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ГЕЛЬВЕТИКА
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# SOME ASPECTS OF MEDIATION AS AN ALTERNATIVE WAY TO RESOLVE CIVIL LAW DISPUTES DURING MARTIAL LAW IN UKRAINE

**Abstract.** ***Purpose.*** The purpose of the article is to study some aspects of mediation as an alternative way to resolve civil law disputes during martial law in Ukraine. ***Results.*** The article studies some aspects of using mediation as an alternative way to resolve civil law disputes during martial law in Ukraine. Mediation should be considered as the promptest, easiest way to resolve civil law disputes in order to protect violated, unrecognised or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, in particular during the period of martial law in Ukraine. Mediation may be conducted both before going to court and during court proceedings or enforcement of a judgment. The author emphasises that if a party or a third party declaring independent claims regarding the subject matter of the dispute is a member of the Armed Forces of Ukraine or other military formations established in accordance with the law, which are transferred to martial law or involved in the anti-terrorist operation before the expiration of the term of such serving, according to the Civil Procedure Code of Ukraine, the court shall suspend the proceedings, and therefore the parties to such a civil dispute have the right to resolve it through mediation. It is proposed to unify the concepts of "mediation agreement" and "agreement on mediation" in the Law of Ukraine "On Mediation". It is noted that the legislation does not impose any restrictions on the conclusion of the above agreements (contracts) during martial law in the state. In this regard, the parties to a civil dispute (conflict) have the right to apply to a mediator and conclude the above agreements (contracts). ***Conclusions.*** Due to the introduction of martial law in Ukraine, some rights of citizens are legally restricted, in particular, in terms of protection of violated, unrecognised or disputed rights, freedoms or interests of individuals, rights and interests of legal entities. In this regard, mediation is one of the promptest and easiest ways to alternatively resolve a civil dispute (conflict), and the Laws of Ukraine "On the Legal Regime of Martial Law" and "On Mediation" do not provide for any restrictions on its use in civil disputes (conflicts).

**Key words:** mediation, concept of mediation, mediator, alternative dispute resolution, civil law dispute, mediation during martial law.

**1. Introduction**

With the adoption of the Law of Ukraine "On Mediation" (hereinafter referred to as the Law) on November 16, 2021 and its entry into force on December 15, 2021, Ukrainian citizens can use a relatively new method of alternative dispute resolution – mediation – in accordance with international standards and trends. Pursuant to Article 3 of the Law, mediation applies to social relations related to mediation in order to prevent future conflicts (disputes) or resolve any conflicts (disputes), including civil, family, labour, commercial, administrative, as well as in cases of administrative offenses and in criminal proceedings with the aim of reconciling the victim with the suspect (accused). We consider civil law relations to be the largest group of relations that can be resolved through mediation. However, today the exercise of this right has specificities due to the introduction of martial law in Ukraine.

Thus, we believe that the use of mediation in civil law disputes during martial law is a relevant issue.

The purpose of the article is to study some aspects of mediation as an alternative way to resolve civil law disputes during martial law in Ukraine.

In Ukraine, mediation in civil law disputes during martial law has not been studied sufficiently. However, a number of studies are somehow related to the use of alternative dis-

pute resolution methods, in particular, the following scientific works should be mentioned: A. Antsupov, N. Atamanchuk, S. Bychkova, N. Bondarenko-Zelinska, O. Bryzhynskyi, D. Davydenko, B. Kyrdan, O. Kostiuchenko, S. Kivalov, K. Kovach, D. Kravtsov, N. Mazaraki, A. Monaienko, Y. Prytyka, V. Prushchak, S. Reznichenko, T. Shamlikashvili, A. Shypylov, and others. Therefore, we propose to analyse the specificities of mediation in resolving civil law disputes during martial law in Ukraine in more detail.

**2. Formation and development of mediation**

According to part 5 of Article 55 of the Constitution of Ukraine, everyone has the right to protect their rights and freedoms from violations and unlawful encroachments by any means not prohibited by law. Applying the classical approach by going to court to protect one's violated, unrecognised or disputed rights, freedoms or legitimate interests is a long process. That is why the use of alternative methods of resolving civil disputes (conflicts) is a positive step in a legal society.

The specificity of alternative dispute resolution is the use of this method of protecting rights outside of court procedures. There are a number of alternative dispute resolution methods: evaluation, negotiation, conciliation, mediation and arbitration. However, the most common is mediation, since it is during the mediation procedure that the parties independently control the process and resolve the dispute (conflict).

In Ukraine, the concept of mediation was enshrined in the legal framework only at the end of 2021, and public mentality is not yet fully aware of its scope (Kyrdan, Shyrokovska, 2022, p. 90).

In addition, there are other advantages of mediation, for example, N. Mazaraki notes that the advantages of mediation include universality, confidentiality, relative cheapness, speed of dispute resolution, high probability of reaching a mutually beneficial solution and maintaining friendly relations between the parties to the dispute, etc. (Mazaraki, p. 82).

Honcharova emphasises the advantage of mediation over court proceedings. In her opinion, first, it ensures promptness; secondly, the absence of clear procedural frameworks contributes to a free atmosphere and willingness of the parties to the conflict to cooperate; third, the decision reached by consensus is usually implemented in the future, and finally, mediation promotes communication between the parties, namely, cohesion in society in general (Honcharova, 2013, p. 133).

Moreover, some scholars believe that the development and effective implementation of mediation in Ukraine, in particular for the protection of civil rights, require focus on the procedural aspects of mediation in reconciliation of the parties to a dispute (conflict) and monitoring of the parties' implementation of the mediation agreement. It will take time to identify shortcomings and gaps in the legal regulatory mechanism for mediation in order to achieve the ultimate goal. The global experience of democratic countries is aimed at finding ways to resolve disputes. In this regard, the movement to introduce mediation has gained great support in Europe, as evidenced by a significant number of international instruments of the European Community and the Council of Europe (Kostiuchenko, Monaienko, Atamanchuk, 2022, p. 51)

According to S.S. Bychkova, the diversification of judicial and out-of-court conciliation procedures expands the possibilities of the parties to private law disputes and finds the most acceptable and optimal mechanisms, ways and means of their resolution (Bychkova, 2022, p. 270).

Under Article 1, part 1, clause 4 of the Law, mediation is an out-of-court voluntary, confidential, structured procedure during which the parties, with the help of a mediator (mediators), try to prevent or resolve a conflict (dispute) through negotiations.

In order to protect their civil rights, freedoms or legitimate interests, the legislator provides for mediation before applying to a court, arbitration court, international commercial arbitration or during pre-trial investigation, court, arbitration proceedings, or during the implementation of a court decision, arbitration court or international commercial arbitration (part 2 of Article 3 of the Law).

**3. Legal and regulatory mechanism for civil law disputes**

In other words, property and non-property rights that arise for legal entities and individuals as participants in civil relations are exercised by them as legally equal participants and are based on free will and property independence. This indicates the need to consolidate at the legislative level the basic legal conditions for conducting mediation procedures that do not restrict the freedom of will of the parties to the dispute, and do not violate human rights and fundamental freedoms in the process of developing and adopting a compromise decision in the case (Kostiuchenko, Monaienko, Atamanchuk, 2022, p. 51-52).

The principles of mediation not only reflect its objective properties, but also embody the subjective and objective perception of mediation by society, consider the experience of mediation in different countries, the mentality of the popula-

tion and the legal traditions of a particular state (Mazaraki, 2019, p. 247).

However, in accordance with Article 1 of the Law of Ukraine "On the Legal Regime of Martial Law", the exercise of the above rights by citizens may be restricted for a certain period. Since February 24, 2022, martial law has been introduced on the territory of Ukraine and is still in effect (Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine" of February 24, 2022 for 30 days, approved by the Law of Ukraine "On Approval of the Decree of the President of Ukraine No. 2102-IX "On the Introduction of Martial Law in Ukraine" of February 24, 2022; Decree of the President of Ukraine No. 133/2022 of March 14, 2022 "On Extension of the Martial Law in Ukraine" from March 26, 2022 for 30 days, approved by Law of Ukraine No. 2119-IX "On Approval of the Decree of the President of Ukraine "On Extension of the Martial Law in Ukraine" of March 15, 2022; Decree of the President of Ukraine No. 259/2022 of April 18, 2022 "On Extension of the Martial Law in Ukraine" from April 25, 2022 for 30 days, approved by Law of Ukraine No. 2212-IX "On Approval of the Decree of the President of Ukraine "On Extension of the Martial Law in Ukraine" of April 21, 2022; Decree of the President of Ukraine No. 341/2022 of May 17, 2022 "On Extension of the Martial Law in Ukraine" of May 25, 2022 for 90 days, approved by Law of Ukraine No. 2263-IX "On Approval of the Decree of the President of Ukraine "On Extension of the Martial Law in Ukraine" of 22.05.2022).

Under the legal regime of martial law, courts, bodies and institutions of the justice system act exclusively on the basis, within the limits of their powers and in the manner prescribed by the Constitution of Ukraine and the laws of Ukraine (Article 12-2 of the Law of Ukraine "On the Legal Regime of Martial Law"). In other words, civil proceedings are continued for the period of martial law, but according to Article 251, part 1, clause 2, of the Civil Procedure Code of Ukraine (hereinafter – the Civil Procedure Code), the court shall suspend the proceedings if a party or a third party making independent claims regarding the subject matter of the dispute is a member of the Armed Forces of Ukraine or other military formations established in accordance with the law, which are transferred to martial law or involved in the anti-terrorist operation before the expiration of the term of such serving (Article 253, part 1, clause 2, of the Civil Procedure Code of Ukraine).

In its Clarifications, the Supreme Court notes that in case of a threat to the life, health and safety of court visitors, court staff, and judges, decisions shall be made promptly to suspend the proceedings of a particular court. If the court has not ceased to conduct legal proceedings, litigants have the opportunity to apply for a postponement of the consideration of cases in connection with military operations and/or for consideration of cases by video conference using any technical means, including their own (Clarification of the Supreme Court regarding the specificities of the administration of justice in the territory where martial law has been imposed, 2022). Therefore, there are risks of restrictions on access to justice. Settlement of a civil dispute with a mediator in accordance with the Law does not have any restrictions on the exercise of such rights. In addition, the parties may resolve their civil disputes without the territorial jurisdiction requirements of the Civil Procedure Code of Ukraine.

One of the grounds for the legitimacy of confirming an alternative resolution of a civil dispute (conflict) through mediation is the conclusion of an agreement. However, the legislator in Article 1, part 1, clauses 1, 3, of the Law provided for the conclusion of: 1) an agreement on mediation, the subject matter thereof is the provision of mediation services, the parties to which are the parties to the civil dispute (conflict) and the mediator; 2) mediation agreement – a written agreement between the parties to legal relations on the method of settlement of all or certain conflicts (disputes) that have arisen or may arise between them through mediation. The legislator also provides for the possibility of concluding a mediation agreement in the form of a mediation clause in a contract or in the form of a separate agreement. As a general rule, a mediation clause in a contract is drawn up in a separate clause, section or paragraph in the contract concluded by the parties to provide legal certainty regarding the actions of each party in the event of conflicts (disputes) between them regarding the performance of a contractual obligation that is the subject of the contract concluded between them, and a mediation agreement in the form of an independent document that sets forth the parties' agreement to mediate (Kostiuchenko, Monaienko, Atamanchuk, 2022, p. 53).

Analysing the legislative construction of the concept of "mediation agreement", we can advocate scholars who consider it as a type of transaction or civil law contract which may be embodied in: 1) the basis for the emergence, change and termination of social relations; 2) a certain action that has the relevant features; 3) dynamic relations during the existence of contractual relations; 4) a document as a form of manifestation of socially significant behav-

iour; 5) a means of realising the legal personality of the participants in the mediation procedure; 6) a way to achieve a legally significant result of this type of alternative form of dispute resolution (Makovii, 2021, p. 102; Kostiuchenko, Monaienko, Atamanchuk, 2022, p. 54).

In addition, we agree with the opinion of scholars who consider it appropriate to unify the terms in the Law. For example, the Law currently divides mediation agreements into two groups of contracts. One group of agreements is aimed at establishing mediation relations and their support at various stages of mediation (agreement between the parties to the dispute on their consent to mediation and agreement on mediation between the parties to the dispute and the mediator). The second group of agreements concluded in connection with the resolution of a civil dispute (conflict) or mediation are mediation agreements (Ohrenchuk, 2016, p. 184). In this regard, we propose to exclude the concept of "agreement" in the text of the Law and replace it with the concept of "contract".

It should be noted that the analysed legislation does not impose any restrictions on the conclusion of the above agreements (contracts) during martial law in the State. In this regard, the parties to a civil dispute (conflict) have the right to apply to a mediator and conclude the above agreements (contracts).

**4. Conclusions**

Due to the introduction of martial law on the territory of Ukraine, certain rights of citizens are legally restricted, in particular, in terms of protection of violated, unrecognised or disputed rights, freedoms or interests of individuals, rights and interests of legal entities.

In this regard, mediation is one of the promptest and easiest ways to alternatively resolve a civil dispute (conflict), and the Laws of Ukraine "On the Legal Regime of Martial Law" and "On Mediation" do not provide for any restrictions on its use in civil disputes (conflicts).

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## ДЕЯКІ АСПЕКТИ ЗАСТОСУВАННЯ МЕДІАЦІЇ ЯК АЛЬТЕРНАТИВНОГО СПОСОБУ ВИРІШЕННЯ ЦИВІЛЬНО-ПРАВОВИХ СПОРІВ ПІД ЧАС ВОЄННОГО СТАНУ В УКРАЇНІ

**Анотація.** ***Мета.*** Метою статті є дослідження деяких аспектів застосування медіації як альтернативного способу вирішення цивільно-правових спорів під час дії воєнного стану в Україні.

***Результати.*** Статтю присвячено дослідженню деяких аспектів застосування медіації як альтернативного способу вирішення цивільно-правових спорів під час воєнного стану в Україні. Медіацію слід розглядати як найшвидший, найпростіший спосіб вирішення цивільно-правових спорів з метою захисту порушених, невизнаних або оспорюваних прав, свобод чи інтересів фізичних осіб, прав та інтересів юридичних осіб, зокрема у період дії воєнного стану в Україні. Проведення медіації може бути здійснено як до звернення до суду, так і під час судового провадження або виконання рішення. Акцентовано увагу, що у зв'язку з перебуванням сторони або третьої особи, яка заявляє самостійні вимоги щодо предмета спору, у складі Збройних сил України або інших утворених відповідно до закону військових формувань, що переведені на воєнний стан або залучені до проведення антитерористичної операції до закінчення строку такого перебування відповідно до ЦПК України, на суд покладено обов'язок зупинити провадження, у зв'язку з чим у сторін такого цивільно-правового спору є право вирішити його за допомогою медіації. Запропоновано уніфікувати поняття в Законі України «Про медіацію» щодо «медіаційної угоди» та «договору про проведення медіації». Зазначено, що законодавством не встановлено під час дії воєнного стану в державі жодних обмежень щодо укладання вище вказаних договорів (угод) не встановлено. У зв'язку з чим сторони цивільно-правового спору (конфлікту) мають право звернутись до медіатора та укласти вказані вище договори (угоди). ***Висновки.*** У зв'язку із запровадженням на території України воєнного стану деякі права громадян на законних підставах вимушено обмежені, зокрема, у частині захисту порушених, невизнаних або оспорюваних прав, свобод чи інтересів фізичних осіб, прав та інтересів юридичних осіб. У зв'язку з цим одним із найшвидших і найпростіших способів альтернативного вирішення цивільно-правого спору (конфлікту) є медіація, жодних обмежень до застосування якої у цивільно-правових спорах (конфліктах) у законах України «Про правовий режим воєнного стану» та «Про медіацію» не передбачено.

**Ключові слова:** медіація, інститут медіації, медіатор, альтернативні способи вирішення спорів, цивільно-правовий спір, медіація під час воєнного стану.

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# THE STUDY OF CIVIL SOCIETY INSTITUTIONS IN THE MECHANISM FOR MAKING STATE TAX POLICY IN UKRAINE

**Abstract.** ***Purpose.*** The purpose of the article is to consider comprehensively, from theoretical and methodological perspective, civil society institutions in the mechanism for making State tax policy. ***Results***. The article focuses on the fact that the effectiveness of the mechanisms for State tax policy of Ukraine depends on the following factors: consistency and coherence of taxation laws, i.e., legal provisions and rules of tax collection determined and established by the State; raising of the level of legal awareness of taxpayers, spreading of the practice of internal free motivation for non-coercive tax payment; strengthening of the rules of tax administration, external coercion to pay taxes. It is proved that in the implementation of these factors in the mechanism for making State tax policy, civil society institutions are of special importance, since the consciousness of the entire society in paying taxes and compliance with tax legislation in general depends on them. Consultations with civil society institutions are held in the form of public discussions on taxation issues, electronic consultations with the public on the appropriateness of the tax burden on certain sectors of social production, as well as to study public opinion on the introduction or increase of tax rates on excisable goods. ***Conclusions***. It is concluded that civil society institutions use the main forms in the mechanism for making State tax policy, such as the right to appeal, local initiatives, public consultations, and activities of public councils. Civil society institutions facilitate measures to resolve topical issues in the field of taxation, fight against tax offenses, and protection of the rights of taxpayers, etc. The activities of civil society institutions in the mechanism for making State policy is a relevant indicator of public trust in public authorities (bodies of the State Tax Service of Ukraine) and readiness for the proper implementation of public law decisions in terms of administration of taxes, fees, payments, etc.

**Key words:** state tax policy, civil society institutions, mechanism for making policy, administration of taxes, fees, payments.

## 1. Introduction

A well-developed civil society is a voice and advocate for the interests and aspirations of various social groups and citizens. Civil society can make a significant contribution to the sustainable development of the State by providing social services, ensuring social entrepreneurship, increasing the number of jobs and self-employed persons, improving the business environment, combating corruption, promoting transparency of the activities of State and local authorities and implementing other socially useful projects. Moreover, civil society institutions in Ukraine play an active role in promoting the restoration of territorial integrity and peacebuilding (Decree of the President of Ukraine On the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026, 2021) and are an effective tool for making State tax policy in Ukraine. It is the latter who actively manifest their civil position, do not stand aside and are involved in this process in every possible way. The issue is to ensure that the forms and methods of public participation are truly effective and contribute to the development of an optimal tax policy that will ensure a balance between public and private interests. Nowadays, the process of involvement of public institutions in the adoption of socially important decisions by public authorities in general, and in making tax policy, is governed by a number of regulations that generally allow to identify typical forms. Our task is to identify them and define the specificities of civil society

institutions in the mechanism for making State tax policy.

Certain aspects of participation of civil society institutions in the mechanism for making State tax policy have been under focus of scientific research by I.V. Aleksieiev, O.I. Baranovskyi, P.D. Bilenchuk, E.M. Bohatyriova, L.A. Burkova, O.D. Vasylyk, V.P. Vyshnevskyi, Yu.V. Harust, V.M. Heiets, O.D. Danilova, O.V. Dzhafarova, O. Kosytsia, V.I. Kravchenko, T.M. Kravtsova, M.I. Krupka, M.I. Kulchytskyi, N.P. Kucheriavenko, I.O. Lunina, K.V. Pavliuk, Yu.V. Pasichnyk, Yu.V. Petrenko, V.V. Pysmennyi, O.P. Riabchenko, T.V. Semeniak, V.M. Starynskyi, L.L. Taranhul, A.V. Tkachenko, O.P. Uhrovetskyi, V.D. Chernadchuk, T.O. Chernadchuk, I.Ya. Chuhunova, and others. However, given the new challenges of the State's development, shortcomings in the collection of taxes and fees, as well as the formulation of proposals for their elimination, require a more detailed study of the role and place of civil society institutions in making tax policy.

The purpose of the article is to consider comprehensively, from theoretical and methodological perspective, civil society institutions in the mechanism for making State tax policy.

**2. Principles of implementation of the mechanisms of State tax policy of Ukraine**

Scientists have repeatedly emphasised that the public component of tax policy actualises the problem of interaction between the State and citizens, represented by civil society institutions that defend its private and public interests in the field of taxation, since State tax policy affects the interests of all citizens without exception. It affects not only the amount of tax payments to the budget but also the correspondence of tax pressure to the public goods that the State should provide with the funds collected from the population (Rudenko, 2017, p. 97). Scientific research reveals that in transition economies, increased tax pressure and incorrect actions in tax administration lead to an increase in the shadow economy. This is due to the fact that tax expenditures make up a significant share of a taxpayer's total expenses, and thus, it is natural for entities to strive to minimise them. However, it should be considered that tax minimisation can be achieved through legal and illegal means: in the first case, taxes are usually paid in certain (reduced) amounts, while in the second case, they are not paid at all. Therefore, it is extremely dangerous for the State if taxpayers use methods related to "tax evasion" (Ivanova and Maiburova, 2010, p. 372). When implementing measures to reduce the tax burden, it should be borne in mind that reducing tax payments is not a goal, but a way to improve the financial condition and increase the investment attractiveness of the organisation (Oryshchyn, 2019, p. 62).

Therefore, our State is facing a rather difficult question: to accept the current low level of public goods and, accordingly, to reduce the tax burden on business (which the latter will readily do, since it is now forced to spend money on quasi-public goods anyway) or to maintain and even gradually increase the level of tax burden by turning public services to face business and individuals and radically improving the supply of public goods. The choice of priorities and decision-making on reforming the tax system, as well as the willingness to implement reforms, ensuring public consensus around the objectives of long-term economic growth, is the main problem in making State tax policy at the current stage of its development and formation (Kutsenko, 2005, p. 320). Thus, in the presence of a developed civil society, there is an active dialogue between civil society institutions and the state authorities on the development, adjustment and implementation of State tax policy. Since the public is mainly interested in the practical components of State tax policy, the main focus of public interest is its tax mechanisms, i.e. the direct means of collecting and redistributing public income (Rudenko, 2017, p. 97).

The effectiveness of the mechanisms of State tax policy of Ukraine depends on the following factors: consistency and coherence of taxation laws, i.e., legal provisions and rules of tax collection determined and established by the State; raising of the level of legal awareness of taxpayers, spreading of the practice of internal free motivation for non-coercive tax payment; strengthening of the rules of tax administration, external coercion to pay taxes (Lytvyn, 2018). Civil society institutions are directly involved in the implementation of these factors of State tax policy mechanism since the consciousness of the entire society in paying taxes and compliance with tax legislation in general depends on them.

According to O.V. Kurnosov, the specificity of forming the mechanisms for State tax policy of Ukraine in the context of the innovative development of the State is the narrowing of the function of direct state influence on taxation, enabling to focus more on the methods of indirect and informal influence (Kurnosov, 2018, pp. 18-19). In addition, the implementation of the mechanisms for State tax policy of Ukraine provides for the reorientation of the latter to the transition from a bureaucratic paradigm to a managerial one, which includes, in addition to the fiscal area, regulatory one (tax

incentives for economic activity and discouragement of violations of the legislation on taxes and fees, which implies liability to the State for late and incomplete payment of taxes), as well as tax administration (planning, forecasting, accounting and control). Their optimal combination will maximise the effectiveness of State tax policy (Kurnosov, 2018, p. 19).

In T.F. Kutsenko's opinion, the taxation mechanism is the practical making of tax policy with the help of various tax instruments (fiscal regulators, levers, incentives, sanctions, etc.), aimed at implementing the following tax policy measures: 1) collection of taxes, fees (mandatory payments), etc.; 2) formation of revenues of the state and local budgets of the country; 3) influence on the socio-economic development of the country; 4) influence on financial and economic phenomena and processes in business activities, etc. (Kutsenko, 2005, p. 241).

In addition, it should be noted that the basis for the construction and functioning of any tax mechanism is based on the elements of taxation, which can be grouped into: basic, that is, the main characteristics of the tax, without which it is impossible to imagine the relevant tax mechanism (taxable entity or taxpayer, object of taxation, tax rate); additional, that is, necessary characteristics that reveal the specifics of the tax mechanism and its use (tax privileges, source of payment or tax base, tax quota, budget or fund where tax payments are received, terms and frequency of tax payments, etc. (Kutsenko, 2005, pp. 241-242).

Furthermore, it should be noted that the potential of civil society institutions is not sufficiently applied in the socio-economic development of Ukraine. According to an analysis of data published on the official website of the State Statistics Service of Ukraine, the share of such institutions in Ukraine's gross domestic product in 2010-2020 was 0.7-0.8 percent, compared to 4-8 percent in the countries of the Organisation for Economic Cooperation and Development and 1.5-2.4 percent in most of Eastern European countries (Decree of the President of Ukraine On the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026, 2021). Therefore, an enabling environment for citizens and business entities is required to support civil society institutions, including by introducing tax incentives to support civil society institutions, their participation in the socio-economic development of the State, allowing for international practice; promoting the development of charitable activities, for example, by reviewing the amount of tax-free charitable assistance provided by civil society institutions with non-profit status in favour of people in difficult life circumstances, as defined by the Law of Ukraine "On Social Services" (Decree of the President of Ukraine On the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021-2026, 2021).

It should be marked that the problem of tax evasion has a complex background and can be solved to some extent not only by creating an effective mechanism for de-shadowing the economy as a system of measures and tools to improve the quality of public services, improving control over tax payments and partially shifting the burden of social security to market instruments and mechanisms (private pension insurance, health insurance, etc.), as well as by involving civil society institutions as relevant participants in the mechanism for making State tax policy. An important factor that will contribute to the de-shadowing of the economy, especially tax evasion, should be adequate changes in the public consciousness of citizens, namely the recognition of moral values and virtues as a guarantee of the future socio-economic development of Ukraine (Kutsenko, 2005, p. 313).

Our further research will be aimed at identifying and studying the main forms of participation of civil society institutions in the mechanism for making State tax policy.

One of the main forms of participation of civil society institutions in making State tax policy is *the right to appeal to* public authorities. According to Article 40 of the Constitution of Ukraine (1996) and the Law of Ukraine "On appeals by citizens" (Law of Ukraine On appeals by citizens, 1996), a citizen or a group of citizens may apply to public authorities that make State tax policy with a relevant appeal (application, proposal, motion or petition). These types of appeals may relate to various taxation issues: providing information on the creation of the taxpayer's "Electronic account", filing a complaint against unlawful actions of regulatory authorities and taxation issues, or, on the contrary, suggesting innovations and new tools to improve the provision of services in this field.

One of the forms of public participation in making State tax policy is "local initiatives". This form of public participation has its own regulatory framework. For example, Article 9 of the Law of Ukraine "On Local Self-Government in Ukraine" states that members of a territorial community have the right to initiate consideration of any issue by the council within the latter's competence. That is, the local initiative, in our case, may relate to the revision of the distribution of the community budget or the establishment of single tax rates in a certain territory, etc.

It is essential to mention that the procedure for submitting a local initiative to the council is

determined by the representative body of local self-government or the charter of the territorial community, allowing for the requirements of the Law of Ukraine "On the principles of State regulatory policy in the field of economic activity" (Law of Ukraine On the principles of state regulatory policy in the field of economic activity, 2003). These draft laws, which are directed by local governments to establish local taxes and fees, determine local tax policy and ensure the filling of the respective budgets, and therefore are an important part of the national budget and tax processes (Establishment of local taxes and fees – according to a simplified procedure: the initiative of the DRS, 2022).

**3. Participation of public institutions in the management of public affairs**

It is worthwhile to mark that given the significance of the participation of public institutions in the management of public affairs, the Cabinet of Ministers of Ukraine adopted Resolution No. 996 as of November 03, 2010 "On ensuring public participation in the formation and implementation of public policy" (Resolution of the Cabinet of Ministers of Ukraine On ensuring public participation in the formation and implementation of public policy, 2010). At the bylaw level, there was an attempt to define the main forms of participation of public institutions in making State policy. Transforming the above into the subject of our study, the forms of participation enshrined in this Resolution should be underlined. For example, according to clause 5 of this Resolution, such forms include *"public consultations" and "public councils"*.

*Consultations* with civil society institutions are held in the form of public discussions on taxation issues, electronic consultations with the public on the appropriateness of the tax burden on certain sectors of social production, as well as to study public opinion on the introduction or increase of tax rates on excisable goods. In this context, there is a positive impact on the coordination of joint actions in making State tax policy through the adoption of relevant decisions, and at the same time, it is the most effective way to exercise the constitutional right of citizens to participate in the management of public affairs.

In addition, the involvement of civil society institutions in consultations in the mechanism for making State tax policy has the following prerogatives: 1) they allow engaging public experts to solve a specific problem or develop a solution without additional costs; 2) they increase the level of public trust in the authorities and readiness for the proper implementation of public legal decisions; 3) they improve the quality of public law decisions in terms of meeting the needs of the public; 4) they allow identifying and eliminating negative consequences of public law decisions at the stage of their development through the involvement of stakeholders in the discussion; 5) they share responsibility for decisions and their consequences between the authorities and the public (which either participated or did not participate in consultations due to passivity and disorganisation) (Krasnosilska, Latsyba, Voloshyna, Kentseva, Vashchuk, 2013, p. 39).

Thus, consultations with civil society institutions are held in order to involve citizens in the management of public affairs, to provide them with free access to information on the activities of executive authorities (the State Tax Service of Ukraine), and to ensure publicity, openness and transparency of the activities of these bodies. Public consultations should facilitate the establishment of a systematic dialogue between the executive authorities and the public, improve the quality of preparation of decisions on important issues of State and public life, allowing for public opinion, and create conditions for citizens to participate in the development of draft decisions (Resolution of the Cabinet of Ministers of Ukraine On ensuring public participation in the formation and implementation of public policy, 2010).

With regards to *"Public Councils"*, the latter is a temporary advisory body established to facilitate the participation of civil society institutions in making public policy in general and in the taxation sector in particular. Representatives of public associations, religious, charitable organisations, creative unions, professional unions and their associations, associations, employers' organisations and their associations, mass media, registered in the manner established by law, may be elected to the Public Council (Resolution of the Cabinet of Ministers of Ukraine On the approval of a standard provision on the public council under the ministry, another central body of executive power, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city, district, district in mm. Kyiv and Sevastopol state administration, 2010).

It should be noted that according to Resolution of the Cabinet of Ministers of Ukraine No. 227 of March 06, 2019, the State Tax Service of Ukraine cooperates with civil society institutions, ensures consultations with the public, in particular through the public council on making State tax policy (Resolution of the Cabinet of Ministers of Ukraine On approval of regulations on the State Tax Service of Ukraine and the State Customs Service of Ukraine, 2019).

For example, in 2020-2021, members of the Public Council at the State Tax Service

of Ukraine drafted legal regulations that were posted for public discussion on the official web portal of the State Tax Service of Ukraine and participated in their finalisation together with the State Tax Service specialists in the regular course of work.

The Public Council at the State Tax Service, in particular, provided comments and suggestions to the Draft Order of the Ministry of Finance of Ukraine "On Approval of Amendments to the Excise Tax Declaration Form and the Procedure for Filling Out and Submitting the Excise Tax Declaration" and a proposal for formulating a recommendation in the Receipt for suspension of tax invoices and adjustment calculations registration (Order of the National Agency for the Prevention of Corruption Approving the Procedure for Conducting Anti-Corruption Expertise by the National Agency for the Prevention of Corruption, 2020). Furthermore, this institution plays an active role in preventing corruption in the activities of tax authorities.

