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USE OF THE EXPERIENCE OF LEGAL SUPPORT OF THE REHABILITATION OF BUSINESS ENTITIES IN BANKRUPTCY CASES IN THE UNITED STATES, FEDERAL REPUBLIC OF GERMANY AND THE UNITED KINGDOM

Abstract. ***Purpose.*** The goal of the study is to analyze the features of legal support for rehabilitation (reorganization) procedures in the legislations of the United Kingdom, Germany and the USA in order to identify the strengths and weaknesses of each of the approaches and the potential areas of improvement of Ukrainian legislation. ***Research methods.*** The article is developed using the general research and special methods, namely systemic-structural, comparative-legal, analytical-synthetic methods. ***Results.*** The article analyzes the legal features of the institution of rehabilitation within the framework of bankruptcy in countries with developed economies, as well as determines ways to improve Ukrainian legislation in accordance with advanced international standards. ***Conclusions.*** The conclusion emphasizes the need to reform Ukrainian bankruptcy legislation in accordance with modern requirements and referring to the foreign experience. In particular, the increase of the debtor's role in the rehabilitation process was proposed, including by expanding his opportunities to manage the enterprise during the whole procedure. In addition, it was offered to introduce an alternative of the American "cram-down" procedure in the Ukrainian legislature, when there is a consent of at least one class of creditors.

Within the framework of the German experience, a change in the payment system for trustees was proposed, tied to the final amount paid to the creditors. Another interesting feature of German law is the presumption of the consent of the creditors to the rehabilitation plan in case no objections were announced during a certain period of time.

Finally, the development of a multi-optional system for overcoming insolvency was proposed, in particular, with an easier access in the case of objective factors that led to bankruptcy.

Keywords: insolvency, bankruptcy, rehabilitation of the debtor, Code of Ukraine on bankruptcy procedures, Western experience, the United States Bankruptcy Code, German Insolvency Code, Insolvency Act of 1986, reforming the institution of bankruptcy rehabilitation.

1. Introduction

The importance of the institution of bankruptcy within the framework of the modern economic model that has developed in most countries of the world, in particular Ukraine, is beyond doubt. The effectiveness of mechanisms related to bankruptcy is the vital factor related to such issues as the preservation of the money supply in the economy, ensuring stability and improving economic relations within the state.

From the very beginning of the existence of the institution of bankruptcy, scientific opinions regarding its interpretation, content, and role in the economic and legal system differ. There are two main approaches: debtor- and creditor-oriented, which, respectively, are focused on macro- or micro-regulation of economic relations.

As noted by I.V. Novyk, "since the economy of the state is directly related to the state of the primary link, i.e., individual enterprises, the problems of the activity of legal entities ultimately have a negative impact on the national financial and economic stability" (Novyk, 2021, p. 3).

Given that bankruptcy is, of course, the last stage on the path of a deep crisis of a particular enterprise, there is an opinion that the main purpose of bankruptcy is to "cleanse" the market of inefficient entrepreneurs. Thus, supposedly only the "strongest" players remain on the field; the ones who contribute to the development of the economic system like no other.

However, this approach obviously has many gaps. First of all, inefficient management is not always the cause of bringing enterprises to bankruptcy. As the world events of recent years show, global objective factors such as a pandemic or large-scale military operations contribute to the liquidation of even the most successful enterprises no less than the inept actions of management. In addition, the Ukrainian bankruptcy institute practice, even until 2020, has repeatedly shown that the legal realities are quite far from the model laid down by the legislator. Abuse of rights and unfair competition have very often become the reason for the decline of enterprises with great potential.

Thereby there is another approach. It is focused on the perception of the bankruptcy procedure not only as a tool for screening players out of the market and preserving the money supply, but also as the "last chance" for falling companies to restore its own solvency with the help of legal mechanisms. I.V. Novyk indicates that a significant share of the so-called "crisis enterprises" are those that have fairly good prospects for overcoming temporary obstacles and effectively continuing their activities in the future (Novyk, 2021, p. 3).

One of the key mechanisms, which is provided precisely for giving the debtor a chance to get out of the crisis, is rehabilitation – a set of procedures aimed at restoring the solvency of a business entity. It allows not only saving the debtor from his "elimination" from the economic arena but also maximizing the amount of funds returned to creditors.

O. Kalchenko, in particular, agrees with the statement about the two-way benefit of rehabilitation, and provides the following definition: "rehabilitation is a complex of financial-economic, production-technical, organizational-legal, social measures, the purpose of which is to restore the solvency of the debtor enterprise, improve its financial condition, fully or partially satisfy creditors' demands and prevent the bankruptcy" (Kalchenko, 2020, p. 225).

It is obvious that maintaining a healthy balance between creditor- and debtor-oriented approaches, depending on the specific economic model, is the most rational decision for the policy development for legal regulation of bankruptcy.

As Ukrainian experience shows, the effectiveness of the bankruptcy and rehabilitation mechanisms in particular is under serious doubt. They are abused to delay time, withdraw additional funds from the enterprise, etc. Consolidation of the creditor-oriented approach during the development of the bankruptcy institute also raises doubts in part of the scientific community. As noted by B.M. Polyakov, the Bankruptcy Law (as amended in 1992), being purely "creditor-oriented", brought a lot of damage to the state's economy, because instead of treating economic entities, they were simply liquidated (Polyakov, 2003, p. 10).

Nowadays, the obsolete law was replaced by the Code of Ukraine on Bankruptcy Procedures (KUzPB), which, although it regulates the rehabilitation procedure, nevertheless rather protects the interests of creditors. As noted by T. Bila in relation to the KUzPB, compared to the norms of the current Law of Ukraine "On restoring the debtor's solvency or declaring him bankrupt", the legislator significantly expanded the ability of creditors to take an active part in debtors' bankruptcy procedures. Thus, we are talking about the scope of creditors' powers, reducing the quorum, voting for the approval of the rehabilitation plan by classes (Bila, 2019, p. 57). In our opinion, in order to maintain the balance, the regulatory legislation should be changed, including by borrowing the best methods from developed capitalist countries.

As a resuly, it is expedient to study the foreign legislation that regulates the rehabilitation procedure, namely, the relevant legal institutions of Germany, Great Britain and the USA – countries that not only demonstrate high indicators of economic development but also have significant practical experience in the application of bankruptcy legislation during crises.

It is crucial to conduct the study of these legal systems based on some specific criteria, namely: the legislation's subjective focus (debtor- or creditor-oriented), the availability of the rehabilitation mechanism, its effectiveness and efficiency in practice, as well as the methodology of conducting "remedial procedures".

Literature review. The issue of legal provision of rehabilitation in both domestic and foreign science is quite relevant. Let's single out some authors who dealt with the issue concerned: T.M. Bila (Bila, 2019), V.K. Bohatyr (Bohatyr, 2021), A.A. Butyrskyi (Butyrskyi, 2007, 2012, 2013), A. Gurrea-Martinez (Guerra-Martinez, 2023), P. Zhark (Zhark, 2012), O.M. Kalchenko (Kalchenko, 2020), L.S. Kozak (Kozak, 2010), I.V. Novyk (Novyk, 2021), F. Pink (Pink, 2000), B.M. Polyakov (Polyakov, 2003), V.L. Piantkovskyi (Piantkovskyi, 2006), M.A. Sarnat-

skyi (Sarnatskyi, 2021), E. Warren (Warren, Westbrook, 2009), Yu.V. Chorna (Chorna, 2018), and others. At the same time, certain aspects of the improvement of the rehabilitation institution are considered insufficiently or are outdated due to changes in the legal reality and development of new theoretical approaches to its understanding.

Research methods. To achieve the goal, the following research methods were used: systemic-structural, comparative-legal, analytical-synthetic, etc. Using the system-structural method, ways for improvement of KUzPB were determined. Using the comparative legal method, it was proposed to make changes to the KUzPB, in particular, in terms of regulating the debtor's role in the rehabilitation process, introducing the compulsory rehabilitation procedure, as well as changing the order of adoption of the rehabilitation plan and certain aspects of the work of the trustee.

Goal. The article aims to investigate the peculiarities of regulating rehabilitation and reorganization in the USA, Germany and Great Britain and to propose improvement of Ukrainian legislation on rehabilitation within the framework of a bankruptcy case.

2. Legal principles of rehabilitation in the USA

The case of the USA in the present study seems to be the most appropriate in view of both the world economic leadership in terms of the size of the economy and, in particular, the high indicator of GDP per capita ($70,250) (The World Bank, 2023).

In the USA, the institution of bankruptcy is regulated by the Bankruptcy Code adopted in 1979 (hereinafter – the US Code). Its key chapters regulate various procedures related to bankruptcy, in particular, the liquidation procedure (Chapter 7) and various types of restructuring (Chapters 11 and 13) – an analogue of Ukrainian rehabilitation.

Analysis of the norms of this regulatory act allows us to conclude that it is aimed, first of all, at protecting the debtor's interest, in particular, restoring his solvency, preventing liquidation. A number of scientists agree with this. Thus, L. Kozak points out that the main task of the US Code is to help the debtor in getting rid of part of the debts and preventing the liquidation of the enterprise. The purpose of the US Code is not liquidation, but rehabilitation, restoration of the enterprise (Kozak, 2010, p. 291).

The US Securities and Exchange Commission is the state body that regulates bankruptcy. In addition to it, there are other bodies of regulatory influence, such as state federal bankruptcy trustees, the main tasks of which are to prevent abuses by independent bankruptcy trustees, as well as fraudulent actions by other participants of the bankruptcy procedure.

V. Piantkovskyi notes that judicial proceedings in bankruptcy procedures in the USA are carried out by federal courts (in bankruptcy cases – specialized courts that are part of the district courts of the USA). A special body that deals with the administrative management of bankruptcy cases is part of the Department of Justice and is called the Executive Office for United States Trustees. It acts as bankruptcy supervisor on behalf of the US Attorney General. Its members, the federal executive heads, are employees of the federal government and are appointed by the attorney general (Piantkowski, 2006, p. 41).

As far as reorganization is concerned, from the provisions of the US Code (in particular, Chapter 11, which is devoted to reorganization), we can see that American law provides a relatively easy access to the procedure: there are no limitations or requirements regarding the amount of debt or income for the enterprise that plans restore its solvency (United States Bankruptcy Code, 2023).

On top of that, it is worth noting that in most cases during reorganization, the debtor himself remains the head of the company (so-called "debtor-in-possession"). A trustee is only appointed in exceptional cases, when facts of fraud are involved etc. Obviously, this approach helps to expand the amount of control of the debtor over the situation, although it increases the risks of abuse.

The debtor can apply to the court with the aim of taking advantage of the possibility of reorganization (chapters 11 and 13) both immediately or after approving the chapter 7 case.

There are several things making up the distiction between chapters 11 and 13. First, Chapter 11, unlike Chapter 13, has no limit on the maximum amount of debt, making it more accessible to large and medium-sized businesses. Chapter 13, on the other hand, is often called "wage earner" bankruptcy.

In addition, both chapters allow the development and implementation of a "recovery plan". The difference is that Chapter 13 is focused on paying off only part of the debt with the subsequent release of the debtor from paying the rest according to the plan, while Chapter 11 is focused on the reorganization of payments and less often provides the reduction of monetary obligations, and also has the primary task of preserving the operation of the enterprise and maintenance of the management of the debtor with the subsequent restoration of solvency.

Both creditors and the debtor have the right to propose a rehabilitation plan. However, dur-

ing the first 120 days after the opening of the proceedings, the corresponding right is only granted to the debtor. Together with the tendency not to change the management of the company, it plays even more into the hands of the potential bankrupt. Then, the plan must be approved by creditors. Voting takes place by classes. First, all creditors are divided into classes, after which voting takes place within each of them. The plan is considered to be approved by a specific class if at least half of all creditors holding 2/3 of the class's obligations have voted for it. So-called "unimpaired classes", in relation to which the obligations of the debtor according to the plan remained unchanged, do not have the right to vote and are considered to have accepted the plan. Only if all classes of creditors agree to the plan is it approved by the court.

However, even here the debtor-oriented approach of the US Code is clearly visible. The US legislation provides a possibility of carrying out the "craw-down" procedure – the forced approval of the rehabilitation plan by the court in case at least one class agrees to its implementation (even if all other classes have voted against it). Section 1129(b) of the United States Bankruptcy Code allows the "craw-down" procedure if a judge finds the plan to be fair and equitable to all participants (United States Bankruptcy Code, 2023).

In fact, during the development of the plan, all parties to the process have the right to offer their own vision of the current state and further development of the enterprise. The valuation of the debtor's assets is of great importance in this process, on which the subsequent redistribution of new ownership shares depends. For the implementation of the plan, it is allowed to carry out a whole range of measures: partial sale of the debtor's assets, reorganization of production, partial liquidation of non-profit departments, rejection of part of the claims by creditors or their exchange for obligations in the future (United States Bankruptcy Code, 2023).

The possibility of additional "debtor-in-possession" financing (so-called "DIP financing") is provided too. Obligations of this type have the highest priority in the order of repayment. As A. Gurrea-Martinez points out, in the absence of any mechanism that would stimulate the debtor's counterparties to continue providing labor, loans, goods and services, the value of the enterprise may be reduced. In many cases, this loss of value can cause viable firms to become unviable businesses that must be closed down. DIP financing is a financing regime designed to help preserve viable businesses that would otherwise disappear (Gurrea-Martinez, 2023, p. 556).

Although the focus of US legislation on the preservation of the debtor allows a large number of enterprises to use the rehabilitation procedure, in practice, only a small part of them completes the procedure, preserving the structure of the enterprise and preventing liquidation. As of 2002, only 17.5% of enterprises were able to survive 12 months from the date of approval of the reorganization plan, and 8.35% – 24 months. Currently, this percentage is increasing, but, nevertheless, remains quite low (Warren, 2009, p. 621). In addition, despite the fact that the liquidation procedure (Chapter 7) remains the most popular among companies, as noted by the American Bankruptcy Institute, the number of reorganization applications for the year increased from 1,766 in early 2022 to 2,973 in early 2023 (American Bankruptcy Institute, 2023).

The US experience is interesting for Ukrainian legislation, primarily because it implements the opposite – debtor-oriented approach, while keeping the debt repayment rate at a relatively higher level. There are also practical problems in the implementation of the reorganization procedure, in particular, a low percentage of its full implementation, but over time the popularity and effectiveness of the American debtor recovery mechanism is steadily increasing.

3. Legal principles of rehabilitation in the Federal Republic of Germany

Another example of a successful economy is Germany, which is one of the European leaders in terms of GDP per capita ($51,200) (The World Bank, 2023).

Legal regulation of the field of bankruptcy and, in particular, rehabilitation procedures of the Federal Republic of Germany is carried out by the Insolvency Act (hereinafter referred to as the German Bankruptcy Law). It regulates both classical bankruptcy and a number of similar procedures, such as rehabilitation.

Despite the fact that Chapter I "Goals of Bankruptcy Proceedings" of the German Bankruptcy Law states the satisfaction of creditors' is its priority goal, it can hardly be called entirely creditor-oriented. The German model maintains a balance between the interests of creditors and the debtor (Insolvenzordnung, 2022). M. Sarnatskyi agrees with this, describing the rights of process participants both at the stage of initiating bankruptcy procedures and during the process. Summing up, M. Sarnatsky notes that "the German authorities are oriented towards the joint protection of the interests of both the debtor and the creditor" (Sarnatsky, 2021, p. 82).

Actually, the analysis of the articles of the following sections of the German Bankruptcy Law reveals the peculiarities of this bal-

anced approach of the legislator. On the one hand, the German Bankruptcy Law allows the use of the bankruptcy procedure (and subsequent rehabilitation) subject to compliance with a number of strict conditions – lack of liquidity (which is determined by the inability to pay 90% of debts), the need to resolve excessive indebtedness (when the amount of the debtor's obligations exceeds the amount of his assets), as well as a period of two years of negative liquidity (Insolvenzordnung, 2022).

Certain mechanisms of the bankruptcy procedure, such as recognition of the invalidity of contracts concluded within twelve years before the opening of proceedings, also play in the interests of creditors. In addition, liquidation/rehabilitation procedures are characterized by a change in the management of the debtor company, which is strikingly different from the American approach.

At the same time, the position of the German Supreme Federal Court is rather debtor-oriented. It clarifies that if the debtor can objectively be expected to settle the obligations within three weeks, then such a situation will not be classified as insolvency. P. Jark points out that a temporary delay in payments cannot immediately be the basis for declaring a person insolvent. Insolvency begins when the debtor is unable to meet 10% or more of the total debt obligations due (Jark, 2012).

There are interesting peculiarities of the participation of state bodies and arbitration administrators (a German analogue for trustees, "Insolvenzverwalter") in the case; the degree of their involvement in the process varies significantly. Yu.V. Chorna marks that the insolvency institute of the Federal Republic of Germany is built on the close interaction of judicial authorities with arbitration administrators. At the same time, the participation of the executive body in the bankruptcy procedure (Federal Ministry of Justice) is carried out on a general basis (Chorna, 2018, p. 4).

German bankruptcy legislation regulates the procedure for choosing an arbitration administrator very thoroughly. Article 56 of the Law of the German Bankruptcy Law defines only general requirements for the relevant candidacy, and specialized directives regulate this issue in more detail. As in Ukraine, a bankruptcy trustee is an individual who is independent of creditors and the debtor and is knowledgeable in economic affairs. In addition, German legislation also provides such a procedural figure as an expert (temporary manager), who becomes a manager in the case after the appointment. His/her task is to determine the property status of the debtor and establish the circumstances regarding the availability of funds to cover court costs, which is a condition for opening bankruptcy proceedings.

Finally, for the reorganization process, § 274 of the German Federal Law defines a bankruptcy administrator ("Sachwalter") who is responsible for examining the economic situation of the debtor and controls the costs of administration in the event that the debtor chooses the "self-administration" procedure ("Eigenverwaltung"). This procedure is a kind of analogue of the American "debtor-in-possession". Instead of a court-appointed bankruptcy administrator the owners carry out the reorganization themselves under the supervision of the bankruptcy administrator (Insolvenzordnung, 2022).

An interesting difference between German and Ukrainian legislation is in the specifics of the regulation of the bankruptcy trustee's activities: according to § 63 of the German Bankruptcy Law, the amount of his remuneration depends on the value of the insolvency estate at the end of the proceedings in the case, unlike in Ukraine, where the remuneration of the arbitration administrator does not depend on the quality of the work performed. In Germany, the remuneration of a trustee in rehabilitation cases is set at the level of 60% of the remuneration of a trustee in liquidation cases, in accordance with § 12 of the Insolvency Remuneration Ordinance (Insolvenzrechtliche Vergütungsverordnung, 2020).

The rehabilitation procedure itself in Germany can be started after the opening of the proceedings in the case. Moreover, the latter is not oriented to the preservation of the enterprise in advance. The rehabilitation plan is approved in the case of the consent of the creditors and their vision of the prospect of saving their capital. An interesting aspect is the presumption of the creditor's agreement with the requirements of the plan in the absence of objections from their side within a month (Insolvenzordnung, 2022).

To carry out rehabilitation and pay creditors, the debtor can redistribute his assets, convert them into liquid assets, sell and lease means of production, etc. The legislation also allows the enterprise to postpone payments on debt until it becomes profitable.

