можливість використання відкритих джерел та пошукових сервісів з метою здійснення збору інформації про обіг протиправного контенту в мережі Інтернет.

Ключові слова: мережа Інтернет, протиправний контент, обіг, кримінальні правопорушення, виявлення, об'єкти пошуку, пошукові заходи.

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EXAMINATION TYPES AND THEIR VALUE FOR THE INVESTIGATION OF CRIMINAL OFFENSES RELATED TO POISONOUS SUBSTANCES TRAFFICKING

Abstract. ***Purpose.*** The present paper is aimed at studying the types of examination which may be implemented while investigating criminal offenses related to poisonous substance trafficking and establishing their value for the relevant process. ***Research methods.*** The paper was based on general and special methods of scientific cognition, namely: dialectical, formal-logical, generalization, comparison, etc. ***Results.*** The paper presents the analysis of the examination concept, conveys its essence and tasks, and specifies its types according to objects. Attention is paid to the following examination types and peculiarities of their implementation: the scene, geographical features (landscape), premises which are not the crime scene but are related to it, items, documents and computer data, inspection of housing or other personal possessions, corpse, examination of the corpse related to exhumation, inspection, vehicle inspection, and exhumation of animals. It is marked that the abovementioned types of examination may be carried out both independently and simultaneously with others, e.g., examination of the crime scene together with the person's housing or other possessions. Attention is focused on the security measures of the investigative team and the third parties or animals during crime scene examination because the examination object can be poisonous substances and their carriers or vapors, which can harm the life and health of persons and animals and the environment. It was established that delays in examination may lead to a change in the circumstances of such a criminal offense, the spread of a poisonous substance into the water and air or the destruction of traces and physical evidence that will complicate the investigation process. ***Conclusions.*** According to research findings, examination is a crucial component of the system of investigative (search) actions (performed during the investigation of criminal offenses related to poisonous substance trafficking) and significant for evidence assessment and a substantiated notification on suspicion of committing specific criminal offenses.

Key words: examination, items, documents, inspection, corpse, vehicle inspection, animal exhumation.

1. Introduction

In today's conditions, war crimes have become widespread, in particular, the use of banned chemical weapons by the Russian Federation against Ukraine in some of its regions, which causes harsh consequences inflicted by the action of poisonous substances on the human body. Criminal offenses related to the illegal trafficking of poisonous substances have their specifics, and thus, their investigation requires various types of examination, which are of undeniable importance. For example, crime scene examination allows the collection of objects that will subsequently form a solid evidence base and contribute to ascertaining the truth in criminal proceedings. Such an objective is achieved through the activities of the investigative and operational group, including a CSI specialist. The latter gathers evidence of specific criminal offenses. However, that kind of activity is complex: it requires appropriate knowledge, skills, and abilities to work with poisonous substances since it is crucial not only to find trace information but also to correctly record it and assist in describing and removing the necessary objects for further forensic studies. Both scene examination and other examination types have their characteristics and specifics and play a significant role in proving criminal offenses related to the illegal trafficking of poisonous substances.

In criminalistics, much attention is paid to the scientific study of the tactics of investigative (search) actions. Examination itself holds a special place in their system. The tactics of the investigative review during the formation and development of the science of criminalistics are elucidated by various scientists, namely, V.P. Bakhin, R.S. Bielkin, H.I. Hramovych, S.P. Yefimychev, V.O. Konovalova, V.P. Kolmakov, N.I. Klymenko, V.S. Kuzmichov, N.I. Kulahin, Ye.I. Makarenko, H.A. Matusovskyi, M.I. Porubov, M.V. Saltevskyi, K. O. Chaplynskyi, Yu. M. Chornous, V.Iu. Shepitko, I.M. Yakimov, M.P. Yablokov, and many others. At the same time, there is a lack of contributions devoted to examination tactics when investigating criminal offenses related to the illegal trafficking of poisonous substances. Consequently, it raises the need for scientific study of the relevant issue.

The article aims to outline the concept, essence, tasks, and types of examination and justify their significance for the investigation of criminal offenses related to the illegal trafficking of poisonous substances.

2. The concept and essence of examination during the investigation of criminal offenses related to poisonous substances

It is worth first referring to dictionaries to define the concept of examination. Thus, a great explanatory dictionary of the modern Ukrainian language interprets "examination" as an inspection aimed at checking, controlling, finding something illegal, etc. (Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy, 2002, p. 658). According to the legal encyclopedia by Yu.S. Shemshuchenko, examination is the procedural action of the investigator, prosecutor, court whereby state, properties and features of tangible objects related to the event under investigation are revealed, directly perceived, assessed, and recorded in order to obtain factual data and clarify circumstances relevant to establishing the truth in criminal proceedings (Iurydychna entsyklopediia, 2002, p. 325). Such a definition is broader than the former and specifics the purpose and tasks.

In our opinion, Ye.I. Makarenko, in his study guide, has defined the investigative review with masterly skill. He notes that the investigative review holds a special place among the investigative actions aimed at obtaining evidence from the most impartial, incorruptible, and veracious witnesses – the so-called "silent witnesses" of the crime (tangible sources of evidence) (Macarenco, 2004, pp. 3–4).