In general, it should be underlined that the main activities of the Public Council at the STS of Ukraine, which are primarily aimed at regulating in the field of taxation and protection of taxpayers' rights, such as: participation in meetings with representatives of public councils at central executive bodies and the Main Departments of the STS of Ukraine; review of draft regulations published on the official web portal of the STS and submission of proposals to the STS of Ukraine; hearing the report of the STS on the implementation of the Anti-Corruption Program of the STS of Ukraine; holding meetings of the Committees and reviewing problematic taxation issues with the involvement of the STS officials, independent experts, business representatives and the public; monitoring problematic taxation issues and submitting proposals to the STS on the preparation of draft laws in the field of taxation; submitting proposals to the STS on resolving problematic issues of tax administration and non-tax payments; preparing proposals for amendments to the Tax Code of Ukraine and other legal regulations of Ukraine; analysing draft laws on tax legislation, conducting (if necessary) public expert review of draft laws and other draft regulations; cooperation with the Public Council at the Ministry of Finance of Ukraine in protecting taxpayers' rights; consideration of appeals from taxpayers and civil society institutions on topical issues in the field of taxation within the full powers of the Public Council; analytical work on the declaration and payment of taxes and fees based on the data of the State Tax Service of Ukraine, the functioning of the PCS and SEARP, the state of VAT refunds, combating tax violations, etc. (Official website of the State Tax Service of Ukraine, 2021).

**4. Conclusions**

To sum up, it is important to highlight that despite the existence of various forms of public participation in making State tax policy, this "tool" is still in its infancy in our country.

Civil society institutions use the main forms in the mechanism for making State tax policy, such as the right to appeal, local initiatives, public consultations, and activities of public councils. Civil society institutions facilitate measures to resolve topical issues in the field of taxation, fight against tax offenses, and protection of the rights of taxpayers, etc. The activities of civil society institutions in the mechanism for making State policy is a relevant indicator of public trust in public authorities (bodies of the State Tax Service of Ukraine) and readiness for the proper implementation of public law decisions in terms of administration of taxes, fees, payments, etc.

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## ДОСЛІДЖЕННЯ ІНСТИТУЦІЙ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА В МЕХАНІЗМІ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОДАТКОВОЇ ПОЛІТИКИ В УКРАЇНІ

**Анотація.** ***Мета.*** Метою наукової статті є комплексне теоретико-методологічне осмислення інституцій громадянського суспільства в механізмі реалізації державної податкової політики. ***Результати.*** У статті звертається увага, що ефективність реалізації механізмів державної податкової політики України залежить від таких факторів: несуперечності й узгодженості законів оподатку-

вання, тобто визначених і встановлюваних державою правових норм і правил справляння податків; підвищення рівня правосвідомості платників податків, поширення практики внутрішньої вільної мотивації до не примусової сплати податків; посилення правил податкового адміністрування, зовнішнього примусу до сплати податків. Доведено, що у здійсненні зазначених факторів у механізмі реалізації державної податкової політики особливе місце відводиться інституціям громадянського суспільства, оскільки від них залежить свідомість усього суспільства у сплаті податків та дотримання податкового законодавства загалом. Консультації з інститутами громадянського суспільства проводяться у формі публічного обговорення питань оподаткування, електронних консультацій з громадськістю щодо доцільності податкового навантаження на окремі сфери суспільного виробництва, а також з метою вивчення громадської думки щодо введення або збільшення податкових ставок на підакцизні товари. ***Висновки.*** Зроблено висновок, що інституції громадянського суспільства використовують у своїй діяльності основні форми в механізмі реалізації державної податкової політики, а саме: право на звернення, місцеві ініціативи, консультації з громадськістю, діяльність громадських рад. Завдячуючи інституціям громадянського суспільства здійснюються заходи, спрямовані на врегулювання актуальних питань у сфері оподаткування, боротьби з податковими правопорушеннями, а також у напрямі захисту прав платників податків тощо. Діяльність інституцій громадянського суспільства в механізмі реалізації державної політики є відповідним індикатором довіри суспільства до органів публічної влади (органів Державної податкової служби України) та готовність до належного виконання публічно-правових рішень у частині адміністрування податків, зборів, платежів тощо.

**Ключові слова:** державна податкова політика, інституції громадянського суспільства, механізм реалізації політики, адміністрування податків, зборів, платежів.

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# THE DEGREE OF SCIENTIFIC DEVELOPMENT OF THE ISSUE OF ADMINISTRATION OF JUSTICE IN ADMINISTRATIVE PROCEEDINGS

**Abstract.** ***Purpose.*** The purpose of the article is to analyse the state of scientific research on the issue of administration of justice in administrative proceedings. ***Results.*** The author argues that independent and impartial justice is a guarantee of sustainable development of society and the State, a guarantee of observance of rights and freedoms of man and of the citizen, rights and legitimate interests of legal entities, interests of the State, growth of welfare and quality of life, creation of an attractive investment climate, timely, efficient and fair resolution of legal disputes based on the rule of law. However, in the course of exercising their powers, state authorities, local self-government bodies and their officials may in some cases violate the rights, freedoms and legitimate interests of individuals and organisations. Decisions and actions or omissions of state authorities, local governments, public associations and their officials may be appealed in court. These cases are considered in administrative proceedings. Providing such an opportunity is the most important guarantee against abuse of power by public administration bodies, as well as it ensures a balance in the system of division of powers. The effective administrative proceedings affect the activities of all executive authorities. The article analyses scientific developments in the field of administrative proceedings in Ukraine. The article considers scientific works which are close to the subject matter of the mentioned scientific topic. The application of the conceptual provisions of dialectics enables to clarify various issues related to the subject matter of this article, to identify the existing unities and contradictions of the phenomena and facts, judgments and conclusions essential for the study. The historical method enables to find out the state of development of certain theories, concepts and proposals regarding the above-mentioned issues. The systemic-structural method is used in the development and formation of the main provisions. The method of system analysis is used in the study and processing of various sources that formed the basis of the factual material of our research. The formal logic methods enable to substantiate the author's proposals and opinions. ***Conclusions.*** Based on the analysis, it is concluded that despite the large number of scientific works in this field, no comprehensive works consider changes and reforms in the field of justice nowadays. The author emphasises the need to intensify such research.

**Key words:** scientific elaboration, justice, administrative proceedings, administrative procedure.

## 1. Introduction

According to Article 6 of the Constitution of Ukraine, the State power in Ukraine shall be exercised with the consideration of its division into legislative, executive and judicial power (Constitution of Ukraine, 1996). In other words, based on this position, it can be argued that the judicial power is on an equal footing with the executive and legislative, but performs functions that are specific to it. In K. Husarov's opinion, the judicial power is realised through the administration of justice in the form of criminal, civil, administrative, constitutional, and economic proceedings (Husarov, 2010, p. 9). Without exaggeration, administrative proceedings can be considered the main means of protecting the rights and interests of individuals and legal entities in the field of public law relations from violations by public authorities (Senkiv, 2016, p. 27). Independent and impartial justice is a guarantee of sustainable development of society and the State, a guarantee of observance of rights and freedoms of man and of the citizen, rights and legitimate interests of legal entities, interests of the State, growth of welfare and quality of life, creation of an attractive investment climate, timely, efficient and fair resolution of legal disputes based on the rule

of law (Decree of the President of Ukraine On Approval of the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023, 2021).

However, in the course of exercising their powers, state authorities, local self-government bodies and their officials may in some cases violate the rights, freedoms and legitimate interests of individuals and organisations. Decisions and actions or omissions of state authorities, local governments, public associations and their officials may be appealed in court. These cases are considered in administrative proceedings. Providing such an opportunity is the most important guarantee against abuse of power by public administration bodies, as well as it ensures a balance in the system of separation of powers. The effective administrative proceedings affect the activities of all executive authorities.

Furthermore, the relevance of the chosen research topic is due to the ongoing administrative reform in the country. The analysis of court practice reveals that the number of administrative cases where citizens increasingly challenge decisions that violate their rights, freedoms and legitimate interests grows every year.

Obviously, a theoretical study of the administration of justice in administrative proceedings is required in order to further develop the main areas for reforming the judicial system and legislation on administrative proceedings.

In order to understand the essence of justice in administrative proceedings and to determine the areas for further research of the issue, it is necessary to review the opinions currently expressed by scholars and practitioners on the issues under study.

Therefore, the analysis of the problem of administration of justice in administrative proceedings at the present stage is relevant and has scientific and practical significance.

The relevance of the issues related to administrative proceedings in Ukraine have been under focus by domestic administrative law scholars such as: V.B. Averianov, O.M. Bandurka, O.I. Bezpalova, M.A. Boiartseva, Yu.P. Bytiak, O.V. Dzhafarova, A.T. Komziuk, O.V. Kapinos, V.V. Malykhina, O.Ye. Mishchenko, V.B. Pchelin, O.M. Nechytailo, N.V. Shevtsova, I.V. Shrub, and others. The works by these authors make a significant contribution to the development of judicial proceedings in general and administrative proceedings in particular. Nevertheless, the continuous development of our country requires further analysis of administrative proceedings as a special form of administration of justice. Today, there is no comprehensive scientific work that would summarise all the theoretical data and offer a unified approach. In this regard, there are sufficient grounds to believe that without a thorough scientific study, further development of justice in administrative proceedings will be deprived of democratic transformations.

The purpose of the article is to analyse the state of scientific research on the issue of administration of justice in administrative proceedings.

Pursuant to the goal and objectives set, as well as allowing for the object and subject matter of the study, the article uses a combination of methods and techniques of scientific cognition. The methodological basis of the work is the general scientific and specific methods of cognition, in particular, the dialectical method of cognition, comparative legal, historical, systemic-structural, and systemic-analytical, sociological, statistical, technical logical, etc. The application of the conceptual provisions of dialectics enables to clarify various issues related to the subject matter of this article, to identify the existing unities and contradictions of the phenomena and facts, judgments and conclusions essential for the study. The historical method enables to find out the state of development of certain theories, concepts and proposals regarding the above-mentioned issues. The systemic-structural method is used in the development and formation of the main provisions. The method of system analysis is used in the study and processing of various sources that formed the basis of the factual material of our research. The formal logic methods enable to substantiate the author's proposals and opinions.

**2. General principles of administrative proceedings**

Justice is an integral part of every State governed by the rule of law. Administrative proceedings play a key role in protecting the rights, freedoms and interests of individuals, the rights and interests of legal entities in the field of public relations from violations by public authorities and local governments, because judicial control over the observance of the law by public authorities has been introduced in Ukraine at a qualitatively new level (Malykhina, 2021, p. 56).

The imperfection of justice in Ukraine is one of the factors hindering democratic transformation in the country. The decline in the quality of legislative activity and the inconsistency of judicial practice are explained by the lack of an updated conceptual view of administrative proceedings as a form of justice. One of the trends in improving administrative proceedings is its effective theoretical support, which is achieved by the focus of the scientific community.

An important stage of any scientific research is a thorough analysis of the existing scientific works of domestic and foreign scholars.

Given that no separate studies have been focused on the problems of administration of justice in administrative proceedings, the purpose of this article is to summarise scientific views in scientific works which are close to the subject matter of this topic.

In the article "Organisational and legal framework for administrative proceedings in Ukraine," V.V. Malykhina defines administrative proceedings as a State instrument that establishes a judicial and control mechanism aimed at regulating relations arising from the violation of an participant's public and individual right, ensuring proper protection of public rights and freedoms of man and a citizen, as well as legitimate interests of public persons in accordance with the laws of Ukraine. The author notes that administrative proceedings are a form of administration of justice aimed at resolving disputes between citizens and public authorities or between the authorities themselves. In addition, she emphasises that the formation of administrative justice has passed through three periods, one of which covers the ordering carried out by the state by legally enshrining justice, namely the adoption of legislation based on the activities of administrative courts (Malykhina, 2021, p. 71).

In his doctoral dissertation "Conceptual foundations of administrative justice in Ukraine", the author argues that the conceptual foundations of administrative proceedings are the ideas that determine the purpose of this form of justice, have a fundamental impact on the content of the rules establishing the powers of the administrative court and the rights and obligations of the parties to the case, outline the procedure for actions that are consistently performed in the trial and which together form it (Pysarenko, 2019, p. 311). The author argues that full implementation of fair trial guarantees in the national administrative procedure law is possible if the law provides for the following system of principles of administrative proceedings: 1) access to justice in administrative cases; 2) prohibition of discrimination (equality of participants in the proceedings before the court); 3) independence and impartiality of the administrative court; 4) publicity of the trial; 5) legality; 6) equality of the parties to the case before the law; 7) competitiveness of the parties to the case; 8) optionality; 9) official clarification of all circumstances in the case; 10) ensuring the right to appeal the case; 11) ensuring the right to cassation appeal of the court decision; 12) validity of the court decision; 13) reasonableness of the timeframe for resolving administrative cases (Pysarenko, 2019, p. 6).

According to V.S. Dorosh's work "Administrative and legal regulation of the organisation of administrative proceedings in Ukraine," administrative proceedings occupy a special position among the functions of the judiciary. On the one hand, it is one of the types of justice, along with constitutional, criminal, civil and commercial justice. On the other hand, it is one of the forms of judicial control. That is, this institution simultaneously combines two main functions of the judiciary: the function of justice and the function of judicial control (Dorosh, 2012, p. 16).

"The Institute of Administrative Case in the Administrative Proceedings of Ukraine" by I.A. Kachur reveals the essence of the administrative case and its place in the theory and practice of administrative proceedings. The author proposes to consider an administrative case as a set of materials and facts relating to a public law dispute in respect of which administrative proceedings have been initiated. The author establishes the procedure for consideration of administrative cases, the stages of administrative case proceedings, and identifies the conditions for consideration of cases in general and simplified action proceedings and the criteria for determining the specifics of an action proceeding in certain categories of administrative cases. The author identifies and summarises the problematic issues of the administrative case in the national administrative proceedings and the ways of their solution (Kachur, 2018, p. 4).

M.K. Hrymych studies the issue in "Judicial acts as a source of administrative procedural law of Ukraine." The dissertation defines the essence and features of judicial acts as sources of administrative procedural law of Ukraine. The author reviews theoretical and legal approaches to understanding the sources of administrative procedural law and their essential features (Hrymych, 2017).

The study by O.V. Kapynos "Theoretical and legal bases of functioning of administrative justice in Ukraine" examines the theoretical and legal principles of the functioning of administrative proceedings in Ukraine in the context of legal protection of rights and freedoms of man and of the citizen and an effective judicial control at the present stage of development of the legal State using leading European experience, and also develops areas for improving the legal and organisational principles of the functioning of administrative proceedings in Ukraine (Kapynos, 2021, p. 234).

The scientific work by O. Mishchenko "Legal regulation of administrative proceedings in the context of reforms and economic transformations" is quite relevant. In the thesis, the author analyses the evolution of administrative legal proceedings from the beginning to

the present. O. Mishchenko examines the issues of legal regulatory mechanism for administrative proceedings and offers specific proposals for solving these problems. Moreover, the work contains proposals for further areas of improvement of legal regulatory mechanism for administrative proceedings in general (Mishchenko, 2011, p. 65).

**3. Specificities of administrative proceedings**

In his work "Legal principles of the organisation of administrative justice in Ukraine," O.I. Korchynskyi argues that the main procedural component of administrative justice is the administration of justice in the form of administrative proceedings. The thesis thoroughly reviews scientific views on the study of the content of concepts such as: "administrative proceedings", "administrative procedure" and various scientists' approaches to their understanding at different historical stages of the existence of administrative law science, as well as an analysis of the organisation of administrative proceedings as a component of the administrative procedure. The author identifies areas for improvement of the legal framework for the organisation of administrative proceedings within the framework of European integration processes (Korchynskyi, 2019).

The thesis by S.A. Hebesh "Initiation of proceedings in an administrative case as a stage of administrative proceedings" reveals the main theoretical provisions on the initiation of proceedings in an administrative case as a stage of administrative proceedings and the formulation of proposals for improving the relevant legal regulatory mechanism. The work reveals the concept and features, defines the principles and functions of administrative case proceedings as a stage of administrative proceedings in Ukraine. The author formulates proposals for improving the legal regulatory mechanism for the initiation of proceedings in an administrative case, allowing for foreign experience (based on the codes of administrative procedure or laws of Austria, Lithuania, the Czech Republic, and France) (Hebesh, 2021, p. 185).

The doctoral thesis by V. Pchelin "Organisation of administrative proceedings in Ukraine: Legal principles" analyses the impact of models of administrative justice of foreign countries on the organisation of administrative proceedings in Ukraine. An attempt is made to establish the regularities of formation and development of administrative proceedings in Ukraine, to define the essence, specificities and tasks of the organisation of administrative justice in Ukraine, to characterise the legal regulatory mechanism for the organisation of administrative proceedings in Ukraine, to systematise the principles of administrative proceedings in Ukraine, to clarify the concept and outline the types of administrative courts of Ukraine, and to reveal the essence and specificities of the jurisdiction of administrative courts of Ukraine, to characterise the concept, types and specificities of jurisdiction of administrative courts over public law disputes, to outline the main stages of administrative proceedings for resolving public law disputes, to define the concept and classify participants in the administrative procedure, to establish the specificities of the legal status of persons involved in the case, and to distinguish the types of entities serving the administrative procedure; to characterise the rights of knowledgeable persons in administrative proceedings of Ukraine, to clarify the specificities, significance and legal basis of procedural representation in administrative proceedings, to reveal the essence and specificities of procedural succession in administrative proceedings, to define the concept and outline the types of support for administrative proceedings of Ukraine, to characterise the legal status of law enforcement bodies in the administrative justice system of Ukraine; to outline the activities of law enforcement bodies in ensuring administrative justice in Ukraine; to suggest ways to improve the legislation regulating the organisation and implementation of administrative proceedings in Ukraine (Pchelin, 2017)

According to A.V. Rudenko in his "Administrative proceedings: Formation and implementation", administrative proceedings are a form of actionable administration of justice, which consists in comprehensive, complete, objective consideration and resolution by administrative courts in the staged procedure determined by the Code of Administrative Procedure of Ukraine of administrative and legal disputes arising between individuals and legal entities, on the one hand, and an authorised actor (State authority, local self-government body, their officials and officers, other authorised actors in the exercise of its administrative functions on the basis of legislation, including the exercise of delegated powers), on the other hand, in order to protect the rights and freedoms of individuals, the rights and legitimate interests of legal entities, and to exercise control in the field of public legal relations (Rudenko, 2006, pp. 170–180).

A large number of theses consider the problems of administrative proceedings, where the authors focus on ideas (principles) inherent only in administrative proceedings. This is most clearly seen in the works that address the issues of consolidation and understanding of the principles of administrative justice.

In his thesis "The Principle of justice in the administrative proceedings of Ukraine", in Chapter 2 "The essence and content of the principle of justice in the administrative proceedings of Ukraine", M. Yakovenko considers justice as a principle of administrative proceedings of Ukraine, as well as studies the correlation of this principle with the principle of the rule of law. The author argues that justice should be considered as the basis for the construction of administrative proceedings, which determine the administration of justice based on the rule of law (Yakovenko, 2019, p. 4)

In her research "Principles of administrative proceedings", S.A. Bondarchuk focuses on the definition of the concept, role and content of the principles of administrative proceedings in Ukraine, studies the formation and development of administrative justice in Ukraine, reviews its understanding in science and practice, defines the tasks and essence of administrative proceedings in Ukraine, defines the system of principles of administrative proceedings, and focuses on the characterisation of certain principles of administrative proceedings that regulate a certain range of administrative procedural relations arising in the administration of justice in administrative cases (Bondarchuk, 2010).

V.V. Malykhina emphasises that the principles give the proceedings the qualities of fair justice in administrative cases, and vice versa, non-compliance with the principles of administrative justice in the administration of justice entails illegality and subsequent reversal of court decisions (Malykhina, 2021, p. 40).

In his PhD thesis "Principles of administrative justice", V. Skrypnychenko reveals modern problems and prospects for the development of administrative proceedings; defines the concept and reveals the legal nature of the principles of administrative proceedings; characterises the principles of the rule of law and equality of all participants in the judicial procedure before the law and the court; examines the content of the principles of publicity and openness of the judicial procedure and its full recording by technical means; defines the features of the principles of competitiveness of the parties, optionality and official clarification of all circumstances in the case; reveals the essence of the principle of binding nature of a court decision and ensuring the right to appeal, as well as ensuring the right to cassation appeal of a court decision in cases determined by law; characterises the principle of reasonableness of the timeframe for consideration of a case by the court and the inadmissibility of abuse of procedural rights and reimbursement of court costs of individuals and legal entities in whose favour a court decision has been made (Skrypchenko, 2020, 2020, p. 2).

It should be noted that a number of dissertation studies on the activities of administrative courts of Ukraine, such as: "Activities of administrative court in the conditions of implementation of the European principles of judicial procedure in Ukraine" (Boiaryntseva, 2019), "Administrative court in the system of public authorities of Ukraine" (Pypiak, 2016), "Administrative courts in Ukraine: Formation and prospects of development" (Svyda, 2008), "Realisation of the right to a fair trial in administrative proceedings of Ukraine" (Himon, 2018), "Problems of delimitation of judicial jurisdiction and determination of competence of administrative courts" (Smokevych, 2009); "Functioning of administrative courts in Ukraine: Organisational and legal principles and their implementation" (Shrub, 2009); "Protection of rights, freedoms and interests of citizens in the administrative court of first instance" (Vovk, 2009); "Dispositiveness and formality in resolving tax disputes in administrative proceedings of Ukraine" (Shevtsova, 2011); "Organisational and legal principles of administrative courts" (Vynokurova, 2011); "Optimisation of organisation and functioning of administrative courts in Ukraine" (Chaku, 2012) and others.

Therefore, the functioning and operation of administrative courts in Ukraine has been extensively and comprehensively studied. Undoubtedly, the reviewed works are of significance in further research of this issue.

**4. Conclusions**

The review of scientific works enables to state that the organisation of administrative proceedings has been and continues to be studied in the scientific works of Ukrainian scholars. However, despite the available scientific works, the problem of administration of justice within the framework of administrative proceedings in Ukraine remains relevant and requires further scientific development. Despite the existing achievements in this field, there is currently no comprehensive scientific work that would summarise all the theoretical data and offer a comprehensive approach. Therefore, a number of unresolved problems in this field enables to understand further promising areas of research and ways to improve legislation.

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## СТУПІНЬ НАУКОВОЇ РОЗРОБЛЕНОСТІ ПРОБЛЕМИ ЗДІЙСНЕННЯ ПРАВОСУДДЯ В МЕЖАХ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА

**Анотація.** ***Мета.*** Метою статті є висвітлення аналізу стану наукової розробленості проблеми здійснення правосуддя в рамках адміністративного судочинства. ***Результати.*** Аргументовано, що незалежне та неупереджене правосуддя є запорукою сталого розвитку суспільства і держави, гарантією додержання прав і свобод людини та громадянина, прав та законних інтересів юридичних осіб, інтересів держави, зростання добробуту та якості життя, створення привабливого інвестиційного клімату, своєчасного, ефективного і справедливого вирішення правових спорів на засадах верховенства права. Однак державні органи, органи місцевого самоврядування та їх посадові особи під час здійснення покладених на них повноважень в окремих випадках допускають порушення прав, свобод та законних інтересів громадян та організацій. Рішення та дії або бездіяльність органів державної влади, органів місцевого самоврядування, громадських об'єднань та їх посадових осіб можуть бути оскаржені у суді. Такі справи розглядаються у порядку адміністративного судочинства. Надання такої можливості є найважливішою гарантією проти зловживання повноваженнями зі сторони органів публічної адміністрації, а також забезпечує баланс у системі поділу влади. Ефективне здійснення адміністративного судочинства впливає на діяльність усіх органів виконавчої влади. Статтю присвячено аналізу наукових доробок у сфері адміністративного судочинства України. Розглянуто наукові роботи, наближені за предметом наукового пошуку до зазначеної теми. Застосування концептуальних положень діалектики дозволило з'ясувати різні питання стосовно предмета цієї статті, визначити наявні єдності та протиріччя суттєвих для дослідження явищ та фактів, суджень та умовиводів. Історичний метод дозволив з'ясувати стан розвитку окремих теорій, концепцій та пропозицій стосовно вказаної проблематики. Системно-структурний метод використовувався під час розробки та формування основних положень. Метод системного аналізу застосовувався у разі вивчення та опрацювання різноманітних джерел, які лягли в основу фактологічного матеріалу нашого дослідження. За допомогою методів формальної логіки аргументували авторські пропозиції та думки. ***Висновки.*** На підставі проведеного аналізу зроблено висновок, що, незважаючи на велику кількість наукових праць у зазначеній сфері, комплексних робіт, які б врахували зміни та реформи у сфері правосуддя, сьогодні бракує. Наголошено на необхідності активізації таких досліджень.

**Ключові слова:** наукова розробленість, правосуддя, адміністративне судочинство, адміністративний процес.

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# TYPES OF ACTORS IMPLEMENTING INTERNATIONAL STANDARDS IN THE FIELD OF HUMAN RIGHTS PROTECTION

**Abstract.** ***Purpose.*** The purpose of the article is to identify the types of actors implementing international standards in the field of human rights protection. ***Results.*** Relying on the analysis of scientific views of scholars and provisions of current Ukrainian legislation, the article emphasises that the implementation of international standards in the field of human rights protection integrates a group of various actors, each of which has its own role in the development of the field of ensuring and protecting human rights and freedoms. The author classifies these actors and briefly describes their administrative and legal status. It is established that law enforcement bodies do not directly implement international human rights standards in the national legal system; however, in accordance with the powers, rights and obligations assigned to this system of State agencies, the latter ensures the effect of these standards, the appropriate level of compliance by all individuals and legal entities without exception, and in exceptional cases brings violators of such standards to legal liability. It is emphasised that the Ukrainian Parliament Commissioner for Human Rights is an important actor implementing international standards in the field of human rights protection. He operates independently of other state bodies and officials. ***Conclusions.*** It is concluded that the process of implementing international standards in the field of human rights protection integrates a group of various actors, each of which has its own role in the development of the field of ensuring and protecting human rights and freedoms. Thus, all actors have their own legal status and respective legal independence in the exercise of their functions, but on the basis of special legal mechanisms, such as ratification of international instruments or as a result of competence granted by law; they are to some extent involved in relations arising from the implementation of international standards in the field of human rights protection. Given this, the classification of the actors of the process under study should be based on the criterion of functional purpose and targeted interest in the outcome of the process of implementing international standards in the field of human rights protection.

**Key words:** international standards, ensuring, protection, human rights, subject, implementation.

## 1. Introduction

Changes in the surrounding reality are always the result of the effective actions of someone or something. This point is the substantive basis for the concept of the object and actor functionally integrated with each other. It so happens that social relations always involve the influence of certain individuals on certain phenomena, objects, etc. In their activities, these individuals use the opportunities provided by morality and law to realise their socio-political role and achieve certain predetermined results. Moving from the abstract to the specific, a vivid example of this view is the sector of implementation of international standards in the field of human rights protection. This complex activity requires a large number of operations, events and other complex actions, and therefore has its own range of implementers, or actors, which are not homogeneous.

Certain problematic issues related to the activities of the actors implementing international standards in the field of human rights protection have been considered in their scientific works by: V. Averianov, O. Bandurka, N. Hrazhevska, D. Zhuravlev, R. Kaliuzhnyi, A. Komziuk, I. Lytvynchuk, V. Ponikarov, O. Solomatina, O. Shevchuk, H. Yarmaki, and many others. However, despite a considerable number of scientific achievements, the issue of the types of these actors has remained virtually unaddressed by scholars.

As a result, the purpose of the article is to identify the types of actors implementing international standards in the field of human rights protection.

**2. The system of actors implementing international standards in the field of human rights protection**

It should be noted that the system of actors implementing international standards in the field of human rights protection differs from the general system of public administration and includes a certain number of bodies, agencies and their officials. For example, the key participants are the President of Ukraine, the Verkhovna Rada of Ukraine and the Ministry of Foreign Affairs of Ukraine. In their triumvirate, they constitute an effective mechanism for adopting foreign experience. For example, the President of Ukraine is the guarantor of state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, human and civil rights and freedoms, as well as the guarantor of the implementation of the strategic course of the State to acquire full membership in the European Union and the North Atlantic Treaty Organisation. The key tasks of the President of Ukraine shall be to ensure state independence, national security and legal succession of the State; to sign laws adopted by the Verkhovna Rada of Ukraine; and to conclude international treaties on behalf of Ukraine concerning human and civil rights, freedoms and duties (The Constitution of Ukraine, 1996).

The Verkhovna Rada of Ukraine is the sole legislative authority in Ukraine. Its powers include the following: to adopt laws in various spheres of public life, including the protection of human rights and freedoms; to determine the principles of domestic and foreign policy, to implement the strategic course of the State to acquire full membership in the European Union and the North Atlantic Treaty Organisation; to grant consent to the binding character of international treaties of Ukraine, including in the field of human rights and freedoms; exercising parliamentary control over the observance of human rights and freedoms, as well as relevant standards in this field (The Constitution of Ukraine, 1996).

The Ministry of Foreign Affairs of Ukraine is a central executive body directed and coordinated by the Cabinet of Ministers of Ukraine. The MFA is the main body in the system of central executive authorities that ensures the formation and implementation of public policy on foreign relations. Its main tasks are to ensure the formation and implementation of public policy on foreign relations; to ensure the protection of Ukraine's national interests in the field of international relations, diplomatic means and methods of protecting Ukraine's sovereignty, international security, territorial integrity and inviolability of borders, its political, trade and economic, cultural, humanitarian and other interests; development of relations with Ukrainians abroad and their public associations, coordination of measures taken by executive authorities to develop such relations; and providing state bodies with information necessary for the implementation of effective foreign and domestic policy of Ukraine; implementation of the foreign policy course of Ukraine aimed at developing political, economic, cultural, humanitarian, scientific and other relations with foreign states and international organisations; coordination of the activities of state bodies to ensure the implementation of a single foreign policy course of Ukraine; protection of the rights and interests of Ukrainian citizens and legal entities abroad; promotion of Ukraine's international authority and its image as a reliable and predictable partner; study and analysis of the political and economic situation in the world, foreign and domestic policies of foreign countries, and the activities of international organisations; participation, within the powers provided by law, in making State foreign economic policy, the policy of integration of the national economy into the world economic system; etc. (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulation on the Ministry of Foreign Affairs of Ukraine, 2016).

Based on the tasks of these state authorities, all of them ensure the implementation of international human rights standards to a greater or lesser extent, as they act as a kind of "bridge" between our country and the international community, enabling these parties to cooperate. Moreover, these actors are specific and significant due to the fact that they are part of a single mechanism for ratification of international instruments. Thus, ratification under national law is a form of Ukraine's consent to be bound by an international treaty, in particular treaties relating to human and civil rights, freedoms and duties (Law of Ukraine On International Treaties of Ukraine, 2004).