If the plan is not accepted within three months, the court starts liquidation.

According to the statistics department of the German government 18,368 companies used the bankruptcy procedure for the period from 2011 to the end of 2018. Of these, 828 (about 4.5%) chose and completed the restructuring procedure, which is somewhat less, but generally corresponds to the level of success of reorganization in the USA (De Statis, 2020).

4. Legal basis of rehabilitation in Great Britain

Great Britain is a country not only with a successful economy (GDP per capita – $46,510) (The World Bank, 2023), but also with a huge experience in regulating bankruptcy procedures. It was in the British Empire that several centuries ago the foundations of insolvency procedures were laid and they are used in the legislation of developed countries to this day.

The institution of bankruptcy within the framework of the British legal system is the closest to the Ukrainian one: the legislator determined the main task of bankruptcy procedures, as in the case of Germany, to be the return of funds to creditors, however, with the actual implementation of the provisions in practice.

The main legal acts governing bankruptcy procedures in Great Britain are: The Insolvency Act 1986, the Insolvency Rules 1986 (SI 1986/1925, replaced in England and Wales from 6 April 2017 by the Insolvency Rules (England and Wales) 2016 (SI 2016/1024) – see below), the Company Directors Disqualification Act 1986, the Employment Rights Act 1996 Part XII, the EU Insolvency Regulation, and case law. Numerous other Acts, statutory instruments and cases relating to labour, banking, property and conflicts of laws also shape the subject. The role of the state bankruptcy authority is performed by the Insolvency Service (Pink, 2000, p. 120).

It should be noted that in Great Britain, the concept of "bankruptcy" is only applicable to natural persons. A legal entity cannot legally "become bankrupt" but immediately proceeds to the liquidation procedure or agrees on one of the options provided for by law. Consequently, the management of the company gathers a meeting of shareholders (for voluntary liquidation, the consent of 75% of shareholders is required), goes to court (in this case, a requirement of a minimum of 750 pounds of debt is added), or submits a "Declaration of solvency" (in the case when the company is solvent, but for certain reasons the owner wants to stop its activity). Also, legal proceedings can be started at the request of the creditor (UK Insolvency Act 1986, 2023).

At the request of the debtor, the bankruptcy process begins on the condition that he realizes that he cannot repay his financial obligations and therefore wishes to come under the protection of insolvency legislation. Although English law allows the opening of bankruptcy proceedings by a court decision, in practice such cases are almost rare. The petition to declare the debtor insolvent is submitted to the special court for insolvency and bankruptcy cases at the place of residence or location of the legal entities submitting the specified petition. In connection with this, the territory of England is divided into districts for insolvency cases.

Pointing out the important role of the insolvency practitioner, it is necessary to emphasize that the decisive role in bankruptcy procedures belongs to the court, which exercises control at all its stages. It is the court that gives permission to carry out particularly significant actions of the insolvency practitioner, passes a decision on the release of the debtor from debts, restoration of his rights to manage the property remaining after the distribution among creditors (UK Insolvency Act 1986, 2023).

In English law, there are the following options for settling company debts:

1. CVA (Company Voluntary Arrangement) – a company's voluntary arrangement is the closest equivalent of the American "chapter 11" and Ukrainian rehabilitation. In this case, the company can continue to function with a certain reorganization of its assets.

A voluntary agreement of a person is called IVA (Individual Voluntary Arrangement) and is separately regulated.

2. Selling the business as a "going concern" to another company – this decision also involves the possibility of continuing the business (albeit with a change of owners), for example, retaining customers, workforce or orders.

3. Sale of company assets as part of liquidation. In this case, the collected money will be paid to creditors, and the company will be liquidated.

4. Liquidation of the company – in case of absence of assets (UK Insolvency Act 1986, 2023).

Of the above procedures, CVA is the most related to the subject of this study. It is with its help that rehabilitation is carried out in Great Britain. The essence of the procedure is similar to both Ukrainian rehabilitation and "Chapter 11/13" of the US Code. CVA procedure is regulated by the Part I of the Insolvency Act 1986.

Subdivision 2 of section 1 of part 1 of the Act states that the bankruptcy officer will draw up an "arrangement" that will cover the amount of debt that can be paid by the debtor and a schedule of payments. English law provides up to a month for this after appointment.

The plan itself should contain the following information:

1. Causes of financial difficulties.

2. Up-to-date information on the company's financial condition, including detailed information on all assets and liabilities.

3. The amount of money the company can afford to pay each month based on financial projections.

4. Projected duration of CVA.

Once the plan is developed, creditors are notified of the agreement and invited to vote. A CVA is considered approved if it is supported by 75% (by the amount owed) of the voting creditors and 50% of the unrelated creditors. The legislation provides, in particular, that a CVA cannot affect the rights of any secured creditor of the company without its consent (UK Insolvency Act 1986, 2023).

In the case of approval of the plan, the further settlement takes place through the mediation of a bankruptcy specialist by means of a monthly payment, which includes the commission for the services of the specialist himself. During the development of a CVA, a specialist can propose various measures to improve the financial situation. Those are, in particular, termination of non-profit contracts, rental/leasing agreements, etc., dismissal of full-time employees, etc. Arrangements can also be negotiated through a profit-based payment, a lump-sum payment – such as selling the property and moving into a rental property to free up funds, or any other suitable offer.

Regarding the question of the effectiveness of CVAs, since these procedures are usually performed over a period of time (2-5 years) and can fail at different stages of the process, it is difficult to determine the ultimate success rate. However, House of Commons information document No. 6944 of 11 June 2019 states that in 2014, 40% of proposed CVAs were successful.

5. Conclusions

Summarizing the above, it is worth noting that the development of the institution of bankruptcy and rehabilitation as part of it is extremely important for the functioning of the entire Ukrainian economy, which is currently going through difficult times. In the context of this issue, the use of the experience of developed Western countries could become a basis for determining the weak and strong sides of domestic legislation, reforming it in accordance with established world practice.

KUzPB strives to protect, first of all, the interests of creditors. This corresponds to judicial practice, which is focused on the realization of the debtor's property and its liquidation. While a similar approach is observed in Great Britain, the experience of countries such as the USA and Germany shows either the opposite or a more balanced approach. Not least this is caused by the desire of the American and German legislators to ensure the maintenance of economic stability, the preservation of economic potential, and the easing of the social burden on the state. The approach of English law is creditor-oriented evidently due to the preference for micro-regulation to which the British elite gravitate and which, given the high level of economic development and, more importantly, stability, the country can afford.

Obviously, the level of stability of the Ukrainian economy, its development potential, and the investment climate compared to Western countries in recent years (and especially after the start of full-scale war) were relatively weak. In the conditions of an aggression, when the economic situation does not contribute to the development of fair capitalist relations, balancing the interests of the debtor and the creditor seems more appropriate.

Considering that most of the bankruptcies of the last period were obviously not caused by inefficient management, but by objective factors, the expansion of the debtor's rights during the rehabilitation procedure, as is happening in the USA, could be more favorable for preserving the potential of enterprises.

In addition, taking into account the unpopularity of the rehabilitation procedure in Ukraine in general, as well as the existence of entire industries of enterprises that are under threat as a result of military operations, an additional regulatory mechanism could be formed on the basis of the "cram-down" procedure. It would allow the courts to forcibly approve the rehabilitation plan, of course, in the presence of a number of strict conditions. In particular, the consent of at least a minimal part of the creditors, the reality of the terms of the plan, as well as control over its implementation by both the creditors and the court.

The experience of Great Britain is also useful, since its legislation regulates the issue of bankruptcy quite effectively, in particular, forming a number of procedures that can be applied to save the enterprise. Perhaps, such a variable approach could be borrowed by domestic legislation, especially, taking into account the events of recent years, when objective factors contributed to the increase of bankruptcies several times. The development of similar procedures for restoring solvency, in particular, with easier access and other features (reduction of financial requirements, application of the "cram-down" procedure in the case of good faith actions of the debtor and the absence of signs of inefficient management, etc.) could be a useful development, especially for increasing the chance of insolvent enterprises for survival.

In our opinion, it is also appropriate to borrow a part of the German experience. In particular, in the issue of regulating the fees of trustees depending on the repaid debt amount, which would contribute to increasing the efficiency of their work. In addition, a positive change could be the establishment of the presumption

of creditors' agreement with the rehabilitation plan in the event of no objections on their part during a certain period. It would increase the interest of the parties in discussing rehabilitation, prevent a number of abuses, and rationalize the use of procedural terms.

In this regard, reforming the legislation in the field of bankruptcy from the point of view of balancing the interests of creditors and the debtor, introducing a more effective and profitable rehabilitation mechanism, expanding the debtor's participation in the management of the enterprise undergoing the rehabilitation procedure, together with strengthening the control over the responsible persons seem necessary for stabilization of the economic situation and establishing the trust of domestic and foreign investors in the Ukrainian economic system.

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ВИКОРИСТАННЯ ДОСВІДУ ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ САНАЦІЇ ЮРИДИЧНИХ ОСІБ У СПРАВАХ ПРО БАНКРУТСТВО У США, ФЕДЕРАТИВНІЙ РЕСПУБЛІЦІ НІМЕЧЧИНА І ВЕЛИКІЙ БРИТАНІЇ

Анотація. ***Мета.*** Ціль дослідження полягає в аналізі особливостей правового забезпечення процедур санації (реорганізації) у законодавствах Великої Британії, Німеччини та США з метою визначення сильних і слабких сторін кожного з підходів і потенційних напрямів удосконалення українського законодавства. ***Методи дослідження.*** Стаття виконана із застосуванням загальнонаукових і спеціальних методів, зокрема системно-структурного, порівняльно-правового, аналітико-синтетичного. ***Результати.*** У роботі проаналізовано правові особливості інституту санації в рамках банкрутства в країнах із розвинутою економікою, а також визначено шляхи вдосконалення законодавства України відповідно до передових міжнародних стандартів. ***Висновки.*** У висновку наголошується на необхідності реформування законодавства України у сфері банкрутства відповідно до сучасних вимог із використанням зарубіжного досвіду. Зокрема, запропоновано підвищення ролі боржника в процесі санації, у тому числі шляхом розширення його можливостей в питанні управління підприємством протягом усієї процедури. Крім того, пропонується запровадити альтернативу американської процедури *cram-down*, коли є згода хоча б одного класу кредиторів.

У рамках досвіду Німеччини запропоновано змінити систему оплати роботи арбітражних керуючих, прив'язану до кінцевої суми виплати кредиторам. Ще однією цікавою особливістю німецького законодавства є презумпція згоди кредиторів із планом санації, якщо протягом певного часу не було оголошено жодних заперечень.

Нарешті, запропоновано розробку багатоваріантної системи подолання неплатоспроможності, зокрема, з полегшеним доступом у разі наявності об'єктивних факторів, що призвели до банкрутства.

Ключові слова: неспроможність, банкрутство, санація боржника, Кодекс України з процедур банкрутства, західний досвід, Кодекс США про банкрутство, Кодекс Німеччини про банкрутство, Закон про неспроможність 1986 р., реформування інституту санації у сфері банкрутства.

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PARTICULARITIES OF SOCIAL SECURITY IN THE CONTEXT OF ATYPICAL FORMS OF HIRED WORKERS' EMPLOYMENT

Abstract. ***Purpose.*** The purpose of the article is to reveal the particularities of social security in the context of atypical forms of hired workers' employment. ***Results.*** Social security in the context of atypical forms of hired workers' employment is best understood as a purposeful activity of the State (represented by its authorised institutions and their officials) and employers themselves, which is enshrined and regulated by the current legislation of Ukraine, aimed at creating appropriate legal and organisational conditions for the implementation of social and economic guarantees, which in their entirety: a) contribute to the stable development of labour relations with employees who work from home, remotely or on a flexible schedule; b) provide the category of employees being studied with a decent standard of living in the event of certain social risks. It is emphasised that an important element of social security is the compulsory State social insurance of Ukraine in case of unemployment. Unemployment insurance is provided to persons working under an employment agreement (contract), including those performing alternative (non-military) service, a civil law contract or on other grounds provided for by law, military personnel (except for military servicemen) and other persons, persons performing service and receiving financial support (hereinafter referred to as military personnel), persons engaged in independent professional activities, individual entrepreneurs, members of a farm, unless they are persons subject to insurance on other grounds. ***Conclusions.*** It is concluded that nowadays the issue of social security in the context of atypical forms of employment is regulated rather superficially, since the legislator does not distinguish this category of workers separately in this context. Therefore, the features of social security of the category of workers under study can be identified as follows: The legislator, when defining the range of persons entitled to social insurance, does not distinguish between workers who work from home, remotely or on a flexible schedule; the current legislation does allow for the specifics of the labour and legal status of the categories of workers under study, and therefore their social security is not properly regulated; the existing regulatory sources do not actually enshrine the duties of employers in relation to employees working in the context of atypical forms of employment.

Keywords: social security, atypical forms of employment, hired workers, social insurance.

1. Introduction

A special guarantee for protection in the context of atypical forms of hired workers' employment is their social security. The latter is not only an integral part of the social policy of any state, but also an indisputable requirement of civilised existence at a sufficiently high level of every society without exception. After all, a person, as the main guarantor of the existence of society, should feel cared for and treated humanely by both the state and the employer. Only the focus on social security and social groups that are directly dependent on will enable the state to ensure historical recognition of the past, stable current functioning and happy existence of citizens in the future, which is the basis for the existence of a democratic legal social state (Pidlypna, 2015).

Some problematic issues related to social security of employees who work from home or remotely have been considered in the scientific works by: A.I. Alimpiiev, V.M. Andriiv, M.I. Bondar, M.L. Zakharov, M.M. Klemparskyi, V.P. Komarova, S.O. Pohribnyi, O.H. Popov, S.H. Rudakova, Ya.V. Svichkariova, O.V. Tsiatkovska, and many others. However, despite a considerable number of scientific achievements, the issue of social security in the context of atypical forms of hired work-

ers' employment remains insufficiently developed in the legal literature.

As a result, the purpose of the article is to reveal the particularities of social security in the context of atypical forms of hired workers' employment.

2. Social security in the context of atypical forms of hired workers' employment

Social security in the context of atypical forms of hired workers' employment is best understood as a purposeful activity of the State (represented by its authorised institutions and their officials) and employers themselves, which is enshrined and regulated by the current legislation of Ukraine, aimed at creating appropriate legal and organisational conditions for the implementation of social and economic guarantees, which in their entirety: a) contribute to the stable development of labour relations with employees who work from home, remotely or on a flexible schedule; b) provide the category of employees being studied with a decent standard of living in the event of certain social risks.

It should be noted that the scientific literature distinguishes between the following forms of social security: state provision, social assistance, social support, and compulsory social insurance. In the context of the presented issues, it is most appropriate to talk about compulsory state social insurance, which is an important component of social security of various categories of workers, including those engaged in non-standard forms of employment (On the approval of the Regulation on the working conditions of home-based workers, 1981). However, according to the Regulation on working conditions for home-based workers, social security of home-based workers also includes such an important area as promoting safe working conditions that would allow them to earn a decent living and prevent injuries and occupational diseases at work. For example, in addition to the above-mentioned requirement that the employer personally inspects the working conditions of the home-based worker, the employer shall provide equipment, tools and devices for free use by home-based workers, and repair them in a timely manner. In cases where a home-based worker uses his or her own tools and mechanisms, he or she is paid compensation for their depreciation in accordance with the procedure established by law. By agreement of the parties, the home-based worker may be reimbursed for other expenses related to the performance of work at home for the enterprise (electricity, water, etc.) (On the approval of the Regulations on the working conditions of home-based workers, 1981). Therefore, compulsory state social insurance for atypical forms of hired workers' employment is a system of social, economic, political and material guarantees enshrined in the current legislation of Ukraine, which are provided to a person for the purpose of social security in the event of certain social risks paid by public funds. Therefore, compulsory state social insurance, as an element of social security, helps to protect citizens from circumstances that may harm a person's health and deprive them of the opportunity to earn money. Thus, social insurance is one of the main mechanisms for regulating social risks, which determines a number of its characteristics: this form of social security, in most cases, applies to employees, for whom the main and often the only source of livelihood is wages. Second, understanding social risk as a natural and objective mass phenomenon that affects certain, rather significant socio-demographic and professional groups and segments of the population. Third, all major social partners, that is employees, entrepreneurs and the state, finance social insurance to some extent, as social insurance costs are socially necessary for the reproduction of labour force and are included in the cost of production, which is a recognition of the non-tax nature of these costs (Nadraha, 2014; Mytko, 2019).

The issue of compulsory state social insurance is regulated by the Constitution of Ukraine and international legal regulations, which set out only the general principles of compulsory state social insurance. This issue is regulated comprehensively at the legislative level. In this context, first of all, the Fundamentals of the Legislation of Ukraine on Compulsory State Social Insurance. In accordance with this regulation, compulsory state social insurance of Ukrainian citizens is carried out on the principles of: legislative definition of the conditions and procedure for the implementation of compulsory state social insurance; compulsory insurance for persons working under an employment agreement (contract) and other grounds provided for by labour legislation, and for self-employed persons (members of creative unions, creative workers who are not members of creative unions), and citizens who are entrepreneurs; granting the right to receive payments under the compulsory state social insurance to persons engaged in entrepreneurial, creative activities, etc; compulsory financing by insurance funds of expenditures related to the provision of material support and social services in the amounts stipulated by the laws

on compulsory state social insurance; solidarity and subsidies; state guarantees for the exercise by insured citizens of their rights; ensuring a standard of living not lower than the subsistence minimum established by law by providing pensions, other types of social benefits and assistance that are the main source of subsistence; targeted use of compulsory state social insurance funds; parity of representatives of all subjects of compulsory state social insurance in the management of compulsory state social insurance (Law of Ukraine on the Fundamentals of the Legislation of Ukraine on compulsory state social insurance, 1998).

It should be noted that, depending on the insured event, the types of compulsory state social insurance are as follows: pension insurance; temporary disability insurance; and medical insurance; accident insurance at work and occupational diseases that caused disability; unemployment insurance; other types of insurance provided for by the laws of Ukraine (Law of Ukraine on the Fundamentals of the Legislation of Ukraine on Compulsory state social insurance, 1998). Therefore, it is most appropriate to consider this issue depending on the insured event that occurred with employees working in the context of atypical forms of employment.

3. Elements of social security in the context of atypical forms of hired workers' employment

First of all, we will focus on social security in case of atypical forms of hired workers' employment due to temporary disability. This type of insurance is available to persons working under an employment agreement (contract), gig contract, other civil law contract, on other grounds provided for by law, at enterprises, institutions, organisations regardless of their form of ownership and business, including those who are residents of Diia City, including in foreign diplomatic and consular missions, other representative offices of non-residents or individuals, as well as those nominated to elected positions in state authorities, local governments and other bodies, individual entrepreneurs, persons engaged in independent professional activity, members of a farm, if they are not covered by insurance in connection with temporary disability on other grounds (Law of Ukraine On compulsory state social insurance, 1999). The following types of financial support and social services are provided under temporary disability insurance: 1) temporary disability allowance (including care for a sick child); 2) maternity benefits; 3) funeral assistances (except for the burial of pensioners, the unemployed and persons who died from an industrial accident); 4) payment for treatment and/or rehabilitation care in the departments of a sanatorium and health resort facility after illnesses and injuries (Law of Ukraine On compulsory state social insurance, 1999). It should be noted that in this case, employees who work remotely, from home or on a flexible schedule are equated with general categories of employees. This, in our opinion, is a significant gap, since the conditions under which a person may lose his or her ability to work in the context of atypical forms of employment may differ greatly from those for general categories of employees.