We also share K.O. Chaplynskyi's opinion that the investigative review belongs to priority, unique, and irreplaceable investigative (search) actions (Chaplynskyi, 2010, pp. 50–51). The urgency distinguishes the specific investigative (search) action from all others and makes it a priority (Shepitko, 2001, p. 218).

Following Art. 237 of the Criminal Procedure Code of Ukraine (CPC of Ukraine) "Investigator, public prosecutor shall carry out a visual inspection of the area, premises, items and documents to find and record the information relating to the commission of a criminal offence" (Kryminalnyi protsesualnyi kodeks Ukrainy, 2012).

Examination means that the investigator, using the methods of cognition, is convinced of the existence and nature of facts that have evidentiary value (Piaskovskyi, Chornous, Samodin, 2020, p. 408). During examination, the investigator: 1) directly perceives the scene background and other tangible objects and studies them; 2) detects and studies traces and other physical evidence; 3) is aware of the essence and mechanism of the case; 4) evaluates the examination results; 5) records the scene background, objects, and traces for their further use in the investigation process (Piaskovskyi, Chornous, Ishchenko, Alieksieiev, 2015).

In addition, the effectiveness of examination shall be achieved within the tasks of an investigative (search) action. Modern criminalistics (Piaskovskyi, Chornous, Samodin, 2020, pp. 408) outlines the following tasks of examination: 1) identifying traces of a criminal offense and other objects that may be attached to the materials of criminal proceedings as physical evidence; 2) clarifying the mechanism of a criminal offense; 3) putting forward versions of the circumstances of the criminal offense and its participants; 4) obtaining information about the participants and eyewitnesses of the criminal offense; 5) establishing other circumstances relevant to criminal proceedings (for instance, ascertaining information about the poisonous substance and its compounds).

3. Characteristics of examination types within the investigation of criminal offenses related to poisonous substances

To render the essence of examination, its types should be specified. Thus, criminalistics literature names examination types according to various grounds. However, as for the present article's subject, we will consider types following examination objects: 1) crime scene examination (part 3 of Art. 214, Art. 237 of the CPC of Ukraine); 2) inspection of the area, premises, items, documents and computer data (Art. 237 of the CPC of Ukraine); 3) inspection of home or other possessions of a person (Art. 233 of the CPC of Ukraine); 4) corpse inspection (Art. 238 of the CPC of Ukraine); 5) corpse inspection associated with exhumation (Art. 239 of the CPC of Ukraine);

6) examination of an individual's body (examination of an individual) (Art. 241 of the CPC of Ukraine); 7) inspection of other objects (inspection of vehicles, animals and their corpses, etc.) (Piaskovskyi, Chornous, Samodin, 2020).

During the investigation of criminal offenses related to the illegal trafficking of poisonous substances, there is the need to conduct the following *examination types:*

1) *crime scene* (apartments, rooms in dormitories, private houses and their private plots and premises, abandoned houses, territories of institutions and organizations that are associated with the trafficking of poisonous substances (for example, pharmacies, hospitals, pharmaceutical enterprises, warehouses with chemicals, etc.), etc.). Examination is carried out after notification of the specific type of criminal offense and is crucial for obtaining physical evidence; it can be primary or repeated, basic or additional).

The effectiveness of investigation of criminal proceedings related to the illegal trafficking of poisonous substances largely depends on the appropriate collection (seizure, packaging, and transportation) of physical evidence during crime scene examination. Such an investigative (search) action is the most common and complex of all of the above. First of all, this is due to the danger to health and the environment of poisonous substances inspection subjects deal with.

At the same time, it should be noted that the evidentiary value of scene examination includes the accurate and objective fixation of the situation as it was during inspection (Razumov, Molyboha, p. 14–15);

2) *areas, premises that are not the crime scene but relate to it* (for example, the need to examine the location arises if traces of poisonous substances or effects of actions related to their concealment were found on the earth or water surface; there is also a need to inspect the premise that is not related to the crime scene in case of receipt of information about the presence of poisonous substances and other physical evidence indicating their illegal trafficking, or information about the possible concealment of the offender (who produced, manufactured, acquired, transported, delivered, or stored for marketing or sold poisonous substances) in a certain premise);

3) *items* (this may concern the inspection of poisonous substances and containers in which they were produced, purchased, transported, delivered, stored for marketing or were sold; devices used during the production of poisonous substances; clothes retaining traces of poisonous substances; other items that may be physical evidence in specific criminal proceedings);

4) *documents and computer data* (if so requested to study such objects and find information in their content that can be used as evidence of the fact or circumstances to be established during the investigation of criminal offenses related to the illegal trafficking of poisonous substances. It is carried out under Arts. 98-100 of the CPC of Ukraine).

That kind of examination deals with documents (printed or electronic) and records which may contain features that make them physical evidence or information indicating the fact of illegal actions.