Ratification takes place after the conclusion of a relevant international treaty concerning human and civil rights and freedoms. It is carried out by adopting a law on ratification, the text of which is an integral part of the international treaty. On the basis of the law signed and officially promulgated by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine signs the instrument of ratification, which is certified by the signature of the Minister of Foreign Affairs of Ukraine if the treaty provides for

the exchange of such instruments. Proposals for ratification of an international treaty of Ukraine shall be submitted by the Ministry of Foreign Affairs of Ukraine to the President of Ukraine within six months from the date of its signing. Proposals for the ratification of an international treaty of Ukraine include the following documents: a submission to the President of Ukraine or the Cabinet of Ministers of Ukraine, respectively; a draft submission to the Verkhovna Rada of Ukraine, which determines the candidate for the rapporteur of the draft law at the plenary session of the Verkhovna Rada of Ukraine; a draft law on the ratification of an international treaty of Ukraine; the text of the international treaty in Ukrainian; a certificate of approval of the draft law by the ministries concerned and other central executive authorities and state collegial bodies; an accompanying (explanatory) note that justifies the expediency of concluding an international treaty with Ukraine and identifies its likely political, legal, social and economic, humanitarian and other effects, as well as actors responsible for implementing the international treaty of Ukraine; financial and economic justification and, in case of proposals for ratification of the international treaty of Ukraine, implementation thereof requires material or other expenses from the State Budget of Ukraine, the budget of the Autonomous Republic of Crimea or local budgets, proposals to cover the costs of the respective budgets; a comparative table in case of proposals for ratification of an international treaty of Ukraine, implementation thereof requires the adoption of new or amendments to existing laws of Ukraine or which amends another international treaty of Ukraine; electronic versions of the texts of documents (Law of Ukraine On International Treaties of Ukraine, 2004).

**3. Types of actors implementing international standards in the field of human rights protection**

The President of Ukraine considers proposals for the ratification of an international treaty of Ukraine and decides to submit a draft law on the ratification of an international treaty of Ukraine to the Verkhovna Rada of Ukraine as a legislative initiative. If an international treaty is submitted for ratification, implementation thereof requires the adoption of new or amendments to existing laws of Ukraine, draft laws are submitted to the Verkhovna Rada of Ukraine together with the draft law on ratification and are adopted simultaneously (Law of Ukraine On International Treaties of Ukraine, 2004).

The Ukrainian Parliament Commissioner for Human Rights is an equally important actor that implement international standards in the field of human rights protection. He operates independently of other state bodies and officials. The Commissioner's activities complement the existing means of protecting constitutional rights and freedoms of man and citizen, do not cancel them and do not entail a review of the competence of state bodies that ensure the protection and restoration of violated rights and freedoms (Law of Ukraine On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, 1997).

The Commissioner is not directly involved in the implementation of human rights standards in the legal system of the State, but is vested with the following powers: to protect human and civil rights and freedoms proclaimed by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; to assist in bringing Ukrainian legislation on human and civil rights and freedoms in line with the Constitution of Ukraine and international standards in this field; to improve and further develop international cooperation in the field of protection of human and civil rights and freedoms (Law of Ukraine On the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, 1997).

The Cabinet of Ministers of Ukraine is an important actor, the highest body in the system of executive authorities. It exercises executive power directly and through ministries and other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea and local state administrations, directs, coordinates and controls the activities of these bodies. The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and the Verkhovna Rada of Ukraine, is controlled by and accountable to the Verkhovna Rada of Ukraine within the limits stipulated by the Constitution of Ukraine, and its tasks, in particular, include measures to ensure the rights and freedoms of man and citizen, an enabling environment for free and comprehensive development of the individual (Law of Ukraine On the Cabinet of Ministers of Ukraine, 2014). Thus, the Cabinet of Ministers is the central "node" of the executive power of the State. In other words, it controls the field of the State apparatus responsible for ensuring compliance with and implementation of international human rights standards implemented in the national legal system. In particular, the Cabinet of Ministers of Ukraine directs the activities of the Ministry of Foreign Affairs of Ukraine (Law of Ukraine On the Cabinet of Ministers of Ukraine, 2014).

Next, the committees of the Verkhovna Rada of Ukraine should be noted. Currently, they have units responsible for making State

policy in the field of implementation of international standards in various areas, such as human rights protection. For example, the Committee on Foreign Policy and Interparliamentary Cooperation is responsible for the following issues: legislative support of Ukraine's foreign policy activities; foreign relations, including Ukraine's participation in international organisations such as the United Nations (UN), the Organisation for Security and Cooperation in Europe (OSCE), and the Council of Europe (CoE), Organisation of the Black Sea Economic Cooperation (BSEC), GUAM Organisation for Democracy and Economic Development (GUAM), Central European Initiative (CEI), Inter-Parliamentary Union (IPU) and others, as well as the North Atlantic Treaty Organisation (NATO) and the World Trade Organisation (WTO) within the Committee's mandate; giving consent to be bound by international treaties of Ukraine (ratification, accession to an international treaty, adoption of the text of an international treaty), denunciation of international treaties of Ukraine (except for international treaties of Ukraine with the European Union (EU) and its member states) (Resolution of the Verkhovna Rada of Ukraine On the list, quantitative composition and subjects of the committees of the Verkhovna Rada of Ukraine of the ninth convocation, 2019).

The target committee activities thereof are directly related to the field under study is the Committee on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories in Donetsk and Luhansk Regions and the Autonomous Republic of Crimea, the City of Sevastopol, National Minorities and Interethnic Relations. The scope of its functions includes the following issues: observance of human and civil rights and freedoms; implementation of European standards for the protection of human rights and fundamental freedoms in national legislation; ethno-national policy, interethnic relations and rights of indigenous peoples and national minorities in Ukraine; cooperation with the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE) in the field of observance (protection) of human rights, national minorities and interethnic relations; cooperation with the United Nations High Commissioner for Refugees, the International Organisation for Migration, the UN Human Rights Council in accordance with the statutory tasks of these organisations that coincide with the competence of the Committee, etc. (Resolution of the Verkhovna Rada of Ukraine On the list, quantitative composition and subjects of the committees of the Verkhovna Rada of Ukraine of the ninth convocation, 2019).

A separate group in the system of actors implementing international standards in the field of human rights protection is law enforcement bodies of the State. According to the definition of this concept proposed by M.I. Melnyk, a law enforcement body is a state body, usually armed, that performs law enforcement functions and therefore requires specific material and other support. In order to effectively perform their duties, employees are endowed with various specific rights, have appropriate benefits, external signs of belonging to law enforcement bodies and enjoy enhanced legal protection (Melnyk, Khavraliuk, 2002, pp. 43-44). V.S. Kovalskyi, V.T. Bilous, S.E. Demskyi, B.V. Romaniuk, M.I. Kamlyk, P.T. Heha et al. define law enforcement bodies as a state body the main subject matter thereof is functions or tasks of law enforcement, prescribed by law, restoration of the violated right or organisation of execution of punishment, protection of national (state) security, maintenance of law and order and ensuring the legality, or a state body performing one or more law enforcement functions, which are decisive in its activities in the social division of labour in the field of public administration (Kovalskyi, Bilous, Demskyi, 2002, p. 8).

Law enforcement bodies do not directly implement international human rights standards in the national legal system; however, in accordance with the powers, rights and obligations assigned to this system of State agencies, the latter ensures the effect of these standards, the appropriate level of compliance by all individuals and legal entities without exception, and in exceptional cases brings violators of such standards to legal liability.

**4. Conclusions**

Therefore, this study has revealed that the process of implementing international standards in the field of human rights protection integrates a group of various actors, each of which has its own role in the development of the field of ensuring and protecting human rights and freedoms. Thus, all actors have their own legal status and respective legal independence in the exercise of their functions, but on the basis of special legal mechanisms, such as ratification of international instruments or as a result of competence granted by law; they are to some extent involved in relations arising from the implementation of international standards in the field of human rights protection. Given this, the classification of the actors of the process under study should be based on the criterion of functional purpose and targeted interest in the outcome of the process of implementing

international standards in the field of human rights protection. In accordance with these criteria, in the result of this scientific study, it is advisable to indicate that the actors of the process under study can be logically divided into the following types:

1) the main actors implementing international standards in the field of human rights protection: the President of Ukraine, the Verkhovna Rada of Ukraine and the Ministry of Foreign Affairs of Ukraine; these actors are participants in the process of ratification, that is, approval of international treaties relating to human rights and freedoms and implementation of their provisions in national legislation, i.e. these actors actually deal with the process of development of the human rights sphere, creating a legal basis for its existence and protection;

2) other actors implementing international standards in the field of human rights protection: the Cabinet of Ministers of Ukraine and committees of the Verkhovna Rada; this group of actors is not directly involved in the process of introducing the latest human rights mechanisms, but they are responsible for coordinating the activities, aimed at creating an "administrative monolith" within the State for the development of the issue under study, i.e. these actors actually create the conditions under which the implementation of international standards in the field of human rights protection becomes possible and has the highest degree of effectiveness;

3) the actors ensuring compliance with international standards in the field of human rights protection: the Ukrainian Parliament Commissioner for Human Rights, law enforcement agencies (the National Police of Ukraine, the Security Service of Ukraine, Prosecutor's Offices, the State Bureau of Investigation, etc.); the performance of the latter type of actors is related to ensuring human rights in certain sectors of public activities, actual compliance with relevant international standards in this field and bringing to justice violators of the legal status of human freedoms.

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# ВИДИ СУБ'ЄКТІВ ЗАПРОВАДЖЕННЯ МІЖНАРОДНИХ СТАНДАРТІВ У СФЕРІ ЗАБЕЗПЕЧЕННЯ ЗАХИСТУ ПРАВ ЛЮДИНИ

**Анотація.** ***Мета.*** Мета статті – з'ясувати види суб'єктів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. ***Результати.*** У статті, спираючись на аналіз наукових поглядів учених та норм чинного законодавства України, акцентовано увагу на тому, що запровадження міжнародних стандартів у сфері забезпечення захисту прав людини об'єднує у собі групу різнорідних суб'єктів, кожен з яких має власну роль у розвитку галузі забезпечення та захисту прав і свобод людини. Здійснено класифікацію вказаних вище суб'єктів, а також надано коротку характеристику їх адміністративно-правового статусу. З'ясовано, що правоохоронні органи не здійснюють безпосередню діяльність з імплементації міжнародних стандартів у сфері прав людини в національну систему права, проте відповідно до покладених на цю систему державних відомств повноважень, прав та обов'язків остання забезпечує дію вказаних стандартів, належний рівень їх дотримання всіма без винятку фізичними та юридичними особами та у виняткових випадках притягує порушників таких стандартів до юридичної відповідальності. Наголошено, що важливим суб'єктом запровадження міжнародних стандартів у сфері забезпечення захисту прав людини є Уповноважений Верховної Ради з прав людини. Він здійснює свою діяльність незалежно від інших державних органів та посадових осіб. ***Висновки.*** Зроблено висновок, що процес запровадження міжнародних стандартів у сфері забезпечення захисту прав людини об'єднує у собі групу різнорідних суб'єктів, кожен з яких має власну роль у розвитку галузі прав і свобод людини. Так, усі суб'єкти мають власний правовий статус та відповідну правову самостійність у питаннях реалізації належних функцій, але на підставі спеціальних правових механізмів, як-то ратифікація міжнародних документів, або внаслідок наданої законом компетенції вони тією чи іншою мірою беруть участь у відносинах, які виникають за фактом запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. З огляду на це у підґрунті класифікації суб'єктів досліджуваного процесу доречно закласти критерій функціональної мети та цільової зацікавленості в результаті процесу запровадження міжнародних стандартів у сфері забезпечення захисту прав людини.

**Ключові слова:** міжнародні стандарти, забезпечення, захист, права людини, суб'єкт, запровадження.

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# DIRECTIONS FOR IMPROVING LEGAL AND REGULATORY FRAMEWORK FOR VOLUNTEERING UNDER MARTIAL LAW IN UKRAINE

**Abstract.** ***Purpose.*** The purpose of the article is to study the current state of affairs and identify the directions for improving the legal and regulatory framework for volunteering under martial law, allowing for the current legislative work in the relevant field. ***Results.*** The author studies the state of affairs and identifies the ways to improve the legal and regulatory framework for volunteering under martial law in Ukraine. The experience of volunteering demonstrates the charitable nature of work. The desire to help is one of the basic human distinguishing features. The ability and skill to be useful by demonstrating one's professional qualities sometimes overlap with career interests. The author emphasises that the level of development of volunteering is one of the factors contributing to the development of democracy in a country, while the State, relying only on its own institutions and resources, without involving the broadest segments of society, is unable to cope with the variety of problems arising in the world, especially in times of war. The author states that the beginning of military aggression against Ukraine on February 24, 2022, caused and revealed a number of global problems and consequences which the volunteer movement, having become the all-Ukrainian and international, helps public administration entities address, which requires the State to properly regulate volunteerism. Relying on the provisions of current legislation and the achievements of administrative law science, the author examines the provisions of the Draft Law of Ukraine amending the Law of Ukraine "On Volunteering". The authors formulate own perspectives on expanding and clarifying the terminology of the proposed directions for volunteer assistance, namely, on consolidating them as universal, independent of situational features (aggressor, place of its conduct, etc.) ***Conclusions.*** The author emphasises the gaps in legislative regulation and legislative work in this field in terms of legalising volunteer movements, their interaction with local public administration bodies, organising control over volunteerism, spending and using volunteer assistance, introducing an objective assessment of the quality of volunteer assistance, etc.

**Key words:** volunteering, volunteer, volunteer assistance, directions for volunteer assistance, volunteer movement.

## 1. Introduction

The outbreak of military aggression against Ukraine, the introduction of martial law on its territory on February 24, 2022, and a full-scale war resulted in human casualties, extensive material damage, including damage to citizens' homes and critical infrastructure, logistical problems, lack of logistical support for the military and territorial defence forces, and the emergence of internally displaced persons. The state authorities and local governments cannot solve them in full, which has led to the emergence of a more powerful volunteer movement with new areas of activities, such as medical or psychological assistance, help with children, pets, financial, logistical and other

assistance, finding housing for displaced people both in Ukraine and abroad, etc. Since volunteering is subject to legislative regulation, there is an urgent need to respond to the changes that have taken place in the provision of volunteer assistance, protection of volunteers, and support from the public administration. In response to such changes, Draft Law "On Amendments to the Law of Ukraine "On Volunteering" regarding support for volunteerism" No. 7363 of May 10, 2022 was developed to promote the development of the volunteer movement in Ukraine. Though the importance and necessity of this document cannot be diminished, it should be noted that some of its provisions need to be improved, while others require to be additionally regulated.

It should be emphasised that the issues of charitable activities in general and volunteerism in particular have been under focus in legal science in the works by O. Akimov, V. Bocharov, V. Voronov, B. Vulfov, V. Vashkovych, O. Hlavnyk, T. Druzhchenko, N. Ivchenko, R. Larsen, V. Petrovych, Y. Polishchuk, N. Romanov, R. Serbin, K. Sydorenko and others. However, these scientific works cover the outlined issues in the context of studying more substantive issues, and, as a rule, do not consider the specificities of these activities under martial law.

The purpose of the article is to study the current state of affairs in and to identify the directions for improving the legal and regulatory framework for volunteerism under martial law, allowing for the current legislative work in this field.

**2. Legal and regulatory framework for volunteering in Ukraine**

Today, the formation and development of civil society in our country is closely linked to the activation of civil institutions that have a resource that is not available to public authorities and commercial entities. This resource is volunteerism. Volunteering, in its various manifestations, is an inherent sign of the times, especially in modern conditions. Various social projects, natural disasters and humanitarian problems that have been constantly arising lately, a number of factors related to the development of the country's economy – all this makes volunteer work very popular. Every day we have to deal with many problems, some of which we can solve on our own, and some of which we need help with. People give and receive help every day, whether it is support or just approval. It is especially needed by those who are in a difficult life situation.

Volunteers are motivated by the desire to participate in solving a socially significant problem. Free expression of will can be called the main factor underlying the development of civil society. Therefore, this sector of human activities is primarily aimed at solving social problems by people themselves, united by common interests and goals. Therefore, the role of volunteerism in the development of civil society and the social economy, in particular in the development of social innovations, which are now widely expected to overcome the crisis and further develop the country, cannot be overestimated.

Therefore, volunteerism is of a public nature. According to V.V. Vashkovych, in understanding the concept of "volunteering", the legislator has not fully considered the factor of public coverage, which is an important and necessary feature for its definition, and proposed to define such activities as “voluntary, socially oriented, non-profit activities implemented in civil society, carried out by volunteers through the provision of volunteer assistance” (Vashkovych, 2018, p. 5).

The experience of volunteering demonstrates the charitable nature of the work. The desire to help is one of the basic human distinguishing features. The ability and skill to be useful by demonstrating one's professional qualities sometimes overlap with career interests. As a result, the volunteer movement, based on high and noble goals, is now a trend at the societal level. Volunteers come to the aid of victims of war, earthquakes, fires and floods, provide assistance to the disabled and elderly, etc., and are increasingly reported in the media.

Volunteerism is a powerful social movement that has its own organisations in all countries of the world, which has long outgrown national borders and the scope of volunteer labour, and year by year the work of volunteers is becoming an increasingly important resource for the development of the global economy (Liakh, Bezpalko, Zaveriko, Zvierieva, Zimovets, 2001, p. 139). The level of development of volunteerism is one of the factors contributing to the development of democracy in a country. International practice reveals that the State, relying only on its own public institutions created exclusively by itself, without involving the broadest segments of society, is unable to cope with the variety of problems arising in the world.

The volunteer movement, as evidenced by the experience of European countries develops within the so-called third sector. Governments of many countries use the resource of volunteering by financing its projects to implement state programs regarding support for youth, to solve social problems. The coordinator for participation in international volunteer programs is the European Volunteer Service (EVS), which

selects the project, sends and receives organisations, helps prepare all the necessary documents for participation in the program and opening visas (Official website of the European Voluntary Service, 2020). Volunteerism has no religious, racial, age or even political boundaries. Numerous transnational platforms and networks of volunteer non-profit organisations engage hundreds of millions of people annually in their projects and programs (Dutchak, 2007, p. 92).

As with any phenomenon that becomes widespread and massive, the volunteer movement is based on a legislative framework. Legal regulations on this issue were adopted first in individual countries and later at the international level. The most illustrative is the position of the General Assembly, which, allowing for the Recommendations of Economic and Social Council resolution 1997/44 of July 22, 1997, at its 52nd session, adopted the following decisions on the spread of the volunteer movement:

– to encourage Governments, as well as volunteer organisations public, governmental and non-governmental organisations to cooperate;

– to outline ways to improve the work, cooperation and popularisation of activities;

– to develop a program of work (the united organisation of volunteers) (Vainola, Kapska, Komarova, 2002).

The UN General Assembly Resolution 55/57 of September 24, 2002 strongly encourages all governments to promote the development of volunteerism.

Both the State and entire society are interested in volunteerism, which is reflected in the adoption of appropriate measures to promote volunteering.

In Ukraine, volunteerism relations are regulated by a number of legal instruments, the main of which is Law of Ukraine "On Volunteering" No. 3236-VI of April 19, 2011 (Law of Ukraine On Volunteering, 2011). Volunteering is defined as a form of charity, voluntary, socially oriented, non-profit activities carried out by volunteers through the performance of work, provision of services free of charge by volunteers (volunteer assistance).

Since the adoption of this Law, eight laws of Ukraine have been adopted to amend and supplement it. Unfortunately, there have been repeated cases of legislators reacting to solve problems in this field rather than preventing them. For example, in 2015, the trends in volunteering in the area of the operation and measures to counter the armed aggression of the Russian Federation in Donetsk and Luhansk regions were expanded, but it was not taken into account that after a short period of time the Anti-Terrorist Operation turned into a Joint Forces Operation. Subsequently, the obligation to pay a one-time financial assistance in case of a volunteer's death or disability received in this area was established, etc.

Currently, a new major problem has arisen in Ukraine, which has led to a sharp intensification of the volunteer movement and, as a result, has exposed new flaws and gaps in the legal and regulatory framework for volunteering. On February 24, 2022, in connection with the military aggression of the Russian Federation against Ukraine, martial law was introduced by Presidential Decree No. 64/2022, initially for a period of 30 days, and later extended several times and continues to this day. The following areas of volunteering have gained urgency, importance and expansion: logistical assistance to military personnel and territorial defence forces, search and purchase of medicines, humanitarian aid, its delivery to the areas of military operations and liberated settlements, free accommodation of internally displaced persons due to the loss of housing, its restoration, repair, installation of windows, etc. According to research, almost every second Ukrainian is or has been involved in volunteer assistance, not to mention the assistance of most countries in the world in these activities. In Ukraine, the volunteer movement has reached an unprecedented level. The war has made significant adjustments to the processes of volunteering, which, unfortunately, again require an appropriate response from the legislator after the fact.

According to experts, the main ones as of 2020 were as follows.

– lack of financial support for volunteering from the state: the Budget Code of Ukraine does not contain provisions to support public initiatives in the field of volunteering and, as a result, there are no expenditures in the state and local budgets for it;

– lack of a state targeted program to promote volunteering;

– age restrictions on persons engaged in volunteerism and a low level of children's involvement in it;

– lack of state support for persons engaged in volunteerism in the form of compensation for daily expenses of volunteers (engaged by local governments) and travel expenses to the place of volunteering;

– low level of involvement of Ukrainian and international volunteers in working with executive authorities and local self-government bodies, etc. According to reform experts, the main reason for this is the lack of an effective mechanism for interaction between volunteers and public officials [7].

**3. Directions for improving the legal and regulatory framework for volunteering in Ukraine**

In order to overcome these and other challenges in the context of armed aggression against Ukraine, people's deputies developed Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Volunteering" to support volunteerism" No. 7363 of May 10, 2022 [8]. The main positions of this draft law are as follows: to expand the areas of volunteering in times of war in order to overcome the consequences of the military aggression of the Russian Federation against Ukraine; to identify forms of state support for volunteerism in the form of: a) legal, financial, organisational, methodological, and informational assistance to volunteers, specialised organisations and institutions; b) development and implementation of nationwide targeted programs to support the development of volunteering and volunteer training, etc.; volunteer training; extension of the payment of one-time financial assistance in case of death or disability to volunteers engaged in activities to counter the armed aggression of the Russian Federation throughout Ukraine and its individual localities. Obviously, one of the challenges for the volunteer movement today is the need to ensure at least relative physical safety for volunteers. However, almost every day in the news feed we read stories of volunteers who, under fire, risk their lives and health to deliver humanitarian supplies to people who need food, water, medicine and are unable to provide for themselves. Unfortunately, many of the volunteers are killed, maimed and injured in the course of their mission. Therefore, the aforementioned provision in the law shall contribute to the social protection of volunteers and their families (Kakhnova, 2022).

The Committee on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories in Donetsk and Luhansk Regions and the Autonomous Republic of Crimea, the City of Sevastopol, National Minorities and Interethnic Relations, the Committee on Social Policy and Protection of Veterans' Rights, the Main Legal Department of the Verkhovna Rada of Ukraine, central executive authorities, other institutions and organisations made many professional and reasonable suggestions and comments on this legislative initiative (Draft Law of Ukraine On Amendments to the Law of Ukraine "On Volunteering and Support for Volunteering", 2022). We would like to express own thoughts on this draft law.

Primarily, the focus should be on the expansion of the areas of volunteer assistance. *First,* "providing citizens who have suffered as a result of an emergency of a man-made or natural nature, a special period, legal regimes of emergency or martial law, the anti-terrorist operation, the Joint Forces Operation, measures to ensure national security and defence, resistance and deterrence of the armed aggression of the Russian Federation against Ukraine, as a result of social conflicts, accidents, as well as victims of criminal offenses, refugees, and internally displaced persons". We believe that specification and linkage to the cases of providing such assistance in the form of the Joint Forces Operation, implementation of measures to resist and deter the armed aggression of the Russian Federation against Ukraine are unnecessary, as they narrow the scope of the law, are not universal and do not provide for a possible change of the aggressor country, the name of the special operation, etc. In this regard, we propose to exclude the words "the Russian Federation" from the article so that volunteer assistance can be provided regardless of who the aggressor country is. The same rationale can be applied to another area, "providing volunteer assistance to the Armed Forces of Ukraine, other military formations, law enforcement agencies, public authorities during a special period, the legal regime of a state of emergency or martial law, the anti-terrorist operation, the Joint Forces operation, the implementation of measures to ensure national security and defence, resistance and deterrence of the armed aggression of the Russian Federation against Ukraine", where we also consider such clarifications unnecessary. *Second*, with regard to the provision of volunteer assistance to overcome the consequences of a fire, natural disaster, catastrophe, hostilities, terrorist act, armed conflict, or temporary occupation, it should be noted that it duplicates the existing provisions of the Law. It is proposed to remove the phrase "fire, natural disaster, catastrophe" since these grounds are already provided for by the Law in Article 1, Part 3, subparagraph 7, in the form of "consequences of emergency situations of man-made or natural nature". *Third*, we believe that the proposed area of "providing volunteer assistance for the restoration of Ukraine after the armed aggression of the Russian Federation against Ukraine" contains the phrase "restoration of Ukraine", which contradicts the principle of legal certainty and covers the previous areas of volunteering. Therefore, it is proposed to clarify that such assistance should be directed to the restoration of critical infrastructure (in accordance with the provisions of the Law of Ukraine "On Critical Infrastructure"), removing the phrase "the Russian Federation against Ukraine". *Fourth*, an area,

"providing volunteer assistance to overcome the consequences of the armed aggression of the Russian Federation against Ukraine," should be excluded, as it repeats the provisions of the previous areas of volunteering as providing assistance to overcome the consequences of hostilities, terrorist acts, armed conflict, and temporary occupation."

In addition, we believe that some provisions of the draft law require clarification of terminology. In particular, it is proposed to establish a rule according to which "State and local authorities and their officials shall facilitate an enabling environment for volunteering, increase its public prestige...". We believe that the term "social prestige" is more appropriate in this context, as it is more stable and relevant. Its definition can be found in encyclopaedic dictionaries. This is "the recognition of the special social significance and value of a particular phenomenon based on its correlation with the system of norms and values characteristic of a given social community. A highly valued phenomenon is endowed with special attractiveness, desirability, and is the source of certain feelings, intentions, and actions of people, including the desire for recognition, approval of the existing social status, and identification with a particular social community. Prestige is manifested in the prestigiousness of certain objects. Prestige is a regulator of social behaviour and has an impact on the decisions of actors of a particular group in the community, leading to its special attractiveness and desirability" (Semigin, Ivanov, 2003).

Unfortunately, the draft law under consideration does not cover other equally important directions for the legal and regulatory framework for volunteering in Ukraine: legalisation of volunteer organisations, guarantees of combining volunteerism with the main place of work, interaction of volunteer organisations with local public administration bodies, organisation of control over volunteering, spending and use of volunteer assistance, introduction of objective assessment of the quality of volunteer assistance, stimulation of volunteer movements, regulation of competitive procedures among volunteer organisations, etc.

**4. Conclusions**

Today, state authorities and local governments, relying only on their own organisational structures and material resources, are unable to cope with the variety of problems arising from the military aggression against Ukraine without the involvement of the broadest segments of the population, including those formed in the form of volunteer movements. The attempts of lawmakers to regulate new social relations caused by the needs of today, in the form of the adoption of the Draft Law of Ukraine "On Amendments to Law of Ukraine "On Volunteering" to support volunteerism" No. 7363 of May 10, 2022, will certainly contribute to positive changes in this field, but only partially.

This Project needs to be finalised in terms of identifying new areas of volunteer assistance, facilitating an enabling environment for its implementation, raising its social prestige, supporting and encouraging volunteerism in Ukraine, as well as additional legal and regulatory framework for the legalisation of volunteer movements, their interaction with local public administration bodies, organisation of control over volunteering, spending and using volunteer assistance received, objective assessing the quality of volunteer assistance, etc.

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# НАПРЯМИ ВДОСКОНАЛЕННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ВОЛОНТЕРСЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ В УМОВАХ ВОЄННОГО СТАНУ

**Анотація.** ***Мета.*** Мета статті – розглянути сучасний стан та визначити напрями удосконалення правового регулювання волонтерської діяльності в умовах воєнного стану з урахуванням діючої натепер законопроєктної роботи у цій сфері. ***Результати.*** Розглянуто сучасний стан та визначено напрями удосконалення правового регулювання волонтерської діяльності в Україні в умовах воєнного стану. Досвід волонтерської діяльності показує благодійну спрямованість роботи. Прагнення допомогти – одна з базових людських відмінностей. Можливість та вміння бути корисним, виявляючи свої професійні якості, часом перетинаються з кар'єрними інтересами. Наголошується, що рівень розвитку волонтерства є одним із факторів, що сприяють розвитку демократії в країні, а держава, спираючись лише на власні інституції та ресурси, без залучення найширших верств суспільства не здатна впоратися з різноманітністю проблем, що виникають у світі, особливо під час війни. Констатується, що початок військової агресії проти України 24 лютого 2022 року спричинив та виявив низку глобальних проблем та наслідків, з якими суб'єктам публічної адміністрації допомагає впоратися волонтерський рух, який отримав масштаби всеукраїнського та міжнародного, що вимагає від держави належного правового регулювання волонтерської діяльності. На основі положень чинного законодавства, досягнень науки адміністративного права розглянуто положення Проєкту Закону України, якими вносяться зміни та доповнення до Закону України «Про волонтерську діяльність». Висловлено власні міркування стосовно розширення та уточнення термінології запропонованих напрямів надання волонтерської допомоги, а саме щодо закріплення їх як універсальних, які б не залежали від ситуативних особливостей (суб'єкта агресії, місця її здійснення тощо). ***Висновки.*** Наголошено на прогалинах законодавчого регулювання та законопроєктної роботи у цій сфері в частині легалізації волонтерських рухів, їх взаємодії з місцевими органами публічної адміністрації, організації контролю за волонтерською діяльністю, витрачанням та використанням отриманої волонтерської допомоги, запровадженням об'єктивного оцінювання якості надання волонтерської допомоги тощо.

**Ключові слова:** волонтерська діяльність, волонтер, волонтерська допомога, напрями надання волонтерської допомоги, волонтерський рух.

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# HUMANITARIAN COMPONENT OF THE NATIONAL SECURITY OF UKRAINE: CONTENT OF THE CONCEPT

**Abstract.** ***Purpose.*** The purpose of the article is to formulate the concept and content of humanitarian security as a component of Ukraine's national security. ***Results.*** The study examines the content and concept of humanitarian security, and its role as a component of Ukraine's national security. The concepts proposed by some scholars are cited, for example, L. Chuprii considers humanitarian security in the context of the conceptual foundations of security policy in the humanitarian sector, refers to it as a component of national security, and proposes to consider it in institutional and functional aspects. I. Zdioruk suggests that in relation to the concept of security, the term "humanitarian" has a double meaning, namely, from a sociological perspective, it is associated with a person and society, and from a political science perspective, as an antithesis of the production and technological sector. O. Neimark understands humanitarian security as the state of protection of national values, traditions, way of life and cultural and spiritual heritage of the people, physical and mental health of the nation, free self-identification of citizens, social groups and countries, which ensures sustainable development of society, timely detection, prevention and neutralisation of real and potential threats to national interests in the humanitarian sector. ***Conclusions***. To sum up, allowing for the scientific literature covered in the study and the analysis of the country's security sector, it is advisable to supplement paragraph 1 of Article 1 of the Law of Ukraine "On National Security of Ukraine", which provides for the key terms, the concept of "humanitarian security" with its subsequent definition as follows: "protection of national interests in the fields of culture, science, education, medicine, social security, information, public morality, youth and sports from external, internal and hybrid threats, the facilitation by the security and defence sector entities of a safe environment for citizens to exercise their rights to educational, medical, cultural, social, information, administrative services and other services in the humanitarian sector provided by state authorities, local self-government bodies, institutions and organisations".