Next, the compulsory state social accident insurance at work and occupational diseases that result in disability should be analysed. The following are subject to accident insurance: 1) persons working under an employment agreement (contract), gig contract, other civil law contract, on other grounds provided for by law, at enterprises, institutions, organisations regardless of their form of ownership and business, including those who are residents of Diia City, including in foreign diplomatic and consular missions, other representative offices of non-residents or individuals, as well as those nominated to elected positions in state authorities, local governments and other bodies, individual entrepreneurs, persons engaged in independent professional activity, members of a farm, if they are not covered by insurance in connection with temporary disability on other grounds; 2) pupils and students of educational institutions, clinical residents, postgraduate students, doctoral students involved in any work during, before or after classes; during classes when they acquire professional skills; during the period of industrial practice (internship), performance of work at enterprises; 3) persons held in correctional institutions and engaged in labour activity in the production of these institutions or in other enterprises under special contracts (Law of Ukraine On compulsory state social insurance, 1999). Allowance for temporary disability due to an illness or injury not related to an industrial accident or occupational disease, stay in healthcare facilities, as well as self-isolation under medical supervision in connection with measures aimed at preventing the occurrence and spread of coronavirus disease (COVID-19), as well as the localisation and elimination of its outbreaks and epidemics, is paid by the Fund to insured persons starting from the sixth day of disability for the entire period until the recovery of working capacity or until the medical and social expert com-

mission (hereinafter – MSEC) establishes disability (establishment of another group, confirmation of the previously established disability group) regardless of the dismissal, termination of entrepreneurial or other activities of the insured person during the period of disability, in the manner and amounts established by law (Law of Ukraine On Compulsory state social insurance, 1999).

An important element of social security is the compulsory State social insurance of Ukraine in case of unemployment. Unemployment insurance is provided to persons working under an employment agreement (contract), including those performing alternative (non-military) service, a civil law contract or on other grounds provided for by law, military personnel (except for military servicemen) and other persons, persons performing service and receiving financial support (hereinafter referred to as military personnel), persons engaged in independent professional activities, individual entrepreneurs, members of a farm, unless they are persons subject to insurance on other grounds (Law of Ukraine On Compulsory state social insurance, 1999).

According to the Law of Ukraine "On compulsory state social insurance in case of unemployment", the types of benefits are: unemployment allowance; funeral assistance in the event of the death of the unemployed or a person who was dependent on him/her. In turn, the types of social services under this Law and the Law of Ukraine "On Employment of the Population" are: vocational training or retraining, advanced training in vocational (vocational-technical), professional pre-university and higher education institutions, including in educational institutions of the State Employment Service, at enterprises, institutions and organisations; career guidance; search for suitable work and assistance in employment, including through the organisation of public works for the unemployed in accordance with the procedure established by the Cabinet of Ministers of Ukraine; providing employers who employ citizens referred to in part one of Article 14 of the Law of Ukraine "On Employment of the Population" with compensation in accordance with Article 26 of the Law of Ukraine "On employment of the population"; providing employers, small businesses, that employ unemployed people with compensation in accordance with Article 27 of the Law of Ukraine "On employment of the population"; providing one-time financial assistance for the organisation of entrepreneurial activities in accordance with Article 27 of the Law of Ukraine "On employment of the population"; implementation of measures to promote the employment of internally displaced persons in accordance with Article 24-1 of the Law of Ukraine "On employment of the population"; information and consulting services related to employment (Law of Ukraine On compulsory state social insurance, 1999).

The last type of insurance is pension insurance, which is regulated by the Law "On compulsory state pension insurance." This legal regulation defines the principles and structure of the compulsory state pension insurance system; the range of persons subject to compulsory state pension insurance; types of pension payments; conditions for acquiring the right and the procedure for determining the amount of pension payments; retirement age of men and women at which a person is entitled to an old-age pension; minimum amount of an old-age pension; procedure for making pension payments under the compulsory state pension insurance; the procedure for using the funds of the Pension Fund and the accumulative pension insurance system; the organisation and procedure for managing the system of compulsory state pension insurance (Law of Ukraine On compulsory state social insurance, 1999). The following categories are eligible to receive pensions and social services from the PAYG system: 1) citizens of Ukraine who are insured in accordance with this Law and have reached the retirement age established by this Law or are recognised as persons with disabilities in accordance with the procedure established by law and have the required length of service for the respective type of pension, and, in case of death of these persons, their family members referred to in Article 36 of this Law and other persons provided for by this Law; 2) persons who, prior to the date of entry into force of this Law, were granted a pension in accordance with the Law of Ukraine "On pension provision" (except for social pensions) or were granted a pension (monthly lifetime allowance) under other legal regulations, but they were entitled to a pension under the Law of Ukraine "On pension provision", provided that they did not receive a pension (monthly lifetime allowance) from other sources, and in cases provided for by this Law, their family members did (Law of Ukraine On Compulsory state social insurance, 1999).

4. Conclusion

To sum up, it should be noted that nowadays the issue of social security in the context of atypical forms of employment is regulated rather superficially, since the legislator does not distinguish this category of workers separately in this context. Therefore, the features

of social security of the category of workers under study can be identified as follows:

– The legislator, when defining the range of persons entitled to social insurance, does not distinguish between workers who work from home, remotely or on a flexible schedule;

– The current legislation does allow for the specifics of the labour and legal status of the categories of workers under study, and therefore their social security is not properly regulated;

– The existing regulatory sources do not actually enshrine the duties of employers in relation to employees working in the context of atypical forms of employment.

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ОСОБЛИВОСТІ СОЦІАЛЬНОГО ЗАХИСТУ ЗА НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ НАЙМАНИХ ПРАЦІВНИКІВ

Анотація. ***Мета.*** Мета статті полягає у з'ясуванні особливості соціального захисту за нетипових форм зайнятості найманих працівників. ***Результати.*** Під соціальним захистом за нетипових форм зайнятості найманих працівників найбільш доцільно розуміти закріплену та регламентовану нормами чинного законодавства України цілеспрямовану діяльність держави (в особі її уповноважених інституцій та їх посадових осіб) і самих роботодавців, що спрямована на створення належних умов правового й організаційного характеру з метою реалізації гарантій соціального й економічного характеру, які у своїй сукупності: а) сприяють стабільному розвитку трудових правовідносин із працівниками, що здійснюють трудову діяльність як надомники, дистанційно чи за гнучким графіком; б) дають змогу забезпечити досліджуваній категорії працівників гідний рівень життя в разі настання певних соціальних ризиків. Наголошено, що важливим елементом соціального захисту є загальнообов'язкове державне соціальне страхування на випадок безробіття. Страхуванню на випадок безробіття підлягають особи, які працюють на умовах трудового договору (контракту), включно з тими, які проходять альтернативну (невійськову) службу, цивільно-правового договору чи на інших підставах, передбачених законом, військовослужбовці (крім військовослужбовців строкової служби) та інші особи, які проходять службу й отримують грошове забезпечення (далі – військовослужбовці), особи, які провадять незалежну професійну діяльність, фізичні особи – підприємці, члени фермерського господарства, якщо вони не належать до осіб, які підлягають страхуванню на інших підставах. ***Висновки.*** Зроблено висновок, що на сьогодні питання соціального захисту за нетипових форм зайнятості регулюється досить поверхнево, адже законодавець у цьому контексті вказану категорію працівників не виокремлює. Усе зазначене вище дає змогу виділити такі особливості соціального захисту досліджуваної категорії працівників: законодавець, визначаючи коло суб'єктів, що мають право на соціальне страхування, фактично не виокремлює працівників, що здійснюють трудову діяльність як

надомники, дистанційно чи за гнучким графіком; нормами чинного законодавства не враховується специфіка трудоправового статусу досліджуваних категорій працівників, а отже, їх соціальний захист належним чином не врегульовується; у чинних нормативних джерелах фактично не закріплюються обов'язки роботодавців щодо працівників, які працюють за нетиповими формами зайнятості.

Ключові слова: соціальний захист, нетипові форми зайнятості, наймані працівники, соціальне страхування.

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THE CONCEPT OF GUARANTEES OF OBSERVING RIGHTS OF AN EMPLOYEE WHO HAS CAUSED DAMAGE TO THE EMPLOYER

Abstract. ***Purpose.*** The purpose of the article is to propose the author's definition of guarantees of observing the rights of an employee who has caused damage to the employer. ***Results.*** Relying on the analysis of scientific views on the essence of the concept of "guarantees", the article offers the author's definition of "guarantees of observing the rights of an employee who has caused damage to the employer". It is noted that the creation of guarantees is an important duty of the State, regardless of the sector of public relations in question. The author emphasises that the guarantees under study are diverse in nature, and therefore their classification is necessary. At their core, guarantees are a system of conditions that ensure that human needs are met. Their main function is to ensure that the state and other entities fulfil their responsibilities in the field of human rights. The object of guarantees is social relations associated with the protection and defence of human rights, satisfaction of property and non-property interests of citizens. Legal guarantees are a constructive expression of the principle of self-defence of rights. They embody the idea of the coordinated action of law and the state, implying that some forms, trends and functions of the state regulatory framework and activities serve as a protective mechanism for others and vice versa. It is only in this general context of mutual support and coherence of various parts and aspects of the entire state legal system that certain special forms and constructions of legal guarantees of individual rights and freedoms can fulfil their protective role. ***Conclusions.*** It is concluded that guarantees of observing the rights of an employee who has caused damage to the employer are a set of conditions, instruments and means enshrined in legal regulations of different legal force which are aimed at ensuring, inviolability and proper exercise of the rights, freedoms and interests of persons who shall compensate for damage to the employer. Observance of these guarantees is an important prerequisite for meeting the principles of legality and justice in the relevant field. It should be emphasised that the guarantees under study are diverse in nature, and therefore their classification is necessary.

Key words: classification, guarantees, observance, rights, freedoms, employees, damage, employer.

1. Introduction

Compensation for damage caused by an employee is a complex concept by its nature and essence. Moreover, compensation for damage always involves the risk of violating employees' rights. In order to avoid such situations, the law provides for a number of different guarantees aimed at ensuring and observing the rights of an employee who has caused damage to the employer. The creation of guarantees is the duty of the state to the individual and to entire society. State authorities should ensure and protect the rights and freedoms of citizens, enter into relations with citizens regarding the direct exercise of these rights (Puchkova, 1987, p. 140). And the issue presented in this research is no exception.

Some problematic issues related to the protection of the rights and freedoms of employees who have caused damage to the employer have been considered in their scientific works by: V.S. Venediktov, V.V. Haievyi, O.Y. Kostiuchenko, T.Ye. Krysan, Ye.Yu. Podorozhnyi, Ya.S. Protopopova, I.A. Rymar, P.R. Stavyskyi, N.M. Khutorian, V.V. Yakovlev, and many others. However, despite a considerable number of scientific achievements, the issue of guarantees of observing the rights of an employee who has caused damage to the employer has actually remained unaddressed by scholars.

Consequently, the purpose of the article is to propose the author's definition of guarantees of observing the rights of an employee who has caused damage to the employer.

2. Functions and the content of guarantees

First, it should be noted that a guarantee (from the French *Garantie*) is defined in dictionaries as moral or material responsibility assumed by an individual, state, enterprise, commercial or other structure for the fulfilment, observance, etc. of any obligations, as well as for the condition, quality of something (Dal, 1880, p. 267). O. Kulinich interprets a guarantee as a certain phenomenon that ensures the achievement of a specific positive result, namely the realisation of the right to education by citizens. The guarantee contains two integral components: it implements and protects. Therefore, today it is important to develop such theoretical legal remedies and conditions that would be maximally realised and protected in practice (Kulinich, 2014, pp. 79–80). M.I. Matuzov and O.V. Malko convincingly prove that guarantees are a socio-political and legal phenomenon which is: 1) cognitive, as it allows to reveal substantive theoretical knowledge about the object of their (guarantees') influence, to gain practical knowledge about the social and legal policy of the state; 2) ideological, as it is used by the political authorities as a means of promoting democratic ideas within the country and abroad; 3) practical, as it is recognised as an instrument of jurisprudence, a prerequisite for satisfaction of social benefits of a person. Relying on this, the authors define guarantees as a system of socio-economic, political, legal organisational prerequisites, conditions, means and methods that create opportunities for an individual to exercise his or her rights, freedoms and interests (Matuzova, Malko, 1997, p. 275).

L.D. Voevodin believes that guarantees are a reliable bridge that ensures the transition from the general to the particular, from the possibility proclaimed in the law to reality, which is necessary in the foundations of the legal status of a person. Guarantees are necessary for the legal status in general and for each of its elements. However, first and foremost, they are required for rights, freedoms and duties. Therefore, the scholar concludes that, in a broad sense, the concept of "guarantees" covers the entirety of objective and subjective factors aimed at the true realisation of the rights and freedoms of citizens, at eliminating possible causes and obstacles to their incomplete or improper exercise, and at protecting rights from violations that are far too frequent today. Although these factors are very diverse, in relation to the process of exercising rights and freedoms, they act as conditions, means, ways, techniques and methods for its proper implementation. Therefore, guarantees should be understood as the conditions and means that ensure the realisation and comprehensive protection of the rights and freedoms of everyone (Voevodin, 1997, p. 222).

According to B.I. Stakhur, guarantees should be considered in a broad and narrow sense. Therefore, broadly "guarantees" means the totality of objective and subjective factors aimed at full implementation and comprehensive protection of the rights and freedoms of citizens, elimination of causes and conditions for their improper exercise and protection against violations. By establishing the content and scope of human rights and freedoms, the state assumes the responsibility for ensuring that these guidelines are met. Moreover, given that the exercise of the rights and freedoms of citizens is inevitably associated with the need to apply procedural coercion measures, the state is forced to develop an effective mechanism to limit the claims of public authorities to undivided dominance in regulating relations with the population. In this regard, guarantees can be viewed as a system of conditions, means and ways that ensure equal opportunities for the identification, acquisition and exercise of rights and freedoms (Stakhura, 2016, pp. 90–91).

Therefore, in essence, guarantees are a system of conditions that ensure that human needs are met. Their main function is to ensure that the state and other entities fulfil their responsibilities in the field of human rights. The object of guarantees is social relations associated with the protection and defence of human rights, satisfaction of property and non-property interests of citizens (Alekseev, 1995, p. 275).

E. Khazov argues that legal guarantees should be understood as the recognition and consolidation of human and civil rights, freedoms and obligations in the Constitution and other regulations of the State and ensuring their implementation by all law enforcement activities of the State, socio-political organisations, their officials and the individual (Khazov, 2011, p. 146). V.M. Skobelkin believes that legal guarantees are legal and organisational means and ways to ensure the exercise of rights and fulfilment of obligations provided for by law. They represent a complex system of interacting elements that allow organising comprehensive support for different stages of exercising rights and duties, protection against encroachments, and restoration of violated legal rights (Skobelkin, 1996, p. 78). According to O. Nehodchenko, legal guarantees are organisational guarantees provided for by the Constitution and laws,

which constitute the legal form of activities of the State and all its bodies, officials and civil society organisations to create an enabling environment for citizens to actually exercise their rights, as well as regulatory and legal guarantees, which constitute a system of norms for the exercise of human and civil rights and freedoms and a legal mechanism for their practical enforcement, protection and defence. Among the regulatory and legal guarantees, procedural norms are of importance as a system of legal means established by law for the administration of justice, protection of human rights and freedoms in criminal and civil proceedings, and fulfilment of the tasks of criminal and civil proceedings (Rymarenko, Kondratiev, Tatsii, Shemshuchenko, 2005, pp. 256–257).

3. Legal guarantees and their place in labour law

Following V.S. Nersesiants, legal guarantees are a system of interrelated forms and means (regulatory, institutional, procedural) that ensure proper recognition, protection and enforcement of certain rights and their duties. Legal guarantees are a constructive expression of the principle of self-defence of rights. They embody the idea of the coordinated action of law and the state, implying that some forms, trends and functions of state regulatory framework and activities serve as a protective mechanism for others and vice versa. It is only in this general context of mutual support and coherence of various parts and aspects of the entire state legal system that certain special forms and constructions of legal guarantees of individual rights and freedoms can fulfil their protective role. To sum up, legal guarantees themselves require legal guarantees, and these can ultimately be provided by the legal state and laws (Nersesiants, 1999, p. 142).

S.S. Klimovskyi argues that legal guarantees are a set of statutory conditions, methods and means by which the conditions and procedure for exercising the rights and freedoms of a person are determined, as well as their protection, defence and restoration in case of violation, they are systemic, comprehensive, permanent, real and legally reliable. The role and significance of legal guarantees is determined by the fact that they create the necessary conditions for the transformation of human and civil rights and freedoms enshrined in the law from opportunities into reality. The scholar identified the following as key features of guarantees: 1) regularisation, which provides for the definition of guarantees only in the texts of legal regulations; 2) consistency – legal guarantees constitute a single system with stable links and relatively autonomous elements, which are represented by guarantees of specific rights and freedoms; 3) permanence – legal guarantees have a permanent, stable, continuous nature; 4) actuality – legal guarantees should be aimed at direct implementation, protection and defence of the right, be non-declarative and be provided by a system of rules that create a mechanism for the implementation of legal guarantees; 5) comprehensiveness – legal guarantees are applied in a combination, the exercise of rights and freedoms can be carried out on the basis of comprehensive application of guarantees, provided that there is an effective mechanism for their implementation; 6) legal reliability – the interrelation of the guarantee with the social situation and the stability of its social content (Klimovskyi, 2015, p. 19).

According to T.V. Kurylo, legal guarantees in labour law are a system of legal provisions provided for by labour legislation which require certain conduct of participants in labour relations (by establishing rights and duties), and the activities of these actors which are based on the provisions of law, enforced by sanctions and are aimed at unimpeded actual implementation, protection and defence of labour rights (Kurylo, Tataryn, 2008, p. 156). In addition, Y.A. Dzhepa considers legal guarantees in labour law as a complex system and offers the following classification of legal guarantees provided for by the Labour Code of Ukraine as a subsystem in the general system of labour legal guarantees: guarantees of the constitutional right to work, which are enshrined in Section 1 "General Provisions" of the Labour Code of Ukraine; guarantees for concluding, amending or terminating an employment contract; guarantees for various participants of labour relations (guarantees for authors of inventions, industrial designs, utility models; guarantees for employees elected to trade union bodies; guarantees for women, pregnant women, women raising children; guarantees for employees who combine work and study, etc.); guarantees for employees who temporarily do not perform their labour functions in cases provided for by labour legislation (guarantees for employees on elected positions; guarantees for donors, guarantees for employees who are sent for medical examination to a medical institution, etc.); guarantees for employees in case of changes in working conditions (business trips, relocation to another location); guarantees for the material liability of employees and employers (Dzhepa, 2009, p. 127).