According to part 1 of Art. 98 of the CPC of Ukraine, physical evidence means tangible objects that have been used as an instrument of a criminal violation, retain traces of such or contain other information, which may be used as evidence of the fact or circumstance to be established during criminal proceedings, including the items that have been an object of criminally unlawful actions, money, valuables or other articles obtained in a criminally unlawful manner or gained by the legal person as a result of criminal violation (Kryminalnyi protsesualnyi kodeks Ukrainy, 2012). In other words, physical evidence in the investigation of criminal offenses can comprise not only the poisonous substances themselves but also other tangible objects that are in any way related to their commission., e.g., documents indicating the fact of production, purchase, sale, or use of a poisonous substance (notebooks with information about the very poisonous substances, recipes for poisonous substances, instructions for handling poisonous substances, professional literature, "black accounts", consignment notes, or receipts for the purchase of poisonous substances, etc.).

The inspection of computer data, which may contain information about the relevant type of criminal offenses, is of particular importance, e.g., when it is necessary to establish the fact of acquisition, transfer of poisonous substances on the Internet, criminal ties, involvement of a person in the search for crime information, etc.;

5) *inspection of home or other possessions of a person* (the need for such inspection during the investigation of criminal offenses arises when there is information that a person produced, acquired and stored for marketing poisonous substances in their house or other possessions. The procedure and grounds for its implementation are general, the same as during the investigation of all other criminal offenses. In conducting the relevant type of inspection, it is essential to pay attention to the safety rules

for handling poisonous substances during their detection and removal);

6) *corpse* (corpse examination is crucial while investigating such types of criminal offenses since the poisonous substance in the corpse can affect the health of the CSI team.

In this regard, those involved in the investigative (search) action, including those who are directly involved in the corpse's examination, collection of samples of tissues, organs or parts thereof, must be provided with the necessary equipment, i.e., medical masks, respirators, and when receiving information about extremely hazardous substances – gas masks, rubber gloves with the appropriate degree of protection, and technical means that allow determining the type and concentration of poisonous substances and their compounds in the field;

7) *corpse related to exhumation* (carried out in order to identify and take samples of corpse tissues, organs or parts thereof for further forensic tests and clarification of issues that are important within the pre-trial investigation of criminal offenses under consideration. To detect and identify poisonous substances, objectively determine their quantity, concentration, or chemical compounds, and perform an expert examination during exhumation, samples of land from the burial place (corpse bed) and clothing of the corpse shall be taken in sufficient quantities. We have discussed the procedure of relevant inspection and its features in a previously published scientific article in detail (Maksymchuk, p. 308), so we will not dwell on them. But attention should be focused on the importance of compliance with the above personal safety measures).

For example, the study of samples of an exhumed corpse played a crucial part while investigating criminal offenses related to the mass thallium poisoning in Kyiv in 1987. At school No. 16, dishwasher Tamara poured thallium into meals that made one and a half dozen teachers and students hospitalized with symptoms of food poisoning, and two children and two adults died almost immediately. During the investigation, it turned out that the nurse who checked the quality of school food had died of cardiovascular disease a week before the event. However, after exhuming and examining her body, thallium traces were identified in the corpse's tissue. Consequently, checks of all employees of the school canteen were conducted. According to findings, a bottle of liquid was found in Tamara Ivaniutina, the examination of which showed that it was Clerici solution – a highly poisonous solution based on thallium. During the investigation, it emerged that Ivaniutina and her family members have poisoned people for 11 years (Hazeta Fakty, 2007);

8) *inspection* (driven by the need to find traces of relevant criminal offenses on the body of the suspect (detainee), or victim. For example, when a person has produced poisonous substances, poured, transported, and performed other manipulations with them, traces could remain on his body, indicating the commission of such a criminal offense);

9) *inspection of other objects*: vehicles, compartments of railway cars, luggage compartments, etc. used for transporting or storing poisonous substances, incl. animals that have become victims of poisonous substances, etc. The above objects of inspection can be the scene of a specific criminal offense or a place retaining physical evidence that will contribute to establishing the truth within criminal proceedings.

The above is illustrated by the case of thallium poisoning, traces of which were found in the vehicle of the deceased. Thus, in early December 2018, Maxym Bilokon died in Kyiv because doctors could not diagnose him for a long time. Moreover, it was too late when it emerged that he had been poisoned with thallium. In addition, 40 days after his death, similar symptoms appeared in his father, Volodymyr, and his colleague who were saved thanks to a timely diagnosis and the provision of medical care. At the beginning of the investigation, the father and son's vehicles were not inspected, although they worked as taxi drivers. Things changed when the father, cleaning the car, found several mercury balls, after which the vehicle was inspected. As a result, physical evidence of poisoning of the mentioned persons was detected (Hazeta Fakty, 2018).

Sometimes there is a need for the exhumation of animals since the results of examination and study can affect the overall assessment of cases of criminal offenses related to the poisoning of people. The particularity may be evident when a criminal tests or experiments on a poisonous substance while preparing for murder with its use.

When examining the exhumed corpse of an animal, it should be borne in mind that although corpses are preserved in the ground longer than on the surface, it is not always possible to identify pathological processes that have caused animal death. But mineral poisons retain in the corpses of animals for a very long time, e.g., arsenic, fluoride, mercury, etc. In this case, a forensic veterinary examination should be appointed. To conduct the study, it is recommended providing not only corpse remains but also soil samples of 0.5 kg from the corpse's bed and surface.

The above types of examination can be implemented both independently and simultaneously with others, e.g., an inspection of the scene and personal housing or possessions.