**Key words:** national security, humanitarian security, content and concept, legislation, administrative and legal framework.

**1. Introduction**

In the current situation in Ukraine, due to external risks and the existential and permanent threat from Russia, national security issues are of particular importance. The Law of Ukraine "On National Security of Ukraine" defines national security as the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats, and the law also uses the term military security (protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from military threats); public security and order (protection of vital interests of society and individuals, human and civil rights and freedoms, ensuring which is a priority task of the security forces, other state bodies, local self-government bodies, their officials and the public, which take coordinated measures to realise and protect national interests from threats); state security as protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from real and potential non-military threats) (Law of Ukraine On National Security of Ukraine, 2018), but there is no mention of the concept of humanitarian security in the law, which is a significant gap in national security, as well as the administrative and legal framework for this issue. Therefore, the chosen topic is of great relevance.

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 formulate the concept and content of humanitarian security as a component of Ukraine's national security.

**2. Legal and regulatory framework for humanitarian security**

Current Ukrainian legislation does not provide for a normative definition of the concept of "humanitarian security". For this purpose, it is necessary to understand the conceptual and categorical apparatus, namely, how the concept of humanitarian security, or the humanitarian component of Ukraine's national security, is considered in the scientific literature.

It should be noted that some researchers use the term "socio-humanitarian" security, which is defined as "the protection of vital interests, values, culture of a person and citizen, society, and the state, facilitating an enabling internal and external environment for the proper level and quality of life of a person and the population of the entire country; development of social and spiritual values of a person and society; realisation of the basic strategic goals of sustainable development of the state based on the humanitarian dimension of social processes, where the highest value is a person, as well as formation of worldview and value orientations of a person (individual) as the main condition for the development of his/her social culture, social activity and realisation of social potential" (Horbatiuk, 2016, p. 41).

I. Zdioruk suggests that in relation to the concept of security, the term "humanitarian" has a double meaning, namely, from a sociological perspective, it is associated with a person and society, and from a political science perspective, as an antithesis of the production and technological sector. The researcher understands humanitarian security as a system of methods and procedures for ensuring humanitarian security, human potential, and life support structures in crisis and conflict situations (emergencies, hostilities, external manipulative influences, including provocative ones), as well as during stabilisation and rehabilitation when a person is overcoming the crisis (Neimark, 2021).

This definition is quite apt, especially in terms of emphasising the importance of ensuring humanitarian security in the context of hostilities, which is relevant for Ukraine, as well as manipulative influences, as we know, the Russian Federation has long been waging a hybrid war, namely, trying to impose the ideals of totalitarianism among Ukrainians, etc.

Instead, V. Pirozhenko gives, in our opinion, a too abstract definition of humanitarian security as "the degree of protection of vital interests of social and political actors determined by their specific worldview and value orientations" (Pyrozhenko, 2005, p. 31). However, the author clarifies that the priority of security in the humanitarian sector should be the formation of worldview and value orientations among the population that create sustainable motivations for maintaining national identity (Pyrozhenko, 2005, p. 31). Indeed, the formation of national identity is an important component of humanitarian security.

O. Neimark understands humanitarian security as the state of protection of national values, traditions, way of life and cultural and spiritual heritage of the people, physical and mental health of the nation, free self-identification of citizens, social groups and countries, which ensures sustainable development of society, timely detection, prevention and neutralisation of real and potential threats to national interests in the humanitarian sector (Neimark, 2021). The researcher considers the concept of humanitarian security in several dimensions: 1) security of physical and mental health of a person; 2) security of the possibility of free self-identification of citizens, social groups and countries; 3) security of citizens and countries in terms of development opportunities and, in general, the ability to choose the future. In addition, the researcher defines the humanitarian security system, which she proposes to understand as "a functional system that reflects the processes of interaction between objects, actors, ideological, theoretical and legislative frameworks, goals, objectives, state bodies, public organisations, officials and individuals who bear full responsibility for the formation of a given level of humanitarian security of Ukraine, as well as a set of forces and means that function in favour of ensuring the humanitarian security

of the country on the necessary level" (Neimark, 2021).

The researcher clarifies the concept of "humanitarian security system" as "an organisational system of bodies, forces, and means of various organisations that are responsible for ensuring humanitarian security. The humanitarian security system is a component of the national security system" (Neimark, 2021).

According to O. Neimark, the mechanism for ensuring humanitarian security is a set of state institutions and civil society structures, as well as practical measures, levers, incentives, ways of action to identify and organise (attract) the necessary and sufficient material, spiritual, human resources, integration of various spheres of society in order to achieve the tasks of ensuring humanitarian security of Ukraine (Neimark, 2021).

**3. Security policy in the humanitarian sector**

In the context of the regional component of making public policy, M.I. Baiuk defines humanitarian security from the perspective of the state of protection of the humanitarian potential, information space of the region; national interests of citizens, their rights, freedoms, physical and mental health, morality, spirituality, intellectuality, public activity from internal and external threats. Moreover, security policy in the humanitarian sector is rightly defined as an enabling environment facilitated by the authorities and public institutions in the region for the development of its human potential through equal access of all citizens to quality education, health care, development of culture and spirituality, ensuring the right to timely and objective information, preservation of historical and ethnic traditions, prevention and counteraction to threats to the humanitarian sector (Baiuk, 2018).

From the perspective of public administration in the field of national security, the author's team, edited by H. Sytnyk, provides an interpretation of the concept of "humanitarian security" in the Dictionary-Reference as follows: "the protection of goals, ideals, values and traditions, way of life and culture of a person, social groups, entire society, which ensures their normal life, sustainable functioning, in particular, the observance of the rights and freedoms, regardless of race and gender, ethnicity, language and religion" (Sytnyk, Poshedin, Shevchenko, 2016, pp. 10-11).

L. Serhieieva considers humanitarian security as a state of protection of a person, family, nation; their goals, ideals, values and traditions, way of life and culture; sustainable necessary and sufficient promotion and development of human rights and fundamental freedoms for all, regardless of race, language and religion (Nikitenko, 2012, p. 303).

Although the researchers provide reasonable and extensive concepts of humanitarian security and the content of State security policy in the humanitarian sector, such definitions and content are given in the context of studies in political science, public administration, and national security. Next, we should consider the concept and content of humanitarian security from the administrative and legal aspects and establish a concept that can be used from the perspective of administrative law in the Law "On National Security of Ukraine". Furthermore, it should be emphasised that the issue of humanitarian security as a component of national security is not mentioned in scientific acts, while humanitarian security is an important separate component of national security.

Allowing for the scientific literature covered in the study and the analysis of the country's security sector, it is advisable to supplement paragraph 1 of Article 1 of the Law of Ukraine "On National Security of Ukraine", which provides for the key terms, the concept of *"humanitarian security"* with its subsequent definition as follows: "*protection of national interests in the fields of culture, science, education, medicine, social security, information, public morality, youth and sports from external, internal and hybrid threats, the facilitation by the security and defence sector entities of a safe environment for citizens to exercise their rights to educational, medical, cultural, social, information, administrative services and other services in the humanitarian sector provided by state authorities, local self-government bodies, institutions and organisations*"

The humanitarian component of national security is ensured through the administrative power of public administrators. The State exercises this power influence on social relations through legal means in order to organise, consolidate, protect and develop, as well as to influence the behaviour and consciousness of citizens by proclaiming their rights and obligations, establishing certain permissions and prohibitions, approving certain legal acts, etc. (Hizhevskyi, Holovchenko, Kovalskyi, 2003, p. 369). O. Druchek writes: "administrative and legal framework is proposed to be understood as the implementation by the state, through a set of special mechanisms, of the ordering of social relations, their legal consolidation, protection, realisation and development" (Druchek, 2013, pp. 126-127).

According to O. Oliinyk, legal means are legal phenomena embodied in the instruments for establishing subjective rights, obligations, benefits, prohibitions, incentives, rewards and actions related to the technology of realisation of rights and duties (Oliinyk, 2015, p. 66).

Some administrative law scholars advocate this well-established position on the definition of legal means as instruments of the administrative and legal framework for relevant phenomena and processes, distinguishing among them prescriptions (imposing a direct legal obligation to perform certain actions under the conditions provided for by a legal provision), prohibitions (imposing direct legal obligations not to perform certain actions under the conditions provided for by a legal provision), permits (providing legal permission to perform certain actions under the conditions stipulated by the provision, or to refrain from doing them at will) (Kolpakov, 1999; Pastukh, 2020). Instead, I. Berezovska suggests the following types of administrative and legal means: 1) permitting; 2) registration; 3) administrative and legal coercion (Berezovska, 2012). O. Oliinyk considers the content of administrative and legal means of legal framework and public administration (in the context of information security) as a set of legal mechanisms and methods and ways of establishing and exercising full powers by state bodies of all branches of government aimed at ensuring information security of an individual, society, and the State (Oliinyk, 2015, p. 66).

The administrative and legal framework is considered by scientists as an ordering of social relations by the bodies authorised by the state, their legal consolidation by means of legal provisions, protection, implementation and development, and a narrow understanding depends on the social relations in question (Humin, Priakhin, 2014, p. 48).

Relying on the scientific developments in the field of administrative law regarding the concept and content of administrative and legal framework, the administrative and legal framework for humanitarian security should be understood as the activities of security and defence sector entities regulated by administrative and legal provisions in the form of a special administrative and legal mechanism regulating public relations regarding protection of national interests in the fields of culture, science, education, medicine, social security, information, public morality, youth and sports from external, internal and hybrid threats, to comply with international standards of humanitarian development of society and to meet the humanitarian interests of every person.

**4. Conclusions**

Therefore, humanitarian security should be defined as an integral set of genetic, demographic, social, psychological, spiritual, moral, and legal components of Ukrainian statehood. Its effective provision is possible only through the use of administrative and legal instruments by the authorised public administration, which form the basis for making public policy in the humanitarian sector, which can be effectively implemented only under structural institutional changes characterised by long-term positive trends in the sustainable development of Ukrainian society and overcoming negative factors and the relevant threats to Ukraine's humanitarian security.

It is necessary to prove the need to recognise humanitarian security as a component of national security and one of the main priorities of public policy, and in this regard, it is proposed to:

1) to legislate the list of threats to national interests as a set of destructive factors that negatively affect the development of the humanitarian sector of the State;

2) to identify ways and mechanisms for implementing the main directions of public policy in the field of humanitarian security in the National Security Strategy of Ukraine.

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## ГУМАНІТАРНИЙ СКЛАДНИК НАЦІОНАЛЬНОЇ БЕЗПЕКИ УКРАЇНИ: ЗМІСТ ПОНЯТТЯ

**Анотація.** ***Мета.*** Метою статті є формулювання поняття та змісту гуманітарної безпеки як складника національної безпеки України. ***Результати.*** В дослідженні розглядається зміст та поняття гуманітарної безпеки, її ролі як складника національної безпеки України. Наводяться поняття, запропоновані деякими вченими, наприклад Л. Чупрій розглядає гуманітарну безпеку в контексті концептуальних засад політики безпеки в гуманітарній сфері, називає складником національної безпеки, він пропонує розглядати її в інституційному та функціональному аспектах. І. Здіорук висловлює думку, що стосовно поняття безпеки термін «гуманітарний» несе подвійний зміст, а саме із соціологічної точки зору це пов'язане з людиною і суспільством, і політологічної як антипод виробничо-технологічній сфері. О. Неймарк під гуманітарною безпекою розуміє стан захищеності національних цінностей, традицій, укладу життя та культурної і духовної спадщини народу, фізичного та психічного здоров'я нації, вільної самоідентифікації громадян, суспільних груп і країн, що забезпечує сталий розвиток суспільства, своєчасне виявлення, запобігання і нейтралізацію реальних та потенційних загроз національним інтересам у гуманітарній сфері. ***Висновки.*** Підсумовано, що на основі висвітленої в дослідженні наукової літератури та аналізу безпекової сфери країни доцільно доповнити п. 1 ст. 1 Закону України «Про національну безпеку України», де розкриваються основні терміни, поняття «гуманітарна безпека» із наступним його визначенням, зокрема як: «захищеність національних інтересів у сферах культури, науки, освіти, медицини, соціального забезпечення, інформації, суспільної моралі, молоді і спорту від зовнішніх, внутрішніх та гібридних загроз, забезпечення суб'єктами сектору безпеки і оборони безпечних умов для реалізації громадянами прав на отримання освітніх, медичних, культурних, соціальних, інформаційних, адміністративних послуг та інших послуг у гуманітарній сфері, які надають органи державної влади, органи місцевого самоврядування, установи та організації».

**Ключові слова:** національна безпека, гуманітарна безпека, зміст та поняття, законодавство, адміністративно-правове забезпечення.

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# ADMINISTRATIVE SUPERVISION OF PERSONS RELEASED FROM PLACES OF DEPRIVATION OF LIBERTY AS A DIRECTION OF PREVENTION OF THE NATIONAL POLICE

**Abstract.** ***Purpose.*** The purpose of the article is to define the purpose of establishment and forms of proceedings and to clarify the characterising features of administrative supervision of persons released from places of deprivation of liberty. ***Results.*** The article reveals the main purpose of the National Police's administrative supervision of persons released from places of deprivation of liberty, which, according to current legislation, is to reduce the level of recidivism. It is emphasised that such activity of the National Police as administrative supervision in the course of its implementation should, in addition to prevention, ensure social adaptation of a person released from places of deprivation of liberty and subject to administrative supervision. The author distinguishes the forms of administrative supervision of persons released from places of deprivation of liberty and the features characterising such activities. It is emphasised that administrative supervision is a measure of individual prevention of recidivism and a means of socialisation of persons who have been deprived of liberty. The conditions for establishing and the procedure for applying administrative supervision shall be enshrined and regulated by law. The current legislation regulating the procedure for establishing and exercising administrative supervision of persons released from places of deprivation of liberty does not ensure the effectiveness of its implementation by police officers. ***Conclusions.*** It is concluded that the social relations between the staff performing administrative supervision and the person under supervision are of an executive and administrative nature. Administrative supervision is aimed at preventing offenses, i.e., it is of a preventive nature. Administrative supervision implies personal restrictions for a person released from places of deprivation of liberty established by an authorised state body and the subsequent control measures to ensure compliance with these restrictions. Administrative supervision is based on administrative and legal relations in which one party is vested with power and the other party is, accordingly, vested with the obligation to comply with the established rules and restrictions.

**Key words:** supervision, administrative supervision, National Police, prevention, person released from places of deprivation of liberty.

## 1. Introduction

Administrative supervision of the police, as a form of prevention, remains a topical area of scientific research and discussion in modern administrative law.

The Constitution of Ukraine No. 254к/96-BP as of 28 June 1996 guarantees freedom of movement, free choice of residence, the right to leave the territory of Ukraine, with the exception of restrictions established by law, for any person who is legally on the territory of Ukraine (Constitution of Ukraine Law, 1996). One of these restrictions on freedom of movement is the administrative supervision imposed on persons released from places of deprivation of liberty.

European integration processes, adaptation of national legislation to European Union law in the field of law enforcement, introduction of the theory of human-centeredness in the field of public administration increases the role of prevention of the National Police, which occupies a key position in the field of administrative supervision of persons released from places of deprivation of liberty. This, in turn, actualises scientific research to clarify the nature and conditions of such administrative supervision.

The various aspects of administrative supervision of persons released from places of deprivation of liberty were under study in the works by scholars, such as: V.B. Averianov, D.M. Bakhrakh, Yu.P. Bytiak, V.V. Halunko, V.M. Harashchuk, O.V. Dzhafarova, A.V. Martynov, B.Y. Nastiuk, V.I. Olefir, S.I. Skvortsov, A.Kh. Stepaniuk, S.H. Stetsenko, V.I. Trubnikov, Yu.M. Frolov, R.V. Shahiieva, O.N. Yarmysh, and others.

The purpose of the article is to define the purpose of establishment, forms of proceedings and to clarify the characterising features of administrative supervision of persons released from places of deprivation of liberty.

**2. The legal and regulatory framework for administrative supervision of persons released from places of deprivation of liberty**

The effective Law of Ukraine "On administrative supervision of persons released from places of deprivation of liberty" No. 264/94-BP as of December 01, 1994, defines administrative supervision as a system of temporary compulsory preventive measures to monitor and control the behaviour of individuals released from places of deprivation of liberty, performed by the National Police. The tasks of administrative supervision are defined by the Law as prevention of criminal offenses by individuals released from places of deprivation of liberty and the correctional influence on them (Law of Ukraine On Administrative Supervision of Persons Released from Places of deprivation of liberty, 1994).

Relying on the content of this legal provision, the main purpose of administrative supervision is to reduce the level of recidivism. According to the legislator, this task can be realised through systematic supervision of the behaviour of a previously convicted person released from places of deprivation of liberty and individual influence on him/her by the National Police, application of preventive measures provided for by law to prevent the resumption of unlawful behaviour and the establishment of criminal ties.

Analysing the measures of supervision of the behaviour of persons released from places of deprivation of liberty, I.Y. Foinickii distinguishes two areas of this activity, the first is coercive and designed mainly to ensure public safety, such as police supervision; the second is of a patronising nature and is designed mainly to provide the released person with support in his/her struggle against the difficulties and temptations of free life; that is, patronage (Foinickii, 1889).

In order to ensure the achievement of this goal, to form a systematic vision of the essence and content of any legal phenomenon, it is necessary to study its meaning in the scientific field from the other scholars' perspectives.

From the etymological perspective, "to supervise" means to watch, to keep an eye on someone or something for control, ensuring order, etc.; to follow, observe for the purpose of supervision (Busel, 2005, p. 707); observation for the purpose of inspection (Yaremenko, Slipushko, 1999, p. 318).

According to A.O. Sobakar, supervision as a legal instrument contributes to the achievement of proper (lawful) behaviour of all subjects of law (enterprises, institutions, organisations, citizens) in a particular sector of public administration (Sobakar, 2017, p. 120).

In O.A. Petrenko's opinion, administrative supervision of persons released from places of deprivation of liberty is of an interdisciplinary nature, as it is on a par with other rules of administrative supervision, control of compliance with which is entrusted to the internal affairs bodies, namely: traffic safety rules, rules of the permit system, rules for holding mass cultural and sports events, etc. (Petrenko, 2012, p. 325).

V.V. Karelin states that administrative supervision, as an independent legal institution for ensuring legality and discipline, implies systematic monitoring of the activities of objects under supervision (persons with a criminal record) that are not organisationally subordinate to the supervisor, in order to verify compliance with legal requirements and, in case of violations of the established norms and rules, to bring the perpetrators to legal responsibility (Karelin, 2019, p. 82).

M.S. Studenikina defines administrative supervision as a type of supervisory control, as a form of active supervision accompanied by the use of administrative power measures in certain cases (Studenikina, 1974, pp. 19-20).

Administrative supervision, as a way to ensure legality, is a constant, systematic monitoring by special state bodies (officials) of the activities of public administration entities not organisationally subordinated to them regarding their compliance with mandatory norms, rules and standards in order to prevent, detect and suppress offenses, restore the established order and bring the perpetrators to administrative responsibility (Sobakar, 2017, p. 124).

F.S. Razarenov considers "administrative supervision" as the basis of the activities of internal affairs bodies, defining it as systematic monitoring by management bodies of the exact and strict implementation of mandatory rules in order to prevent, stop their violations, identify and bring offenders to justice or apply public pressure measures to them (Razarenov, Kotiurgin, 1979, p. 10).

Given the content of the studied definitions of administrative supervision, the main purpose

of its implementation is to monitor the behaviour of the person under supervision in order to prevent violations of the established norms and rules of conduct. Meanwhile, given the preventive nature and preventive content of such activities of the National Police as administrative supervision, the focus should be on the fact that in the course of its implementation, due attention is not paid to the issue of social adaptation of a person released from places of deprivation of liberty, over whom administrative supervision is established.

The current legislation regulating the procedure for establishing and exercising administrative supervision of persons released from places of deprivation of liberty does not ensure the effectiveness of its implementation by police officers.

**3. Tasks of administrative supervision of persons released from places of deprivation of liberty**

According to O.M. Holovko, administrative supervision should perform not only the functions of ensuring that a person released from places of deprivation of liberty complies with prohibitions and restrictions, but also of the formation of new value attitudes in such persons, which is not provided for in the legislation and within the framework of the activities of the bodies exercising such supervision. Administrative supervision is mostly formal in nature, which leads to a low level of its effectiveness (Holovko, 2018, p. 127).

In S.I. Skvortsov's opinion, the main factors that negatively affect the effectiveness of administrative supervision of persons released from places of deprivation of liberty are as follows: 1) the low level of legal culture and consciousness of the persons under supervision, on the one hand, and the National Police officers exercising supervision, on the other; 2) formal performance of their duties by district police officers and their lack of motivation to improve their professional skills; 3) insufficient interaction of the public administration in providing administrative services to persons under supervision in order to ensure their rapid social adaptation; 4) low level of legal and regulatory support regulating public relations in the field of administrative supervision of persons released from places of deprivation of liberty; 5) insufficient control of administrative supervision by the National Police bodies; 6) low level of material and technical support and conditions for administrative supervision of former convicts; 7) insufficient number of district officers to ensure proper administrative supervision (Skvortsov, 2018, pp. 151-152).

Since administrative supervision is an active observation by police officers of the behaviour of an indefinite number of persons, it can be performed in the form of direct visual observation, observation using special technical means and devices, public, secret, scheduled or unscheduled inspections of compliance with the established regime, as provided for in the Instruction on the organisation of administrative supervision of persons released from places of deprivation of liberty (Order of the Ministry of Internal Affairs of Ukraine, the State Department of Penalties on the approval of the Instruction on the organisation of administrative supervision of persons released from places of deprivation of liberty, 2003).

Administrative supervision by the police over persons released from places of deprivation of liberty aims to: – prevent this category of persons from committing crimes and other offenses; – apply individual preventive (precautionary) measures to these persons in order to prevent reoffending and protect state and public interests.

Moreover, human rights defenders argue that administrative supervision is an additional restriction of a person's rights beyond the court verdict and in addition to the sanctions established by law, which can be characterised as a double punishment for the same act, for not admitting guilt, etc. According to human rights defenders, this leads to a violation of the constitutional principles of justice and international law in the field of human rights.

However, supporters of the other perspective, allowing for the rights of persons released from places of deprivation of liberty, emphasise the importance of ensuring the proper realisation of the constitutional rights of other persons who are significantly affected by the unfavourable crime situation in the country. In their opinion, it is the prevention of a high level of recidivism, rather than the desire to infringe on the rights of former prisoners, that underlies the essence and tasks of administrative supervision of the police as a preventive measure against repeated crimes and other offenses.

It should be noted, as the practical experience of administrative supervision of the police shows, that actual supervision of the behaviour of a person released from places of deprivation of liberty begins before making the relevant decision on its establishment. After all, administrative supervision is established on the basis of a reasoned decision of a competent authority that has sufficient information and grounds specified in the law to make a decision to establish supervision of a person.

The administrative supervision performed by the police should be so thoroughly organised and conducted that it enables to timely detect signs of an offense in the behaviour of a per-

son released from places of deprivation of liberty during preventive work and to respond in a timely manner to establish administrative supervision.

Administrative supervision, allowing for its tasks and content, is to ensure, by means and methods determined by law, the implementation of generally binding provisions established or authorised by the state, both at the level of law and bylaw.

Administrative supervision is performed in forms as follows:

– registration and accounting of a person subject to administrative supervision;

– periodic inspections, enabling to control the state of the person subject to administrative supervision;

– constant surveillance, for a person under supervision to have a sense of continuous control and to keep him/her from committing an unlawful act;

– study and analysis of the behaviour of the object under supervision and of information obtained in the course of administrative supervision.

**4. Conclusions**

Given the results of scientific research, it can be noted that administrative supervision of persons released from places of deprivation of liberty by the National Police, as activities of a preventive nature and precautionary content, is endowed with special features that characterise its content and determine its essence.

1. Administrative supervision is a measure of individualised prevention of recidivism and a means of socialisation of persons who have been deprived of liberty.

2. The conditions for establishing and the procedure for applying administrative supervision shall be mandatory and regulated by law.

3. The social relations between the staff performing administrative supervision and the person under supervision are of an executive and administrative nature.

4. Administrative supervision is aimed at preventing offenses, i.e., it is of a preventive nature.

5. Administrative supervision implies personal restrictions for a person released from places of deprivation of liberty established by an authorised state body and the subsequent control measures to ensure compliance with these restrictions.

6. Administrative supervision is based on administrative and legal relations in which one party is vested with power and the other party is, accordingly, vested with the obligation to comply with the established rules and restrictions.

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# АДМІНІСТРАТИВНИЙ НАГЛЯД ЗА ОСОБАМИ, ЗВІЛЬНЕНИМИ З МІСЦЬ ПОЗБАВЛЕННЯ ВОЛІ, ЯК НАПРЯМ ПРЕВЕНТИВНОЇ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ

**Анотація.** ***Мета.*** Мета статті полягає у визначенні мети встановлення, форм провадження та з'ясуванні характеризуючих ознак адміністративного нагляду за особами, звільненими з місць позбавлення волі. ***Результати.*** У статті розкривається основна мета здійснення Національною поліцією адміністративного нагляду за особами, звільненими з місць позбавлення волі, яка за змістом чинного законодавства полягає у зниженні рівня злочинності, що має рецидивний характер. Наголошується, що така діяльність Національної поліції, як адміністративний нагляд, у ході її провадження повинна, крім профілактики, забезпечити соціальну адаптацію особи, звільненої з місць позбавлення волі, над якою встановлено адміністративний нагляд. Автором виділяються форми провадження адміністративного нагляду за особами, звільненими з місць позбавлення волі та ознаки, що характеризують таку діяльність. Наголошено, що адміністративний нагляд виступає мірою індивідуальної профілактики рецидивної злочинності та засобом соціалізації осіб, які були позбавлені волі. Умови встановлення та процедура застосування адміністративного нагляду має обов'язкове нормативно-правове закріплення та регулювання. Сучасне законодавство, яким регламентовано порядок встановлення та процедуру здійснення адміністративного нагляду над особами, звільненими з місць позбавлення волі, не забезпечує ефективність його провадження працівниками поліції. ***Висновки.*** Зроблено висновок, що суспільні відносини, що складаються між суб'єктом адміністративного нагляду та піднаглядною особою, мають виконавчо-розпорядчий характер. Адміністративний нагляд має на меті попередження правопорушень, тобто наділений превентивним характером. Адміністративний нагляд полягає у встановленні уповноваженим органом держави персональних обмежень для особи, яка звільнена з місць позбавлення волі, та здійснення в майбутньому контрольних заходів на предмет дотримання цих обмежень. Основу адміністративного нагляду становлять адміністративно-правові відносини, в яких одна сторона наділена владними повноваженнями, а інша відповідно наділена обов'язком дотримання встановлених правил та обмежень.

**Ключові слова:** нагляд, адміністративний нагляд, Національна поліція, превентивна діяльність, особа, звільнена з місць позбавлення волі.

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# THE CONCEPT AND CLASSIFICATION OF AUTHORISATION PROCEDURES IN THE TELECOMMUNICATIONS SECTOR

**Abstract.** ***Purpose.*** The purpose of the article is to formulate the concept and classification of authorisation procedures in the telecommunications sector. ***Results***. Authorisation is considered to be an integrating basis for regulating the relevant types of activities. Administrative authorisation directly determines the essence and content of the legal regime for the relevant activities. The specific purpose of certain regimes shall be defined by law, while it is important that the authorisation procedure does not repeat the rest of the regulatory procedures for the activities of entities. Authorisation is required only if the state establishes special administrative legal regimes for certain activities or the use of relevant facilities. The essence of authorisation is not to grant a person the right to perform actions that are prohibited, but to ensure that the activities are qualified and safe. From the legal perspective, authorisation has all the characteristic features of an administrative act. It is an individual legal act of the authorised executive body on recognition or state confirmation of the initiation, transfer, restriction or termination of rights to the objects of the authorisation system or to perform certain activities. Authorisation is a specific legal act of state recognition and consolidation of the rights to perform activities and use objects that shall be under state supervision. Authorisation procedures in the field of telecommunications by the nature of the actors can be classified into: general, the actors thereof may be any natural persons and legal entities (for example, TV and audio broadcasting); special, the actors thereof may be a limited list of persons. ***Conclusions.*** Permits as legal means regulating the telecommunications sector are links that ensure interaction and integration of all levels and elements of the regulatory system. The introduction of permits as a legal method regulating the telecommunications sector ensures the integrity of the information sphere, which is being improved in accordance with certain laws. If the laws of development of the telecommunications and information sectors are ignored, the efficiency of telecommunications systems in all sectors of society's life is reduced.

**Key words:** authorisation, legal and regulatory framework, law, legal act, actor, full powers.

## 1. Introduction

The authorisation system is one of the most important legal institutions. The current administrative legislation does not provide a legitimate definition of a permitting authority, administrative authorisation, administrative authorisation system, administrative authorising activities, authorising administrative and legal regime, administrative authorisation procedures, etc. Therefore, it is necessary to refer to scientific works to understand the issue of the authorisation system, authorisation and authorisation procedures.

As noted above, there is no single definition of the term "authorisation system" in Ukraine. The legislation defines the authorisation system within the scope of economic activities as a set of relations regulated by law that arise between permitting authorities, administrators and business entities through the issuance of permits (Law of Ukraine "On the authorisation system in the field of economic activities," Article 1, para. 2 (Law of Ukraine On the authorisation system in the field of Economic activities, 2005)). According to the Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulations on the authorisation system (1992), the concept of "authorisation system" is a special procedure for the manufacture, acquisition, storage, transportation, accounting and use of specific items, materials and substances, as well as the opening and operation of certain enterprises, workshops and laboratories for the protection of public interests and public safety.

Before the 1990s, the legal literature defined the authorisation system as a set of rules that

regulated the procedure for the manufacture, acquisition, use, sale, transportation of certain items and substances, and the opening and operation of individual enterprises. The authorisation system is undergoing intensive development in the telecommunications industry due to the transition to market-based regulating.

**2. Specificities of development and establishment of the authorisation system**

The history of the development of the authorisation system shows that the scope, types and forms, as well as nature, of permits have changed depending on the characteristics of social relations and other factors.

Scholars of administrative law theory have repeatedly tried to formulate a unified doctrine of authorisation procedures within a particular industry. The characteristic features of the authorising and licencing system in various fields have been studied, and the categories of the authorisation system, its characteristic features and attributes have been considered.

O. Kharytonov, with regards to the content of the authorisation system, argues that it is the State's effective regulatory instrument used by public authorities to guarantee stability, welfare and security of the State and individual citizens, which are achieved through systematic solution of economic, social, administrative, political and legal issues (Kharytonov, 2004).