In O.A. Anton's opinion, the specificity of legal guarantees enshrined in the Labour Code of Ukraine is due to the special subject matter of the regulatory framework and is as follows: a) some legal guarantees have a limited scope, i.e. they apply only to a certain category of persons (for example, they are intended for young people, women, working mothers); b) legal

guarantees enshrined in the Labour Code are characterised by the non-simultaneous entry into force: some guarantees come into force before the labour relationship arises (for example, the prohibition on the employer's demanding documents and information about a person not required by law during the hiring process – Article 25 of the Labour Code); others – only after their occurrence (for example, salary guarantees become effective only after the employee has started performing his or her employment duties); depending on the employee's age, gender, health status, and area of employment (e.g., it is prohibited to dismiss an employee at the employer's initiative during the period of temporary disability – Part 3 of Article 40 of the Labour Code); in certain circumstances (e.g., after an employee is unlawfully dismissed, legal guarantees come into force to give the employee the right to seek protection of his or her rights in court and give rise to a new duty for the employer to reinstate the unlawfully dismissed employee); c) as well as their occurrence, the termination of guarantees is non-simultaneous: regardless of the person's will (for example, reaching the age of majority terminates the right to extended minimum annual labour leave); as a result of certain actions (for example, if an employee fails to report to work for more than 4 consecutive months due to temporary disability, the employer has the right to dismiss the employee. That is, in this case, the guarantee provided for in Part 3 of Article 40 of the Labour Code does not apply) (Anton, 2005, p. 190).

4. Conclusions

Therefore, the guarantees of observing the rights of an employee who has caused damage to the employer are a set of conditions, instruments and means enshrined in legal regulations of different legal force which are aimed at ensuring, inviolability and proper exercise of the rights, freedoms and interests of persons who shall compensate for damage to the employer. Observance of these guarantees is an important prerequisite for meeting the principles of legality and justice in the relevant field. It should be emphasised that the guarantees under study are diverse in nature, and therefore their classification is necessary.

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ПОНЯТТЯ ГАРАНТІЙ ДОТРИМАННЯ ПРАВ ПРАЦІВНИКА, ЯКИМ БУЛА ЗАВДАНА ШКОДА РОБОТОДАВЦЮ

Анотація. ***Мета*** статті – запропонувати авторське визначення гарантій дотримання прав працівника, яким була завдана шкода роботодавцю. ***Результати.*** За результатами аналізу наукових поглядів вчених стосовно сутності поняття «гарантії» у статті запропоновано авторське визначення «гарантії дотримання прав працівника, яким була завдана шкода роботодавцю». Відмічено, що створення гарантій – це важливий обов'язок держави, незалежно від того, про яку сферу суспільних відносин йдеться. Акцентовано увагу на тому, що досліджувані гарантії є різноманітними за своєю природою, а отже, потрібна їх класифікація. За своєю суттю гарантії – це система умов, які забезпечують задоволення потреб людини. Їх головною функцією є виконання обов'язків державою та іншими суб'єктами у сфері реалізації прав людини. Об'єктом гарантій є суспільні відносини, які пов'язані з охороною та захистом прав людини, задоволенням майнових і немайнових інтересів громадян. Юридичні гарантії – це конструктивне вираження принципу самозахисту прав. Вони, продовжує науковець, втілюють ідею узгодженої дії права та держави, коли одні форми, напрями й функції державно-правового регулювання та діяльності слугують водночас захисним механізмом для інших і навпаки. І лише в такому загальному контексті взаємної підтримки й узгодженості різних частин і аспектів усього державно-правового комплексу окремі спеціальні форми та конструкції юридичних гарантій прав і свобод особистості можуть реально здійснити свою захисну роль. ***Висновки.*** Зроблено висновок, що гарантії дотримання прав працівника, яким була завдана шкода роботодавцю, є сукупністю закріплених у нормативно-правових актах різної юридичної сили умов, інструментів та засобів, що спрямовані на забезпечення, непорушність і належну реалізацію прав свобод та інтересів осіб, які повинні відшкодувати шкоду роботодавцю. Дотримання вказаних гарантій є важливою запорукою дотримання принципів законності та справедливості у відповідній сфері. Слід підкреслити, що досліджувані гарантії є різноманітними за своєю природою, а отже, потрібна їх класифікація.

Ключові слова: класифікація, гарантії, дотримання, права, свободи, працівники, шкода, роботодавець.

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TYPES OF NATIONAL AND INTERNATIONAL CLASSIFICATIONS OF INDUSTRIAL PARKS

Abstract. ***Purpose.*** The purpose of the article is to study the current types of classification of industrial parks in accordance with the national Ukrainian legislation and the requirements of the UN and the EU, as well as in accordance with scientific research, and to propose potential solutions to the numerous problems arising from the reform of industrial parks in our country. ***Results.*** The article studies the classification of industrial parks. The classification of industrial parks under legislation in force (Articles 1 and 13 of the Law of Ukraine "On Industrial Parks") is considered and it is concluded that the legislator differentiates industrial parks into national and transboundary parks, as well as depending on the initiators of their creation, by the land on which the industrial park has been created and by the ownership of the land plot. Furthermore, various scientific studies that classify industrial parks according to the type of production site, the share of high-tech technologies, ownership, industry structure, management model, and others are reviewed. The classification provided by Chinese authors, according to which industrial parks are divided into product-oriented parks, consumer-oriented parks and trade-oriented parks, is under the focus of the study. The need for further research and improvement of national legislation in this field, bringing it in line with international standards is underlined. In particular, the author examines the definitions of an industrial park and a technology park provided by national legislation and proves that they are similar up to the level of complete synonymy. In addition, eco-industrial parks, which are currently considered to be advanced and are rapidly spreading around the world, are under the focus of the study. ***Conclusions.*** It is concluded that the national legislator's approach requires significant changes both in terms of the definition of an industrial park and in terms of the regulatory framework for its creation and operation. Classification models introduced in the leading countries of the world and the UN can greatly help to determine which classification features of an industrial park should be indicated as the main ones and which features of industrial parks require special attention and appropriate regulatory framework.

Key words: industrial parks, investment attraction, industrial park territory, classification of industrial parks, UN Industrial Development Organisation, EIP Framework.

1. Introduction

Modern Ukraine needs significant capital injections both during the war and after the victory, during the period of reconstruction and further development of the national economy. To this end, the national legislator adopted amendments to the Law of Ukraine "On Industrial Parks", proclaiming that this would supposedly make existing and newly created industrial parks attractive to investors. However, there are well-founded fears that the legislator views industrial parks as a type of free economic zone that has repeatedly proved to be ineffective and has served almost exclusively for money laundering and corruption by officials at various levels. In addition, this understanding of the concept of an industrial park is outdated, which may impede Ukraine's gradual entry into the European legal space.

In order to prevent this, the current classifications of industrial parks according to Ukrainian legislation and existing international legislative and scientific classifications should be properly considered. Moreover, this will help further improve national legislation and bring it in line with the UN requirements for modern industrial parks, which will undoubtedly contribute to attraction of a significant number of foreign investors in the future.

At present, the classification of industrial parks as a possible means of rebuilding the state economy is primarily of interest to journalists and economic analysts, such as V. Marchuk, O. Bilan, V. Bilotkach, Yu. Horodnichenko,

O. Zholud, T. Kupe, T. Mylovanov, V. Movchan, A. Nikolsko-Rzhevskyi, D. Nizalov, O. Nizalova, I. Solohub, O. Talavera, N. Shapoval, and others. Among the scientists who once studied the issues of industrial parks, it is necessary to mention foreign and domestic researchers such as Dick van Beers, Klaus Tyrkko, A. Flammini, C. Barahona, L.Ya. Benovska, O.M. Boiko, O.V. Marchyshynets, S.M. Marchyshynets, N.T. Rud, and Yu.V. Chyrychenko. However, significant updates in domestic and international scientific and legislative approaches to industrial parks make it necessary to note a significant lack of research on this issue.

The purpose of the article is to study the current types of classification of industrial parks in accordance with the national Ukrainian legislation and the requirements of the UN and the EU, as well as in accordance with scientific research, and to propose potential solutions to the numerous problems arising from the reform of industrial parks in our country.

2. The regulatory framework for types of industrial parks

The Ukrainian legislation in force does not contain any detailed classification of industrial parks. However, relying on the analysis of certain articles of the Law of Ukraine "On Industrial Parks" and a number of other legal regulations, some conclusions can be drawn.

In particular, according to the definitions provided in Article 1 of the Law of Ukraine "On Industrial Parks", industrial parks are divided into:

1) National – established in accordance with the laws of Ukraine;

2) Cross-border – industrial parks that should be created and operate on the basis of an international agreement of Ukraine concluded between governments or their authorised initiators (Law of Ukraine On Industrial Parks, 2012). Since it remains unclear how such an international agreement would be concluded, what competence and within what limits would be possessed by, for example, "initiators authorised by governments of states", and who would have the right to grant them the relevant competence, it is quite possible that additional subclasses may appear in this subtype of industrial parks.

Relying on the analysis of Article 13 of the above-mentioned Law, industrial parks can also be classified depending on the initiators of the industrial park creation:

– parks created by state authorities;

– parks created by local authorities;

– parks created by legal entities or natural persons (Law of Ukraine On Industrial Parks, 2012).

The legal regime for these categories is somewhat different. For example, depending on the initiator of the industrial park, the management company will be selected: if the initiator is a state or local government body, the management company will be selected through a tender (Articles 18–19 of the Law) since the relevant authorities have the right to make such decisions exclusively through a tender in accordance with the legislation in force. If the initiator of the creation is a legal entity/natural person (and the land plots intended for the creation of the industrial park are privately owned), the management company is appointed by the initiator of the creation (Article 18 of the Law).

Accordingly, parks can be created on state, municipal or private land. In principle, the classifications by initiators and by the land on which the industrial park is created will almost coincide, but certain nuances are present. For example, a legal entity or a natural person may initiate the creation of an industrial park on state or municipal land if it is a tenant of such land and complies with other provisions of the Law of Ukraine "On Industrial Parks" (Article 5 of the Law) (Law of Ukraine on Industrial Parks, 2012).

In terms of land ownership, industrial parks can be classified as those created on their own land or on leased land because the lessor will have certain additional rights on the leased land. The initiators of the creation, if they are tenants, will accordingly have certain obligations towards the landowner. For example, when appointing a management company, the tenant shall notify the landlord of such a decision (Article 18, part 3, of the Law). The landlord shall also approve the concept of the industrial park, and the tenant shall agree this concept with the landlord. There are also other legal provisions that set out the rights of the lessor and the corresponding duties of the lessee.

The legislator does not differentiate between industrial parks according to the types of activities, limiting itself to listing the types of activities that are permitted and prohibited on the territory of any industrial park. Moreover, the Law of Ukraine "On the special regime of innovative activities of technology parks" contains the following definition: "a technology park (technopark) is a legal entity or a group of legal entities (hereinafter referred to as participants in the technology park), acting in accordance with a joint venture agreement without establishing a legal entity and without pooling contributions in order to create organisational frameworks for the implementation of technology park projects for the production implementation of knowledge-intensive developments, high technologies and ensuring industrial production competitive in the global

market" (The Law of Ukraine On the Special Regime of Innovative Activity of Technological Parks, 1999). Comparison of the definitions provided in the two legal regulations simultaneously in force in our country leads to a number of disappointing conclusions.

In particular, both definitions refer to similar concepts – territories set aside for innovation and industrial activity – but the interpretation of these definitions is fundamentally different: an industrial park is considered to be a specific land plot, i.e. a territory allocated for certain activities, while a technology park is primarily a group of people (who, in theory, can create a technology park in a rented multi-storey building).

These differences cannot be recognised as existing precisely for the sake of the fundamental distinction between the two definitions. Most likely, it is a sad lack of a systematic approach in a modern national regulatory framework. Moreover, the existence of these two approaches is of importance since the differences between them lead to fundamental differences in the further interpretation of concepts. If industrial and technological parks are land plots, the activities related to their creation and operation should include the appropriate arrangement of a specific land plot, the supply of communications, the laying of roads, the construction of logistics hubs, etc. Such activities will be regulated in many respects by the construction law, and only then will the persons who wish to use the proposed territory enter into lease agreements or other types of contracts with the management company. Consequently, investors will also enter into relevant agreements: these will be derivatives of the agreements on the use of the territory. If the concept of industrial and technological parks is defined as a set of founders, the creation of an appropriately equipped territory on a certain land plot turns from the leading activity of creating an industrial park into a secondary one, and the creation of the park should be considered as the selection of a circle of persons concerned (i.e., founders or even managers, i.e., a management company) who may well take on the arrangement of the territory and other purely organisational functions.

In the first case, the functions of the initiators of an industrial park are to prepare a developed land plot in which investors will invest and which park participants will be able to use in a certain way; in the second case, the functions of the initiators of the technology park are limited to the search for participants, and instead of a properly equipped land plot, any plot that meets the needs of the technology park, even a multi-storey office and industrial building, can be used (leased, etc.). There are no restrictions on the number of hectares on which a technology park can be located; there are also no restrictions on the range of activities.

Obviously, the definitions in the above-mentioned legal regulations make it virtually impossible to distinguish between the concepts of "industrial park" and "technology park" by the category of activities carried out. After all, based on the definitions, in both technological and industrial parks the following activities are performed:

a) Research and development;

b) Industrial implementation of the results of research and development;

c) Information and telecommunications (high technologies);

d) Industrial production.

Therefore, the analysis of the above definitions leads to the conclusion that although the legislation in force does not use the concepts of "technology park" and "industrial park" as synonymous, they are essentially synonymous, since it is impossible to distinguish between them. Supposedly, a technology park is focused on the development of innovative technologies and their testing, while an industrial park is focused on production, but this distinction is only an assumption. In addition, it should be noted that the legislation in force contains the concept of a "science park", which is specifically entrusted with the function of research and development and the creation of new technologies, and that existing draft laws also use the concept of an "investment park", which should be understood as a part of the territory of Ukraine where a special legal regime for business activities and the procedure for the application and operation of Ukrainian legislation are established and in force.

Therefore, since the national legislation in this matter demonstrates outright incompetence, it seems reasonable to consider the classifications that are common in the world, since international law and the law of certain countries have been using these concepts for a long time.

3. Specificities of the classification of industrial parks

Among the classifications of industrial parks, the most common is the division by type of production site. The traditional division is between greenfield and brownfield, where greenfield is new parks built from scratch, and brownfield is old ones that have emerged on the site of former industrial zones.

According to experts, greenfield industrial parks are usually attractive mainly to large companies looking for space to build industrial facilities to suit their specific needs. Such

parks often attract foreign investors. In modern Ukraine, an industrial park in Bila Tserkva was built using the greenfield methodology.

As for brownfield industrial parks, these are parks that were built on an existing site equipped with the appropriate infrastructure (for example, in Ukraine, this happened primarily on the territory of large factories and industrial complexes that were partially or completely destroyed in the 1990s). Frequently, private industrial parks are built using the brownfield system in the world. They are of interest to small companies, mostly domestic ones, production facilities thereof can be located in standard premises.

Today, this classification is increasingly expanded to include the so-called bluefield category, which is a mixed-structure industrial park built partly on an existing site and partly on a new territory added to the site or with significant infrastructure redevelopment. However, the concept of bluefields is not yet well-established, and experts interpret it in very different ways.

According to the share of high-tech technologies, industrial parks are divided into those dominated by industrial production, predominantly industrial, predominantly scientific and technological, and high-tech parks. (It should be noted that current Ukrainian legislation recognises only manufacturing parks as industrial parks, which is not in line with global trends).

Regardless of how an industrial park is classified, its main purpose is to carry out economic activities. The concentration and development of industry is always the essence of a park. The style of development and methods of transformation of parks differ because the main industries of the parks differ.

Chinese researchers Bai Yue and Li Xuewen divide economic activity into three categories: production activity, consumer activity and trade activity. Accordingly, they divide industrial parks into product-oriented parks, consumer-oriented parks and trade-oriented parks.

Among them, product-oriented parks are divided into tangible product parks and intangible product parks based on different product types. High-tech parks, economic and technological development zones and other parks focusing on manufacturing are tangible product-oriented parks. Cultural and creative industrial parks, financial industrial parks, industrial parks of the Internet information economy and other parks that produce ideas are intangible product-oriented parks.

Consumer-oriented parks are basically structures that offer consumers goods and places to gain certain experiences and relaxation, including scenic spots for tourism and recreation, health areas and urban agricultural parks. A trade-oriented park is a hub that provides modern logistics capabilities and transport support for trade and exhibitions. The main industries in this case are customs warehousing, logistics and distribution, as well as trade and exhibition centres, including the airport economic zone, the bonded port area and the logistics park (Yue, Xuewen, 2022).

According to ownership, industrial parks are divided into municipal, private-municipal and private. Historically, municipal industrial parks have been considered the most effective, as their main goal is not so much to generate excessive profits from a project or land lease as to attract investors who will pay taxes and create new jobs in the future. Opinions on private industrial parks differ. On the one hand, private industrial parks are often speculative in nature. In addition, the prices for services in such parks are usually higher, as the founders have to pay back the funds invested in the infrastructure. On the other hand, such parks are subject to higher requirements in terms of the level of efficiency of business entities. In addition, the management of such parks is more flexible, as private owners are more responsive to market needs and invest more in the newest and most profitable sectors.

Industrial parks are grouped into universal and specialised by sectoral structure. The residents of universal parks are dominated by enterprises of different companies that are not interconnected by technological processes. The only criterion is that the enterprises should not conflict with the environment. Specialised parks, in turn, are of two types. According to the first type, one anchor resident selects companies with related businesses, while the second type involves the integration of independent companies operating in the same industry.

In the global practice of industrial parks, two main management models can be distinguished. According to the first model, the parks are managed by a management company that provides enterprises not only with sites for production, but also with the necessary infrastructure and services. According to the second model, small industrial parks are not managed by a special company, and firms that have located production on a single territory provide all the necessary services and attract outside companies.

In addition, in global practice, industrial parks are sometimes identified with the following concepts: technology parks, special economic zones, special industrial zones, special economic zones, etc. However, in Ukraine,

the concept of an industrial park is separately defined. Industrial parks in our country are built according to the European model of technology parks, which is characterised by the following features: a centrally developed and managed territory with production, warehouse, office buildings, appropriate communications, infrastructure, research and development activities (Osadcha, 2014, p. 73).

Recently, the model of so-called eco-industrial parks, supported by the relevant UN structures (specifically, the United Nations Industrial Development Organisation, UNIDO), has been prevailing in the global space. The main goal of such parks is not only to make profits, but, above all, to develop innovative technologies and preserve the environment at the same time (Dick, Klaus, Alessandro, Barahona, Christian, 2020).

4. Conclusions

Therefore, the national legislator's approach requires significant changes both in terms of the definition of an industrial park and in terms of the regulatory framework for its creation and operation. Classification models introduced in the leading countries of the world and the UN can greatly help to determine which classification features of an industrial park should be indicated as the main ones and which features of industrial parks require special attention and appropriate regulatory framework. In particular, we believe it is necessary to focus on the infrastructure and environmental components of the industrial park, which are currently not regulated by the relevant national legislation. In addition, we believe that it is correct and reasonable to provide tax incentives exclusively to companies that introduce the latest, innovative technologies.

Further research should focus on the issue of modern classification of industrial parks with the predominant introduction of eco-industrial parks and relevant standards, as well as on creating an enabling environment at the legislative level for attracting advanced technologies to our country and investing in efficient new technologies.