4. Conclusions

It is worth noting that examination occupies a central place in the system of investigative (search) actions taken during the investigation of criminal offenses related to the illegal trafficking of poisonous substances. All its types are essential since they are highly significant investigative (search) actions for collecting and evaluating evidence and providing a reasonable report of suspicion of a criminal offense related to poisonous substances.

Compared to other investigative (search) actions, examination almost always endangers its participants since the object of inspection can be represented by poisonous substances and their carriers (corpses, containers, items, or things that had contact with a poisonous substance, etc.) or fumes that can harm the life and health of persons and animals and the environment. Delays in examination can change the conditions of a criminal offense, cause the spread of a poisonous substance into the water and air, the destruction of traces and physical evidence, their concealment, etc., that will complicate the investigation and the establishment of the truth in criminal proceedings.

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ВИДИ ОГЛЯДУ ТА ЇХ ЗНАЧЕННЯ В ДОКАЗУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ З НЕЗАКОННИМ ОБІГОМ ОТРУЙНИХ РЕЧОВИН

Анотація. ***Метою*** статті є дослідження видів огляду, які можуть проводитися під час розслідування кримінальних правопорушень, пов'язаних з незаконним обігом отруйних речовин,

та встановлення їх значення у процесі доказування. ***Методи дослідження.*** Робота виконана з використанням загальнонаукових та спеціальних методів наукового пізнання, таких як: діалектичний, формально-логічний, узагальнення, порівняння тощо. ***Результати.*** У статті розглянуто поняття огляду, запропоновані різними вченими-криміналістами, та розкрито його сутність, наведено його завдання та охарактеризовано види за об'єктами огляду. Зосереджено увагу на особливостях проведення таких видів огляду, як: місця події, місцевості, приміщень, які безпосередньо не є місцем події, але пов'язані з нею, речей, документів та комп'ютерних даних, огляд житла чи іншого володіння особи, трупа, огляд трупа, пов'язаного з ексгумацією, освідування, огляд транспортних засобів та ексгумація тварин. З'ясовано, що наведені вище види огляду можуть проводитися як самостійно, так і одночасно з іншими, такими як огляд місця події та житла чи іншого володіння особи. Акцентовано увагу на заходах безпеки учасників слідчо-оперативної групи та сторонніх осіб чи тварин під час проведення огляду, оскільки об'єктом дослідження можуть бути як безпосередньо отруйні речовини, так і їх носії чи випари, які можуть завдавати шкоду життю, здоров'ю особам, тваринам, навколишньому середовищу. Встановлено, що зволікання з проведенням огляду може призвести до зміни обстановки такого кримінального правопорушення, розповсюдження отруйної речовини у водний та повітряний простори, знищення слідів і речових доказів, що призведе до утруднення процесу розслідування. ***Висновки.*** У результаті проведеного дослідження встановлено, що огляд у системі слідчих (розшукових) дій, які проводяться під час розслідування кримінальних правопорушень, пов'язаних з незаконним обігом отруйних речовин, займає центральне місце, він є надзвичайно важливою слідчою (розшуковою) дією, що має ключове значення у процесі доказування, а також обґрунтованого повідомлення про підозру у вчиненні таких видів кримінальних правопорушень.

Ключові слова: огляд, речі, документи, освідування, труп, огляд транспортних засобів, ексгумація тварин.

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FORENSIC CHARACTERISATION OF THE MECHANISM OF FORMATION OF TRACES ON BULLETS FIRED FROM CRAFT-MADE FIREARMS AND STANDARD TYPES OF FIREARMS

Abstract. ***Purpose.*** The purpose of the article is a forensic characterisation of the mechanism of formation of traces on bullets fired from craft-made firearms and standard types of firearms. ***Results.*** The article describes the mechanism of formation of traces on bullets fired from different samples of craft-made firearms. The article also specifies a number of circumstances that characterise craft-made firearms and form a trace pattern on bullets. The article describes the regularities revealed in the mechanism of trace formation on bullets at different ratios of bullet diameters and barrel channel. When firing craft-made smooth-bore firearms with different values of caliber excess, it is noted that: – with the increase of the clearence between the surfaces of the bullet and the barrel channel, the size, location and shape of the trace reflection changes (from complete deformation of the leading part of the bullets to a semi-oval). On such traces, it is possible to determine the approximate value of caliber excess, enabling to establish the design features of firearms that have not been submitted for examination; – traces on the bullet, reflected by a shot from firearms with a large caliber, can be distinguished from the traces reflected by the use of firearms with a misaligned chamber, drum chamber or equipped with a device for silent shooting (silencer). It is revealed that the occurrence of translationally oscillatory and translationally circular movements of the bullet can be explained by the following reasons: – uneven fastening (segmental crimping, coring, etc.) of the bullet in the cartridge case; – use of craft-made cartridges, in which the top in the head part of the bullet is located eccentric to its longitudinal axis; – mismatch of the bullet and cartridge case axes; – uneven pressure of powder gases on the bullet, due to: a) misalignment of the bullet inlet and the barrel channel; b) defects in the barrel channel, formed during the manufacture or operation of the firearm, and manifested in a partial reduction or increase in its diameter. ***Conclusions.*** When removing the elements of the dissector with violation of the integrity of the barrel channel, shells are formed that change the transverse roundness and fragmentarily increase the transverse area of the barrel channel. When the bullet crosses such a shell, the uniformity of pressure on the bottom part changes, because of which the direction of movement changes, and it begins to make translational and oscillatory movements. With self-made crimping, even and symmetrical depressed traces remain. With a tight fit of the bullet, the metal may be displaced around the cartridge case bore.