D. Denysiuk studied the licensing and authorisation system with regards to functioning of the police (internal affairs bodies) as a type of activities carried out by certain bodies within the framework of the procedure for the acquisition, transportation, storage, use and sale of strictly defined items and substances, as well as the opening and operation of certain enterprises and organisations in order to ensure personal public safety and public order (Denysiuk, 2010).

According to Yu. Sahaidak, the authorisation system is, on the one hand, a set of social relations, regulated by legal provisions, between actors vested with public authority, and on the other hand, legal entities and natural persons to grant permits for activities and control compliance with the rules to ensure personal, public and state security (Sahaidak, 2016).

The authorisation system in administrative law is a type of State administrative relations, the essence thereof is permission, recognition of an official type of admission of entities to activities where professional implementation of various qualification and administrative requirements is necessary to avoid negative consequences.

The authorisation system is a form of preliminary control over the legality of acquiring special legal capacity, the legal status of the actor of the authorisation system, the current monitoring of meeting the requirements for the permitted activities, and the subsequent legal termination of the permitted activities.

The authorisation system should be considered as a system that is in the process of being formed on the basis of legal relations of actors regarding the legalisation of a particular type of activities. The authorisation system is the relationship of several entities that are characterised by different public legal status in terms of regulating and control at the time of implementing activities within a particular sector.

The authorisation system as activities of public authorities cannot be recognised as complete because such consideration reduces the authorisation system to performing only one control function. The authorisation system is a set of legal relations that covers not only the control function, but also the function of legal provision, termination of legal violations, etc.

The analysis of these opinions on the nature of the authorisation system enables to formulate the concept of the authorisation system, which is understood as a set of activities of public authorities aimed at granting actors which are not vested with public authority with a prolonged permit to perform the relevant activities requiring special legal authorisation, control over compliance with special legislation by these actors, termination of legal violations, and deprivation of legal entities of carrying out certain activities.

According to Ya. Voronin, the elements of the authorisation system are:

1. Permission, that is, a specific procedure of actions or behaviour of citizens, legal entities, state bodies and their authorised officials in the field of the authorisation system, for the purpose of the applicants' realisation of their subjective rights.
2. The purpose of the authorisation system.
3. The object and subject matter.
4. Actors.
5. Legal regulations on which the authorisation system is based.
6. Control over compliance with the established rules of the authorisation system by authorised entities.
7. Bringing persons who violate the rules of the authorisation system to the liability established by law (Voronin, 2014, p. 81).

Therefore, the main component in terms of terminology and legal use is authorisation.

Authorisation is considered to be an integrating basis for regulating the relevant types of activities. Administrative authorisation directly determines the essence and content

of the legal regime for the relevant activities. The specific purpose of certain regimes shall be defined by law, while it is important that the authorisation procedure does not repeat the rest of the regulatory procedures for the activities of entities. Authorisation is required only if the state establishes special administrative legal regimes for certain activities or the use of relevant facilities. The essence of authorisation is not to grant a person the right to perform actions that are prohibited, but to ensure that the activities are qualified and safe.

From the legal perspective, authorisation has all the characteristic features of an administrative act. It is an individual legal act of the authorised executive body on recognition or state confirmation of the advent, transfer, restriction or termination of rights to the objects of the authorisation system or to perform certain activities. Authorisation is a specific legal act of state recognition and consolidation of the rights to perform activities and use objects that shall be under state supervision.

Authorisation as an independent regulatory means has been first distinguished by Kh.P. Yarmaki, who notes that authorisation is between law and prohibition in terms of the degree of legal influence, but, unlike prohibition, it does not prevent the engagement in business or other activities (Yarmaki, 2006, p. 200). The essence of authorisation is not to grant an individual or legal entity the right to perform actions that are prohibited, but to ensure qualified, technically and technologically sound implementation of the relevant activities.

Authorisation can be independent elements of the legal and regulatory mechanism. In addition, it is not advisable to reduce authorisation as administrative legal acts to supervisory acts. They are independent administrative and legal acts that vest legal entities with relevant powers.

Authorisation as an administrative and legal act, by providing a legal entity with the authority to perform a particular type of activities, becomes a means of controlling and monitoring the quality and quantity of entities in a certain social sector, enabling to apply certain administrative methods of coercion in case of violations of the law, and to prevent the unlawful actions of entities.

Authorisation as a regulatory means has a sectoral colouring. Subjective rights do not arise from a law addressed to an indefinite number of persons, but from a legal act addressed to a specific actor. An authorising regulatory means can be used only if special organisational structures are created that are vested with authority, i.e. it combines a regulatory and individual legal mechanism.

From a formal perspective, permits are required only if the state establishes special administrative and legal regimes for the relevant activities. However, it is incorrect to assert that the essence of these regimes is a relative prohibition.

Certain authorising regimes for the relevant activities have been formalised in law, but have existed for decades. Modern legal theory, with regards to authorisation as an administrative category, has various approaches to understanding its essence.

Moreover, authorisation in administrative law is, on the one hand, the implementation of a system of measures to grant business entities a permit for a certain type of business activities; on the other hand, authorisation is aimed at the implementation by authorised bodies of supervisory activities over compliance with the requirements established by the current legislation by economic entities.

The definition of the term "authorisation procedures" stems from the broader term "legal procedures", the definition thereof is based on the etymology of the term "procedure".

A.V. Basov provides the following definition of the term "legal procedure": officially established procedure for performing the relevant activities (Basov, 2011, p. 3). N.V. Halitsyna argues that from the legal perspective, a procedure is a procedure of actions, regulated by a legal provision, or regulatory mechanism for certain social relations within the scope of legal application (Halitsyna, 2010, p. 166).

V.P. Tymoshchuk argues that an administrative procedure can be recognised as a legally established procedure for consideration and resolution of individual administrative cases by administrative bodies (Tymoshchuk, 2013, p. 147).

N.V. Halitsyna defines this concept a little more deeply. She believes that an administrative procedure is a legally established procedure, rules and conditions for procedural actions regarding the consideration, resolution and resolution of a certain administrative case within the scope of public administration (Halitsyna, 2010, p. 167).

The use of the category "administrative procedure" to refer to the functioning of public administration bodies is a rather new category for the national science of administrative law. However, the correctness of using the category of "administrative procedure" directly is due to the following: first of all, the definition of the concept of "procedure". According to the explanatory dictionary of the Ukrainian language, a procedure is an officially established sequence of actions for the realisation or implementation of something (Hrynchyshyn, 1999, p. 204).

An administrative procedure can be defined as a procedure established by law for consistent procedural actions of the participants in relevant administrative and legal relations and the adoption of regulations to exercise their rights and obligations.

The procedures for authorising activities, as compared to the general concept of administrative procedures, are determined by the subject matter of the regulatory mechanism and its specifics. Therefore, authorisation procedures are a group of homogeneous administrative and procedural provisions and the resulting procedural actions consistently performed by the authorised bodies (their duly authorised persons) to consider an individual administrative case at the request of an individual or legal entity and to adopt an individual administrative act as a permit or a decision to refuse to issue it and its execution (Voronin, 2014, p. 82).

According to the Law of Ukraine On the Authorisation system in the field of Economic Activities, Article 1, part 1 (Law of Ukraine On the Authorisation system in the field of Economic Activities, 2005), the authorisation system in the field of economic activities is a set of relations regulated by law that arise between the permitting authority, administrator and business entity through the issuance of permits, reissuance, and revocation of permits.

According to the Law of Ukraine "On the Authorisation system in the Field of Economic Activities", Article 41, part 1, the procedure for authorisation procedure, reissuance and revocation of permits by central executive bodies and their territorial bodies is established by the CMU upon submission of a separate permitting authority, which has been agreed with the authorised body.

According to the above law, Article 41, Part 1, subpar. 4, the term for issuing permits is up to ten business days, unless otherwise provided by law. Permits are issued free of charge for an unlimited period of time, unless otherwise provided by law.

Authorisation as a means of legal regulation in the field of telecommunications is the links that ensure the interaction and integration of all levels and elements of the legal and regulatory system. Legal and regulatory systems in the telecommunications sector have administrative and organisational, administrative and legal, and information and communication components. The specificity of the administrative and legal component of the legal and regulatory mechanism is that permits are used on the grounds of the relevant administrative and legal regimes. The introduction of permits as a legal method regulating the telecommunications sector ensures the integrity of the information sphere, which is being improved in accordance with certain laws. If the laws of development of the telecommunications and information sectors are ignored, the efficiency of telecommunications systems in all sectors of society's life is reduced (Bondarenko, Pustova, 2017, pp. 79-80).

In order to provide the relevant services and, if necessary, use the radio frequency spectrum, business entities (legal entities and individuals) shall apply to the relevant state authorities for permits. In addition, a number of documents required by the applicable law, which contain relevant information confirming the ability and opportunity to perform work and provide services, shall be submitted to the relevant authorities for consideration. In accordance with Ukrainian law, in order to obtain various permits, entities shall submit applications, the forms thereof have been specially developed and approved by authorised officials of State bodies.

In the telecommunications sector, a permit is an authorisation act that grants the right to perform certain activities, acting as a "filter" for legal entities in the telecommunications industry. Allowing for the legal nature, authorisation determines the essence and content of the legal regime for certain activities, which covers: the specifics of territories, objects, actors; special status of the actor; special requirements and conditions for activities or use of the object; constant control (supervision) of meeting the requirements of the regimes (Bondarenko, Pustova, 2017, p. 76).

The authorisation system in the telecommunications industry, which is of an administrative and legal nature, is aimed at regulating legal relations arising from the exercise of information rights and freedoms, adjusts the scope of permitted and prohibited economic and business activities in the industry and protects Ukrainian foreign economic interests.

The authorisation system in the field of telecommunications, in accordance with the current legislation of Ukraine, covers the following: issuance of permits for ship radio stations; issuance of permits for the construction, reconstruction, and operation of land-based telecommunication lines when crossing the border of Ukraine and in the border area; assignment of radio frequencies or radio frequency channels for civilian radio electronic equipment; registration of radio electronic equipment for the formation of femtocells in IMT-2000/UMTS, 3G, 4G, etc. land-based mobile radio telecommunication networks; licensing; registration; allocation of radio frequency spectrum; allocation and use of numbering resources; State registration of ownership of space-type communication

facilities (communication satellites, including dual-purpose ones); registration of transfer of certain rights to space facilities; allocation of telecommunication lines and their registration.

Therefore, the authorisation procedure is the activities of public administration bodies regulated by the rules of administrative procedure to resolve issues related to guaranteeing the exercise of the rights of legal entities and individuals to perform and implement relevant actions or engage in relevant types of activities by issuing certain permits.

**3. Classification of authorisation procedures**

Allowing for the specificities of legal relations of a permitting nature, the types of authorisation procedures can be classified according to the following criteria:

1) objectives;

2) actors responsible for the issuance of certain permits;

3) the subject matter of legal relations.

For example, depending on the objectives, the types of authorisation procedures are as follows:

– Guaranteeing interested parties' ability to exercise subjective rights (for example, to engage in a particular type of activities);

– Obtaining permits (licenses) relevant activities by business entities.

Depending on the actors responsible for issuing certain permits, the authorisation procedures are classified as follows:

1) those implemented by the National Police;

2) those implemented by other State authorities (e.g., the Ministry of Education of Ukraine, the Ministry of Health of Ukraine, etc. and their structural subdivisions).

Depending on the subject matter of legal relations, we can distinguish the following authorisation procedures:

– for obtaining a permit to purchase, carry and store firearms;

– for obtaining a permit to make and use explosives and materials;

– for licensing in the educational sector;

– for issuing permits – licenses to make and trade tobacco products, ethyl alcohol, alcoholic beverages, etc. (Minka, 2017, p. 252).

V. Tkachenko generally classifies administrative permits, distinguishing between permits and licenses (Tkachenko, 2006, pp. 10-11). The legal literature identifies the following types of authorisation: licenses, permits, special permits, admissions, approvals, passes, special passes, credentials, inspections, examinations, attestations, accreditations, diplomas, certificates, quotas, special rights, passports, mandates.

According to the studies by some scholars, authorisation should be classified by criteria:

– validity period

– sectoral focus;

– the degree of mandatory nature;

– the nature and scope of rights and obligations arising from authorisation;

– the actor and nature of its competence;

– the object (Iesimov, 2013).

According to these criteria, authorisation can be grouped into: registration; licensing, which includes permits, special permits; confirmation of the status of a person (accreditation, warranty); confirmation of the status of an item, device, service (passport, certificate).

The reviews of existing classifications of authorisation in administrative law enable to assert that all classifications have a similar structure, with the only difference being the presence of intermediate versions of permitting acts. These classifications are common to administrative law.

According to clause 34 of the List of permits in the field of economic activities (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulations on the authorisation system, 1992), permits include authorisation to use the numbering resource in accordance with the Law of Ukraine "On Telecommunications".

With regard to the classification of authorisation procedures in the telecommunications sector, its crudity should be noted, so it is advisable to develop a classification of authorisation purposely for the telecommunications sector, since this sector has specific characteristics.

The provisions of the Laws of Ukraine "On telecommunications", "On the authorisation system in the field of economic activities" and "On licensing of economic activities" make it clear that relations in the telecommunications industry include those related to:

– creation and operation of telecommunication infrastructure (design and construction of telecommunication networks have their own specifics and are only partially regulated by the construction legislation);

– the use of telecommunication resources of the radio frequency spectrum (numbering, addressing, radio frequencies), technological facilities of the telecommunication infrastructure;

– operation of the Internet;

– provision of telecommunication services on the territory of Ukraine.

In accordance with the provisions of the laws, the classification of authorisation procedures in the telecommunications sector should cover: the creation and operation of all

telecommunications networks and telecommunications facilities; the use of radio frequency spectrum; and telecommunications services. The classification is based on the division of the telecommunications sector into certain subgroups, depending on the field of technological activities (Bondarenko, Pustova, 2017, p. 78).

The classification of authorisation procedures in the telecommunications sector by the nature of regulated technological processes includes:

– Registration of the use of specific equipment and radio frequencies;

– Authorisation of the right to perform special works.

The first category of authorisation procedures includes: issuance of permits for shipboard radio stations; assignment of radio frequencies or radio frequency channels for civilian electronic equipment, etc.

The second category includes issuance of permits for construction, reconstruction, and search work for the design of telecommunications lines; allocation of radio frequency spectrum; allocation and use of numbering resources, etc.

Authorisation procedures in the field of telecommunications by the nature of the actors can be classified into:

a) general, the actors thereof may be any natural persons and legal entities (for example, TV and audio broadcasting);

b) special, the actors thereof may be a limited list of persons.

In addition, authorisation procedures in the telecommunications sector can be classified by their validity period:

– one-time, for construction and search works, other actions that are limited in time;

– long-term, which entitle the holder to perform activities in the telecommunications industry for a certain period and may be revoked only in case of violation of the rules of conducting activities.

Authorisation in the field of telecommunications can be classified according to the criterion of territorial effect on the territory of: a) the state; b) a separate administrative-territorial unit.

The above grouping of authorisation procedures enables to systematise the existing types of administrative authorisation procedures in the field of telecommunications, dividing them according to the essential characteristics of the permitting act (Bondarenko, Pustova, 2017, p. 79).

**4. Conclusions**

Permits as legal means regulating the telecommunications sector are links that ensure interaction and integration of all levels and elements of the regulatory system.

The introduction of permits as a legal method regulating the telecommunications sector ensures the integrity of the information sphere, which is being improved in accordance with certain laws. If the laws of development of the telecommunications and information sectors are ignored, the efficiency of telecommunications systems in all sectors of society's life is reduced.

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## ПОНЯТТЯ ТА КЛАСИФІКАЦІЯ ДОЗВІЛЬНИХ ПРОЦЕДУР У СФЕРІ ТЕЛЕКОМУНІКАЦІЙ

**Анотація.** ***Мета.*** Метою статті є формулювання поняття та класифікації дозвільних процедур у сфері телекомунікацій. ***Результати.*** Дозвіл розглядається як інтегруюча основа в регламентації відповідних різновидів діяльності. Безпосередньо адміністративним дозволом визначається сутність та зміст юридичного режиму реалізації відповідної діяльності. Мета певних режимів має бути визначена нормативно, водночас важливо, аби порядок дозвільного типу не повторював решту регулюючих процедур діяльності суб'єктів. Дозволи необхідні лише у випадку державного встановлення особливих адміністративних правових режимів реалізації певної діяльності чи застосування відповідних об'єктів. Сутність дозволу у наданні особі не права реалізувати дії, що заборонено, а у забезпеченні здійснення діяльності кваліфікованої й безпечної природи. З юридичного боку дозволу притаманні всі характерні риси адміністративного акту. Ним постає індивідуальний правовий акт уповноваженого виконавчого органу щодо визнання чи державного підтвердження виникнення, переходу, обмеження чи припинення прав на об'єкти системи дозвільного характеру чи на реалізацію певної діяльності. Дозволом є специфічний правовий акт державного визнання і закріплення прав на реалізацію діяльності, застосування об'єктів, котрі мають перебувати під державним наглядом. Класифікація дозвільних процедур у сфері телекомунікацій за характером суб'єктів: загальні, суб'єктами яких можуть бути будь-які фізичні й юридичні особи (наприклад, здійснення теле- і аудіотрансляції); спеціальні, суб'єктами яких може бути обмежений перелік осіб. ***Висновки.*** Дозволи як способи правового регулювання у телекомунікаційній сфері є сполучними ланками, що забезпечують взаємодію й інтеграцію всіх рівнів і елементів системи правового регулювання. Упровадження дозволів як способу правового регулювання у телекомунікаційній сфері забезпечує цілісність інформаційної сфери, що вдосконалюється відповідно до певних закономірностей. У разі ігнорування закономірностей розвитку телекомунікаційної та інформаційної сфери зменшується ефективність впровадження телекомунікаційних систем у всі сфери життєдіяльності суспільства.

**Ключові слова:** дозвіл, юридичне регулювання, закон, правовий акт, суб'єкт, повноваження.

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# REORGANISATION OF SPECIAL PURPOSE FORCES AND ITS IMPACT ON 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 reorganisation of Special Purpose Forces and its impact on crime control under criminal law in the first half of the 1920s. ***Results.*** It is emphasised that one of the signs of the Soviet leadership's orientation towards intensifying repressive activities was the reorganisation of Special Purpose Forces. In 1922, the convoy guard from the People's Commissariat of Justice, and later the border guard units were transferred to the NKVD, which meant the practical completion of the process of reforming the troops of the State Political Directorate on the eve of the formation of the USSR. Structurally, it was as follows: a) internal troops (units and subdivisions directly assigned to the bodies of the State Political Directorate); b) convoy guards; c) border guards. Their total number exceeded 100 thousand people. It is revealed that employees of the State Political Directorate collected and sent the necessary information to state institutions, conducted agent surveillance of political opponents and suspicious individuals, groups and organisations both in the country and abroad; issued permits to travel abroad and enter the country; expelled "unreliable" foreign citizens; and reviewed postal and telegraphic and other correspondence; suppressed armed counter-revolutionary protests with the help of troops of the State Political Directorate; conducted inquiries and sent cases of uncovered criminal acts to the judiciary for hearing and registered persons found and suspected of crimes, "unreliable" personnel of state institutions, industrial enterprises, command and administrative staff of the Red Army; conducted statistical and analytical development of the accumulated materials. ***Conclusions.*** It is concluded that the establishment and strengthening of the repressive apparatus created a solid platform for the formation of the Soviet totalitarian regime, which used the mechanism of crime control to implement the idea of state paternalism, strengthen the power of the ruling elite and economic transformations aimed at maximising nationalisation of production.

**Key words:** State Political Directorate, Border Guard Administration, military guard, abuse of power; bribery.

## 1. Introduction

One of the signs of the Soviet leadership's orientation towards intensifying repressive activities was the reorganisation of Special Purpose Forces. In 1922, the convoy guard from the People's Commissariat of Justice, and later the border guard units were transferred to the NKVD, which meant the practical completion of the process of reforming the troops of the State Political Directorate on the eve of the formation of the USSR. Structurally, it was as follows: a) internal troops (units and subdivisions directly assigned to the bodies of State Political Directorate); b) convoy guards; c) border guards. Their total number exceeded 100 thousand people. Almost 30% were stationed in Ukraine. Since then, the troops have become an integral part of the law enforcement and repressive state mechanism (Borodych, 1999). Moreover, the Fundamentals of Criminal Procedure of the USSR and the Union Republics, adopted by the Central Executive Committee of the USSR in 1924, provided for a reservation that the prosecutor's right to release unjustifiably arrested persons did not apply to those arrested by the United State Political Directorate (hereinafter – the ODPU) (Abramenko, Amons, 2006, p. 13).

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,

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.

As a result, the purpose of the article is to study the process of reorganisation of Special Purpose Forces and its impact on crime control under criminal law in the first half of the 1920s.

**2. Organisation of Special Purpose Forces**

The troops of the GPU-ODPU occupied a special place among the specialised bodies. During 1922, they were deprived of the functions of protecting railway facilities, vehicles and cargo, and industrial enterprises. According to a Resolution of the All-Union Central Executive Committee of January 3, 1923, a convoy guard corps was added to the GPU troops, which was tasked with guarding places of detention and escorting arrested and imprisoned persons.

From 1 January 1923, according to a Resolution of the RSFSR Council of People's Commissars of September 27, 1922, the Ukrainian SSR GPU was subordinated to the border troops. Podillia, Volyn, and Odesa border detachments were created. The most numerous parts of the GPU troops were the internal troops, responsible for guarding the premises of the highest state and party institutions and were used to fight banditry. In the first half of the 1920s, the number of internal troops was reduced to one 4th Ukrainian regiment. There were military formations with a special status, a Special Purpose Detachment subordinated to the head of the Administrative and Organisational Department of the GPU of the Ukrainian SSR, and guard detachments and teams of the FC of the GPU of the Ukrainian SSR. According to a Resolution of the All-Union Central Executive Committee of March 22, 1922, the head of the GPU of the Ukrainian SSR was considered the commander of the GPU troops. Direct management was carried out by the Headquarters and the Political Department (the Inspectorate since 1923) of the troops of the GPU of the UVO. In 1926, with the establishment of the Department of Border Guard and the GPU troops, the leadership of the internal and border troops of the GPU was united. The Resolutions "On the military protection of enterprises" and "On the paramilitary protection of industrial enterprises and state buildings" adopted by the Council of People's Commissars of the USSR on May 12, 1927, were important for expanding the functions of the GPU troops. Military guards were introduced at enterprises and institutions that were important for the defence of the Ukrainian SSR, and they were included in the troops of the GPU-ODPU. The paramilitary guards were subordinated to the Supreme Council of National Economy of the Ukrainian SSR and the GPU of the Ukrainian SSR (Okipniuk, 2002, p. 11).

The reorganisation of the Cheka into the DPU was accompanied for some time by serious restrictions on the agency's powers. In particular, since 1922, extrajudicial verdicts of Chekist bodies were reviewed by a commission consisting of representatives of the DPU, the Supreme Tribunal, and the KNU. All criminal cases of speculation, official and other crimes had to be transferred to revolutionary tribunals or people's courts according to their jurisdiction. The People's Commissariat of Justice was entrusted with control over the observance of the law by the GPU (Website of the Central State Archive of Public Associations: *cdago.gov.ua*). However, the Resolution of the congress of NKVD employees on V. Balytskyi's report "On the next tasks of the NKVD and its local bodies" stated that the NKVD bodies were not satisfied with the reorganisation. It was emphasised that 1923 reorganisation of the People's Commissariat of Internal Affairs (hereinafter – NKVD) led to a narrowing of the scope and content of its work (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

In 1924, discussions about the status of the NKVD became widespread. The reason for the resumption of local discussions about the expediency of the NKVD was the ODPU's circular letter No. 75365 of May 22, 1924, signed by Deputy Head of the ODPU Yahoda and addressed to the heads of the provincial departments of the DPU, which proposed to submit the issue of complete merger of the police and detective services with the DPU and the disbandment of the NKVD for discussion by the regional executive committees. The Odesa and Podillia regional executive committees recognised this decision as appropriate, while others opposed it (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

The issue of terminating the NKVD on the initiative of the ODPU was discussed by the Politburo of the Central Committee of the RCP, which unanimously rejected the proposal to disband the NKVD. Based on this resolution, the NKVD of the RSFSR not only fully retained all its functions, but also extended its activities to Ukraine (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

However, the analysis of documents related to the reorganisation of the GPU and NKVD suggests that dissatisfaction with the results of the reorganisation was subjective and determined by the ambitions of the leadership of these bodies and the desire of the top party leadership to maintain competition in the field of law enforcement and special services, including to limit the possibility of concentrating their leadership in one hand.

After the reorganisation of security agencies and temporary restrictions on their rights, the country's leadership gradually returned repressive functions to the GPU. The rationale for this decision was the need to counteract mass manifestations of "banditry," one of the reasons for which was the Soviet government's unbalanced economic policy and selective application of punishment to the "proletarian strata of the population" compared to the "exploiting classes." In March 1922, the Politburo of the Central Committee of the RCP/b/ granted the GPU the right to directly deal with persons found guilty of armed robbery, criminal offenders, and repeat offenders captured with weapons. On April 14, 1922, the Politburo of the Central Committee of the CP(b)U decided to grant the GPU the right to directly repress and pass extrajudicial sentences, with the consent of the Central Executive Committee, up to and including the death penalty, in cases involving crimes committed by GPU employees, repeat offenders, captured with weapons, participants in armed demonstrations or counterrevolutionary organisations aimed at the violent overthrow of the Soviet system (Kulchytskyi, 1996, p. 257).

On 27 April 1922, the GPU was entitled to execute on the spot a "bandit element" captured while committing a crime. On 10 August 1922, the Central Executive Committee granted the GPU the right to apply administrative exile abroad or to certain areas of the RSFSR against those under its supervision. Such decisions were made by the Special Commission, which had the right to decide on the expulsion or detention of anti-Soviet political party members and repeat offenders. Under the NKVD of the Ukrainian SSR, such a commission began operating on September 6, 1922 (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

The Soviet government's punitive policy toward the Ukrainian peasantry brought certain results. The documents of the Cheka-DPU reflect the history of the gradual extinction of the insurgency. In the first half of 1922, the emergency authorities conducted 539 operations in which 40 detachments and 29 underground organisations were liquidated, 895 people were arrested, 53 atamans were killed and 69 captured, 830 and 2049 members of the armed opposition were arrested, and 18 machine guns, 2741 rifles, and 346 revolvers were seized (Arkhiiereiskyi, Bazhan, Bykova, 2002, p. 251). During the same period, the state security agencies arrested 3,546 people on charges of "banditry," 523 of whom were executed. By the end of the year, 111 organised opposition groups with a total of 2,634 members were ended, 341 atamans were arrested, and 1,232 people were convicted of participating in "banditry." However, as of July 1, 1922, the GPU authorities in Ukraine had more than 80 insurgent groups with a total of 1,500 fighters, including 17 groups in Volyn, 11 in the Podillia province, 12 in the Kyiv province, 5 in the Kharkiv province, 7 in the Poltava province, and 8 in the Kremenchuk province. The activities of the GPU bodies were aimed at ending the insurgency, but the number of its participants gradually decreased only for economic reasons, when the peasantry, convinced of the benefits of the NEP, gradually withdrew from supporting the opposition. As of April 1, 1923, according to the GPU, there were 26 separate armed groups in Ukraine with a total of 168 people (Website of the Central State Archive of the Supreme Bodies of Government and Administration of Ukraine: *tsdavo.gov.ua*).

In November 1923, the Joint State Political Directorate of the USSR (ODPU) was established. The ODPU's regulations stated that the state security agencies acted on the basis of the Resolutions of the Central Executive Committee of February 6 and October 16, 1922, and the Resolution of the Presidium of the Central Executive Committee of the USSR of November 2, 1923 (N.d., 1926, pp. 9-12). Supervision over the legality of the ODPU's actions was entrusted to the prosecutor of the USSR Supreme Court.

**3. The legal and regulatory framework for reorganising Special Purpose Forces**

According to the Regulations on the ODPU, it had at its disposal special troops in the number established by the Council of Labour and Defence of the USSR. From that time on, a fundamental reorganisation of the state security and internal affairs agencies began, the process of creating a Union-wide security and punitive system with strict centralised control, in which an important role was assigned to the internal and border troops. The first legal document to publicise their functions and tasks was the "Statute of the Special Service of the ODPU Troops" (1924) (Borodych, 1999, p. 16).

DPU employees collected and sent the necessary information to state institutions, con-

ducted agent surveillance of political opponents and suspicious individuals, groups and organisations both in the country and abroad; issued permits to travel abroad and enter the country; expelled "unreliable" foreign citizens; and reviewed postal and telegraphic and other correspondence; suppressed armed counter-revolutionary protests with the help of troops of the State Political Directorate; conducted inquiries and sent cases of uncovered criminal acts to the judiciary for hearing and registered persons found and suspected of crimes, "unreliable" personnel of state institutions, industrial enterprises, command and administrative staff of the Red Army; conducted statistical and analytical development of the accumulated materials (Website of the Central State Archive of the Supreme Bodies of Government and Administration of Ukraine: *tsdavo.gov.ua*).

In January 1923, Regulations on the Economic Department of the DPU were approved, thereof employees were responsible for identifying organisations and individuals who opposed the normal operation of economic institutions and enterprises; combating economic sabotage and abuse of power; bribery and mismanagement; and malicious failure to fulfil obligations under contracts with state bodies.

On 15 November 1923, the Central Executive Committee of the USSR granted the GPU the right to consider cases of sabotage, arson, explosions, and damage to machinery and mechanisms at state-owned enterprises at court hearings of the ODPU board. During court hearings on political crimes and espionage, a representative of the GPU was required to sit on the court. However, secret employees of the DPU could not be summoned to court as witnesses, and other employees were summoned only as a last resort (N.d., 1960, p. 118).

Cases initiated by the DPU were considered at extraordinary sessions of the Supreme and provincial courts, where the State Political Department had representatives. The DPU also maintained detention facilities for no more than 100 prisoners at each local department. The powers of the ODPU were further expanded in 1924, when on 1 February 1924, the Presidium of the USSR allowed the ODPU to use administrative exile and deportation, to isolate in camps persons accused of buying and hiding bread products, "maliciously" raising their prices, and persons accused of large-scale speculation. On 28 March 1924, Regulations on the ODPU's rights in the field of administrative expulsions, exile, and imprisonment were approved. The circle of persons who could be subjected to such punishment was expanded. On 28 April 1924, by a decision of the Presidium of the USSR Central Executive Committee, the GPU received the right to resolve cases on charges of "banditry" out of court. On 9 May, the Presidium of the Central Election Commission granted the ODPU authorised officials the right to extrajudicially deal with "bandits" and their assistants, as well as the right to evict them from the area, imprison them for up to three years, and apply the death penalty. The Regulations on the NKVD of September 20, 1924, enshrined the interdepartmental statute of the Special Commission, which dealt with expulsion out of court. The right of expulsion was also granted to the Special Meeting of the Board of the GPU of the Ukrainian SSR. Moreover, on 1 October 1924, the provision of March 28 was extended to persons who speculated in grain products in areas recognised as unproductive (Bilas, 1994, p. 93).