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ВИДИ НАЦІОНАЛЬНИХ І МІЖНАРОДНИХ КЛАСИФІКАЦІЙ ІНДУСТРІАЛЬНИХ ПАРКІВ

Анотація. ***Мета.*** Метою статті є вивчення сучасних видів класифікації індустріальних парків згідно з національним українським законодавством і вимогами ООН та ЄС, а також відповідно до наукових досліджень, і пропонування можливих варіантів вирішення численних проблем, що виникають у зв'язку з реформацією індустріальних парків у нашій державі. ***Результати.*** Статтю присвячено дослідженню класифікації індустріальних парків. Розглядається класифікація індустріальних парків згідно з чинним законодавством (ст. 1, 13 Закону України «Про індустріальні парки») і робиться висновок, що законодавець розмежовує індустріальні парки на національні

та транскордонні, а також залежно від ініціаторів створення за землями, на яких створений індустріальний парк, і за правом власності на земельну ділянку. Також розглядаються різноманітні наукові дослідження, згідно з якими здійснюється класифікація індустріальних парків залежно від типу виробничого майданчика, відповідно до частки високонаукових технологій, за правом власності, за галузевою структурою, за моделлю управління тощо. Окремо розглядається класифікація, надана китайськими авторами, згідно з якою індустріальні парки поділяються на парки, орієнтовані на продукт, парки, орієнтовані на споживача, і парки, орієнтовані на торгівлю. Багато уваги у статті приділяється необхідності подальших досліджень і вдосконаленню національного законодавства в цій сфері, узгодженню його зі світовими стандартами. Зокрема, розглядаються надані у вітчизняному законодавстві визначення індустріального парку та технологічного парку, доводиться їхня схожість аж до рівня повної синонімії. Увага приділяється також екопромисловим (екоіндустріальним) паркам, які наразі вважаються передовими та стрімко розповсюджуються по всьому світові. ***Висновки.*** Зроблено висновок, що підхід національного законодавця потребує значних змін як у частині визначення індустріального парку, так і в частинах правового регулювання його створення та діяльності. Класифікаційні моделі, запроваджені у провідних країнах світу та ООН, можуть значно допомогти з тим, щоб визначитися, які саме класифікаційні ознаки індустріального парку вказувати як головні та які особливості індустріальних парків потребують особливої уваги й відповідного правового регулювання.

Ключові слова: індустріальні парки, залучення інвестицій, територія індустріального парку, класифікація індустріальних парків, Організація промислового розвитку ООН, Міжнародна структура EIP.

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STRUCTURE OF ADMINISTRATIVE AND LEGAL MECHANISM FOR INTERACTION OF SECURITY AND DEFENCE SECTOR ENTITIES WITH REGARD TO ENSURING NATIONAL SECURITY

Abstract. ***Purpose.*** The purpose of the article is to characterise the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security. ***Results.*** It is determined that the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security is a controversial topic, enabling to present the original opinion on this issue. In our opinion, these are: rule-making (establishment of rules, procedures, duties, etc.), organisational (collection of information, preparation of documents, etc.), support (methodological support, technical and material equipment, financing, etc.) and managerial (encouragement, persuasion, control and supervision, etc.). ***Conclusions.*** It is stated that the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security is as follows: 1) Administrative and legal provisions objectified within the regulatory framework consisting of regulations of different legal force, of general and special orientation, the main purpose thereof is to regulate a specific issue within the relations under study; 2) Objects being regulated – the activities and conduct of security and defence sector entities, a clear identification of their composition; 3) Regulatory actors – that is, those actors that form the legal framework and procedures for the interaction under study. These are both the actors of a hierarchically higher structure and the actors of interaction, which is represented by the existence of memoranda of cooperation or the relevant jointly agreed and developed procedures for activities in a particular area; 4) Administrative legal relations that arise between objects being regulated and regulatory actors, as well as those that arise, develop and terminate between representatives of the security and defence sector: these are both horizontal and vertical relations characterised by different content; 5) Administrative and legal means of implementing the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security: rule-making (establishment of rules, procedures, duties, etc.), organisational (collection of information, preparation of documents, etc.), support (methodological support, technical and material equipment, financing, etc.) and managerial (encouragement, persuasion, control and supervision, etc.).

Key words: administrative and legal mechanism, interaction, security, national security, mechanism, national interests, security and defence sector.

1. Introduction

The structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security is a controversial issue, the peculiarity of which is determined by its purely theoretical content. The point is that there can be no unity of scientific opinion in this context due to subjective interpretations of scientists since there is no regulatory consolidation of such elements. Accordingly, we have the opportunity to present the original opinion on this issue.

The issues presented for analysis have not been covered in the literature at all. The assumptions about the structure of the mechanism under study are based on the general theoretical framework developed and supported by scholars such as: O. Bandurka, O. Holovko, V. Komziuk, S. Naumenko, V. Nehodchenko, O. Perederii, I. Pohribnyi, A. Rusetskyi, O. Salmanova, D. Slynko, L. Soroka, and others.

2. Administrative and legal provisions objectified within the regulatory framework as an element of the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security

In our direct consideration of the stated issues, we would like to clarify that we are of the opinion that the structure of the mechanism under study includes, first, the regulatory component represented by the regulatory framework in this field; second, the organisational component, i.e., object-actor units and relevant legal relations; and third, the instrumental component, which is objectified by the system of administrative and legal means in the instrumental context.

Accordingly, the structure of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security can be presented as follows.

1. Administrative and legal provisions objectified within the regulatory framework consisting of regulations of different legal force, and of general and special orientation, the main purpose thereof is to regulate a specific issue within the relations under study. General regulations are:

– The Constitution of Ukraine, which establishes the fundamental principles of national security and defence in general, as well as the exclusive or basic powers of the key actors in the security and defence sector and those responsible for organising their interaction;

– Laws of Ukraine: a) "On National Security of Ukraine" No. 2469-VIII of 21 June 2018, which specifies the provisions of the Constitution of Ukraine in terms of the principles of national security and defence, public policy in this field, as well as the powers and procedures of the actors involved in the implementation of this process; b) "On Defence of Ukraine" No. 1932-XII of 6 December 1991, which is the basic specialised law in the field of defence; c) "On the National Security and Defence Council of Ukraine" No. 183/98-VR of 05 March 1998, which establishes the legal basis for coordination and special control activities in this field; d) "On the Security Service of Ukraine" No. 2229-XII of 25 March 1992, which defines the principles of activity of the key state security agency, etc;

– Strategic planning regulations, such as: the National Security Strategy of Ukraine, approved by Presidential Decree No. 392/2020 of 14 September 2020, which aims to strengthen Ukraine's capacity to counter internal and external threats; the Strategy for State Security, approved by Presidential Decree No. 56/2022 of 16 February 2022, which defines the areas of optimisation of public policy on state security, the leading of which is the optimisation of interagency cooperation in the security and defence sector; the Military Security Strategy of Ukraine, approved by the Presidential Decree No. 121/2021 of 25 March 2021, which is the main planning document in the field of comprehensive defence; the Concept of Ensuring the National Resilience System, approved by the Presidential Decree No. 479/2021 of 27 September 2021, which aims to implement effective procedures for protecting important sectors of society and the state from adverse factors and influences, etc;

– Other legal regulations, such as, Resolution No. 878 of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on the Ministry of Internal Affairs of Ukraine" of 28 October 2015, which establishes the organisational and practical implementation principles of the internal security and protection function of the state; Order No. 6/315 of the Ministry of Defence of Ukraine and the Ministry of Internal Affairs of Ukraine "On approval of the Procedure for electronic information interaction of the defence intelligence of Ukraine, the Ministry of Internal Affairs of Ukraine and Central Executive Authorities, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine" of 25 May 2022, which defines the relevant mechanism, etc.

3. Objects being regulated by the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security

2. Objects being regulated – in this case, we should talk about the activities and conduct of the security and defence sector actors, and a clear identification of their composition. It should be noted that to date, the concepts officially used in this field have been and are "the sector of national security and defence", "the sector of military security", "the military sector", "the military organisation of the state", etc. They are used in various legal regulations and have not lost their relevance to this day. However, the term "security sector" is increasingly used, including in the context of the implementation of the recently adopted National Security Strategy of Ukraine. Unfortunately, in many scientific sources this concept is interpreted in an expanded way, there are attempts to cover the entire system of national security of the state or to replace this concept with another one, or to reduce it to only one sector (military) or structural component (entity of ensuring military security) (Semenchenko, 2007; Nechkhaiev, 2007;

Sahaniuk, Romanov, Trotsko, Veshchytskyi, 2008). The Law of Ukraine No. 2469-VIII "On National Security of Ukraine" of 21 June 2018 stipulates that the security and defence sector includes: the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, the State Special Transport Service, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Anti-Terrorist Centre of the Security Service of Ukraine, the Court Security Service, the Department of State Guard of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the National Security and Defence Council of Ukraine, intelligence agencies of Ukraine, central executive body responsible for the formation and implementation of the state military-industrial policy (Law of Ukraine On National Security of Ukraine, 2018).

However, this list should not be taken as exhaustive, in particular because of the legislative provisions that state that: "the security and defence sector of Ukraine consists of four interconnected components: security forces; defence forces; defence industry; citizens and public associations that voluntarily participate in ensuring national security (Law of Ukraine On National Security of Ukraine, 2018).

Accordingly, there is still a scientific debate about the legislative definition of such entities. For example, some scholars add to this list the State Bureau of Investigation, the Antimonopoly Committee of Ukraine, the National Agency on Corruption Prevention, the Independent Defence Anti-Corruption Committee, the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes, and other agencies and organisations (Ponomarov, 2018, p. 102; Honcharenko, 2020, p. 43). In addition, there is an opinion that such entities are aggregates, such as: 1) state authorities that carry out strategic and managerial activities in the sectors of national security and defence of Ukraine (the Verkhovna Rada of Ukraine (within general competence), the President of Ukraine and the National Security and Defence Council of Ukraine (within special competence), the Cabinet of Ministers of Ukraine and relevant ministries (within general and special competence depending on the scope of a specific power)); 2) performers of practical tasks defined in strategic and managerial decisions directly related to the development of security and defence capabilities of Ukraine, protection and defence of the national interests of Ukraine (a) special entities: the Armed Forces of Ukraine, the State Special Transport Service, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Department of State Guard of Ukraine, the State Service for Special Communications and Information Protection of Ukraine, the Foreign Intelligence Service of Ukraine, the Defence Intelligence of Ukraine, the Intelligence Agency of the State Border Guard Service of Ukraine; b) general entities: courts of general jurisdiction, the Prosecutor's Office of Ukraine, the National Anti-Corruption Bureau of Ukraine, local state administrations and local self-government bodies, enterprises and organisations of various forms of ownership, citizens of Ukraine, associations of citizens); 3) bodies, institutions, organisations and individual actors involved in the performance of tasks of ensuring the national security of Ukraine (Zhuk, 2021, pp. 53–54).

4. Regulatory actors of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security

3. Regulatory actors – that is, those actors that form the legal framework and procedures for the interaction under study. For example, the provisions of Law of Ukraine No. 2469-VIII "On National Security of Ukraine" of 21 June 2018 include the following: the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the National Security and Defence Council of Ukraine, the Ministry of Defence of Ukraine, the Ministry of Internal Affairs of Ukraine, the Commander-in-Chief and General Staff of the Armed Forces of Ukraine, the Head of the Security Service of Ukraine, etc. It should be noted that the Advisor-Presidential Commissioner for interaction with public associations and volunteer formations involved in ensuring national security is responsible for establishing effective interaction of citizens, public associations, volunteer formations formed or self-organised for the defence of Ukraine and voluntarily participating in ensuring national security, defence and protection of the state, with the Armed Forces of Ukraine, other military formations formed in accordance with the laws of Ukraine and law enforcement bodies (Decree of the President of Ukraine The issue of the Advisor-Presidential Commissioner on issues of interaction with public associations and voluntary formations that participate in the provision, 2022). In

addition, it should be noted that the legal framework and procedures of the studied interaction can be formed by both the actors of a hierarchically higher structure and the actors of interaction, which is represented by the existence of memoranda of cooperation or the relevant jointly agreed and developed procedures for activities in a particular area.

4. Administrative legal relations that arise between objects being regulated and regulatory actors, as well as those that arise, develop and terminate between representatives of the security and defence sector: these are both horizontal and vertical relations characterised by different content.

5. Administrative and legal means of implementing the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security are the appropriate tools for the activities of the entities regulating this type of legal relations. In our opinion, these are: rule-making (establishment of rules, procedures, duties, etc.), organisational (collection of information, preparation of documents, etc.), support (methodological support, technical and material equipment, financing, etc.) and managerial (encouragement, persuasion, control and supervision, etc.).

5. Conclusions

We present original perspective on the structure of the administrative and legal mechanism for interaction of security and defence sector actors in ensuring national security. Its elements are composed on the basis of the general theoretical foundations developed by leading Ukrainian administrative scientists. Moreover, the results of this study do not claim to be "exhaustive", but rather an attempt to contribute to a scientific thought. It is likely that over time, other provisions may be substantiated or developed that will change the current view of the elemental composition of this mechanism, and possibly fill it with qualitatively new content.

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СТРУКТУРА АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ВЗАЄМОДІЇ СУБ'ЄКТІВ СЕКТОРУ БЕЗПЕКИ Й ОБОРОНИ ЩОДО ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ

Анотація. ***Мета.*** Метою статті є характеристика структури адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки. ***Результати.*** Визначено, що структура адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки є дискусійною проблематикою, у зв'язку із чим є можливість висвітлити власну думку щодо цього питання. Адміністративно-правові засоби реалізації механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки – це відповідний інструментарій діяльності суб'єктів регулювання цього різновиду правовідносин. Зокрема, вважаємо, що такими є: нормотворчі (встановлення правил, процедур, зобов'язань тощо), організаційні (збір інформації, підготовка документів тощо), забезпечувальні (методичний супровід, технічне та матеріальне оснащення, фінансування тощо) та управлінські (заохочення, переконання, контрольно-наглядова діяльність тощо). ***Висновки.*** Сформовано, що структура адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки є такою: 1) адміністративно-правові норми, об'єктивовані в межах нормативно-правової бази, що складається з актів різної юридичної сили й загального та спеціального спрямування, основним призначення яких є врегулювання конкретного питання в межах досліджуваних відносин; 2) об'єкти регулювання – діяльність і поведінка суб'єктів сектору безпеки й оборони, чітка ідентифікація їхнього складу; 3) суб'єкти регулювання – тобто ті суб'єкти, що формують правові рамки та процедури досліджуваної взаємодії. Причому це як суб'єкти ієрархічно вищої структури, так і самі суб'єкти взаємодії, що репрезентується наявністю меморандумів про співпрацю або ж відповідними спільно узгодженими та розробленими порядками діяльності в конкретному напрямі; 4) адміністративні правовідносини, що виникають між об'єктами та суб'єктами регулювання, а також ті, що виникають, розвиваються та припиняються між представниками сектору безпеки й оборони – йдеться як про горизонтальні, так і вертикальні відносини, що характеризуються різним змістом; 5) адміністративно-правові засоби реалізації механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки – нормотворчі (встановлення правил, процедур, зобов'язань тощо), організаційні (збір інформації, підготовка документів тощо), забезпечувальні (методичний супровід, технічне та матеріальне оснащення, фінансування тощо) та управлінські (заохочення, переконання, контрольно-наглядова діяльність тощо).

Ключові слова: адміністративно-правовий механізм, взаємодія, забезпечення безпеки, забезпечення національної безпеки, механізм, національні інтереси, сектор безпеки й оборони.

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THE ESSENCE AND CONTENT OF THE ADMINISTRATIVE AND LEGAL MECHANISM FOR FORMATION AND IMPLEMENTATION OF PERSONNEL POLICY IN THE NATIONAL POLICE OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to reveal the essence and content of the administrative and legal mechanism for the formation and implementation of personnel policy in the National Police of Ukraine. ***Results.*** The article analyses the etymological origin and encyclopaedic interpretation of the term "mechanism" and identifies the features that are common to all legal categories in which this term is present. The content of special features which are peculiar to the mechanism for personnel policy in general and personnel policy in the National Police of Ukraine in particular are revealed. The authors characterise the main structural elements of the administrative and legal mechanism for the formation and implementation of personnel policy in the National Police of Ukraine, which are grouped into four blocks: regulatory, organisational, functional and procedural. Relying on the results of the analysis, the author formulates an original definition of the concept "administrative and legal mechanism for the formation and implementation of personnel policy in the National Police of Ukraine". The content of the mechanism for personnel policy in the National Police of Ukraine comprises a set of interrelated and interdependent areas such as "formation" and "implementation" of this public policy. ***Conclusions.*** It is concluded that the administrative and legal mechanism for the formation and implementation of personnel policy in police bodies should be understood as an integral, internally coordinated, dynamic, complex system, enshrined in laws and bylaws (regulatory block), comprising forms, methods, measures, means and instruments (procedural block) which are different in nature and focus (procedural block), enabling authorised actors (organisational block) regulate administrative and legal relations in the field of the formation and implementation of public policy on personnel in the police (functional block) in order to achieve its tasks and strategic goals. This definition, on the one hand, is as universal as possible, since it allows for the most significant and essential features inherent in administrative and legal mechanisms in general, and on the other hand, it is quite detailed since it covers absolutely all structural elements of the administrative and legal mechanism for the formation and implementation of personnel policy in the police.

Key words: administrative and legal mechanism, administrative and legal relations, personnel policy, personnel policy mechanism, mechanism, legal culture and legal consciousness, structure of the personnel policy mechanism, personnel policy makers, forms and methods of personnel policy.

1. Introduction

The issues of the administrative and legal mechanism for personnel policy in the National Police of Ukraine (hereinafter referred to as the NPU), i.e. the dynamic component of such policy, are considered only in fragments in the modern scientific literature. Moreover, it is

obvious that all the principles, norms, theoretical views, concepts, ideas, priorities, criteria, requirements and recommendations for organising HR processes that make up the content of personnel policy will be purely declarative if they are not supported by the necessary institutional and organisational mechanism capable of guaranteeing their effective implementation in practice. All of the above confirms the relevance and practical significance of a scientific study of the structure and content of the administrative and legal mechanism for the formation and implementation of personnel policy in the NPU.

The purpose of the article is to reveal the legal nature and essence, to clarify the characteristic features, to define and analyse the main constituent elements of the administrative and legal mechanism for the formation and implementation of personnel policy in the National Police of Ukraine.

2. Clarification of the conceptual and categorical apparatus

First of all, it is necessary to clarify the etymological interpretation of the word "mechanism". As we have found out, it comes from the Greek word μηχανή (machine) and is defined by most Ukrainian explanatory dictionaries as: 1) the same as a machine; 2) a device that transmits or converts motion, drives a machine or apparatus into action; 3) a system for transmitting or reproducing motion; 4) a set of movably connected parts that perform the applied movements under the influence of the applied force; 5) the internal structure, system of something; 6) a system that determines the order of any type of activity; 7) a set (sequence) of states and processes that determine any actions or that make up a certain physical, chemical and other phenomenon, etc. (Busel, 2005).