Key words: craft-made firearm, caliber of the firearm, barrel channel, rifling fields, muzzle of the barrel, bullet, chamber, trace.

1. Introduction

By the presence or absence of specific traces on the bullets, it is possible to establish not only the fact of the use of craft-made firearms, but also to determine its type (completely improvised, modified or adapted).

The analysis of the materials of expert practice, as well as the results of the experiments, allow to include among the constant conditions of the shot, which are essential for establishing the fact of the use of craft-made firearms, in addition to the design flaws in the parts and components of the firearm, formed in the manufacture of such firearms, also the mismatch of the diameters of the bullet and the barrel channel.

2. Traces on bullets from craft-made firearms

Traces on bullets fired from craft-made firearms primarily depend on the relief of the barrel channel. If a standard barrel from a factory-made firearm is used in the design and standard cartridges for the barrel are fired, the mechanism of formation of traces on the bullet will be the same as when firing from a standard firearm for which this barrel was originally intended. If there are irregularities and burrs in the muzzle of the barrel caused by rough machining or sawing of the barrel, traces of deformation are formed on the bullet.

Traces on the bullets fired from a craft-made revolver, unlike pistols, remain from the barrel channel, chamber channels of the drum, as well as from the rotating cartridge block and other parts of the firearm. The bullet may have traces formed on impact from a craft-made stump, as well as from the surface of the drum chamber in which the cartridge was located at the time of the shot. These traces are displayed as separate traces, which helps the expert not only to determine the design of the craft-made revolver, but also to identify it. For example, sometimes when fired from modified gas revolvers, the length of the bullet is reduced, but its caliber diameter is increased, while retaining traces suitable for identifying the modified drum (Photo 1).

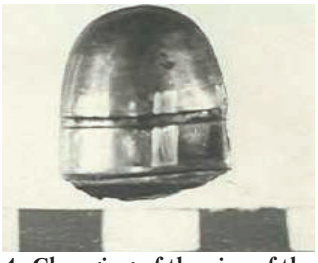

Photo 1. Changing of the size of the bullet (reducing of the length and increasing of diameter), fired from a modified gas revolver "Strazh"

The absence of traces of rifling on the bullet can be explained by the fact that the rifling in the firearm was made without observing the basic requirements for the manufacture of barrels. The length of the barrel, the pitch of the rifling and their depth were chosen by the manufacturer arbitrarily, somewhat smaller than necessary for such firearms. As a result, when firing a standard cartridge with a jacketless bullet, the latter overcomes the barrel channel, not having time to perceive the effect of the rifling. When firing from such a barrel with a cartridge that has a smaller powder charge, clear traces of rifling are displayed on the surface of the bullet (Ustinov, 1968, p. 69–72).

Most criminologists include differences in the diameters of the bullet and the barrel channel to the group of constant conditions that characterise craft-made firearms and form a trace pattern on the bullet. For example, a bullet fired from a firearm with a smaller caliber than it, crashing under strong pressure into the barrel channel, stretches, taking its diameter along the rifling, so its surface shows traces not only on the fields, but also the entire bottom surface of the riflings, with traces located not only on the leading part, but also on the lower parts of the head and tail of the bullet. In such cases, even with a worn barrel channel, traces of rifling fields are clearly visible. By such traces, it is possible to easily establish the group affiliation of the firearm used.

When firing a firearm with a larger diameter (caliber) of the barrel channel than the bullet, the movement of the bullet through the barrel channel will be unstable. This factor affects the dynamics of forward motion, so the bullet begins to make additional movements, which changes the trace pattern on its surface. Signs of the degree of influence of the discrepancy in diameters (calibers) on the formation of the trace pattern are necessary, first of all, for experts conducting forensic ballistics research. However, firstly, the data published so far are not summerised and differ significantly in the minimum clearance at which a change in the trace pattern occurs (E.N. Tikhonov – 0,01 mm) (Tihonov, 1974, p. 71), (E.I. Stashenko – 0,1 mm) (Stashenko, 1973, p. 57); (V.V. Sharunov – 0,28 mm) (Sharunov, 1981, p. 95), (V.V. Filippov – 1,0 mm) (Filippov, 1967, p. 19), and, secondly, the authors studied the mechanism of trace formation on the bullet when using only standard rifled firearms. Therefore, due to simpler technologies, the bulk of craft-made firearms are made with a smooth barrel

channel. However, the forensic literature provides no information about the parameters of the clearence at which the trace pattern on a bullet fired from such firearms changes.

We conducted an experiment in which different types of smooth-bore firearms were used with the caliber of the barrel channel exceeding from 0.1 to 1.0 mm. To obtain more detailed information about the mechanism of trace formation on the bullet, smooth-bore firearms with different barrel lengths were used, firing 5.45x39 (AKM) and 9x18 (PM) cartridges. The surface of the barrel channel was processed by machine equipment using a single technology. The purpose of the experimental study is to identify regularities in the mechanism of trace formation on the bullet at different diameters of the bullet and the barrel channel.