The rights of the GPU of the Ukrainian SSR were expanded in such areas as the fight against banditry and counterfeiting, control over the observance of secrecy, and censorship. For example, the Resolution of the CEC and the Council of People's Commissars of the Ukrainian SSR of December 12, 1924, "On the Procedure for the Production, Trade, Storage, Use, Accounting and Transportation of Weapons, Ammunition, Explosives and Explosives" brought the powers of the GPU of the Ukrainian SSR regarding the circulation of weapons in line with the all-Union legislation.

When the USSR Central Executive Committee and Council of People's Commissars issued a new regulation on the protection of the borders of the USSR on June 15, 1927, the provisions that defined the rights of the GPU of the Ukrainian SSR in the field of protection and regime of state border crossing, and the fight against smuggling were amended accordingly. The practice of involving the DPU in solving socio-economic problems, such as fighting fires and sabotage, speculation and agitation, participation in a campaign to reduce prices, etc. was also enshrined in law. The resolution "On clarification of the functions of the GPU bodies of the Ukrainian SSR" adopted on June 9, 1926 by the All-Ukrainian Central Executive Committee and the Council of People's Commissars of the Ukrainian SSR expanded the rights of the latter as bodies of inquiry and preliminary investigation. During the period of the collapse of the NEP and the formation of a totalitarian regime, starting in 1928, the legal status of the GPU of the Ukrainian SSR and its structure changed dramatically. The legislative basis for the gradual transformation of the GPU of the Ukrainian SSR into an integral element of the totalitarian state mechanism was the following resolutions adopted on Octo-

ber 10, 1928: "On clarification of the functions of the GPU and prosecutorial supervision of cases under the GPU of the Ukrainian SSR", "On the relationship between the GPU of the Ukrainian SSR, prosecutorial supervision and the court" and "Regulations on the procedure for consideration of cases in extraordinary sessions of the Supreme Court of the Ukrainian SSR, the Main Court of the AMSSR and district courts in the Ukrainian SSR" (Okipniuk, 2002).

However, in the mid-1920s, due to low prices, rising unemployment, and the release of certain categories of prisoners, there was a certain intensification of "political banditry." The Central Committee of the CP(b)U recognised that the spread of insurgence was due to the difficult financial situation of the largest segments of the peasantry, who had been actively involved in the policies of the Soviet government before the NEP. Another, more important, reason was the abuse of certain representatives of local village and district authorities, as well as police officers, who settled old scores or illegally seized property from peasants (Arkhiiereiskyi, Bazhan, Bykova, 2002, p. 255). In this regard, the number of cases taken under control by the prosecutor's office gradually increased. For example, in 1923, the prosecutor's office registered 1853 cases, in 1924, 9879 cases, and in the first four months of 1925, over 5000 cases. Most cases were under control in the Donetsk (1321), Kyiv (981), Poltava (350), and Katerynoslav (575) provinces (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

**4. Conclusions**

Therefore, the establishment and strengthening of the repressive apparatus created a solid platform for the formation of the Soviet totalitarian regime, which used the mechanism of crime control to implement the idea of state paternalism, strengthen the power of the ruling elite and economic transformations aimed at maximising nationalisation of production.

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# РЕОРГАНІЗАЦІЯ СИЛ СПЕЦІАЛЬНОГО ПРИЗНАЧЕННЯ ТА ЇЇ ВПЛИВ НА КРИМІНАЛЬНО-ПРАВОВИЙ КОНТРОЛЬ ЗА ЗЛОЧИННІСТЮ В ПЕРШІЙ ПОЛОВИНІ 1920-Х РР.

**Анотація.** ***Мета.*** Метою статті є дослідження процесу реорганізації сил спеціального призначення та її вплив на кримінально-правовий контроль за злочинністю у першій половині 1920-х рр. ***Результати.*** Наголошено, що однією з ознак орієнтації радянського керівництва на посилення репресивної діяльності була реорганізація сил спеціального призначення. У 1922 р. конвойна варта з Наркомюсту, а згодом і прикордонні частини були передані у відання НКВС, що означало практичне завершення процесу реформування військ Державного політичного управління напередодні утворення СРСР. Структурно це виглядало таким чином: а) внутрішні війська (частини й підрозділи, що закріплені безпосередньо за органами Державного політичного управління); б) конвойна варта; в) прикордонна охорона. Загальна їх чисельність перевищувала 100 тис. осіб. З'ясовано, що співробітники Державного політичного управління збирали й направляли державним установам потрібну інформацію, вели агентурний нагляд за політичними противниками і підозрілими особами, групами й організаціями як на території країни, так і за кордоном; видавали дозвіл на виїзд за кордон і в'їзд у країну; висилали за межі держави «неблагонадійних» іноземних громадян; здійснювали перегляд поштово-телеграфної й іншої кореспонденції; придушували за допомогою військ Державного політичного управління збройні контрреволюційні виступи; здійснювали дізнання і направляли справи про розкриті злочинні дії для слухання у судові органи і реєстрували осіб, виявлених і підозрюваних у злочинах, «неблагонадійний» персонал державних установ, промислових підприємств, командний і адміністративно-господарський склад Червоної Армії; проводили статистичну й аналітичну розробку накопичених матеріалів. ***Висновки.*** Зроблено висновок, що становлення та зміцнення репресивного апарату створювало міцну платформу для формування радянського тоталітарного режиму, який використовував механізм контролю за злочинністю для реалізації ідеї державного патерналізму, зміцнення влади пануючої верхівки та економічних перетворень, спрямованих на максимальне одержавлення виробництва.

**Ключові слова:** Державне політичне управління, Управління прикордонної охорони, військова охорона, зловживання владою, хабарництво.

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# ON THE ISSUE OF MOTIVES FOR MODERN VANDALISM

**Abstract.** ***Purpose.*** The purpose of the article is to identify and study the motives as they give a deeper understanding of the causes of vandalism and make it possible to identify specific personal qualities and characteristics of a vandal. ***Results.*** Vandalism is an extremely complex form of deviant destructive behaviour that has existed at all stages of society's development and has been inherent in all types of social cultures. In the modern world, the problem of vandalism has not lost its relevance, on the contrary, it has acquired new forms of expression. Expanding its legal nature and going beyond the traditional legal interpretation, vandalism has penetrated almost all spheres of public relations and has affected all strata of society. It is emphasised that in recent years, scholars and practitioners have been focusing on the motives for vandalism, which are the basis and the initial element for developing and implementing an effective system of preventive and corrective measures. It is highlighted that from the perspective of criminology, the study of subjective characteristics of vandalism and its psychological basis is not so much theoretical as practical. After all, traditional methods of countering vandalism, such as punishment of offenders and repair of the damage caused, do not yield the expected results today, as evidenced by the intensification of vandal behaviour, increased aggressiveness and cruelty of its manifestation. ***Conclusions***. It is established that all motives for vandalism can be classified into 12 main groups: 1) lucre; 2) hooliganism; 3) ideological motives, such as nationalistic, religious, racial, political, anarcho-nihilistic motives; 4) revenge; 5) anger; 6) boredom; 7) curiosity; 8) self-affirmation; 9) selfish reasons; 10) protest; 11) manipulation; 12) sexual motives. In addition, the motives for vandalism may include envy, anger, irritation, frustration, despair, attention-seeking, self-defence, etc. It is proven that when considering a specific act of vandalism, it is usually extremely difficult to clearly identify the immediate motive for its commission. This is due to the fact that a characteristic feature of vandalism is multi-motivation, i.e., the simultaneous existence of two or more dominant motives.

**Key words:** vandal behaviour, act of vandalism, motive, dominant motive, ideological motives.

**1. Introduction**

In the public consciousness, vandalism is perceived mainly as a manifestation of senseless (unmotivated) behaviour and is identified with irrational, aimless, unjustified damage, destruction, and defamation of other people's property. In fact, absurdity, senselessness, and recklessness of vandalism are features that explain only its external, objective aspect, i.e., characterise its perception by other people or entire society. In a subjective context, vandalism cannot be considered a meaningless act, as it is always motivated and has a personal meaning.

It should be noted that from the perspective of criminology, the study of subjective characteristics of vandalism and its psychological basis is not so much theoretical as practical. After all, traditional methods of countering vandalism, such as punishment of offenders and repair of the damage caused, do not yield the expected results today, as evidenced by the intensification of vandal behaviour, increased aggressiveness and cruelty of its manifestation.

Therefore, in recent years, scientists and practitioners have been focusing on motives for vandalism, which are a basis and the initial element of the development and implementation of an effective system of preventive and corrective measures. For example, the issue of vandalism has been to some extent addressed in the works by O. Bandurka, V. Vasylevych, O. Dzhuzha, V. Dziuba, O. Kolb, A. Niebytov, M. Khavroniuk, V. Shakun, and others.

The purpose of the article is to identify and study motives as they give a deeper understanding of the causes of vandalism and enable to identify specific personal qualities and characteristics of a vandal.

**2. General principles of basic motives for vandalism**

Relying on the analysis of scientific approaches to classifying vandalism, as well as on the results of our research, including the study of criminal proceedings and a sociological survey, we can offer our own perspective on the classification of motives for vandalism (Dobroskok, 2016, p. 88).

The vast majority of respondents (89% of police officers and 86% of citizens) consider *lucre* to be the main motive for vandalism. Indeed, lucrative vandalism is the oldest and, at the same time, the most widespread type of vandalism. The main purpose of vandals' actions in this case is to enrich themselves, to gain profit, material goods or any other benefit.

However, it should be noted that some scholars deny the expediency of identifying lucrative vandalism and refer to it as a crime against property (Pashutina, 2009). We believe that this approach is unjustified, as there are several significant differences between theft and lucrative vandalism, such as:

– in case of theft, the main object of the offense is property, while in the case of vandalism, morality as well;

– in case of theft, the intent of the perpetrator is aimed solely at stealing property, while in case of vandalism, also at destroying, demolishing or damaging a certain object;

– in case of vandalism, unlike theft, the perpetrator knows and is aware of the special historical, cultural, religious or other value of the object, but deliberately disregards it;

– theft usually involves causing only material damage to the victim, while vandalism can cause both tangible and intangible damage.

Moreover, it is proposed that lucrative vandalism should include cases of intentional destruction of or damage to property that occurs in order to conceal another crime or the true intentions of the offender. In the scientific literature, such actions are traditionally referred to as tactical vandalism. However, in our opinion, this approach is questionable, because when assigning an act of vandalism to a particular group, the original motives should be considered. In this case, such motives are primarily lucre, profit, financial or other enrichment.

A significant number of respondents (82% of police officers and 77% of citizens) identify *hooliganism* as a motive for vandalism. In the science of criminal law, hooliganism is traditionally considered to be "a person's desire to demonstrate his or her contempt for others and society; to openly oppose his or her behaviour to public order; to show contempt for human dignity and the rules of human coexistence" (Danshyn, 2003, p. 55). Therefore, the reasons for committing hooliganism acts are characterised by triviality, insignificance, they are clearly inadequate, i.e. they do not correspond to the unlawful acts committed and the consequences caused, they have no logical explanation, are not caused by circumstances, and do not follow from them (Korzhanskyi, 1998, p. 4).

For example, the most typical feature of the so-called hooligan vandalism is that the offender acts irrationally, impulsively, under the influence of unconscious anger, cruelty and cynicism. Frequently, the object of destruction or desecration is chosen at random. However, frequently the characteristic features of the object are outlined in advance (for example, these may be objects indicating affiliation with a particular religion, nationality, etc.) In these circumstances, the hooligan nature of vandalism is evidenced by the intent that arises and develops suddenly. The most illustrative example of hooligan vandalism is the activity of radical and extreme football fans who are prone to fighting, rioting, and breaking both inside and outside stadiums. Frequently, it does not matter whether the team they support wins or loses, which indicates the lack of a clearly understood motivation in their actions.

The majority of respondents (83% of police officers and 80% of citizens) emphasise that vandalism is often motivated by ideological motives. It should be noted that ideological motives characterise vandalism in its classical sense, as traditionally vandals were considered to be people who destroyed or damaged objects of historical, cultural, religious or other value.

Ideological vandalism is a rather capacious concept that encompasses numerous different motives. The review of the materials of the studied criminal proceedings, as well as media publications, enables to group them into several relatively independent subgroups (Dobroskok, 2019, p. 33).

First, these are *nationalist motives*. Such motives are the basis for attacks on state symbols, acts of destruction of historical monuments to famous statesmen, damage and destruction of burial sites of famous cultural figures, soldiers and liberators, etc.

Secondly, these are *religious motives*. Today, several types of religious vandalism can be distinguished depending on those who commit it. For example, it can be initiated directly by the state. In this case, vandalism becomes massive and organised and is usually aimed at the complete destruction of objects of a certain religious value.

Thirdly, these are *racial motives*. The peak of vandalism motivated by racial animosity is traditionally considered to be the Second World War, when all objects related to people

of the Jewish race, regardless of their nationality, citizenship, or social status, were completely destroyed. However, even today this type of ideological vandalism is widespread throughout the world, including in Ukraine. Jews, as well as Roma and Crimean Tatars, continue to face the greatest oppression. The objects of destruction or desecration in this case are most often burial sites, monuments to prominent statesmen, religious buildings, private property, etc. Acts of racial vandalism mostly deal a significant blow to the reputation of our country and undermine its authority in the international arena.

Fourth, there are *political motives*. Scholars rightly argue that vandalism can not only be a manifestation of interethnic and religious conflicts, but also reflect "the state's internal policy toward various entities" (Pashutina, 2008, p. 145). For example, most of the large-scale rallies, demonstrations and other mass events held in recent years have been accompanied by the destruction or damage not only to monuments and objects of cultural, historical, artistic or other value, but also by the banal destruction of infrastructure: fences, public transport stops and even sidewalks.

Fifth, there are *anarcho-nihilistic motives*. They reflect a conscious rejection of, and opposition to, generally accepted rules, norms, and standards in society. For example, some scholars use these motives to explain the cases of unauthorised felling of centuries-old trees in protected areas and the construction of private houses in their place; deliberate discharge of wastewater and hazardous waste into rivers; persistent (despite fines) air pollution (Liubchenko, Savelieva, 2018, p. 24). In this case, vandalism is a form of resistance, opposition to changes in economic, political and social life. Such changes, affecting value orientations and attitudes of a person, are subjectively perceived by him or her as a violation of his or her subjective rights, freedoms and legitimate interests, as well as generally accepted moral norms and centuries-old traditions.

The majority of respondents (62% of police officers and 59% of citizens) believe that *revenge* is one of the main motives for vandalism. The results of the criminal proceedings we have studied show that this type of vandalism is based on aggression, which usually arises and develops through interpersonal hostility. Destruction and damage of certain objects in these circumstances appears as a delayed, mostly anonymous, response to the offender's actions: to the insult, humiliation, harassment, injustice, etc.

It should be noted that vengeful vandalism usually involves an indirect form of revenge. For example, the vandal usually chooses an object that is only indirectly, symbolically connected to the primary source of aggression and hostility. In other words, the aggression is shifted from the victim's person to the property that belongs to him or her or to which he or she is related.

Today, the most common and typical examples of vindictive vandalism are damage to the property of an enterprise or organisation by an employee who is dissatisfied with the level of financial security, or a former employee who was dismissed at the initiative of the employer, or an employee who has a conflict with management or other team members. The same motives are used to destroy or damage the property of one of the spouses or their close relatives after a divorce; destroy or damage the property of an educational institution by a student who received a reprimand or unsatisfactory grade; desecration of religious monuments or buildings by a person who has an interpersonal conflict with a member of the relevant religion, etc. By the way, these acts of vandalism are usually committed under the influence of alcohol or drugs.

**3. Basic motives for vandal behaviour**

Almost half of the respondents (48% of police officers and 37% of citizens) consider *anger* to be the main motives for vandal behaviour. The basis of this type of vandalism can be considered several relatively independent levels of personal and emotional needs that activate the aggravation of vandal motivation, namely:

– Hostility, envy, jealousy, cynicism, nihilism, dislike of other people, disgust. Under their influence, a person has a desire to harm those who are more successful; to disfigure or deface things that someone else has but a person does not have; to destroy items or objects that make someone admire or be proud of, etc;

– Anxiety, sociopathy, irritability, impulsivity, psychological imbalance, and other disorders associated with mental instability or a person's being in various frustrating states. In these conditions, a person usually acts unconsciously, satisfying their own needs under the influence of alcoholic beverages or drugs, as well as being in a state of extreme emotional distress. These conditions are accompanied by the inhibition of mental reactions, providing an outlet for anger and discharge in the form of destructive actions;

– Pronounced sensitivity and vulnerability, inability to self-realisation. These and other qualities are a clear indication of a person's emotional instability, i.e., the inability to control the emotions that control them. In addition, they lead to the emergence and deepening of stress. In this case, destructive actions

become the most acceptable form of coping with stress.

More than two-thirds of respondents (74% of police officers and 81% of citizens) recognise *boredom* as the main motivation for vandalism. As some scholars have rightly noted, "boredom is not a motive; it is a psychological background that causes many youth offenses, including vandalism" (Antonjan, 1992). The motivating factor here is the search for new experiences, thrills, which are caused by all kinds of prohibitions and danger. Vandalism allows a person to distract themselves, have fun, feel adrenaline and strong emotions, ignore the rules, act quickly and ignore the consequences.

A typical form of this type of vandalism is a game that serves as a tool for self-assertion within a narrow social group, allowing it to express courage or earn the respect of peers. Moreover, two subtypes of game vandalism can be distinguished. The first is unintentional vandalism, which is the result of careless games ("unintentional" is a rather conditional title, since the nature and rules of the game imply a rather high probability of socially dangerous consequences, which the offender is clearly aware of). The second is intentional vandalism, which occurs when the destruction or damage of certain objects is an immediate condition, the basic rule of the game.

Every second respondent (49% of police officers and 56% of citizens) believes that vandals may be motivated by *curiosity*. Curiosity vandalism is a fairly common, but not sufficiently studied, type of destructive behaviour. It often does not pose an increased public danger and is committed mainly by children and teenagers. After all, they are always interested in what a particular mechanism, device, item, or object consists of and how it works.

This type of vandalism is based on knowledge and interest, which are manifested in excessive curiosity and "destructive experimentation." Much less frequently, destructive actions are caused by the lack of competence and carelessness of employees when working with new equipment or at a new workplace.

The majority of respondents (55% of police officers and 63% of citizens) recognise *self-assertion* as one of the main motives for vandalism. This type of vandalism is defined in the scientific literature in different ways: it is called "self-personal", "intrapersonal", "existential", etc. However, whatever the name, the characteristic feature here is the need for self-affirmation and self-realisation, which is satisfied by humiliating in various forms what is of special cultural, artistic or religious value to others. It is in this way that a person tries to attract attention and stand out from the grey masses; to gain prestige, dominance, raise his or her social status or become a group leader; to explore the possibilities of his or her influence on society; to express a cynical protest against the rules of social coexistence, etc.

A significant number of respondents (60 percent of police officers and 52 percent of citizens) identified *selfish* motives as the main motivation for vandalism. This type of vandalism is based on a person's desire to satisfy their aesthetic needs, which arise due to the inconsistency of a certain object, its individual elements or characteristics with the existing perceptions of it. By committing destructive actions, he or she seeks to change such an object, to improve the environment in accordance with own needs and interests, to make it more convenient and comfortable.

Selfish vandalism is most common among adolescents and young people. Frequently, the person is not even aware of the illegal nature of their actions. After all, the actions that society and criminal law classify as destruction or damage to someone else's property he or she see as improvement of a certain object (subjective ergonomics). This is how graffiti appears, as well as various inscriptions and drawings on fences, building walls, and other architectural structures that a person considers an artistic achievement, a decoration of the city. That is, in this case, vandalism serves as one of the ways to demonstrate one's own position and attitude to the aesthetics of the surrounding space, to eliminate the inconvenience and discomfort that exists in it. These seemingly positive impulses can explain the fact that acts of vandalism are mostly committed in places that have already been deformed.

The majority of respondents (52% of police officers and 57% of citizens) believe that many acts of vandalism are a form of *protest*. In this case, acts of vandalism are directed not against a specific person, organisation, national community or religious movement, but against the entire society, generally accepted norms and rules of social coexistence. Protest can take many forms: from a deliberate refusal to comply with mandatory requirements, to follow established canons or standards, to acts of destructive behaviour, one of which is vandalism.

Today, there are many reasons for this type of vandalism. For example, it can be a manifestation of a person's rejection of established centuries-old traditions, norms and rules that limit his or her "freedom," a response to the authorities' abolition of any rights and legitimate interests. By engaging in acts of vandalism, adolescents and young people speak out against the social and cultural norms of the "adult world." For workers and employees, it is a desire to show

their disagreement with existing or new working conditions; for politically active citizens, it is a desire to reveal their opposition views. The mechanism of formation of criminal intent may also vary: it may arise as a result of a long, gradual accumulation of negative emotions; or it may be the result of a sudden, one-time experience of a stressful situation.

One in three respondents (33% of police officers and 39% of citizens) is convinced that acts of vandalism are often the result of *manipulation*. The materials of the criminal proceedings we studied show that manipulative vandalism can have various forms of manifestation, which depend, first, on the individual characteristics of the offender; second, on the nature of the needs that he or she seeks to satisfy in this way. For example, children and adolescents may commit vandalism to divert attention from other activities (e.g., setting fire to a building that was used as a drug or alcohol den). In organisations and workplaces, an informal leader may commit vandalism to manipulate the public consciousness and behaviour of colleagues in order to achieve personal goals (e.g., increased salary, career advancement). Criminal groups, by organizing large-scale exterminations, seek to intimidate certain groups of citizens, thus keeping them in constant tension. By committing vandalism, some informal groups can sabotage an important event or divert attention from the true nature of their activities, etc.

Every fourth respondent (26% of police officers and 22% of citizens) does not rule out the possibility of *sexual motives* when committing vandalism.

Above, we have analysed only the main motives underlying most acts of vandalism recorded by law enforcement agencies in recent years. Of course, within and beyond these, scholars identify a number of other motives that detail the type of destructive behaviour under consideration: abusive vandalism; conformist vandalism; instrumental vandalism; aesthetic vandalism.

In addition, the *reasons of vandal behaviour can be the motives* such as envy, anger, irritation, frustration, despair, attention-seeking, self-defence, etc.

**4. Conclusions**

To sum up the analysis of the motives for vandalism, it should be noted that when considering a specific act of vandalism, it is usually extremely difficult to clearly identify the immediate motive for its commission. This is due to the fact that a characteristic feature of vandalism is multi-motivation, i.e., the simultaneous existence of two or more dominant motives. Moreover, there is a fairly close integrative relationship and interdependence between all the motives of vandalism. For example, vandalism motivated by hooliganism is facilitated by anger, rage and irritation accumulated by a person at that moment, as well as a desire to attract attention; ideological motives are often combined with protest, revenge and despair; the desire to assert oneself is often based on selfish motives, self-interest, envy, group dependence, irritation, etc. Taken together, all of these motives arouse a sense of hostility in a person, increase the level of aggression, and encourage them to commit destructive violent acts.

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# ДО ПИТАННЯ МОТИВІВ СУЧАСНОГО ВАНДАЛІЗМУ

**Анотація.** ***Мета.*** Метою статті є визначення й дослідження мотивів, оскільки саме вони дозволяють більш глибоко зрозуміти причини вандальної поведінки, а також визначити специфічні особистісні якості та характеристики вандала. ***Результати.*** Вандалізм є надзвичайно складною формою девіантної деструктивної поведінки, яка існувала на всіх етапах розвитку суспільства та була притаманна всім типам соціальних культур. У сучасному світі проблема вандалізму не втратила своєї актуальності, навпаки, набула нових форм вираження. Вандалізм проник практично в усі сфери суспільних відносин, торкнувся всіх прошарків суспільства, розширивши таким чином свою правову природу та вийшовши за межі традиційного юридичного тлумачення. Наголошено, що останніми роками науковці та практичні працівники зосереджують увагу на мотивах вандалізму, які є основою, вихідним елементом розроблення та впровадження ефективної системи профілактичних і корекційних заходів. Наголошено, що з позиції кримінології дослідження суб'єктивних характеристик вандалізму та його психологічного підґрунтя має не стільки теоретичне, скільки практичне значення. Адже такі традиційні методи протидії вандалізму, як покарання правопорушників та усунення завданої шкоди, на сьогодні не дають очікуваних результатів, свідченням чого є активізація вандальної поведінки, посилення агресивності й жорстокості фактів її вияву. ***Висновки.*** Встановлено, що всі мотиви вандальної поведінки можуть бути об'єднані у 12 основних груп: 1) користь; 2) хуліганські спонукання; 3) ідеологічні мотиви, у межах яких слід виокремити націоналістичні, релігійні, расові, політичні, анархо-нігілістичні мотиви; 4) помста; 5) злість; 6) нудьга; 7) цікавість; 8) самоствердження; 9) егоїстичні спонукання; 10) протест; 11) маніпуляція; 12) сексуальні мотиви. Окрім зазначених, мотивами вандальної поведінки можуть бути заздрість, гнів, роздратованість, розчарування, зневіра, бажання привернути увагу, самозахист тощо. Доведено, що під час дослідження конкретного акту вандалізму зазвичай буває вкрай складно чітко визначити безпосередній мотив його вчинення. Це зумовлено тим, що характерною рисою вандалізму є полімотивованість, тобто одночасне існування двох і більше домінуючих мотивів.

**Ключові слова:** вандальна поведінка, акт вандалізму, мотив, домінуючий мотив, ідеологічні мотиви.

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# ON THE URGENCY OF MAKING METHODOLOGY FOR INVESTIGATING SOLICITATION OF CHILDREN FOR SEXUAL PURPOSES (ARTICLE 156-1 OF THE CRIMINAL CODE OF UKRAINE)

**Abstract.** ***Purpose.*** The purpose of the article is to prove the urgency of developing a methodology for investigating solicitation of children for sexual purposes and to outline its structure. ***Results***. The article emphasises that protection of childhood in Ukraine is a general priority task. It is noted that encroachments on the rights, freedoms and legitimate interests of a child, especially those related to his or her sexual freedom and sexual inviolability, are punishable and necessarily entail liability. It is emphasised that the age and level of development of a child affect the criteria for selecting him or her as a victim of harassment, the ways of committing this unlawful act and the motivation of the perpetrator. During the period of hostilities, due to a number of objective factors, control over the timing of a child's stay in the Internet space and the content to which he or she has access has decreased. In addition, a child's absorption in virtual life and virtual friends is a kind of psychological relief and distraction from current realities. At such times, a child is particularly psychologically and emotionally unstable and vulnerable. The author establishes that criminal offenses committed against a child are characterised by a specific mechanism of commission and by specific activities aimed at their detection, disclosure and investigation. Law enforcement officers are not always able to correctly determine an exhaustive list of circumstances to be clarified during the investigation of these unlawful acts and correctly define the limits of proof; predict the behaviour of participants in criminal proceedings; plan and organise pre-trial investigations; establish effective cooperation; etc. ***Conclusions.*** The author establishes that the urgency of developing a separate specific methodology, namely, the methodology for investigating solicitation of children for sexual purposes (Article 156-1 of the Criminal Code of Ukraine) is justified by the child's vulnerability to malefactors due to his/her age and emotional and psychological traits; and by the increasing number of cases of criminal offenses related to sexual abuse and sexual exploitation against children, especially with the use of cyberspace and telecommunication technologies; the development of information and telecommunication systems and technologies, their active implementation in criminal activities; the lack of established methods for investigating solicitation of children for sexual purposes and practical experience in detecting, solving and investigating these criminal offenses.

**Key words:** criminological methodology, sexual exploitation, sexual abuse, investigation methodology, solicitation of children for sexual purposes, formation of methodology.

## 1. Introduction

Childhood protection is a strategic national priority that is important for ensuring the national security of Ukraine and the effectiveness of the State's domestic policy. In particular, in order to ensure the child's rights to life, health care, education, social protection, comprehensive development and upbringing in a family environment, the State establishes the basic principles of public policy in this field based on ensuring the best interests of the child. Moreover, childhood protection involves the application of a whole system of state and public measures aimed at ensuring a full life, comprehensive upbringing and development of the child and protection of his or her

rights (Law of Ukraine On Protection of Childhood, 2001). However, unfortunately, despite the State's desire to ensure the best interests of the child, cases of violations of children's rights often occur. Therefore, in order to prevent such violations or at least reduce their number, social relations that arise, change and terminate in the course of ensuring and protecting children's rights are subject to various types of protection by the State. For example, exceptionally socially dangerous acts against a child are under criminal legal protection. Thus, in February 2021, the Special Part of the Law of Ukraine on Criminal Liability was supplemented with a new corpus delicti, namely Art. 156-1 of the Criminal Code of Ukraine "Solicitation of children for sexual purposes" (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2021; Criminal Code of Ukraine, 2001).

Evidently, socially dangerous acts are committed against a child that infringe on his or her rights, freedoms and legitimate interests, including solicitation for sexual purposes. Moreover, these attacks are committed taking into account the peculiarities of the physiological and psychological development of the child, who becomes a victim precisely because of his or her age and level of development. These factors also affect the criteria for selecting a child as a victim of molestation, the ways in which this unlawful act is committed, and the motivation of the perpetrator. In this regard, criminal offenses committed against a child are characterised by a specific mechanism of commission, and thus by criminological activities. After all, in order to establish all the circumstances to be proved in criminal proceedings on solicitation of children for sexual purposes and to collect relevant evidence, it is necessary to understand the distinctive features of the mechanism of committing this category of offenses and the difficulties that pre-trial investigation bodies often face in detecting, investigating and solving them. In particular, one of the tools that facilitates the activities of law enforcement agencies and helps to avoid or minimise the previously mentioned difficulties is a separate criminological methodology. Therefore, in the context of the outlined issues, the question of the urgency and timeliness of the formation of such a separate, namely, a specific criminological methodology as a methodology for investigating solicitation of children for sexual purposes is considered relevant.

Prospects, principles of construction and implementation of methodologies for investigating criminal offenses of a particular type (group), as well as their structure have frequently been under the study in the works of many scholars in the field of criminalistics. In particular, these issues have been comprehensively covered by V.P. Bakhin, R.S. Belkin, L.Ya. Drapkin, V.F. Yermolovych, V.A. Zhuravel, O.N. Kolesnichenko, V.O. Konovalova, A.F. Oblakov, O.V. Pchelina, R.L. Stepaniuk, V.V. Tishchenko, V.Y. Shepitko, A.V. Shmonin, M.P. Yablonov and others. The problem of investigating criminal offenses related to solicitation for sexual purposes committed against children was not ignored. Certain aspects of the formulation and solution of this problem can be found in the scientific works by M.V. Voichyshena, M.M. Yefimov, V.O. Maliarova, T.P. Matiushkova, D.H. Palianychko, etc. However, these developments relate either to the general provisions of making criminological methodologies and their adaptation to practical activities for the detection and investigation of crimes and criminal offenses, or to the specifics of investigating certain types (groups) of criminal offenses against children and/or related to encroachment on sexual freedom and sexual inviolability of a person. A considerable number of scholarly works focus on the criminal law and criminological characterisation of solicitation of children for sexual purposes or so-called "grooming". Meanwhile, there is a lack of comprehensive research on the mechanisms of solicitation of children for sexual purposes and criminological recommendations for its pre-trial investigation. Therefore, the purpose of the present study is to prove the urgency of developing a methodology for investigating solicitation of children for sexual purposes and to outline its structure.