As we can see, in the Ukrainian language, the word "mechanism" has several alternative interpretations and is used in various sectors of public life to refer to various objects, processes and phenomena. In jurisprudence, this term also has a wide scope of application and is used as part of many legal concepts ("mechanism of the state", "state legal mechanism", "administrative and legal mechanism", etc.) Unfortunately, the limited scope of this article makes it impossible to conduct a comprehensive analysis of their essence and content. However, generalisation and systematisation of scientific views allow us to draw some important conclusions.

Firstly, most scientifically based definitions use the word "mechanism" in the meaning of a set of "political, administrative, economic, social, humanitarian, organisational, legal and other means of targeted influence" (Bakumenko, Beznosenko, 2011), or "means of regulating various sectors of social life" (Rudnytskyi, 2011). In addition to "means", the "mechanism" often includes such categories as “measures,” “methods,” “methodologies,” “techniques,” etc.

Secondly, when the word "mechanism" is used to define a particular legal category, it means not a simple set of elements, but their "system" which reveals the internal structure of a certain state and legal phenomenon. As a system, the "mechanism" has its own structure, methods, levers, instruments of influence on the object of management, as well as appropriate legal, regulatory and information support (Fedorchak, 2008).

Thirdly, a characteristic feature of a "mechanism" is its dynamic (mobile) nature. This feature is also relevant for the State and legal mechanisms, which are considered not as a static set of certain elements, but as a set of processes which determine the sequence of, procedure for a certain State and legal phenomenon and its implementation.

Above, we have identified three **key features** that are characteristic of all (or at least the vast majority) of State and legal categories comprising the word "mechanism". In addition to these general features, we should mention **special features** that are peculiar to the mechanism for personnel policy in general and personnel policy in the NPU in particular. However, it is extremely difficult to identify such features because: first, not all scholars focus on them in their research; second, those scholars who do focus on the study of these features justify different, sometimes contradictory perspectives. As an example, some of the most popular scientific approaches are analysed further.

Firstly, most scientific discussions are focused on defining the legal nature and essence of the personnel policy mechanism. For example, most scholars identify this mechanism with "a system of practical measures of personnel policy makers" (Oluiko, 2011). Sometimes, in addition to measures, the personnel policy mechanism also includes such elements as "rules and norms, aspirations and restrictions" (Vynohradskyi, Vynohradska, Shkanova, 2009), "legal norms, principles and means" (Kovbasiuk, Vashchenko, Surmin, 2012), or "means" and "institutions" that implement such measures and means (Muraviov, 2017). No less popular is the so-called "activity approach", in which the personnel policy mechanism is considered as a "system of HR activities of personnel policy makers" (Bahmeta, Ivanova, Furtatova, 2007; Bosak, 2014), or "system of HR work" (Honchar, 2019: 115). Sometimes, the essence of the personnel policy mechanism is limited only to the "structure of bodies and entities"

involved in its implementation (Bahmeta, Ivanova, Furtatova, 2007). Recently, we can also find more innovative approaches, in which the mechanism for personnel policy is considered, for example, as a "set of iterative processes" (Iuryk, Zhuk, 2013: 51), or "a means of resolving contradictions in the HR management process" (Mosumova, 2021), and even as a "mechanism of staffing" (Vytko, 2011).

In our opinion, when addressing the issue of the essence of the personnel policy mechanism, most scholars make a significant logical mistake, which is to try to reveal in detail the internal structure of this mechanism. The correct definition of the structure of the personnel policy mechanism is a really important issue (this structure will be analysed fully below). However, when it comes to the legal nature and essence of this mechanism, we believe that, first of all, it is necessary to proceed from the above etymological interpretation of "mechanism" as "a system that determines the procedure for any type of activity" (Busel, 2005).

Therefore, by its essence and legal nature, the mechanism for personnel policy in the NPU is a holistic, internally coordinated system of elements that ensure the implementation of such policy.

Secondly, scholars have different approaches to defining the content of the personnel policy mechanism. In most cases, the literature review reveals that in the course of the study of the organisational and operational aspects of personnel policy, the category of "mechanism for implementation" of such policy is used. In addition to the "mechanism for implementation of personnel policy", Professor Yu.V. Kovbasiuk and some other scholars distinguish the "mechanism for its formation" (Kovbasiuk, Vashchenko, Surmin, 2012). Sometimes, these areas are combined, and then we are talking about a holistic "mechanism for the formation and implementation of personnel policy" (Oluiko, 2011). However, an even broader approach can be found, in which, in addition to "formation" and "implementation", the areas such as "evaluation" and "adjustment" are separately distinguished within the personnel policy mechanism (Iuryk, Zhuk, 2013).

We believe that the phase of organisational and legal activity such as "implementation" is indeed an important element, a central component of any administrative and legal mechanism. However, when it comes to the mechanism for personnel policy, we believe that its content is objectively unable to cover all important organisational and operational aspects of personnel policy. This primarily concerns the areas of defining the purpose, focus, functions and principles of personnel policy, defining its main tasks, justifying the methods and methodology of their implementation, etc. It is more appropriate to consider all these areas within the framework of the phase of "formation" of personnel policy, which in the logical and structural chain must necessarily precede the phase of "implementation". However, on the other hand, we do not share the view of those scholars who propose to distinguish the phases of the personnel policy mechanism such as "evaluation" and "adjustment" as independent components of its mechanism, since they are an organic part of the "implementation" phase and cannot exist independently outside its framework.

To sum up, we can conclude that the content of the mechanism for personnel policy in the NPU comprises a set of interrelated and interdependent areas such as "formation" and "implementation" of this public policy.

Third, scientific views on the target orientation of the personnel policy mechanism are ambiguous. For example, some scholars believe that the mechanism for personnel policy is aimed at "ensuring the fulfilment of tasks and achievement of goals of public administration in the specified area" (Muraviov, 2017); the second – at "formation of high-quality human resources" (Honchar, 2019); the third – at "staffing political, socio-economic, defence, cultural development of the state and society" (Honchar, 2019). Those scholars who consider separately the "mechanism for formation" and the "mechanism for implementation" of personnel policy define the focus of the former as "development of the human resources management system and formation of its potential capabilities", and the focus of the latter as "ensuring rational selection, training, use and development of human potential in various fields of activity" (Kovbasiuk, Vashchenko, Surmin, 2012).

Apparently, all of the above approaches have a right to exist, as they complement each other and expand our understanding of the target orientation of the personnel policy mechanism. However, their comprehensive analysis leads to a radically opposite conclusion: most of the statements analysed above should be used to reveal the essence of personnel policy in general, rather than its administrative and legal mechanism. It is well known that the areas of activities such as "formation of high-quality personnel potential" and "meeting needs for personnel," "ensuring rational selection, training, use and development of human potential", etc., should be considered in the context of the target orientation of personnel policy as a more general category, and not in the context of the mechanism for the formation and implementation of a policy, which reflects only its

organisational and operational aspects.

Thus, there is every reason to believe that the target orientation of the mechanism for personnel policy in the NPU is determined by the overall strategy of such policy and is aimed at achieving its goal, objectives, as well as ensuring the most effective implementation of the areas defined by it.

Fourthly, a less controversial but no less important feature of the personnel policy mechanism concerns its regulatory framework. Having analysed a considerable number of scientific definitions of the personnel policy mechanism, we have noticed that not all scholars focus on this feature. However, in other cases, the wording used is almost identical. In particular, the most commonly used references are to the fact that the personnel policy mechanism "relies on... the legal framework" of such policy (Bosak, 2004; Honchar, 2019), or "is based on... laws, the regulatory framework" (Kovbasiuk, Vashchenko, Surmin, 2012).

In general, we advocate the above wording. However, given the specifics of this scientific article, we consider it appropriate to make minor adjustments to them. In particular, in this case, the mechanism for personnel policy in the NPU should have appropriate administrative and legal support. Using this formulation, we mean that: first, all elements of this mechanism function allowing for provisions of both relevant laws and bylaws; second, the set of such acts does not necessarily correspond to, and mostly is even wider than the regulatory framework for personnel policy (this is due to the involvement of a significant number of non-specialised actors in the mechanism for the formation and implementation of personnel policy in the NPU, borrowing many methods, technologies, forms of HR work from other areas of public administration, management and the economic sector, etc.)

Above, we have identified and provided a detailed description of the most significant special features of the mechanism for personnel policy in the NPU. However, this analysis is still not enough to comprehensively study this mechanism. It is well known that formation and implementation of public policy in the NPU cannot be seen as a haphazard and chaotic process. First and foremost, it is a well-established mechanism that has its own internal structure and functions in a clearly defined manner. Therefore, there is a need to further elaborate on **the structure of the administrative and legal mechanism for the formation and implementation of personnel policy in the NPU**, as well as on the establishment of interrelations between its main elements.

3. The structure of the administrative and legal mechanism for the formation and implementation of personnel policy in the NPU

As we have found out, there is currently no consensus among scholars on the structure (internal structure) of the personnel policy mechanism in general and the personnel policy mechanism in the NPU in particular. Moreover, it is noteworthy that the approaches substantiated in the literature differ significantly not only in terms of the quantitative but also in terms of the content of the elements that are identified. Unfortunately, the limited scope of this article does not allow us to provide a detailed description of all views on this issue. Therefore, below we will focus only on those approaches, the analysis of which is necessary to formulate our own perspective on the structure of the administrative and legal mechanism for the formation and implementation of personnel policy in the NPU.

The first group of scholars, which considers the mechanism for personnel policy as an "activity", names certain phases of HR work or HR procedures as its main constituent elements. The most typical example of this approach is the perspective of H. Bosak, substantiated in his study of the essence and content of personnel policy in internal affairs bodies (IAB). For example, the author identifies the main elements of the mechanism that drives policy on personnel management of the civil service in the IAB, management of personnel processes and relations in the IAB, improvement of the methodology for selection and recruitment to the IAB, formation of a personnel reserve to fill vacant positions in the IAB, planning and implementation of a career in the IAB and a number of other elements (Bosak, 2014). M. Rudakevych offers a similar approach to defining the structure of the personnel policy mechanism. In her opinion, the systematic organisation of such policy requires modern innovative mechanisms such as organisational and personnel audit, personnel monitoring, controlling and consulting, staff leasing, performance management, etc. (Rudakevych, 2010).

The second group of scholars, which considers the mechanism for personnel policy as a "process", names certain levels or components as its main elements. For example, A.K. Mosumova's dissertation research focuses on important components such as organisational structure, the system of work with personnel, the regulatory framework, information and methodological support, as well as technologies, methods and tools (Mosumova, 2021). A similar perspective on the structure of the mechanism for personnel policy in the law enforcement sector is substantiated

by M. Kovaliv. However, the scholar identifies only two main administrative and legal elements of such mechanism: creation of a legal framework to regulate (control and adjust) it, as well as organisation and functioning of the system of public bodies involved in its implementation (Kovaliv, 2017).

Having carefully analysed the above scientific approaches, we have come to the conclusion that it is inappropriate to use them to reveal the structure of the administrative and legal mechanism for the formation and implementation of personnel policy in the NPU, since most of them do not deal with the structural elements of this mechanism, but rather with its completely different characteristics. In particular, they list the features of the personnel policy mechanism, main areas of such policy, phases of its formation and implementation, requirements to be met, certain HR technologies, etc. In our opinion, it is a mistake to equate such characteristics with "elements" of the administrative and legal mechanism.

Given the above arguments, we consider the approach of the third group of scholars who chose the so-called "classical" model of the administrative and legal mechanism as the most reasonable. However, it should be noted that their views on the internal structure of this model differ somewhat. For example, among the main structural elements of the administrative and legal mechanism for personnel policy, scholars mainly name "legal provisions", "practical measures (means)", "institutions" that implement such measures and means, "personnel activities" or "personnel work", etc.

So what elements are included in the structure of the administrative and legal mechanism for the formation and implementation of public policy on personnel in the police? Below, we will try to substantiate our own view on this issue, which is based on the thesis that **it is advisable to combine all elements of the mechanism being analysed into four relatively independent but closely interrelated blocks**.

1. The regulatory block includes the following elements: legal regulations that define the grounds and procedure for the formation and implementation of the administrative and legal mechanism for public policy on personnel in the police; principles, target orientation, tasks and functions of the administrative and legal mechanism for public policy on personnel in the police.

2. The organisational block includes the following elements: makers of public policy on personnel in the police; legal culture and legal consciousness.

3. The functional block includes the following elements: administrative and legal relations in the field of the formation and implementation of public policy on personnel in the police; acts of exercising rights and duties, as well as acts of applying law.

4. The procedural block includes the following elements: forms and methods of personnel policy; means, measures and instruments of legal and regulatory influence; appropriate support.

4. Conclusions

Above, we have described in general terms the essence, content and structure of the administrative and legal mechanism for the formation and implementation of personnel policy in the police. The conclusions and summarisation made as a result of this study allow us to formulate an original definition of the latter. Therefore, we propose to understand the administrative and legal mechanism for the formation and implementation of personnel policy in police bodies as an integral, internally coordinated, dynamic, complex system, enshrined in laws and bylaws (regulatory block), comprising forms, methods, measures, means and instruments (procedural block) which are different in nature and focus (procedural block), enabling authorised actors (organisational block) regulate administrative and legal relations in the field of the formation and implementation of public policy on personnel in the police (functional block) in order to achieve its tasks and strategic goals.

The definition we have formulated, on the one hand, is as universal as possible, since it allows for the most significant and essential features inherent in administrative and legal mechanisms in general, and on the other hand, it is quite detailed, since it covers absolutely all structural elements of the administrative and legal mechanism for the formation and implementation of personnel policy in police bodies. Another advantage of the definition proposed is that it reveals the essence and deepens the scientific and theoretical understanding of the relationship between personnel policy in the NPU (a static side, functional and instrumental aspects) and the administrative and legal mechanism for its formation and implementation (a dynamic side, organisational and operational aspects).

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СУТНІСТЬ І ЗМІСТ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ КАДРОВОЇ ПОЛІТИКИ В ОРГАНАХ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є з'ясування сутності та змісту адміністративно-правового механізму формування й реалізації кадрової політики в органах Національної поліції України. ***Результати.*** Аналізується етимологічне походження й енциклопедичне тлумачення терміна «механізм», а також визначаються ознаки, характерні всім юридичним категоріям, у назвах яких зустрічається цей термін. Розкривається зміст спеціальних ознак, які властиві саме для механізму кадрової політики загалом і кадрової політики в органах Національної поліції України зокрема. Характеризуються основні структурні елементи адміністративно-правового механізму формування та реалізації кадрової політики в органах Національної поліції України, які об'єднано в чотири блоки: нормативний, організаційний, функціональний і процедурний. З урахуванням результатів проведеного аналізу формулюється авторська дефініція такого поняття, як «адміністративно-правовий механізм формування та реалізації кадрової політики в органах Національної поліції України». За своїм змістом механізм кадрової політики в органах Національної поліції України є сукупністю таких взаємопов'язаних і взаємообумовлених напрямів, як «формування» та «реалізація» означеної державної політики. ***Висновки.*** Зроблено висновок, що під адміністративно-правовим механізмом формування та реалізації кадрової політики в органах поліції ми пропонуємо розуміти закріплену в законах і підзаконних нормативно-правових актах (нормативний блок) цілісну, внутрішньо узгоджену, динамічну, складноструктуровану систему різних за своїм характером і спрямованістю форм, методів, заходів, засобів та інструментів (процедурний блок), за допомогою яких уповноважені суб'єкти (організаційний блок) здійснюють регулювання адміністративно-правових відносин, що складаються у сфері формування та реалізації державної кадрової політики в органах поліції (функціональний блок), з метою досягнення її завдань і стратегічних цілей. Сформована дефініція є, з одного боку, максимально універсальною, оскільки враховує найбільш значимі та суттєві ознаки, що загалом властиві адміністративно-правовим механізмам, а з іншого – достатньо розгорнутою, оскільки охоплює абсолютно всі структурні елементи адміністративно-правового механізму формування та реалізації кадрової політики в органах поліції.

Ключові слова: адміністративно-правовий механізм, адміністративно-правові відносини, кадрова політика, механізм кадрової політики, механізм, правова культура та правова свідомість, структура механізму кадрової політики, суб'єкти кадрової політики, форми та методи кадрової політики.

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ADMINISTRATIVE AND LEGAL GUARANTEES FOR DEVELOPMENT OF ARTIFICIAL INTELLIGENCE IN UKRAINE: CONCEPT AND SYSTEM

Abstract. ***Purpose.*** The purpose of the article is to define the concept and system of administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine. ***Results.*** The article examines the concept and system of administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine. It is underlined that administrative and legal guarantees are a type of legal guarantees along with civil law, criminal law, constitutional and international guarantees. Administrative and legal guarantees for the development of artificial intelligence in Ukraine are proposed to consider as a system of administrative law instruments aimed at improving the efficiency of activities related to the creation, implementation and use of artificial intelligence, while ensuring democratic values, observance of the rule of law, as well as fundamental rights and freedoms of man and of the citizen. The activities related to the creation, implementation and use of artificial intelligence technologies, as one of the areas of realisation of human rights to development, intellectual activity and meeting of economic, social, cultural and other interests, should not be left without proper support and provision by state institutions, including through administrative and legal means. These are appropriate guarantees from the state. ***Conclusions.*** We propose to include the following groups of guarantees into the system of administrative and legal guarantees for the development of artificial intelligence: institutional – administrative and legal provisions constituting the legal basis for the creation, implementation and use of artificial intelligence and its public administration; functional – administrative law provisions that ensure the creation of an enabling environment for the development of artificial intelligence technologies, as well as protect the rights and interests of physical persons or legal entities involved in the creation, implementation and use of artificial intelligence; organisational – administrative and legal provisions regulating the activities of public administration bodies in controlling and monitoring activities related to the creation, implementation and use of artificial intelligence.

Key words: administrative and legal guarantees, public administration, development of artificial intelligence, institutional guarantees, functional guarantees, organisational guarantees.

1. Introduction

In any democratic, legal and social state, which is being developed in Ukraine, human and civil rights and freedoms cannot be declarative; their implementation must be supported and ensured by such a state.

Accordingly, the Constitution of Ukraine, Article 3, Part 2, provides as follows: "Human rights and freedoms and their guarantees determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State" (Constitution of Ukraine, 1996).

The activities related to the creation, implementation and use of artificial intelligence technologies, as one of the areas of realisation of human rights to development, intellectual activity and meeting of economic, social, cultural and other interests, should not be left without proper support and provision by state institutions, including through administrative and legal means. These are appropriate guarantees from the state.

In other words, in the administrative and legal mechanism for ensuring public admin-

istration of the type of activity under consideration, State support guarantees are of importance, since the effectiveness of development of artificial intelligence technologies largely depends on the effective implementation of a range of such guarantees (Kurkova, 2020, p. 32). Implementation of social reforms and development strategies requires improvement of the use of the institution of state guarantees, which allows to ensure the realisation of the interests of citizens, legal entities, local self-governments and the entire state, as well as to increase the efficiency and effectiveness of public administration and regulatory mechanism, strengthen economic stability, improve approaches to the functioning of any branch of public administration (Kucher, 2019, pp. 113–114).