3. Bullet movement when the caliber of the barrel channel is exceeded

Direct examination of the surface of the bullets under a microscope MBS-10, as well as the study of traces on the photo scans found that, despite the differences in the size of the clearence, all the bullets to some extent had contact with the surface of the barrel channel, enabling to detect an important identification feature of firearms, which characterises the relative position of individual elements in traces belonging to a group of common features.

When the caliber of the barrel channel exceeds +0.1 mm, the bullet moves in a translational and oscillatory motion, without full contact with the surface of the barrel channel. In such a movement, the longitudinal axis of the bullet does not coincide with the axis of the barrel channel, and on the diagonally opposite surfaces of the driven part, parallel to the axis, well-defined traces-tracks are formed. Traces on bullets of different designs differ in size and location. The differences are caused by the fact that a 9 mm bullet's area of contact with the surface of the barrel channel along its circumference is larger than that of a 5.45 mm bullet. In addition, the 5.45 mm bullet is longer, it has a bevel in the tail part, which also affects the differences in the length of the traces (Photo 2).

With this excess of caliber, the traces on the bullets are more distinct in the area located closer to the tail part (80% – 5.45 mm, 65% – 9 mm), which is due to a deeper riflingting of the shell metal. Such traces consist of two parts that form a kind of rings. One ring is located at the junction of the head and leading parts, the other is at the junction of the leading and tail (bottom) parts of the bullet.

Photo 2. Traces on the surfaces of bullets fired from a smooth-bore craft-made firearm, in which the caliber of the barrel channel is 0.1 mm larger (left – bullet from a 5.45x39 mm cartridge, on the right – 9x18 mm)

When the caliber of the barrel channel is increased (+0.5 mm), the size, location and degree of traces' expressiveness change (Photo 3). This is manifested in their slight displacement (in 80% of the fired bullets the traces shifted to the tail of the bullet, while the length of the traces decreased). The boundary of the trace, located in the head part of 5.45 mm bullets, became wavier.

Photo 3. Traces on the surfaces of bullets fired from a smooth-bore craft-made firearm, with the caliber of the barrel channel exceeding +0.5 mm (on the left, bullet from a 5.45x39 cartridge, on the right, from a 9x18 cartridge)

With a further increase in caliber (up to + 1.0) of the firearm, the shape and size of the traces also change proportionally. These traces have the shape of a half oval, in which the rounded part is directed towards the top of the bullet. There is a slight shift in the direction of the traces relative to the bullet axis, which is not typical for smooth-bore firearms (Photo 4).

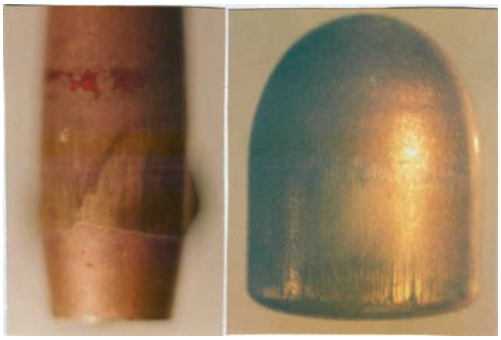

Photo 4. Traces on the surfaces of bullets fired from a smooth-bore craft-made firearm, exceeding the caliber of the barrel channel + 1.0 mm (on the left, bullet from a 5.45x39 cartridge, on the right, 9x18)

The change of direction can be explained by the fact that at a certain excess of the clearence, the bullet, in addition to the translational and oscillatory movement, can make a translational-circular movement. With this movement of the bullet, its contact with the surface of the barrel channel occurs at two points located on opposite sides of the bullet (Fig. 1). A distinctive feature of the translational-circular motion of the bullet from the translational-rotational motion, which is observed when using rifled firearms, is that the circular motion does not occur around the axis of the bullet.

Such traces in shape may resemble the traces formed when the cartridge chamber (drum chamber) and the barrel channel are mismatched (Photo 5).

You can distinguish them according to:

1) the place of reflection (in this case, closer to the tail part, and in case of misalignment of the chamber or the drum store, at the boundary of the slave and the main part of the bullet);

2) the shape (in case of inconsistency, the traces have double roundness);

3) the degree of expressiveness (with the normal arrangement of the axes, the depth of metal riflingting is less).

Photo 5. Traces on the surfaces of bullets that were reflected when fired from a craft-made firearm, in which the chamber (photo on the left) and the drum chamber (photo on the right) are misaligned

The traces on the bullets formed with a larger diameter of the barrel channel differ from the traces left by firing from a firearm equipped with a device for silent shooting (silencer). The latter have the peculiarities of reflecting a trace-defect (shearing of the shell) on the surface of the bullet: firstly, this trace has a characteristic concavity, and, secondly, it always has significant dimensions (Photo 6) (Latyshov, Maksimenkov, 1999, pp. 82–90).