**2. Regulatory and legal framework for the protection of children against sexual exploitation and sexual abuse**

Due to their status as minor, children need special protection from their families, society and the state. This is emphasised not only at the national but also at the international level. Much attention is paid to children's health and psychosocial development. In this context, the particular social danger and destructive nature of sexual exploitation and sexual abuse against children is emphasised. In particular, according to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, "sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies, and that preventing and combating such sexual exploitation and sexual abuse

of children require international co-operation" (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007). Moreover, sexual exploitation and sexual abuse against a child has a traumatic effect on the child's psyche, thereby causing not only physical harm, but also disrupting the normal life relationships of the minors. In such a situation, the latter are filled with a sense of helplessness and inferiority, which in turn negatively affects the child's further spiritual development (Kozliuk, 2019).

For example, Article 23 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse emphasises the need to criminalise the offense of solicitation of children for sexual purposes. In particular, this provision suggests that the said unlawful act should be understood as an intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the legal age for sexual activities for the purpose of committing any of the offences such as engaging in sexual activities with a child under the legal age for sexual activities or producing child pornography, where this proposal has been followed by material acts leading to such a meeting (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007).

Ukraine, having acceded to the Convention, supplemented the Criminal Code of Ukraine with a relevant provision criminalising solicitation of children for sexual purposes (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2021). Moreover, the legislator clearly defines the age of the subject of the criminal offense of a child who may be a victim of the said offense, the purpose, methods and consequences of this offense. In particular, according to Art. 156-1 of the Criminal Code of Ukraine, solicitation of a child for sexual purposes is an offer of a meeting made by an adult, including with the use of information and telecommunication systems or technologies:

– to a person under the age of sixteen for the purpose of committing any sexual or lewd acts against him/her, if such an offer has been followed by at least one action leading to such a meeting;

– to a minor with the intent to involve him or her in producing child pornography, if after such an offer at least one action has been taken to ensure such a meeting (Criminal Code of Ukraine, 2001).

Furthermore, solicitation of children for sexual purposes may be committed repeatedly or by prior conspiracy by a group of persons, or against a minor (Criminal Code of Ukraine, 2001).

**3. Development of criminal legislation and investigation methodologies in the field of child protection from sexual exploitation and sexual abuse**

Novelties in the national criminal legislation are clearly justified and are caused by both the crime situation and the degree of development of information technologies and their place in modern society. According to H. Popov, the above amendments and additions are extremely relevant, as children spend more and more time on the Internet (studying, searching for interesting information or new friends, etc.) and the danger can take them by surprise, as strangers who establish friendly relations with children are not always who they say they are. Frequently, such acquaintances are aimed at "grooming," that is, establishing a trusting relationship with a child (including online) for the purpose of sexual abuse. In addition, the timeliness of criminalisation of solicitation of children for sexual purposes is also due to the high level of latency of such offenses, which in turn requires high professionalism from both law enforcement officials (for detection and response) and other professionals involved in pre-trial investigations to bring to justice those responsible for committing the above criminal offenses related to sexual abuse against children (Popov, 2020).

It should be noted that a favourable factor in the increase in cases of solicitation of children for sexual purposes was the transition of offenders to commit socially dangerous offenses. This situation has especially worsened during the COVID-19 pandemic, as the use of online platforms for distance learning and increased time spent online has increased, the use of various social networks and chat rooms has increased the risk for children to encounter cases of sexual exploitation, sexual abuse, and offenders lurking on the Internet (Kukovets, 2021). As a result, the possibility of establishing a trusting relationship with a child for the purpose of sexual abuse increased through online communication ("cyber grooming") (Symonenko, 2022).

Therefore, solicitation of children for sexual purposes is usually committed with the use of information and telecommunication technologies. That is, in fact, a combination of sexual and cybercrime features in the mechanism of committing the type of criminal offenses under study. Thus, it is important to investigate the mechanisms of solicitation of children for sexual purposes and to identify patterns of this

category of unlawful acts and, allowing them for, to formulate forensic recommendations for their timely detection and effective investigation. In other words, it is necessary to formulate a criminological description of solicitation of children for sexual purposes, to determine the specifics of organising their investigation and the tactics of certain procedural actions. All of this once again emphasises the practical need to develop a methodology for investigating solicitation of children for sexual purposes, as the mechanism of its commission is specific, and the very corpus delicti under Article 156-1 of the Criminal Code of Ukraine is relatively new. As a result, pre-trial investigation officers have no experience in detecting, disclosing and investigating them. For example, law enforcement officers are not always able to correctly determine an exhaustive list of circumstances to be clarified during the investigation of these unlawful acts and correctly define the limits of proof; predict the behaviour of participants in criminal proceedings; plan and organise pre-trial investigations; establish effective cooperation; etc. However, modern criminological science lacks any developments in making a methodology for investigating solicitation of children for sexual purposes.

The urgency of making a methodology for investigating solicitation of children for sexual purposes is also indicated by statistics from the Prosecutor General's Office, according to which 8 cases of solicitation of children for sexual purposes were recorded in January-June 2022. Furthermore, in 5 criminal proceedings, a person was notified of suspicion (Website of the Prosecutor General's Office, 2020). This information is noteworthy, especially given the fact that it was recorded under martial law in Ukraine. During the period of hostilities, due to a number of objective factors, control of the timing of a child's stay in the Internet space and the content to which he or she has access has decreased. In addition, a child's absorption in virtual life and virtual friends is a kind of psychological relief and distraction from current realities. At such times, a child is particularly psychologically and emotionally unstable and vulnerable.

**4. Conclusions**

Therefore, the vulnerability of children due to their age and emotional and psychological traits to intruders; the increase in cases of criminal offenses related to sexual abuse and sexual exploitation against children, especially with the use of cyberspace and telecommunications technologies; the development of information and telecommunication systems and technologies, their active implementation in criminal unlawful activities; the lack of established methods of investigating child sexual abuse and practical experience in detecting, solving and investigating these criminal offenses justifies the urgency of building a separate type of methodology, namely, the methodology for investigating solicitation of children for sexual purposes (Article 156-1 of the Criminal Code of Ukraine).

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# ЩОДО НАГАЛЬНОСТІ ПОБУДОВИ МЕТОДИКИ РОЗСЛІДУВАННЯ ДОМАГАНЬ ДИТИНИ ДЛЯ СЕКСУАЛЬНИХ ЦІЛЕЙ (СТ. 156-1 КК УКРАЇНИ)

**Анотація.** ***Мета.*** Метою статті є обґрунтування нагальності побудови методики розслідування домагань дитини для сексуальних цілей та окреслення її структури. ***Результати.*** У статті наголошено, що охорона дитинства в Україні є загальним пріоритетним завданням. Зазначено, що посягання на права, свободи і законні інтереси дитини, особливо, що пов'язані з її сексуальною свободою і сексуальною недоторканністю, є караними й обов'язково тягнуть за собою відповідальність. Підкреслено, що вік і рівень розвитку дитини впливають на критерії вибору її жертвою домагання, способи вчинення цього протиправного діяння та мотивацію особи злочинця. У період бойових дій через низку об'єктивних факторів знизився контроль за таймінгом перебування дитини в інтернет-просторі та контентом, до якого вона має доступ. Крім того, поглинання дитини віртуальним життям і віртуальними друзями є своєрідним способом психологічної розрядки та відволікання від нинішніх реалій. У такий час дитина є особливо психологічно й емоційно нестійкою та вразливою. Встановлено, що кримінальні правопорушення, скоєні стосовно дитини, відзначаються специфічним механізмом учинення та діяльністю з їх виявлення, розкриття та розслідування. Правоохоронці не завжди можуть правильно визначити вичерпний перелік обставин, що підлягають з'ясуванню під час розслідування вказаних протиправних діянь, і правильно окреслити межі доказування; спрогнозувати поведінку учасників кримінального провадження; розпланувати та організувати досудове розслідування; налагодити ефективну взаємодію тощо. ***Висновки.*** З'ясовано, що нагальність побудови окремої видової методики, а саме методики розслідування домагань дитини для сексуальних цілей (ст. 156-1 КК України), обґрунтовується вразливістю дитини через її вікові й емоційно-психологічні риси перед зловмисниками; зростанням випадків учинення кримінальних правопорушень, пов'язаних із сексуальним насильством і сексуальною експлуатацією, стосовно дітей, особливо з використанням кіберпростору та телекомунікаційних технологій; розвитком інформаційно-телекомунікаційних систем і технологій, їх активною імплементацією в кримінальну протиправну діяльність; відсутністю сформованих методик розслідування домагань дитини для сексуальних цілей і практичного досвіду з виявлення, розкриття та розслідування вказаних кримінальних правопорушень.

**Ключові слова:** криміналістична методика, сексуальна експлуатація, сексуальне насильство, методика розслідування, домагання дитини для сексуальних цілей, формування методики.

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# TYPICAL INVESTIGATIVE SITUATIONS DURING THE INVESTIGATION OF ILLEGAL HANDLING OF FIREARMS, AMMUNITION, EXPLOSIVES AND EXPLOSIVE DEVICES

**Abstract**. ***Purpose***. The purpose of the article is to characterise typical investigative situations during the investigation of illegal handling of firearms, ammunition, explosives, and explosive devices. ***Results***. The article identifies the following typical investigative situations: a person is detained while selling firearms (except for smoothbore hunting firearms) without a permit prescribed by law; firearms are found in a certain place or by a person without a permit prescribed by law; the purpose of the suspect's actions has not been established; firearms (except for smooth-bore hunting firearms) were found in the premises, a car belonging to a particular person, or discovered in connection with procedural actions in another criminal proceeding; Internet resources engaged in illegal activities related to the sale of firearms were identified; facilities adapted for the manufacture and repair of daggers, Finnish knives, brass knuckles or other cold steel without a permit provided for by law were found, but the identity of the offender(s) was not established. ***Conclusions***. When the investigative situation changes dramatically, the tactics of conducting investigative (search) actions should be adjusted accordingly. However, in any case, the investigator needs to collect the maximum number of key elements of the investigative situation within a short period of time, evaluate them, and make the right tactical decision. The relevant algorithm of an investigator's actions during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices is as follows: assess the initial investigative situation; set tactical tasks, put forward investigative leads and plan the start of a pre-trial investigation; plan and conduct individual investigative (search) actions and other measures to solve the tasks. Other investigative situations, which account for 3.1%, are not typical for illegal handling of firearms, ammunition, explosives and explosive devices and do not have a stable pattern of formation and cannot be the basis for a separate methodology for investigating such criminal offenses.

**Key words:** firearms, ammunition, explosives, explosive devices, investigative situation, criminal proceedings, investigation.

**1. Introduction**

Criminal proceedings are carried out in specific conditions of time, place, and situation, based on the actions and behaviour of persons involved in its scope and under the influence of other factors. This complex system of interrelationships constitutes the specific environment in which the investigator and other competent actors work (Piaskovskyi, Chornous, Ishchenko, Alieksieiev, 2015, p. 306).

The term "situation" (from the Latin word *situatio*) is interpreted as a combination of conditions and circumstances that create a certain environment, a position (Busel, 2001, p. 1102). In case of investigation of criminal offenses, this interpretation is reflected in the formulation of the concept of "investigative situation" by a significant number of criminalists (Lukianchykov, Lukianchykov, 2001).

Solving pre-trial investigation tasks using a situational approach is a widespread and practice-proven method of analytical and practical work of an investigator, which allows for all important circumstances of the event and proceedings at various stages of the investigation and directly apply scientific developments to its specific situations and conditions. The formation of typical investigative situations of pre-trial investigation of criminal offenses is based on the study of law application materials and is

a component of almost all criminological techniques (Novachuk, 2020, p. 82).

However, not only knowledge of certain algorithms of actions is the key to a successful pre-trial investigation of a criminal offense (Shevchenko, 2018). It is also necessary to analyse and provide a correct assessment of the investigative situation. Since these factors will further affect the correctness of the planned methodological techniques and the choice of making the right tactical decisions.

**2. Typical investigative situations during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices**

Relying on the study of investigative practice in the investigation of this category of criminal offenses, we can identify typical investigative situations that investigators usually face at the initial stage of the investigation.

*The first situation:* a person is detained while selling firearms (except for smooth-bore hunting firearms), ammunition, explosives, or explosive devices without a permit provided for by law.

For example: around 8 PM. On February 17, 2021, in Novohrad-Volynskyi, law enforcement officers detained a resident of Rivne region on the sale of a 9 mm Makarov pistol and six rounds of ammunition to a resident of Zhytomyr. After receiving money in the amount of UAH 26.5 thousand for the illegal sale, the offender was detained in accordance with Art. 208 of the CPC of Ukraine, the money, gun and ammunition were seized. Allegedly, a 31-year-old resident of a neighbouring region illegally purchased and stored firearms and ammunition, which he transported to Zhytomyr region for sale. The illegal activities in the field of illegal trafficking in firearms and ammunition were documented under the procedural supervision of the regional prosecutor's office, by investigators of the Main Department of the National Police in the region with the operational support of the SBU Office in the region (Site Zhytomyr info, 2021).

Typically, such situations occur during covert investigative (search) actions (hereinafter referred to as CISA) (operational procurement) and are one of the most favourable compared to others, since there is a purpose of committing a criminal offense (sale), the fact of sale itself, which is a mandatory element of a criminal offense, as well as the firearms that the person tried to sell. In addition, based on the analysis of criminal proceedings and court cases in this category of criminal offenses, pre-trial investigation bodies have a significant amount of information about the circumstances of the illegal act and a wide range of sources of evidence (witnesses, material evidence, ISA and CISA records, etc.).

The main task of the pre-trial investigation at the initial stage in the current situation is to consolidate the available data by conducting investigative (search) actions (ISA).

Investigative leads are put forward regarding the source of acquisition (receipt) of firearms (except for smooth-bore hunting firearms), ammunition, explosives, or explosive devices, the role of the suspect (whether he is a wholesale or retail seller, whether he is a thief of firearms); the identity of accomplices.

Experts in criminology give different interpretations to a criminological category of a lead. According to O.Ya. Baev, the criminological lead is a reasonable assumption of a professional participant in the procedural investigation of crimes about the nature and significance of individual facts, circumstances, their relationship with each other and in the aggregate, within the scope of such an examination, formulated with the aim of objectifying and optimising the achievement of the results of the latter and verified in criminal proceedings (Baev, 2003, p. 127).

In this context, we cannot agree with the perspective of I.F. Herasymov and L.Ya. Drapkin that the investigative lead is an approximate description, while the investigation plan is a directive, a mandatory order (Herasymov, Drapkyn, 1994, p. 231).

We believe that the most successful definition of the investigative lead was proposed by R.S. Belkin, who argues that it is an independent specific forensic tool (forensic method of investigation) used by the investigator to cognise and prove the objective truth in the investigation (Belkyn, 1993, p. 31). Alleged explanations of facts that are not related to the subject matter of proof cannot be considered leads (Belkyn, 1993, pp. 27-28).

To verify the relevant leads, various investigative measures may be conducted, in particular: 1) immediately after the detention of a person (suspect), a personal search is conducted, based on the results of which a relevant protocol is drawn up; 2) examination of the scene; 3) examination of the suspect, obtaining samples for expert examination (if necessary, hand washings, etc.); 4) examination of the suspect's clothing and items (bags, holsters, packages, etc.) that are on his or her person and contain firearms; 5) interrogation of the suspect; 6) search of the suspect's place of residence; 7) interrogation of police officers who participated in the detention, other witnesses to the detention, and attesting witnesses; 8) interrogation of witnesses at the place of residence, work (persons living together with the suspect, neighbours, work colleagues); 9) inspection of firearms and other objects (e.g., money)

related to the sale of these items; 10) appointment of forensic examinations to identify seized firearms (examination of explosive devices, fingerprinting, biological, examination of substances, materials and products, etc;) 11) giving operative officers separate orders to establish the suspect's connections; studying his or her personality and lifestyle, circle of acquaintances, in particular, checking whether the suspect was registered with a narcologist or psychiatrist (Chaplynskyi, Luskatov, Pyrih, Pletenets, Chaplynska, 2017, p. 134).

For example, simultaneously with the measures to neutralise or destroy an explosive device, the operational staff of the IOG, on behalf of the investigator, conduct an oral interview or interrogation of witnesses and eyewitnesses in order to identify the persons involved in this criminal event, and, in addition, establish the ways of approaching and leaving the place of detection of the explosive device. When communicating with eyewitnesses and witnesses, the operational staff should pay attention to the behaviour of persons at the time of detection of the explosive device or arrival of the IOG.

In addition, after the explosive device is detonated, its remains are packed in plastic bags and sealed. Up to 10 grams of the explosive used to destroy the explosive device are packaged separately as a sample for comparative study. After that, the method of destruction, the materials used, describes the remnants of the explosive device after the explosion, and photographs them are put on a record. The investigator should allow for the fact that forensically significant traces (e.g., handprints, traces of biological origin, etc.) may remain on the remains of the explosive device, so measures should be taken to identify, record and seize them (Polishchuk, 2013, p. 96).

*The second situation*: criminal proceedings are initiated after the discovery of firearms, ammunition, explosives and explosive devices that are located without a permit provided for by law in a certain place (premises, vehicle, locality, cache, parcel, etc.) or on a person; the purpose of the suspect's actions has not been established. The respective share of such situations in the total number of criminal proceedings initiated under Part 1 of Art. 263 of the Criminal Code of Ukraine is 44%.

For example, during a search of a building in Tverskyi dead-end in central Kyiv, police seized several firearms and grenades, and took more than a hundred people to the police station, the press service of the Kyiv police reported on Wednesday evening. "As soon as we received a report that two groups of people had gathered near the premises on Tverskyi dead-end, additional law enforcement reserves were sent to ensure law and order and conduct priority investigative actions. In particular, as a result of a search of the premises, law enforcement officers seized several firearms and grenades, which were sent for examination. Their origin and purpose of storage will be established. In addition, more than a hundred people have been invited to the territorial police department and are being questioned," said Kyiv Police Chief Andrii Kryshchenko (Radio Liberty website, 2021). Or another case that recently occurred in Sumy: police officers, together with representatives of public organisations, while patrolling the city, found a man who, upon seeing law enforcement officers, became visibly nervous and changed direction. During a cursory inspection, a Makarov pistol and ammunition were found on his person. At the same time, the man did not have the appropriate permit to keep firearms. The man was taken to the police station, and the weapon and ammunition were seized (Social news site, 2021).

The tactical tasks are: to establish the circumstances of the incident and the persons involved in the commission of the criminal offense; to find material traces proving the involvement of specific individuals in the commission of illegal handling of firearms, ammunition, explosives and explosive devices; to search for persons who witnessed the actions of the perpetrators. The basis for the formation of an investigation algorithm for this situation should include actions and measures that facilitate the identification of persons involved in the commission of the criminal offense under investigation.

The most effective primary and urgent investigative measures and other procedural measures include: inspection of firearms; inspection of the scene; inspection of objects and documents; appointment and conduct of forensic examinations; checking the records of the detected firearms; interrogation of witnesses (citizens, officials); search and identification of a person by signs or traces left behind; identification of persons, objects; taking information from transport telecommunication networks and electronic information systems, etc. (Andrieiev, 2020; Shepitko, Konovalova, Zhuravel, 2016).

In such cases, investigative leads should be aimed primarily at confirming or refuting the belonging of the detected firearms to the person who was detained, as well as at establishing the purpose and motives for the criminal offense (Bandurina, 2013).

Options for the main investigative leads may include the following: firearms, ammunition, explosives and explosive devices belong to the detainee or another person; the criminal offense was committed with or without the purpose of sale.

In order to initially verify these investigative leads, one of the first steps should be to interrogate the suspect (obtain explanations), in particular, in order to be able to gradually verify his or her testimony. In addition to the list of investigative measures to be taken in the first investigative situation, it is also necessary to:

1) interrogate persons who can confirm or refute the testimony of the detainee;

2) interrogate the persons identified by the detainee as the owners of the seized firearms, ammunition, explosives and explosive devices;

3) interrogate family members, relatives, neighbours, and other close associates of the detainee regarding the purpose of acquisition of firearms, ammunition, explosives, and explosive devices by the suspect;

4) inspect and seize firearms with the involvement of an appropriate specialist;

**3. Typical investigative situations during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices discovered in connection with investigative (search) actions or covert investigative (search) actions in other criminal proceedings**

*The third situation*: firearms (except for smooth-bore hunting firearms), ammunition, explosives and explosive devices were found in a room or car belonging to a particular person and discovered in connection with the conduct of ISA (inspection of the scene, search, etc.) or CISA in another criminal proceeding.

For example, two men, aged 34 and 37, were involved in the illegal appropriation of vehicles. In Ternopil, an Iveco truck was stolen from a new building on Stepan Budnyi Street. Less than a month later, the thieves were active in the Kremenets region. A Volkswagen Passat CC was stolen from a private service station in the village of Velyki Mlynivtsi. Law enforcers managed to detain the persons involved in the illegal appropriation of vehicles. Investigators served them a notice of suspicion of committing a criminal offense under Part 2 of Art. 289 of the Criminal Code of Ukraine." During the urgent ISA at the place of residence of one of the suspects, a stolen car with a GPS jamming device on the roof was found. Additionally, during the inspection of the apartment, the police found and seized drugs, technical passports for various cars and 13 car keys, a GPS tracker, a vehicle locking device, a revolver, and an object similar to a Kalashnikov rifle. The police also managed to locate the Iveco truck stolen in Ternopil. The criminals hid it in the village of Ikva, Kremenets district. During the authorised search, the car was seized. By the decision of the Kremenets District Court, both suspects were subject to a measure of restraint in the form of detention. The pre-trial investigation is ongoing. Police are checking the suspects for involvement in similar crimes in the region, according to the Ternopil regional police communication department (Shpikula, 2021).

The circumstances of the discovery of the firearms indicate the presence of signs of a criminal offense under Art. 263 of the Criminal Code of Ukraine. The relevant investigative situation is in 15% of criminal proceedings.

The primary tactical tasks of the investigation in this situation are to establish the following circumstances: search for evidence that incriminates or exonerates the suspect; verification of the person's alibi and the reliability of his or her testimony (Volobuiev, Danshyn, Ishchenko, 2018). In this case, investigative leads should be put forward regarding the ownership of the seized firearms by a particular person (group of persons), the purpose of their storage, and sources of acquisition. To verify and develop relevant investigative leads, it is necessary to:

1) identify and interrogate persons living (working) in the premises that were inspected and who had access to it, in particular the owner of the car or persons using it;

2) identify, among a certain circle, persons suspected of committing illegal handling of firearms, ammunition, explosives or explosive devices, if necessary, to inspect their personal belongings and, if necessary, to conduct an additional urgent search in places related to the suspects;

3) identify and interrogate other witnesses;

4) give separate instructions to operational staff to establish possible connections of the suspect, study his or her personality, circle of acquaintances, etc;

5) inspect the detected firearms with the obligatory involvement of specialists (explosive experts);

6) appoint an appropriate forensic examination of the seized firearms.

*The fourth situation*: Internet resources engaged in illegal activities related to the sale of firearms, ammunition, explosives, or explosive devices have been identified.

This situation stipulates the following leads: a) the Internet resource was created for the sake of curiosity (fun); b) the Internet resource was created by professional programmers ("hackers") only to make a profit for the use of other persons; c) the Internet resource provides a channel for the sale (purchase) of firearms, ammunition, explosives, or explosive devices.

In order to verify these versions, it is necessary to conduct a set of ISA and CISA, including by cybercrime units with the possible involvement of specialists from other law enforce-

ment agencies, aimed at: identifying persons, who have illegally acquired or sold firearms, ammunition, explosives, or explosive devices through the use of an Internet resource; identifying the persons who have created the Internet resource; establishing the purpose of creating the Internet resource; establishing the organisational and functional structure, etc.

Next, the investigator shall: conduct CISA in order to collect and record evidentiary information (observation of a person, thing or place (Article 269 of the CPC of Ukraine); take information from transport telecommunication networks (Article 263 of the CPC of Ukraine); take information from electronic information systems (Article 264 of the CPC of Ukraine); determine the necessity and expediency of control over the commission of a crime (Article 271 of the CPC of Ukraine) in the form of: operational purchase or controlled delivery; interrogation of Internet users and persons involved in the creation of an Internet resource; effective searches of suspects (Tarasenko, 2017; Kovalenko, 2006).

*The fifth investigative situation:* facilities adapted for the manufacture and repair of daggers, Finnish knives, brass knuckles or other cold steel without a permit provided for by law were found, but the identity of the offender(s) was not established.

This situation stipulates the main lead: the owner of the facility, his or her family members, relatives, friends, or colleagues use the facilities to deliver, store, manufacture, or repair daggers, Finnish knives, brass knuckles, or other cold steel.

To work out this version, it is necessary to carry out the following investigative and other procedural actions and organisational measures:

– to offer the owner to hand over the items or provide temporary access to the items and documents;

– to inspect all seized items and documents;

– to interrogate the owner of the object, his or her family members, relatives, friends or colleagues who had access to the object;

– to detect and take fingerprints on objects and documents;

– to appoint forensic examinations;

– to give a written order to operational officers, etc. (Tarasenko, 2017, p. 115).

Regardless of the investigative situations of the initial stage of the investigation, the investigator's performance at the next stage is related not only to clarifying the actual circumstances of the event, but also to further collecting the necessary evidence in criminal proceedings. In this regard, the investigative situations inherent in this stage of criminal investigation are as follows: evidence obtained that indicates the person's non-involvement in the commission of a criminal offense; information obtained about accomplices in the illegal handling of firearms, ammunition, explosives, or explosive devices; the suspect continues to insist on his or her innocence of the criminal offense and refuses to cooperate with the pre-trial investigation; the suspect has changed his or her position regarding the criminal offense, admits guilt, and cooperates with the investigation.

In view of this, in any investigative situation, the following circumstances are subject to clarification (as confirmed by the results of the survey of law enforcement officers): the origin of the seized objects (belonging to firearms, ammunition, explosives, or explosive devices) – 100%; their belonging to a person ("owner") – 100 %; whether the person had the appropriate permit to handle certain firearms – 62%; how the firearms were acquired – 58%; the purpose of their acquisition and storage – 73%; the likelihood of using these firearms for criminal purposes (establishing involvement in a number of armed criminal offenses) – 65%; establishing channels for firearms to enter the illicit trafficking – 48%; identifying the range of persons whose actions contributed to this – 32 %.

We believe that such circumstances are a certain guideline in the investigator's cognitive activity, which affects the choice of the direction of investigation.

**4. Conclusions**

Therefore, allowing for the materials of investigative and judicial practice, we have identified the most common investigative situations. Of course, this list is not exhaustive and may vary depending on the circumstances arising in criminal proceedings. When the investigative situation changes dramatically, the tactics of conducting ISA should be adjusted accordingly. However, in any case, the investigator needs to collect the maximum number of key elements of the investigative situation within a short period of time, evaluate them, and make the right tactical decision. The relevant algorithm of an investigator's actions during the investigation of illegal handling of firearms, ammunition, explosives and explosive devices is as follows: assess the initial investigative situation; set tactical tasks, put forward investigative leads and plan the start of a pre-trial investigation; plan and conduct individual ISA and other measures to solve the tasks. Other investigative situations, which account for 3.1%, are not typical for illegal handling of firearms, ammunition, explosives and explosive devices and do not have a stable pattern of formation and cannot be the basis for a separate methodology for investigating such criminal offenses.

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# ТИПОВІ СЛІДЧІ СИТУАЦІЇ ПІД ЧАС РОЗСЛІДУВАННЯ НЕЗАКОННОГО ПОВОДЖЕННЯ ЗІ ЗБРОЄЮ, БОЙОВИМИ ПРИПАСАМИ, ВИБУХОВИМИ РЕЧОВИНАМИ ТА ВИБУХОВИМИ ПРИСТРОЯМИ

**Анотація**. ***Мета.*** Метою статті є характеристика типових слідчих ситуацій під час розслідування незаконного поводження зі зброєю, бойовими припасами, вибуховими речовинами та вибуховими пристроями. ***Результати.*** У статті виокремлено такі типові слідчі ситуації: особу затримано під час збуту предметів озброєння (крім гладкоствольної мисливської зброї) без передбаченого законом дозволу; виявлено предмети озброєння у певному місці або особи без передбаченого законом дозволу; мету дій підозрюваного не встановлено; предмети озброєння (крім гладкоствольної мисливської зброї) були знайдені в приміщенні, автомобілі, що належить конкретній особі, або виявлені у зв'язку з проведенням процесуальних дій в іншому кримінальному провадженні; встановлено Інтернет-ресурси, які займаються незаконною діяльністю, що пов'язана із продажом предметів озброєння; виявлено об'єкти, пристосовані для виготовлення та ремонту кинджалів, фінських ножів, кастетів чи іншої холодної зброї без передбаченого законом дозволу, але особу злочинця (-ців) не встановлено. ***Висновки.*** Під час різкої зміни слідчої ситуації повинно бути відповідно скориговано і тактику проведення слідчих (розшукових) дій. Однак у будь-якому випадку слідчому необхідно протягом незначного проміжку часу зібрати максимум ключових елементів слідчої ситуації, оцінити їх та прийняти правильне тактичне рішення. Відповідний алгоритм дій слідчого під час розслідування незаконного поводження зі зброєю, бойовими припасами, вибуховими речовинами та вибуховими пристроями виглядає так: оцінка вихідної слідчої ситуації; постановка тактичних завдань, висунення слідчих версій та планування початку досудового розслідування; планування та проведення окремих слідчих (розшукових) дій та інших заходів для вирішення поставлених завдань. Інші слідчі ситуації, частка яких становить 3,1%, не типові для незаконного поводження зі зброєю, бойовими припасами, вибуховими речовинами та вибуховими пристроями й не мають стійкої закономірності утворення і не можуть бути покладені в основу створення окремої методики розслідування таких кримінальних правопорушень.

**Ключові слова:** зброя, бойові припаси, вибухові речовини, вибухові пристрої, слідча ситуація, кримінальне провадження, розслідування.

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# CRIMINOLOGICAL CLASSIFICATION OF CORRUPTION CRIMES

**Abstract.** ***Purpose.*** The purpose of the study is to establish the place and role of the criminological classification of corruption crimes in making group, type and subtype criminological methods and identify the criteria for classifying corruption crimes. ***Results***. The article emphasises that in order to facilitate the investigation of corruption crimes and to make not only group but also specific individual criminological methodologies and micro methodologies, a criminological classification of relevant criminal offenses is required. It is proved that criminological classification is a tool for identifying specific features of unlawful acts which are of importance in determining the boundaries and subject matter of proof, choosing the means of proof and organising their pre-trial investigation. It is noted that the criminological classification enables to distinguish certain types of unlawful acts according to certain criteria, allowing for not only the peculiarities of the criminal law regulation of the offense but also its mechanism. It is emphasised that the criminological classification of corruption crimes contributes to the specification, clarification of the peculiarities of their criminological characteristics and the development of flexible and situational criminological methodologies. ***Conclusions***. It is found that the criminological classification of corruption crimes combines two criteria: criminal legal and criminological one. It is proposed that in order to streamline the activities of making a methodology for investigating corruption crimes and their varieties, these unlawful acts should be classified according to the following criteria: an actor, the purpose, a subject matter, a situation, the degree of organisation and the scale of criminal unlawful activities. Moreover, the formation of a methodology for investigating corruption crimes, including those combined with obtaining undue advantage, is impossible without a preliminary criminological classification of these criminal offenses. The latter is a tool for identifying specific features of unlawful acts which are of importance in determining the boundaries and subject matter of proof, for choosing the means of proof and organising their pre-trial investigation.