In addition, the use of artificial intelligence is an increasingly important factor in the development of the digital economy of any state, but uncertainty in its development and possible threats from its use raise questions and require legal guarantees for the safe operation of artificial intelligence systems (Telychko, Rekun, Chabanenko, 2021, p. 311).

However, the doctrine of administrative law lacks research on administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine.

The purpose of the article is to define the concept and the system of administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine.

2. General provisions of administrative and legal guarantees for the development of artificial intelligence in Ukraine

In the *Great explanatory dictionary of modern Ukrainian language*, the term "guarantee" is interpreted, in particular, as: "A pledge of something, something given as security. // An obligation provided for by law or a specific agreement, under which a legal entity or individual is liable to creditors in the event of a debtor's failure to fulfil its duties" (Busel, 2005, p. 222).

The theory of state and law understands guarantees (from the French *garantie* – security, pledge) of human and civil rights and freedoms as a system of general (political, economic, spiritual, etc.) and special legal means and institutions aimed at creating an enabling environment for the realisation of human rights, as well as ensuring their comprehensive protection and protection against violations (Tsvik, Petryshyn, Avramenko, 2009, p. 456). M. Koziubra argues that a guarantee is "to some extent related to public coercion, which is necessary in case of possible violation of norms" (Koziubra, 2015, p. 128). Guarantees can be of different nature, depending on the field of existence: political, economic, spiritual and legal.

The issues of legal guarantees have always been under focus by scholars and continue to be relevant. The works by legal scholars, such as: V. Averianov, O. Malko, M. Matuzova, V. Pohorilka, N. Shevchenko, etc., are well-known. However, despite the significant achievements of the topic in the general theoretical perspective, today there are no studies with a comprehensive theoretical and legal analysis of guarantees of administrative and legal support in some sectors of public administration, which determines the relevance of the subject matter of this study and the need for further research in this area (Kurkova, 2019, p. 48). This is true, in particular, of the guarantees of administrative and legal support for the development of artificial intelligence in Ukraine.

The legal guarantees of human and civil rights and freedoms in the theory of state and law include legal procedures for their implementation, the right to know one's rights and duties, and the right to legal aid, including free of charge, to judicial defence, to appeal in court against decisions, actions or omissions of state authorities, local self-government bodies, officials and employees, to compensation from the state or local self-government bodies for material and moral damage caused by their unlawful decisions, actions or omissions, and to establish legal liability for violations or restrictions of human rights (Tsvik, Petryshyn, Avramenko, 2009, p. 457). An important characteristic of legal guarantees is "their specific definition of legal means, conditions and procedure for the realisation of human rights, their protection and defence" (Yatskevych, 2016, p. 13).

The provisions of national law define different approaches to the interpretation of State guarantees, allowing for the specifics of the branch of law, which affects the study of their essence and features. The study and generalisation of this concept enables to identify the characteristic features of State guarantees and to propose areas for improving the effectiveness of their use for ensuring social development (Kucher, 2019, p. 113). It should be noted that "administrative and legal guarantees are a type of legal guarantees along with civil law, criminal law, constitutional and international guarantees" (Sakun, 2020, p. 60). Therefore, the question is how to understand guarantees through the prism of administrative law.

According to V. Averianov, administrative and legal guarantees of the rights and freedoms of citizens are a set of administrative and legal means ensuring the completeness, sustainability and stability of the rights and freedoms of citizens in the field of public administration (Averianov, 2008, p. 310). According to K.M. Kurkova, they are a set of means and conditions provided

for in the provisions of substantive and procedural administrative law, through which administrative and legal support of human rights and freedoms is provided by public administration bodies (Kurkova, 2019, p. 49). O.O. Navrotskyi argues that administrative and legal guarantees are a set of statutory "state power measures" with the aim of creating an enabling environment for the exercise of rights, their protection in case of a threat of encroachment, restoration and compensation in case of violation (Navrotskyi, 2018, p. 7). D.I. Sakun argues that "administrative and legal guarantees establish a mechanism for the implementation of rights and freedoms, control the observance of rights and freedoms in the activities of individuals and legal entities, ensure the protection of rights and freedoms, restore them in case of violation and establish the procedure for liability for administrative torts that infringe on the established public order" (Sakun, 2020, p. 61). It is important to understand that such guarantees must be effective, that is, capable of delivering a positive result.

Thus, it is only through the effective functioning of administrative and legal guarantees that it is possible to receive public administration services, ensure and protect violated rights (Kostiushko, 2017, p. 162).

Therefore, administrative and legal guarantees of the rights and freedoms of citizens should be understood as a system of administrative law means which should effectively ensure human rights and freedoms in the field of public administration.

With regard to administrative and legal guarantees in individual sectors of public administration, for example, O. Batanov understands such guarantees in the field of municipal administration as the political, legal and socio-economic environment and a special mechanism necessary for the acquisition, possession, use and disposal of municipal rights and freedoms and which together ensure and protect the activities of public administrators in the exercise of the powers granted (Batanov, 2001, p. 180). According to D.I. Sakun, administrative and legal guarantees of free legal aid by attorneys are a set of conditions, means and ways of ensuring activities in the field of free legal aid by attorneys provided for by the provisions of administrative law, namely, the establishment of a mechanism for exercising the right to free legal aid, monitoring the quality, qualification and impartiality of the provision of free legal aid by a lawyer and bringing him or her to disciplinary responsibility in case of improper performance of his or her professional duties and restoring the right to free legal aid to attorneys in case of its violation with full or partial payment for the services of attorneys from the state or local budgets (Sakun, 2020, p. 3).

However, the closest to the topic of our study are the guarantees of administrative and legal support for scientific and technological development of Ukraine, which were studied by K.M. Kurkova, who understands these guarantees as "independent instruments of the administrative and legal support mechanism, which by their legal nature are separate legal, financial, economic and social means of ensuring (guaranteeing) and protecting the rights of actors of scientific and technological activities created by the state for the purpose of stable and sustainable implementation of scientific and technological development in society" (Kurkova, 2019, p. 49). In this sense, guarantees are ones of administrative and legal support, which include not only legal but also financial, economic and social guarantees. However, the study of the latter two groups of guarantees is not within the scope of our research, since we will only consider administrative and legal guarantees.

3. The Concept and system of administrative and legal guarantees for the development of artificial intelligence in Ukraine

In order to formulate the definition of administrative and legal guarantees ensuring the development of artificial intelligence, it is advisable to refer to the Concept of artificial intelligence development in Ukraine, according to which one of the principles of development and use of artificial intelligence technologies is the development and use of artificial intelligence systems subject to the rule of law, fundamental rights and freedoms of man and citizen, democratic values, as well as ensuring appropriate guarantees in the use of such technologies (Averianov, 2008). Therefore, for the branch of public administration under consideration, important guarantees should include instruments to ensure compliance with the rule of law, fundamental rights and freedoms of man and citizen, and democratic values.

The next issue to consider is the classification of administrative and legal guarantees.

According to D.I. Sakun, such classification is the process of ordering, systematisation and grouping of administrative and legal guarantees into types for the purpose of clarifying their multidimensionality and factual determination (Sakun, 2020, p. 95). For example, L.Yu. Veselova proposes the following classification criteria: by the method of legal regulation, by functional orientation, by rule-makers, by the form of implementation and by the nature of influence (Veselova, 2016, p. 10). In V.O. Hryniuk's opinion, there are organisational and legal, substantive and organisational, procedural guar-

antees (Hryniuk, 2004, p. 70). V.A. Holovko groups administrative and legal guarantees into: "administrative and legal guarantees ensuring the implementation of rights and freedoms, and administrative and legal guarantees aimed at protection and defence" (Holovko, 2011, p. 16). D.I. Sakun argues that administrative and legal guarantees establish a mechanism for the implementation of rights and freedoms, control the observance of rights and freedoms in the activities of individuals and legal entities, ensure the protection of rights and freedoms, restore them in case of violation, and establish the procedure for liability for administrative torts that infringe upon the established public order (Sakun, 2020, p. 61). Therefore, the latter two classifications of guarantees are based on their functional purpose.

In this regard, D.I. Sakun states that the variety of criteria for classification of administrative and legal guarantees indicates their originality and exclusivity, since only a multidimensional approach is able to ensure the fixation of their features and correlations (Sakun, 2020, p. 92). Therefore, for our study, it is advisable to choose one criterion and classify according to it, since a thorough analysis of all existing positions is not within the scope of our article.

Moreover, with regard to certain branches of public administration, some scholars do not specify the criterion by which they classify guarantees.

For example, K.M. Kurkova, without naming a criterion, makes a proposal of the following classification of legal guarantees, the object of which is administrative and legal relations in the field of scientific and technological development: 1) protection and defence of intellectual property rights, which involves various functional and legal instruments, the priority thereof is to protect intellectual property rights at all stages of its implementation; 2) creation and functioning of a system of scientific and technical information, that is, a unified base for systematisation of information resources of scientific and technological activities to reflect its reliable results in society; 3) ensuring functioning and administrative support for state registers of objects of scientific and technological development; 4) state support for the implementation of scientific, scientific and technical expertise, which in the mechanism of administrative and legal support serves as both a tool and a guarantee that systematically allows to verify and guarantee the correctness, quality and safety of scientific and technological activities; 5) ensuring a comprehensive system of quality management of scientific and technological development through standardisation, certification and metrological support; 6) the organisational and legal component of state support for international scientific and technological cooperation, which is determined by state integration measures of a legal and organisational nature, aimed at the overall development of the international, national scientific and technological area and the adoption of good practices for individual states; 7) administrative liability as a guarantee of proper scientific and technological development (Kurkova, 2021, pp. 186–187). Given that the development of artificial intelligence technologies is in the field of scientific and technological development, the above list of guarantees is largely relevant to the field of public administration under consideration, but this list does not consider its specifics and needs to be systematised.

Therefore, a more successful position, one which meets modern requirements, is the classification of administrative and legal guarantees by their purpose, as proposed by I.I. Kohutych, namely: organisational (ensuring organisationally separate, autonomous and independent development of legal institutions), institutional (creating a "harmoniously developed progressive legal framework"), functional (ensuring appropriate conditions and means for the implementation of the provisions enshrined in legal acts) (Kohutych, 2018, p. 84).

Similarly, D.I. Sakun identifies the following types of administrative and legal guarantees of free legal aid by advocates: a) institutional – the rules which establish the legal basis for the provision of free legal aid by attorneys and receipt of free legal aid by other persons; b) functional – ensure the creation of an enabling environment for the performance by attorneys of their duties in providing legal aid, as well as protect their rights and interests; c) organisational – the activities of public administration bodies in monitoring and controlling the process of providing legal aid by attorneys (Sakun, 2020, p. 94).

Therefore, we propose to group the administrative and legal guarantees for ensuring the development of artificial intelligence in Ukraine, depending on their functional purpose, into institutional, functional and organisational ones.

4. Conclusions

Therefore, in this study, administrative and legal guarantees for the development of artificial intelligence in Ukraine are considered as a system of administrative law instruments aimed at improving the efficiency of activities related to the creation, implementation and use of artificial intelligence, while ensuring democratic values, observance of the rule of law, as well as fundamental rights and freedoms of man and of the citizen.

We propose to include the following groups of guarantees into the system of administrative and legal guarantees for the development of artificial intelligence:

– Institutional – administrative and legal provisions constituting the legal basis for the creation, implementation and use of artificial intelligence and its public administration;

– Functional – administrative law provisions that ensure the creation of an enabling environment for the development of artificial intelligence technologies, as well as protect the rights and interests of physical persons or legal entities involved in the creation, implementation and use of artificial intelligence;

– Organisational – administrative and legal provisions regulating the activities of public administration bodies in controlling and monitoring activities related to the creation, implementation and use of artificial intelligence

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АДМІНІСТРАТИВНО-ПРАВОВІ ГАРАНТІЇ ЗАБЕЗПЕЧЕННЯ РОЗВИТКУ ШТУЧНОГО ІНТЕЛЕКТУ В УКРАЇНІ: ПОНЯТТЯ ТА СИСТЕМА

Анотація. ***Мета.*** Метою статті є визначення поняття та системи адміністративно-правових гарантій забезпечення розвитку штучного інтелекту в Україні. ***Результати.*** Досліджено поняття та систему адміністративно-правових гарантій забезпечення розвитку штучного інтелекту в Україні. Наголошено, що адміністративно-правові гарантії є різновидом юридичних гарантій поряд із цивільно-правовими, кримінально-правовими, конституційно-правовими й міжнародними. Під адміністративно-правовими гарантіями забезпечення розвитку штучного інтелекту в Україні пропонується розуміти систему засобів адміністративного права, що спрямовані на підвищення ефективності діяльності зі створення, впровадження та використання штучного інтелекту та забезпечують при цьому демократичні цінності, дотримання верховенства права, а також основоположні права і свободи людини і громадянина. Діяльність зі створення, впровадження та використання технологій штучного інтелекту, як один із напрямів реалізації прав людини на розвиток, інтелектуальну діяльність і задоволення економічних, соціальних, культурних та інших інтересів, також не повинна залишатися без належної підтримки та забезпечення з боку державних інституцій, зокрема, за допомогою адміністративно-правових засобів. Йдеться про відповідні гарантії з боку держави. ***Висновки.*** До системи адміністративно-правових гарантій забезпечення розвитку штучного інтелекту пропонуємо відносити такі групи гарантій: інституційні – адміністративно-правові норми, що забезпечують правову основу діяльності зі створення, впровадження та використання штучного інтелекту та її публічного адміністрування; функціональні – норми адміністративного права, що забезпечують створення сприятливих умов для розвитку технологій штучного інтелекту, а також захищають права й інтереси фізичних або юридичних осіб, які залучені до діяльності зі створення, впровадження та використання штучного інтелекту; організаційні – адміністративно-правові норми, що регламентують діяльність органів публічного адміністрування стосовно здійснення контролю та моніторингу за діяльністю зі створення, впровадження та використання штучного інтелекту.

Ключові слова: адміністративно-правові гарантії, публічне адміністрування, розвиток штучного інтелекту, інституційні гарантії, функціональні гарантії, організаційні гарантії.

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PARTICULARITIES OF FUNCTIONING OF CIVIL-MILITARY ADMINISTRATIONS ON THE TERRITORY OF UKRAINE DURING THE EXISTENCE OF THE HETMAN STATE

Abstract. ***Purpose.*** The purpose of the article is to clarify the particularities of functioning of civil-military administrations on the territory of Ukraine during the existence of the Hetman state. ***Results.*** The relevance of the article is due to the fact that civil-military administrations have operated on the territory of Ukraine at various times. The study of such historical experience is necessary in the current Ukrainian reality, as it will help identify the strengths and weaknesses of models of governing territories through civil-military administrations. Moreover, information systemised and analysed can serve as an essential basis for building a strategy for mechanisms and models of civil-military governance of territories in our time. As a result of the successful national liberation struggle led by Bohdan Khmelnytskyi, the Ukrainian Cossack state was formed, and a new administrative division called regimental system was introduced to a large part of the territory of modern Ukraine. If we draw parallels, a regiment was a kind of region, and a *sotnia* (company) was a district. The basic military-administrative unit was the *kurin* (performing organisational and economic functions). ***Conclusions.*** It is emphasised that regiments and companies represented the civil-military administrations of the Ukrainian Cossack state. The administrative division of the newly created state generally repeated the structure of the Cossack army. Administrative-territorial units, i.e. regiments and companies, corresponded to the military hierarchy of the Cossacks. Due to this overlap, the Cossacks were able to carry out mobilisation activities in the shortest possible time. The *History of the Ukrainian Cossacks* notes that the regimental-company system was not unique. It is found that the Hetmanate practiced removing a company in some regiments from jurisdiction of the colonel. It was then transferred directly to the Hetman or the General Military Chancellery. The author concludes that various forms of civil-military administrations have emerged on the territory of Ukraine over the centuries. Such administrations were introduced by both the Ukrainian state authorities and foreign states. The administrations of the Cossack Hetmanate were structured in such a way as to mobilise significant military resources in the entrusted territories efficiently and quickly. Regiments and companies corresponded to the structure of the army. At a time when there was a military threat from all sides, such a system was very effective and timely.

Key words: government, land fund, taxation, judicial functions, mobilisation.

1. Introduction

Civil-military administrations have also operated on the territory of Ukraine at various times. The study of such historical experience is necessary in the current Ukrainian reality, as it will help identify the strengths and weaknesses of models of governing territories through civil-military administrations. Moreover, information systemised and analysed can serve as an essential basis for building a strategy for mechanisms and models of civil-military governance of territories in our time.

The Zaporozhian Sich, although not a state in the classical sense of the word, had a number of important features. In general, the Zaporozhian host had two systems of division: military and territorial. In military terms, the Cossack community was divided into *kurins*, with a total number of 38. It was the system of *kurins* that formed the basis of the administrative division of the *Sich*. According to the territorial principle, the Sich was first divided into 5, and later into 8 *palankas*. According to D. Yavornytskyi's *The History of the Zaporozhian Cossacks*,

the genesis of this particular structure is still unknown (Yavornytskyi, 1990, p. 157).

2. Particularities of the administrative-territorial division of the territory of Ukraine during the existence of the Hetmanate

In general, the term "*kurin*" was used in two ways: as a dwelling and as an independent unit of the host. Therefore, a Cossack's affiliation with a particular *kurin* meant either that he lived there or that he was enrolled in the *kurin* but lived elsewhere. Mostly, Cossacks were only registered with a particular *kurin*, while in the *kurin* only about one tenth of the Cossacks remained, relative to the entire host. The rest were engaged in their own economic affairs, etc. The term "*palanka*" was used by the Cossacks as a central administrative structure on the territory, the administration or department itself, and the territory where the Zaporozhian liberties operated (Yavornytskyi, 1990, pp. 159–160). It should be noted that every Cossack in the *Sich* had a double chain of command. Accordingly, in administrative and judicial terms, they were subordinated to the *palanka* administration, and in economic and military terms to the *kurin*. According to the collective monograph *Essays on the History of the Civil Service in Ukraine*, as well as Cossack law in general, the Cossack administrative system embodied a specific symbiosis: "...Ukrainian customary law, elements of German Magdeburg law and provisions of Lithuanian statutes" (Arkusha, Borodin, Vidnianskyi, 2009, p. 80).

In *kurins*, the *starshyna* (officers) of the *kurin* was the managerial element. Each *kurin*, as a military-administrative unit, had its own military traditions, etc. The *kurins* had their own customary law, which was eventually unified. On average, 200 to 400 Cossacks were assigned to each *kurin*. Registration was carried out in *kurin komputs* (the so-called Cossack registers). At the general meeting of the *kurin*, a senior officer, also called *kurinnyi*, or *otaman*, was elected. This was the first person for the Cossacks after the *Kish otaman* (the main person in the *Sich*). In addition to military and administrative powers, *kurin otamans* performed judicial functions (they had the right to impose corporal punishment). The *kurin otaman* could even sentence to death. *Kurin otamans* were re-elected mostly once a year at *kurin* meetings (all Cossacks who were registered with the relevant *kurin* according to the *komput* could participate). Although the *otaman* had considerable powers, he did not have any pronounced privileges; he lived with everyone else in the *kurin* but had only a symbolic advantage – he was given a special place at the table (Arkusha, Borodin, Vidnianskyi, 2009, p. 80).