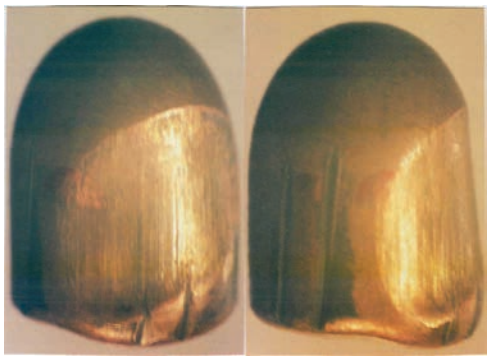

Photo 6. Traces on the surfaces of bullets reflected when fired from a firearm equipped with a device for silent shooting (silencer)

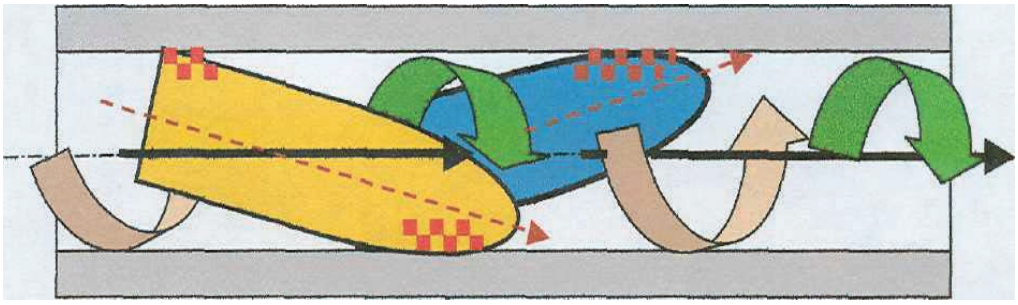

Figure 1. The mechanism of formation of traces at translational-circular movements of the bullet along the channel of the barrel of larger diameter

Bilateral deformation (within the driven and bottom (9 mm) or driven and tail parts of the bullets (5.45 mm), in which the cross-section of the bullet takes an oval (ellipsoidal) shape, was displayed in cases of use of firearms with a barrel length of more than 120 mm. The bullets fired from the guns with shorter barrel lengths mostly had only one-sided deformation. The differences in deformation are explained by the different barrel lengths, so the number of oscillatory movements does not correspond to them.

4. Traces of firing a craft-made smooth-bore firearm

Assessing the results of the experimental firing of craft-made smooth-bore firearms with different caliber excess, we note that:

1) with the increase of the clearence between the surfaces of the bullet and the barrel channel, the size, location and shape of the trace reflection changes (from complete deformation of the leading part of the bullets to a semi-oval). On such traces, it is possible to determine the approximate value of caliber excess, enabling to establish the design features of firearms that have not been submitted for examination;

2) traces on the bullet, reflected by a shot from firearms with a large caliber, can be distinguished from the traces reflected by the use of firearms with a misaligned chamber, drum chamber or equipped with a device for silent shooting (silencer).

The occurrence of occurrence of translational and oscillatory and translationally circular movements of the bullet can be explained by the following reasons:

1) uneven fastening (segmental crimping, coring, etc.) of the bullet in the cartridge case;

2) use of craft-made cartridges, in which the top in the head part of the bullet is located eccentric to its longitudinal axis;

3) mismatch of bullet and cartridge case axes;

4) uneven pressure of powder gases on the bullet, due to: a) misalignment of the bullet inlet and the barrel channel; b) defects in the barrel channel, formed during the manufacture or operation of the firearm, and manifested in a partial reduction or increase in its diameter.

Partial (fragmentary) reduction of the diameter of the barrel channel in the craft-made manufacture of firearms can be due to:

1) incomplete removal (drilling or knocking out) of the splitter in gas barrel firearms or the locking screw during the processing of firearms for underwater hunting (Demin, 1974, p. 41);

2) placing craft-made plugs in the gas exhaust hole in automatic firearms or in the hole drilled in training firearms (Gusarov, 1973, pp. 27–29);

3) rough processing of the barrel channel, resulting in arched rollers and grooves on its surface.

Under these factors, the residual elements from the splitter or plug remaining in the bore go inside the barrel channel, protruding beyond its surface. When the bullet passes through such a section, well-defined dynamic traces-tracks are formed along its entire length, which contribute to the correct determination of the design of the removed splitter.

In the places where the residual elements go beyond the surface of the barrel channel, the greatest metallisation occurs, which also affects the formation of microrelief in the traces. This is confirmed by the H.A. Samsonov's data (Samsonov, 1960, p. 43), which demonstrate that the microrelief of the traces is significantly modified during the metallisation of the barrel channel.

When removing the elements of the dissector with violation of the integrity of the barrel channel, shells are formed that change the transverse roundness and fragmentarily increase the transverse area of the barrel channel. When the bullet crosses such a shell, the uniformity of pressure on the bottom part changes, resulting in a change in the direction of movement, and it begins to make progressive oscillatory movements. Shells in the barrel channel leave traces on the bullet in the form of separate tracks. E.I. Stashenko explains the formation of these traces by the fact that when the bullet passes the area with protruding irregularities, "... swelling of the metal on the edges of the shells from the action of powder gases penetrating into the cracks of the surface layer" (Stashenko, 1973, p. 64), separate groups of tracks are formed (Photo 7).