**Key words:** criminological methodology, corruption, corruption crimes, criminological classification, criterion, investigation methodology, formation of methodology.

## 1. Introduction

Traditional corruption in its various manifestations and areas remains one of the most acute problems in Ukraine to this day. Corruption adversely affects the exercise of constitutional human and civil rights, social transformations and economic development, causes distrust in state institutions, and creates a negative image of Ukraine in the international arena (Dudorov, Ryzak, 2015). Accordingly, corruption is a negative phenomenon that is constantly being "fought" at the national and international levels. In particular, criminal liability is provided for these unlawful acts.

However, in order to facilitate the investigation of corruption crimes and to make not only group but also specific individual criminological methodologies and micro methodologies, a criminological classification of relevant criminal offenses is required.

The issue of criminological classification of criminal offenses and its use in making individual criminological methodologies has been repeatedly studied from various aspects by R.S. Bielkin, A.F. Volobuiev, V.F. Yermolovych, V.A. Zhuravel, O.N. Kolesnychenko, V.O. Konovalova, O.V. Pchelina, R.L. Stepaniuk, V.Y. Shepitko, A.V. Shmonin, M.P. Yablokov, and others.

However, these scientific works define the role and place of the criminological classification of crimes in the structure of criminological methodology, as well as offer a criminological classification of certain groups of criminal

offenses, such as official crimes, budget crimes, economic crimes, etc. In addition, a large number of scientific works consider the criminological classification of corruption criminal offenses, but there are no comprehensive studies of the meaning and criteria for the criminological classification of corruption crimes.

Therefore, the purpose of the study is to establish the place and role of the criminological classification of corruption crimes in making group, type and subtype criminological methods and identify the criteria for classifying corruption crimes.

**2. The legal and regulatory framework for the fight against corruption crimes**

The law on criminal liability defines the concept of "corruption criminal offenses" and their elements. For example, according to the note to Art. 45 of the Criminal Code of Ukraine, "following the Code, corruption criminal offences are criminal offences under Articles 191, 262, 308, 312, 313, 320, 357, 410, if committed through abuse of office, as well as criminal offences under Articles 210, 354, 364, 364-1, 365-2, 368-369-2 of this Code" (Criminal Code of Ukraine, 2001). However, the legislator does not systematise corruption crimes.

Moreover, criminological science is interested in the criminological classification enabling to distinguish certain types of unlawful acts by specific criteria, allowing for not only the peculiarities of the criminal law regulation of the offense but also its mechanism. Such classification makes it possible to determine the type (group) of criminal offenses, including corruption crimes, in the construction of appropriate criminological methodology. In addition, the criminological classification of corruption crimes allows specifying the content of their criminological characteristics (Kazanska, 2014, p. 171). Therefore, undeniably, the criminological classification of criminal offenses is organically included in the structure of criminological methodology, because it is impossible to build a system of individual criminological methodologies without a logically sound classification of crimes (Shchur, 2010, p. 337).

Moreover, the criminological classification of criminal offences, including corruption offences, is aimed at refining and developing methodologies of investigation of specific categories of crimes, contributing to the specification, clarification of the peculiarities of their criminological characteristics and the development of flexible and situational criminological methodologies (Tishchenko, 2003; Lysenko, 2006; Nikitina-Dudikova, 2021). After all, the success of the investigation of any crime usually depends on the investigator's ability to understand not only the criminal legal but also its criminological essence (Zapototskyi, 2016, p. 35).

It should be noted that the criminological classification of corruption crimes combines two criteria: criminal legal and criminological one. Therefore, we consider it necessary to highlight the positions of scientists on the criminological classification of these unlawful acts.

For example, according to D.H. Mykhaylenko, an important typology of corruption crimes is their division into two fundamentally different groups according to the criterion of the corruption relations mechanism: unilateral and bilateral corruption crimes. Unilateral corruption crimes are those that can be committed by the actor of corruption alone without the mandatory voluntary participation of other persons. Bilateral corruption crimes include such corruption crimes that can be committed only with the mandatory voluntary participation of several actors of corruption (Mykhailenko, 2013, p. 10).

**3. Classification of corruption crimes**

According to A.V. Savchenko's study on the problems of criminal legal understanding of corruption crimes, corruption crimes can be classified according to several criteria:

– by the sequence of grouping corruption crimes in the Note to Art. 45 of the Criminal Code of Ukraine and by the fact whether or not they have been committed through abuse of office (corruption crimes committed through abuse of office; certain corruption crimes in the field of economic activities, against the authority of state authorities, local governments and associations of citizens, as well as in the field of official and professional performance related to the provision of public services);

– by the generic object of the offense (corruption crime against property; corruption crime in the field of economic activities; corruption crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors; corruption crimes against the authority of state authorities, local self-government bodies and associations of citizens; corruption crimes in the field of official and professional performance related to the provision of public services; corruption crime against the established order of military service/corruption military crime;

– by actors (those committed by: officials of legal entities of public law; officials of legal entities of private law; persons who are not public officials, local self-government officials, but perform professional activities related to public services; employees of an enterprise, institution or organisation who are not officials or persons working for the benefit of an enterprise, insti-

tution or organisation; general actors; military officials);

– by subject matter (with and without subject matter);

– by purpose (those that are aimed at obtaining any undue advantage and those that are not) (Savchenko, 2015, pp. 19-20).

We fully support the above criminological classification of corruption crimes. At the same time, we believe that it can be supplemented with the following criteria:

a) by the setting of commission, corruption crimes can be committed in agriculture, hunting and related services; forestry and logging; fisheries; mining and quarrying; processing industry; supply of electricity, gas, steam and air conditioning; water supply, sewerage, waste management; construction; wholesale and retail trade, repair of motor vehicles and motorcycles; transport, warehousing, postal and courier activities; temporary accommodation and catering; information and telecommunications; financial and insurance activities; real estate transactions; law, accounting, architecture and engineering, technical testing and research; administrative and support services; public administration and defence, compulsory social insurance; education; health care and social assistance; art, sports, entertainment and recreation; etc;

b) by the degree of organisation of criminal unlawful activities, corruption crimes can be committed by an individual, a group of persons, an organised group or a criminal organisation;

c) by the actor, corruption crimes are divided into those committed by officials; officials holding a responsible position; officials holding a particularly responsible position; persons authorised to perform the functions of the state or local self-government.

Moreover, we believe that corruption crimes should be classified according to the following criterion: the scale of criminal unlawful activities. According to this criterion, criminal technologies and individual crimes should be distinguished. In addition, the technologies of criminal enrichment include the main and subordinate crimes (Pchelina, 2014, p. 270).

**4. Conclusions**

Therefore, the formation of a methodology for investigating corruption crimes, including those combined with obtaining undue advantage, is impossible without a preliminary criminological classification of these criminal offenses. The latter is a tool for identifying specific features of unlawful acts which are of importance in determining the boundaries and subject matter of proof, for choosing the means of proof and organising their pre-trial investigation. In order to streamline the activities of making a methodology for investigating corruption crimes and their varieties, these unlawful acts should be classified according to the following criteria: an actor, the purpose, a subject matter, a situation, the degree of organisation and the scale of criminal unlawful activities.

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## КРИМІНАЛІСТИЧНА КЛАСИФІКАЦІЯ КОРУПЦІЙНИХ ЗЛОЧИНІВ

**Анотація.** ***Мета.*** Метою дослідження є встановлення місця та ролі криміналістичної класифікації корупційних злочинів у разі формування групових, видових і підвидових криміналістичних методик, виокремлення критеріїв класифікації корупційних злочинів. ***Результати.*** У статті наголошено, що для полегшення діяльності з розслідування корупційних злочинів і формування не тільки групових, а й видових окремих криміналістичних методик і мікрометодик потрібно здійснити криміналістичну класифікацію вказаної категорії кримінальних правопорушень. Обґрунтовано, що криміналістична класифікація є інструментом виокремлення специфічних рис протиправних діянь, які відіграють важливу роль у разі визначення меж і предмета доказування, обранні засобів доказування й організації їх досудового розслідування. Зазначено, що криміналістична класифікація дозволяє за певними критеріями виокремити певні види протиправних діянь з урахуванням не тільки особливостей кримінально-правової регламентації правопорушення, а і його механізму. Підкреслено, що криміналістична класифікація корупційних злочинів сприяє деталізації, з'ясуванню особливостей їх криміналістичної характеристики та розробленню гнучких і ситуативно пристосованих криміналістичних методик. ***Висновки.*** Встановлено, що кримінальні правопорушення, скоєні стосовно дитини, відзначаються специфічним механізмом учинення та діяльністю з їх виявлення, розкриття та розслідування. З'ясовано, що криміналістична класифікація корупційних злочинів поєднує у собі два критерії – кримінально-правовий і криміналістичний. Запропоновано з метою упорядкування діяльності з побудови методики розслідування корупційних злочинів і їх різновидів здійснювати класифікацію згаданих протиправних діянь за такими критеріями: суб'єктом, метою, предметом, обстановкою, ступенем організації та масштабом кримінальної протиправної діяльності. Також формування методики розслідування корупційних злочинів, зокрема поєднаних із отриманням неправомірної вигоди, неможливе без попередньої криміналістичної класифікації вказаних кримінальних правопорушень. Остання є інструментом виокремлення специфічних рис протиправних діянь, які відіграють важливу роль у разі визначення меж і предмета доказування, обранні засобів доказування й організації їх досудового розслідування.

**Ключові слова:** криміналістична методика, корупція, корупційні злочини, криміналістична класифікація, критерій, методика розслідування, формування методики.

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# PECULIARITIES OF THE PREPARATORY STAGE OF INSPECTION WHEN INVESTIGATING CRIMINAL OFFENSES RELATED TO TRAFFICKING OF POISONOUS SUBSTANCES

**Abstract.** ***The purpose*** of the article is to study the peculiarities of the preparatory stage of inspection and establish its significance for the further conduct of the specific investigative (search) action during the investigation of criminal offenses related to the illegal circulation of poisonous substances. ***Research methods.*** The work was performed using general scientific and special methods of scientific knowledge, such as: dialectical and formal-logical ones, analysis and synthesis, generalization, comparison. ***Scientific novelty.*** The article examines the concept of the preparatory stage of inspection and covers its essence, gives the peculiarities of its conduct, taking into account the specific nature of criminal offenses related to illegal circulation of poisonous substances. Inspection stages have been specified, and their significance for the investigation has been partially elucidated: attention is paid to the preparatory stage because all subsequent actions during investigative (search) activity depend on it. The algorithm for organizational actions of the investigator before going to the scene, given the initial information about the criminal offense, is clarified, and actions of the patrol police before arrival of the investigative team are characterized. Emphasis is placed on the measures and means of ensuring the personal safety of the investigative team and actions to preserve the investigative information during and after elimination of negative consequences of the event. The algorithm of actions of the investigator and the CSI team upon arrival at the place of inspection and collection of forensically significant information, keeping the rules and procedures for working with poisonous substances, is presented. ***Conclusions.*** As a result of the conducted research, specific nature and peculiarities of the preparatory stage of inspection, which plays an important role in collecting physical evidence in these criminal offenses, have been determined. It was established that before the inspection's beginning, all its participants should strictly follow the defined algorithm of actions and work harmoniously in close cooperation. It was concluded that the neglect of measures and means of personal protection can harm the life or health of inspection participants.

**Key words:** inspection, preparatory stage, safety measures, personal protective equipment, degassing, crime scene investigation team, patrol police.

## 1. Introduction

The initial stage of the investigation of illegal acts involving poisonous substances requires a specific study, since it is characterized by the relative short duration, intensity and urgency of investigative (search) actions and intelligence operations, limited information about the criminal offense and perpetrator (Kuznietsova, 2008, p. 4).

At the initial stage of investigating criminal offenses related to the trafficking of poisonous substances, inspection matters since it is a point when the countdown begins to terminate the consequences of such acts, collect evidence and plan further investigation. The effectiveness of inspection directly depends on the close interaction between the units involved, the awareness of a crime scene investigation (CSI) team about the actions before departure and upon arrival at the scene, and many other essential factors and particularities.

In forensic science, many scholarly contributions are devoted to the inspection tactics, in particular by V.P. Bakhin, H.I. Hramovych, V.O. Konovalov, N.I. Klymenko, V.S. Kuzmichov, Ye.I. Makarenko, H.A. Matusovskyi, M.I. Porubov, M.V. Saltevskyi, K.O. Chaplynskyi, Yu.M. Chornous, V.Yu. Shepitko,

I.M. Yakimov, and others. Despite a lack of works elucidating the essence and content of inspection, the issue of its tactics during the investigation of criminal offenses related to the trafficking of poisonous substances is still unsettled and requires scholarly inquiry.

The article's purpose is to study particularities of the preparatory stage of inspection and establish its significance for the further conduct of the relevant investigative (search) action when investigating criminal offenses related to the trafficking of poisonous substances.

**2. The concept and content of the preparatory stage of inspection during the investigation of criminal offenses related to poisonous substances**

During the development of forensic science, a well-established structure of investigative (search) actions has been formed, and inspection is no exception. In textbooks on forensic science, there are three stages of inspection, namely: 1) preparatory; 2) operational; 3) final (Piaskovskyi, Chornous, Samodin, 2020, p. 416). Each stage plays its role in collecting forensically relevant information for the effective investigation of criminal offenses under consideration.

Among the above stages of inspection, amidst the investigation of criminal offenses related to the trafficking of poisonous substances, preparation for its conduct is critical as after receiving the initial information about such a criminal offense, a set of actions and measures should be taken to eliminate the harmful effects of criminal actions, ensure the safety of persons, animals, the environment, etc., that will affect the further detection of material evidence, prevention of its loss and preservation for subsequent expert examination.

The preparatory stage of all types of inspection begins when the investigator makes the specific decision. According to O.V. Zarubenko, such a decision is due to the ability to solve the tasks facing the pre-trial investigation as quickly and fully as possible (Zarubenko, 2012, p. 373).

Thus, inspection during the investigation of criminal offenses under consideration does not tolerate delay and, first of all, is associated with the cessation of the spread of poisonous substances – the elimination of adverse effects of a criminal event and maintaining the security of citizens, animals, and the environment.

The preparatory stage of inspection is long enough, since it requires some organizational actions. Therefore, it is essential: 1) to come up with participants to inspection; 2) to determine time and place of its conduct; 3) to ensure the safety of all participants; 4) to involve the necessary specialists (a chemist to deal with a poisonous substance during inspection; a forensic scientist to work with other traces; a fire safety engineer – if there was a fire, etc.); 5) to prepare photo/video software; 6) to maintain interaction with other units during inspection (solving the issue of transportation of poisonous substances and their disposal), as well as other organizational issues.

The above general recommendations relate to the preparatory stage of all types of inspection when investigating criminal offenses concerned. However, a crime scene investigation is more complex and cumbersome, hence we will specify the algorithm of actions at the preparatory stage for the subjects holding it.

**3. Algorithm of the investigator's actions before visiting the scene of an event related to the trafficking of poisonous substances**

As a rule, during the investigation of any criminal offense, the preparatory stage of crime scene examination is conditionally divided into two independent stages: the investigator's actions before visiting the scene and directly at the scene (Piaskovskyi, Chornous, Samodin, 2020, p. 416). We share such a division and consider it correct from the perspective of tactics, as that division contribute to performing all the tasks assigned to the investigator at minimum expenditures of forces and means.

Since poisonous substances are classified as chemical, all actions of police officers taken at the preparatory stage of inspection must comply with the requirements set out in the Instruction on the procedure for actions of police bodies (units) in case of detection of radioactive, chemical and nuclear materials or receiving information about violations of the rules or illegal handling of them, which was approved by the Order of the Ministry of Internal Affairs of Ukraine No. 754 dated 06.09.2017 (hereinafter referred to as the Instruction).

According to para. 3 of the Instruction, when police officers receive a notification of illegal handling of poisonous substances or direct detection of poisonous substances, they shall immediately take measures to ensure individual and public safety, prevent further contact of people and animals with them, and inform a duty officer of the police body (unit) about the relevant fact (Maksymchuk, Sakovskyi, Sura, Furman, 2019, p. 36).

However, as K.O. Krushelnytska aptly points out, a police officer, being in a situation which requires physical presence in the zone of action of chemical (poisonous) substances, is not able to ensure individual and public safety. One does not have expertise and practical skills in using personal protective equipment and is not aware of an algorithm for removing contaminated clothing, sanitizing exposed skin

and mucous membranes, etc. (Krushelnytska, 2022, p. 217). Therefore, at the present stage of inspection, a set of measures is carried out and the forces and means of various units of not only the National Police but also other bodies are involved.

After receiving a notification of a criminal offense related to the illicit trafficking in poisonous substances, the duty officer shall: (Nakaz MVS Ukrainy vid 06.09.2017, No. 754):

1) register the notification in the unified accounting log and report the event to the head of the police body (unit), his deputy – the head of the investigative department (division), the deputy for preventive activities, the head of the patrol police response sector, the person responsible for the police body (unit), and the senior duty officer (para. 6 of the Instruction);

2) ensure public safety and order and fencing of the scene before the arrival of emergency rescue services, send to the scene police squads and a CSI team equipped under paragraph 6 of Section 2 of the Instruction and, if necessary, an emergency (ambulance) team;

3) inform the territorial bodies of the State Emergency Service or their subordinate units, as well as the territorial bodies (units) of the Security Service of Ukraine, the State Environmental Inspectorate, the State Service of Ukraine on Food Safety and Consumer Protection, the State Nuclear Regulatory Inspectorate, local state administrations and local self-government bodies (hereinafter referred to as the interested state authorities) under the current legislation.

In addition, the chief inspector of the duty unit of the Department of Analytical Support and Operations of the National Police of Ukraine (hereinafter referred to as ASO), having received a notification (electronic card) about the specific criminal offense, shall inform a management personnel of the central police authority, ASO, and the structural unit of the central police authority entrusted with ensuring radiation, chemical and nuclear safety, and the interested public authorities.

In case of receiving information about the detection of poisonous substances in a large area or in places of mass presence of people, the duty officer of the National Police of Ukraine shall call the SES units to the scene to organize and take actions following the current legislation.

The above demonstrates that investigating such a criminal offense requires special treatment immediately after receiving a notification of its commission. Hence, different units and services are informed about a criminal offense, a set of actions aimed at ensuring safety and eliminating the harmful consequences of the offense are taken, etc.

As N. I. Klymenko notes, when preparing for the scene visit, the investigator shall obtain as much data about the event and its eyewitnesses as possible, organize the protection of the scene, take measures to preserve traces and other material evidence, and keep the situation stable (Klymenko, 2005, p. 13). Moreover, it is crucial to eliminate the negative consequences of the event, that is, poisonous substances and their spread.

Based on the analysis of literary sources, we identified the algorithm of the investigator's actions before visiting the scene of an event related to the illicit trafficking in toxic substances. In particular, the investigator shall:

1) send a patrol police detachment to the scene to ensure the safety of others and protect the scene before the arrival of a CSI team;

2) take measures to eliminate the harmful consequences of such a criminal offense, that is, send the SES, ambulance, etc. to the scene;

3) ensure the presence of eyewitnesses of such a criminal offense before their arrival;

4) make proposals for additional staff of the investigation team, namely, engage relevant specialists in inspection and ensure their arrival (a chemist to deal with a poisonous substance during inspection; a forensic scientist to work with other traces; a fire safety engineer – if there was a fire, etc.);

5) equip CSI members in accordance with para. 6 of Section 2 of the Instruction, as follows: a set of overalls and personal protective equipment, in particular: a) skin, respiratory and visual protection (bathrobe, shoe covers, respirator (gas mask) or disposable gauze mask, rubber gloves, safety glasses and chemical goggles, etc.); b) warning devices for the detection and preliminary identification of chemical (poisonous) materials, rapid tests for the identification of hazardous substances certified in accordance with the relevant procedure;

6) prepare software for video/photo recording of inspection;

7) maintain interaction with other units during inspection (solving the issue of transportation of toxic substances, their neutralization, disposal) and many other organizational issues.

All of the above are necessary measures and means of an effective inspection. However, an important issue at the inspection's preparatory stage is to promote the personal safety of CSI members since they may come into contact with poisonous substances during scene examination, personal inspection, and vehicle inspection when detecting clandestine laboratories which work with chemicals, etc.

We agree with V. V. Zelenko, N. Ie. Piriatinska, M. I. Lytvynenko et al. that personal protective equipment and clothing can serve

as a barrier and minimize the effect of aerosols, spray, and accidental inoculation. The choice of protective equipment and clothing depends on the nature of the work on hand. Before leaving the inspection site, it is necessary to remove protective clothing and wash hands (Zlenko, Piriatinska, Lytvynenko, 2015).

Such means and measures depend on the type of a criminal offense, its scale and other circumstances. For example, if a person has been detained at a checkpoint, who tried to cross the state border and illegally transport metal mercury in the amount of eight kilograms in sealed rubber pears, then it will be enough to wear a respirator, rubber gloves and shoe covers to inspect and remove such a poisonous substance. However, if there was a leakage of a poisonous substance into the environment, and the scene is large-scale, then one cannot do without overalls and other means of ensuring personal safety.

**4. Actions of the police squad at the scene of an incident related to the trafficking of poisonous substances before a CSI team's arrival**

It should be noted that the first to arrive at the scene are police squads that carry out immediate actions and wait for the arrival of a CSI team, emergency services, specialists of interested public authorities and executive authorities so they shall comply with the rules of physical protection and safety measures when handling poisonous substances.

According to para. 5 of Section 2 of the Instruction, the police officers who arrived first at the scene carry out the following immediate actions (Nakaz MVS Ukrainy vid 06.09.2017, No. 754):

1) evacuate people from the area of possible effect of poisonous substances to the minimum safe distance (approximately 100 – 400 m) in the opposite wind direction, taking into account the geographical location of the scene, climatic conditions, the nature of the terrain and particularities of the water area, the presence of buildings or structures, enclosed space, potential targets, etc.;

2) act to provide emergency prehospital care to persons affected by exposure to hazardous materials and call medical workers to the scene to provide medical assistance, and, if possible, inform the family members of the victims;

3) determine the approximate boundaries of the scene, fence the zone of possible damage and install warning signs, including for vehicles, as well as maintain road safety;

4) ensure public safety and order around the scene area, that is, prevent contact of people and animals with the place of detection of poisonous substances, ensure, as far as possible, the preservation and inviolability of the area and traces of a criminal offense;

5) take other actions to ensure the safety of citizens and the environment provided for by the legislation of Ukraine (for example, it may be the continuation of the scene protection until the completion of the decontamination of the zone of poisonous substance distribution, etc.).

From the above, it is worthwhile to note the importance of the actions of the police, who arrive first at the scene of an incident related to the trafficking of poisonous substances. After all, the evacuation of people from the place of spread of poisonous substances, the provision of prehospital care to victims, the determination and fencing of the scene boundaries, as well as taking actions to preserve the area and traces of a criminal offense are the key to subsequent full, objective and effective inspection of the scene and further planning of the investigation of such types of criminal offenses.

**5. The investigator's actions upon arrival at the scene of an incident related to the trafficking of poisonous substances**

After the work of emergency rescue services at the scene and specialists of interested public authorities and executive authorities on the elimination of the negative consequences of a criminal offense, the investigative team begins to collect significant information in terms of forensics.

Upon arrival of a CSI team at the scene, the next preparatory stage of the inspection begins. After communicating with the police officers who arrived first at the scene and waited for the arrival of the CSI team, the investigator must make sure that the safety measures in relation to the surrounding persons and animals, the environment and all participants in the inspection are observed. Since poisonous substances penetrate into the human body through the skin, respiratory organs and stomach, appropriate protective equipment should be chosen. Indeed, the degree of damage by toxic substances depends on their toxicity, effect specificity, duration, as well as their physical and chemical properties. However, at the scene, it is unclear at first glance what kind of poisonous substance the investigator and the entire investigative team will deal with, so protection should be universal. Since skin lesions accelerate the penetration of poisonous substances into the body, such areas of body parts should be covered when working at the scene. Moreover, it is crucial to refrain from smoking or eating at the scene, because poisonous substances enter the gastrointestinal tract due to non-compliance with personal hygiene rules and immediately enter the blood from the oral cavity. Such substances, for instance, include fat-soluble compounds, phenols, cyanides, etc.

It is equally important to control the provision of medical care to the victims. If it was not provided, then measures should be taken to provide the necessary medical care and find out the reasons for the lack of such actions.

As it was found out, the CSI team conducts a scene inspection only in the presence of specialists from the interested public authorities and only after they perform an initial inspection of the scene and confirm the absence of negative factors, the safety of the level of chemical contamination, and then the CSI team starts working. Therefore, before taking the relevant actions, it is essential that the investigator conducts a briefing on the handling rules at the scene by such inspection participants so that they do not leave their traces and do not destroy the traces of a criminal offense (fingerprints, footprints (shoes), vehicles, biological traces, etc.).

Let's specify the investigator's actions upon arrival at the scene of an incident related to the trafficking of poisonous substances, as follows:

1) check whether there is a criminal offense related to the trafficking of poisonous substances;

2) make sure that unauthorized persons present in the area of investigative (search) actions are removed;

3) make sure that the safety of others and participants in the inspection is maintained;

4) make sure that medical care is provided to the victims;

5) instruct the inspection participants on the work at the scene in terms of preserving forensically significant information in dangerous conditions;

6) only after the initial examination by specialists of interested public authorities and their confirmation of the absence of negative factors (chemical contamination), organize the work of the CSI team in order to identify and record the signs and traces of the crime, as well as perpetrators;

7) determine the scope of inspection;

8) choose the movement route of the CSI participants at the scene in order not to destroy the trace information;

9) involve, if necessary and appropriate, witnesses in the inspection and finally determine the circle of other participants in the inspection and instruct them on their rights and obligations;

10) identify the changes that were made at the scene as a result of its initial examination by the specialists of the interested public authorities, e.g., whether the means of degassing affected other traces of such a criminal offense and how exactly, since this will have impact on their removal for further investigation.

After taking the above measures, the investigator together with the CSI team proceed to the inspection's operational stage.

**6. Conclusions**

The above demonstrates that the inspection's preparatory stage plays an essential role in collecting material evidence of such criminal offenses and requires adherence to a well-defined algorithm of actions by all its participants. It was found that the preparatory stage of inspection has its specifics and the following features:

1 – it can cover a large area, and thus, it is difficult to plan and use forces and means of inspection;

2 – at each stage, adverse consequences of a criminal incident should be taken into account (the spread and effect of the poisonous substance that was the subject matter of the crime, the effect of bad weather on such a poisonous substance and the place where it was found, etc.);

3 – a CSI team inspects the scene after the elimination of negative consequences by specialists of interested public authorities that may affect the preservation of trace information;

4 – since many people are involved, there is a difficulty in coordinating the actions of each of them. Therefore, it is necessary to instruct and outline a role of every person (for instance, to allocate the personnel at the scene correctly, in particular: a specialist with the investigator work in the center of the incident, at a distance of 30-40 meters from them – other participants of the CSI team, and at a distance of 20-30 meters from the latter, if necessary, the media, etc.);

5 – efforts should be constantly focused on the preservation of material evidence, since there is a significant risk of its loss as a result of work on the site of many people (for instance, by visually examining the situation, to identify the trajectory of the offender's movement at the scene and limit the movement of the CSI team along it);

6 – maintain proper cooperation of all CSI participants;

7 –ensure the personal safety of CSI participants (individual protection), surrounding persons, animals, the environment;

8 – keep in mind the impact of degassing on crime traces and take measures to preserve them as much as possible;

9 – identify geolocation via Google Maps to visualize the scale of the incident and formalize the results as an annex to the protocol;

10 – it is recommended using UAVs to fix the large incident scene;

11 – the inspection area shall be secured before and after it;

12 – the detected and seized poisonous substance shall be transported for further storage, expert research and disposal.

Consequently, the safety of all inspection participants and the effectiveness of the entire investigative (search) action depend on the steps taken at the preparatory stage of inspection. Awareness and observance by all participants to inspection of tactics and the implementation of all preparatory actions, without exception, will contribute to the effective, rapid and complete detection, recording and uptake of forensically solid information.

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## ОСОБЛИВОСТІ ПІДГОТОВЧОГО ЕТАПУ ОГЛЯДУ ПІД ЧАС РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ ІЗ НЕЗАКОННИМ ОБІГОМ ОТРУЙНИХ РЕЧОВИН

**Анотація.** ***Метою*** статті є дослідження особливостей підготовчого етапу огляду, встановлення його значення для подальшого проведення цієї слідчої (розшукової) дії під час розслідування кримінальних правопорушень, пов'язаних з незаконним обігом отруйних речовин. ***Методи дослідження.*** Робота виконана з використанням загальнонаукових та спеціальних методів наукового пізнання, таких як: діалектичний, формально-логічний, аналіз та синтез, узагальнення, порівняння. ***Наукова новизна.*** У статті розглянуто поняття підготовчого етапу огляду та розкрито його сутність, наведено особливості проведення з урахуванням специфіки кримінальних правопорушень, пов'язаних з незаконним обігом отруйних речовин. Конкретизовано етапи огляду та частково розкрито їх значення для розслідування, зосереджено увагу саме на підготовчому етапі, оскільки від нього залежать усі наступні дії під час проведення цієї слідчої (розшукової) дії. З'ясовано алгоритм організаційних дій слідчого до виїзду на місце події, враховуючи вихідну інформацію про кримінальне правопорушення, а також охарактеризовано дії патрульної поліції до приїзду слідчо-оперативної групи. Акцентовано увагу на заходах і засобах забезпечення особистої безпеки учасників слідчо-оперативної групи та діях щодо збереження слідової інформації під час та після ліквідації негативних наслідків події. Наведено алгоритм дій слідчого та слідчо-оперативної групи після

прибуття на місце огляду щодо збору криміналістично значущої інформації, враховуючи правила та порядок роботи з отруйними речовинами. ***Висновки.*** У результаті проведеного дослідження встановлено специфіку та особливості підготовчого етапу огляду, який відіграє важливу роль у зібранні речових доказів у таких кримінальних правопорушеннях. Встановлено, що до початку огляду слід чітко дотримуватися визначеного алгоритму дій усіма його учасниками, працювати злагоджено у тісній взаємодії. Дійшли висновку, що нехтування заходами та засобами індивідуального захисту може завдати шкоди життю чи здоров'ю учасників огляду.

**Ключові слова:** огляд, підготовчий етап, заходи безпеки, індивідуальні засоби захисту, дегазація, слідчо-оперативна група, патрульна поліція.

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**НОТАТКИ**