Photo 7. A bullet fired from a craft-made firearm that has defects on the surface of the barrel channel (shell)

5. Conclusions

In addition, the signs indicating the use of craft-made firearms are as follows:

1) The absence of traces of fields and rifling on the bullet from a factory-made cartridge intended for rifled firearms (Photo 8);

2)

3) Photo 8. Two bullets to 9x18 cartridge fired from a standard firearm (PM) – on the left and from a craft-made smooth-bore pistol – on the right.

1) Non-standard number, as well as steepness and width of the riflings (Photo 9 "a", "b", "c", "d", "e");

2) Change in the character (degree) of roundness (ovality) or the presence of angularity of the cross section of the bullet.

The listed signs, depending on the form of manifestation, indicate:

1) craft-made production of riflings in the barrel channel;

2)

3) Photo 9. Six bullets (9x18 cartridges) fired from a firearm (from left to right, top to bottom): a firearm with four right-hand rifling (RH ПМ); a craft-made firearm with five left-hand rifling; a craft-made firearm with five right-hand rifling; a craft-made firearm with six right-hand rifling; a craft-made firearm with seven right-hand rifling.

1) larger caliber of the barrel channel than the bullet;

2) shortening of the standard barrel near the muzzle (Rusakov, 1981, p. 52);

3) incompleteness of factory production of the part – ствола the barrel (Latyshov, 1997, p. 131).

1) Elongation of the bullet by reducing its diameter, resulting from firing a firearm of a smaller calibre than the bullet (Ladin, 1965, pp. 196–199). In such cases, the traces of the rifling of the barrel channel are clearly visible, without changing the angle of their inclination;

2) Signs of craft-made changes in the shape of the bullet, manifested by shortening its length, or reducing its diameter;

3) Signs of craft-made fastening of the bullet in the cartridge case (non-standard shape, size, number and location of fastening marks). Craft-made crimping leaves even and symmetrical depressed traces. If the bullet fits tightly, the metal may be displaced around the cartridge case bore.

4) Traces of "sticking" on the head of the bullets, reflected from defects in the processing of the chamber and barrel inflow in the form of groups of arched scratches.

The article presents materials enabling forensic experts to correctly evaluate the traces formed on the fired bullets, while considering the influence of various factors on the patterns of trace formation and successfully solve the issues posed to them in the study of craft-made firearms.

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КРИМІНАЛІСТИЧНА ХАРАКТЕРИСТИКА МЕХАНІЗМУ УТВОРЕННЯ СЛІДІВ НА КУЛЯХ, ВИСТРІЛЯНИХ ІЗ САМОРОБНОЇ ВОГНЕПАЛЬНОЇ ЗБРОЇ ТА СТАНДАРТНИХ ВИДІВ ВОГНЕПАЛЬНОЇ ЗБРОЇ

Анотація. ***Мета.*** Метою статті є здійснення криміналістичної характеристики механізму утворення слідів на кулях, вистріляних із саморобної вогнепальної зброї та стандартних видів вогнепальної зброї. ***Результати.*** У статті викладено характеристику механізму утворення слідів на кулях, стріляних в різних зразках саморобної вогнепальної зброї. Також в статті детально розглядаються ціла низка обставин, які характеризують саморобну вогнепальну зброю і формують слідову картину на кулях. В статті описані виявлені закономірності в механізмі слідоутворення на кулях при різних співвідношеннях діаметрів куль та каналу ствола. При відстрілі саморобної гладкоствольної зброї з різною величиною перевищення калібру, відзначено, що: – зі збільшенням зазору між поверхнями кулі і каналу ствола змінюється розмір, розташування і форма відображення сліду (від повної деформації провідної частини куль до напівовалу). На таких слідах можна визначити приблизну величину перевищення калібру, що допоможе встановити конструктивні ознаки зброї, що не надійшла на дослідження; – сліди на кулі, що відобразилися при пострілі зі зброї з великим калібром, можна відрізнити від слідів, що відобразилися при застосуванні зброї з неспіввісним патронником, камори барабана або укомплектованого приладом для безшумової стрільби (глушником). З'ясовано, що виникнення поступально-коливальних і поступально-кругових рухів кулі може бути пояснено такими причинами: – нерівномірним кріпленням (сегментне обтиснення, керніння і т.п.) кулі в гільзі; – використанням саморобних патронів, у яких вершина в головній частині кулі розташована ексцентрично її повздовжньої вісі; – невідповідністю вісей кулі та гільзи; – нерівномірністю тиску порохових газів на кулю, внаслідок: а) несувісності кульового входу і каналу ствола;

б) наявних в каналі ствола дефектів, що утворилися при виготовленні або експлуатації зброї, і що виявилися в частковому зменшенні або збільшенні його діаметра. ***Висновки.*** При видаленні елементів розсікача з порушенням цілісності каналу ствола, утворюються раковини, що змінюють поперечну округлість і фрагментарно збільшують поперечну площу каналу ствола. При перетині кулею такої раковини, рівномірність тиску на донну частину змінюється, внаслідок чого змінюється напрямок руху, і вона починає здійснювати поступально-коливальні рухи. При саморобному обтиску залишаються парні і симетричні вдавлені сліди. При щільній посадці кулі можливий зсув металу навколо дульца гільзи.

Ключові слова: саморобна вогнепальна зброя, калібр зброї, канал ствола, поля нарізів, дульна частина ствола, куля, патронник, слід.

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