In *palankas* located outside the *Sich*, as administrative units of the Cossacks, administrative powers were exercised by the head of the *palanka* - the *palanka* colonel and the local *starshyna* (*osavul* (aide-de-camp, the colonel's closest aide), a *pysar* (scribe), sub-*osavul* and sub-*pysar*). The *starshyna* of the *palanka* were elected. They were elected at the *Sich*, and their term of office ranged from one to three years. *Palankas* were directly subordinate to the *Kish*. Traditionally, the *palanka* leadership was elected only from among the *Sich* members. At the *palankas*, there was a special council of "staid good Cossacks" (those Cossacks who did not live in the *Sich* and had families). The *palankas* also had a *palanka* court, represented by the *kurin otaman* of the *kurin* in charge of the respective *palanka*. All the inhabitants of the *palanka* and those who lived there temporarily were subordinate to the *palanka* colonel. The *palanka* colonel embodied administrative, judicial and military power on the territory of the *palanka*. After their election, colonels and starshyna (officers) received written confirmation from the *Sich* to exercise their powers; the document outlined their rights and duties, the amount of salary for officials (Arkusha, Borodin, Vidnianskyi, 2009, pp. 81–82).

Over time, in the eighteenth century, the administrative structure of the Zaporozhian Cossacks underwent major changes. In the 1740s, the *palanka* system was extended to all the lands under the jurisdiction of the *Kish*. At that time, not only central settlements but also smaller administrative units were called *palankas*. The *palanka* colonel was no longer elected but appointed (by Kish). *Palankas* had their own seals. The size of the *palankas* can be estimated by analysing several of them. For example, the Buhohardivska *palanka*, which was located between the left bank of the Pivdennyi Buh River and the right bank of the Inhulets River, the Dnipro River and the border with the Crimean Khanate, had approximately 500 wintering places (a Cossack farm, a hamlet). The Samara *palanka*, located on the left bank of the *Sich's* possessions between the Kinska and Samara rivers, was the largest. The *palanka* centre was located in the town of Samara, and in general, there were several thousand Zaporozhian farms, i.e. wintering places, and a significant number of large villages on the territory of the *palanka* (Smolii, 2006, pp. 608–610).

As a result of the successful national liberation struggle led by Bohdan Khmelnytskyi, the Ukrainian Cossack state was formed, and a new administrative division called regimental system was introduced to a large part of the territory of modern Ukraine. If we draw parallels, a regiment was a kind of region, and a *sotnia* (company) was a district. The

basic military-administrative unit was the *kurin* (performing organisational and economic functions).

The average *kurin* consisted of 10 Cossacks at first. The leader was the *otaman*, who was either appointed by the *sotnyk* or elected by the *kurin* community. In the eighteenth century, *kurins* already included 20–30 people, and sometimes even 70. Each company consisted of approximately 10 to 20 *kurins*, which united several villages. *Kurin otamans* were subordinated to the *sotnia* leadership and, as mentioned above, performed mostly organisational and economic functions (Zaruba, 2007, p. 31).

However, it is necessary to focus on regiments and companies that represented the civil-military administrations of the Ukrainian Cossack state. The administrative division of the newly created state generally repeated the structure of the Cossack army. Administrative-territorial units, i.e. regiments and companies, corresponded to the military hierarchy of the Cossacks. Due to this overlap, the Cossacks were able to carry out mobilisation activities in the shortest possible time. The *History of the Ukrainian Cossacks* notes that the regimental-company system was not unique. The mobilisation principle of administrative division was used in the Grand Duchy of Lithuania (county and voivodeship system) and in the Kingdom of Poland. The unique feature of the system introduced in the new Ukrainian state was that regiments and companies were much smaller in size than voivodeships and counties. The experience of the registered Cossack regiments was used in the introduction of the new system (Smolii, 2006, pp. 314–315).

Regiments, in turn, were divided into companies. The number of companies in different regiments could vary significantly, from 8 in Chernihiv to 23 in Bila Tserkva (as of 1649). The population of the companies and regiments was also uneven. For example, according to the *komput* (register) of the Chernihiv regiment, there were 997 Cossacks, while the Korsun regiment had 3472 Cossacks. The Romny *Sotnia* of the Myrhorod Regiment consisted of 300 Cossacks, and, for example, the Sytnytsia *Sotnia* of the Korsun Regiment consisted of 48 Cossacks, and the Regimental *Sotnia* of the Kyiv Regiment consisted of 8 Cossacks. Cities and small towns or even large villages could become the administrative centres of the companies. Moreover, regimental administrations were located in cities. The name of the *sotnia* was traditionally given according to the name of the settlement where the *sotnia* administration was located; it was extremely rare for a company to be named after the surname of the *sotnyk* (Smolii, 2006, p. 318).

3. Particularities of the division of regimental and company administrations on the territory of Ukraine during the existence of the Hetmanate

In the administrative centres, the respective regimental and company administrations functioned. They were called governments. The regimental government was composed of a colonel and a regimental *starshyna*. The colonel had a regimental council, which elected him and the *starshyna*. Over time, Bohdan Khmelnytskyi began to appoint the regimental leadership in order to concentrate power. The colonel personified all the power on the ground. They had a wide range of powers in administrative matters, exercised judicial and financial powers, and were in charge of military matters (e.g., mobilisation activities, disposal of land). The colonel largely duplicated the powers of the hetman, but only within the regiment under his jurisdiction (Sas, Smolii, Stepenkov, 2014, p. 60). The colonel was in charge of mobilising Cossacks within the regiments, and as for the management of the Cossack land fund (rank estates), it should be noted that it was the colonel who granted land that had previously belonged to the Polish gentry to ordinary Cossacks and *starshyna* as payment for their service in the host. The colonel collected taxes for the host treasury and also managed enterprises (he could, for example, lease them out) that belonged to the host fund (Smolii, 2006, p. 319).

The regimental commander relied on the regimental *starshyna* (officers) for his authority. The *starshyna* consisted of a regimental *oboznyi* (quartermaster, artillery commander), an *osavul* (aide-de-camp, the colonel's closest aide), a *pysar* (scribe), and a regimental judge. They, together with the regimental council of *starshyna* and the regimental office, exercised the powers of the *Starshyna* General, the *Starshyna's* Council and the General Chancellery, but, of course, within the regiment [3, p. 60]. The model for the organisation of the civil-military administration of the companies was generally the regimental one. Each company was headed by a *sotnyk*. The symbol of his authority was the banner. His assistants in the performance of administrative functions were *horodovyi* (town), *sotnia* and *kurin otamans*. The company administration included a *sotnia*'s *pysar* (secretary), *osavul*, *khorunzhyi* (flag-bearer, protector of the regimental banner). The *starshyna* of the *sotnia* were subordinate to the regimental administration and the hetman. Companies performed a wide range of administrative powers and functions, as well as military (Zaruba, 2007, p. 30).

Until 1649, the government of the *sotnia* was elected by and subordinate to the Cossack

council. However, over time, this first became a formality as the central government, represented by the hetman, gained more power, and then the colonel began to appoint the *sotnyks*. The *sotnyk* was subordinate to the colonel in the hierarchy of power and had significant judicial, administrative and military powers. The *sotnia* scribe and the *osavul* had the same functions as the regimental scribe and the *osavul*. At the same time, a special place in the vertical of governance was occupied by the town *otaman*, who was vested with administrative power in Ukrainian towns. He was in charge of law enforcement and also acted as commandant there, and if the *sotnyk* was absent, he headed the board of the company court. The town *otamans* of the cities where the regimental administration was located were even higher in status than the *sotnyk*s, as they were part of the regimental government (Sas, Smolii, Stepenkov, 2014, p. 60).

It should be noted that the Hetmanate practiced removing a company in some regiments from jurisdiction of the colonel. It was then transferred directly to the Hetman or the General Military Chancellery. Such company was in the capital Baturyn, Hlukhiv (Zaruba, 2007, p. 31).

Regimental and company governments were thus the embodiment of civil-military administrations on the territory of Ukraine. In addition to civilian affairs, such as managing the land fund, organising tax payments, and performing judicial functions, colonels and *sotnyks* in the regiments and companies entrusted to them dealt with mobilisation issues and monitored the combat capability of Cossack armed formations. The organisation of administrations using the Cossack military hierarchy facilitated the rapid mobilisation of Cossacks, which significantly increased the combat capability of the Cossack state.

4. Conclusions

Therefore, various forms of civil-military administrations have emerged on the territory of Ukraine over the centuries. Such administrations were introduced by both the Ukrainian state authorities and foreign states. The administrations of the Cossack Hetmanate were structured in such a way as to mobilise significant military resources in the entrusted territories efficiently and quickly. Regiments and companies corresponded to the structure of the army. At a time when there was a military threat from all sides, such a system was very effective and timely.

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ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ВІЙСЬКОВО-ЦИВІЛЬНИХ АДМІНІСТРАЦІЙ НА ТЕРИТОРІЇ УКРАЇНИ В ПЕРІОД ІСНУВАННЯ ГЕТЬМАНСЬКОЇ ДЕРЖАВИ

Анотація. ***Мета.*** Метою статті є з'ясування особливостей функціонування військово-цивільних адміністрацій на території України в період існування Гетьманської держави ***Результати.*** Актуальність статті полягає в тому, що на території України в різні часи також діяли адміністрації військово-цивільного характеру. Дослідження подібного історичного досвіду потрібне в сучасних українських реаліях, оскільки це дасть змогу виявити сильні та слабкі сторони моделей управління територіями через військово-цивільні адміністрації. Зі свого боку, систематизована та проаналізована інформація може слугувати суттєвим базисом для вибудовування стратегії щодо механізмів і моделей військово-цивільного управління територіями в наш час. Унаслідок успішної національно-визвольної боротьби під проводом Б. Хмельницького утворилась українська козацька держава,

отже, на значну частину території сучасної України було поширено новий адміністративний поділ, який отримав назву полково-сотенний. Якщо проводити паралелі, то полк поставав своєрідною областю, а сотня – районом. Базовою військово-адміністративною ланкою був курінь (виконували організаційно-господарські функції). ***Висновки.*** Наголошено, що полки та сотні уособлювали військово-цивільні адміністрації української козацької держави. Адміністративний поділ новоствореної держави загалом повторював структуру козацького війська. Адміністративно-територіальні одиниці, тобто полки та сотні, відповідали військовій ієрархії козаків. Завдяки такому дублюванню козаки мали змогу в найкоротші терміни здійснювати мобілізаційні заходи. В «історії українського козацтва» зазначається, що полково-сотенний устрій не був унікальним. З'ясовано, що використовувалася в Гетьманській державі практика, коли в окремих полках сотня могла вилучатися з-під юрисдикції полковника. Вона тоді передавалася в підпорядкування безпосередньо гетьману або генеральній військовій канцелярії. Зроблено висновок, що на території України протягом багатьох століть виникали різні форми військово-цивільних адміністрацій. Такі адміністрації впроваджувались як українською державною владою, так і іноземними державами. Адміністрації за часів козацької гетьманської держави були побудовані таким чином, щоб ефективно та швидко мобілізовувати значні військові ресурси у ввірених територіях. Полки та сотні відповідали устрою війська. У часи, коли з усіх сторін існувала військова загроза, така система була дуже ефективною та на часі.

Ключові слова: уряд, земельний фонд, сплата податків, судові функції, мобілізація.

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FUNDAMENTALS OF FORMING PROSECUTORIAL ACTIVITIES IN THE AUSTRO-HUNGARIAN EMPIRE

Abstract. ***Purpose.*** The purpose of the article is to determine the specifics of prosecutorial activities in the Ukrainian lands in the Austro-Hungarian Empire and its current status. ***Results.*** The functions of specialised financial prosecutor's offices in the Ukrainian lands of the Austro-Hungarian Empire were as follows: 1) representing the interests of the state in resolving legal disputes (including cases related to the oil industry, mining, glassworks, communications, state monopolies, state estates, fines imposed by courts in disputes between large capitalist monopolies (syndicates, trusts); 2) court representation in cases involving state property and equivalent funds, and, as a result, protection of the state's property interests; 3) filing charges in court disputes concerning state property; 4) drafting court opinions; 5) legal assistance to state organisations, their advice when entering into legal contracts; 6) participation in the implementation of legal regulations concerning state property and funds that were equated to them. It is important to note that when representing the interests of state bodies in courts, financial prosecutors' offices enjoyed the procedural rights of a plaintiff or defendant. ***Conclusions.*** It is concluded that the system of public prosecution bodies has existed since ancient times and has undergone changes on different historical paths of its development, but the role of this body remains invaluable to this day. The historical analysis of the development of the provisions regulating prosecutorial activities enables to conclude that the idea of the prosecutor's powers and his/her procedural status has been constantly changing throughout the entire period of formation and development of the prosecution institution. Such changes were caused by the development of statehood, progress towards the rule of law and civil society. Therefore, the prosecution bodies and their activities on the territory of Ukraine during the period when it was part of the Austro-Hungarian Empire were characterised by a number of particularities due to the specifics of the territory. Thus, an important prerequisite for Ukraine's accession to the European legal space is to allow for the domestic process of prosecution in Austria-Hungary. Furthermore, historical and legal research suggests that the structure of the prosecution service and its competence should be improved in accordance with the generally accepted European standards.

Key words: system of prosecution bodies, legislation, legal status, specialised prosecutor's office.

1. Introduction

Studying the specifics of prosecutorial activities in the Austro-Hungarian Empire, domestic scholars primarily consider the period from 1849 to 1918. The starting point of this historical era is due to the fact that on 13 March 1849, the Austrian Emperor approved the Law Against Abuse of the Press and the Regulations on the Process of Investigation of Abuse of the Press, and these events are considered by domestic scholars as the starting point for the introduction of the post of public prosecutors in the Austro-Hungarian Empire and the beginning of the process of organising the system of general prosecution bodies (Khudoba, 2009). Meanwhile, in 1918, a number of important events took place in the history of Ukraine, including the establishment of the Ukrainian People's Republic and the Western Ukrainian People's Republic and the collapse of the Austro-Hungarian Empire, which summed up the end of this era in the history of the formation of prosecutorial activities in the Ukrainian lands. We propose to consider this period, from 1849 to 1918, through the prism of the following periods:

Period I (1849–1855) – the establishment of prosecutorial activities in the Austro-Hungarian Empire;

Period II (1851–1867) – establishment and development of specialised prosecutor's offices;

Period III (1867–1918) – expansion of prosecutorial powers.

The purpose of the article is to determine the specifics of prosecutorial activities in the Ukrainian lands in the Austro-Hungarian Empire and its current status.

2. Formation of prosecutorial activities in the Austro-Hungarian Empire

After the annexation of the lands of Galicia, the Austro-Hungarian government began reforming the state authorities and local self-government. According to O. Kondratiuk, it focused on the creation of judicial and other law enforcement bodies: courts, police and the bar (Kondratiuk, 2011). As of 1849, a system of prosecution bodies was formed in the Ukrainian lands that were part of the Austro-Hungarian Empire, and prosecutors were vested with clearly defined competences. However, it should be noted that the legislation adopted at that time was not specialised as it mainly concerned the judicial system, with which the prosecutor's office was closely connected. However, starting from the following year, the Austro-Hungarian legislator adopted a number of regulations important for the functioning of the prosecution service in the Austro-Hungarian Empire.

Primarily, the provisions of the Austrian Provisional Code of Criminal Procedure of 17 January 1850 defined the legal status of the prosecutor as a participant in criminal proceedings, and in accordance with this status, the following powers were defined within this regulation (Tverdokhlib, 2015). The literature review reveals that the prosecutor's office in Galicia, despite the independence of the court from the prosecutor's office declared at the level of legislation, influenced the courts in the exercise of their powers. In this regard, N.Yu. Panych argues that supervision over the observance of legislation in the enforcement of court decisions in criminal cases was one of the key areas of prosecutorial activities in this period, and this was primarily due to the fact that the Austrian Provisional Code of Criminal Procedure of 17 January 1850 provided that the enforcement of court decisions within counties, as well as collegiate and regional courts, should be carried out under the supervision of the Public Prosecutor (Womit eine neue provisorische Strafprozessordnung mit der Bestimmung kundgemacht wird, dass der Tag, an welchem sie in Wirksamkeit zu treten hat, erst nachtraglich bekannt gegeben wird, 1850). In other words, prosecutors in the exercise of their powers did indeed have an influence on the judiciary by supervising their activities. In addition, according to N. Yu. Panych, judges were required to send monthly data to the Public Prosecutor on the number of executed court decisions in criminal cases under their supervision. The exception was cases where the convicted person was sentenced to death, as the Public Prosecutor and the judge jointly supervised the enforcement of such a decision (Panych, 2008). Therefore, with the adoption of the Austrian Provisional Code of Criminal Procedure, prosecutors were assigned the competence to supervise the enforcement of court decisions, which, on the one hand, made courts dependent on prosecutors, and on the other hand, demonstrated the importance of the prosecutor's office for the functioning of the state apparatus.

The further development of the legal status of the prosecutor is associated with the adoption of specific legislation on the prosecutor's office and prosecutorial activities. For example, on 10 July 1850, the Austrian Empire and the Austro-Hungarian Monarchy adopted the Organic Law on the Public Prosecutor's Office (Kulchytskyi, 1965). The scientific literature notes that, in fact, since the adoption of this legal regulation, the status of the prosecutor's office as a law enforcement body has been established. Among the functions of the prosecutor's office of the Austro-Hungarian Empire defined in this legal regulation, O. Kondratiuk identifies the following: first, the exercise of prosecutorial activities "partly for the purpose of direct justice in civil and criminal cases"; second, the exercise of prosecutorial activities "partly for the purpose of governmental administration of justice and for the improvement and correct application of laws in general" (Kondratiuk, 2011). The first type of function is related to governmental influence on the court, that is, it determines the actual subordination of the court to the prosecutor's office. As for the second type, these functions are related to the supervision of the rule of law in legal relations in the state.

For example, the position of public prosecutor was introduced at each district court. In 1850, in total, seven district prosecutor's offices were established on the Ukrainian territories of the Austro-Hungarian Empire: in Lviv, Zolochiv, Peremyshl, Sambir, Stanislav, Ternopil, and Chernivtsi. The position of the Prosecutor General was established at the Supreme Court of Justice and Cassation and at the Higher Regional Courts. The legal status of the Prosecutor General was regulated by the Imperial Patent of 7 August 1850. In particular, it defined that the Prosecutor General is the supreme guardian of the "unity of law and the proper application of the law". It was established that this position was directly subordinate to the Minister of Justice. The prosecutor general of the Supreme Court and the Court of Cassation and his deputies, as well as the prosecutors general of the higher provincial courts, were appointed by the emperor himself on the recom-

mendation of the minister of justice. All other prosecutors were appointed by the Minister of Justice, and the functional staff of the prosecutor's office were appointed by the Prosecutor General (Kondratiuk, 2011). Therefore, all of the above indicates that as of 1850, a system of prosecution bodies was actually formed in the Ukrainian territories of the Austro-Hungarian Empire and legislation was adopted to regulate their legal status. Several issues remained unresolved: first, the system of specialised prosecutor's offices had not yet been formed; second, some of the courts envisaged by the Resolution "On the main features of the new judicial system" of 14 October 1849 had not yet started operating, and thus the prosecutor's offices established under them.

On 13 August 1851, the Ministry of Finance issued a decree establishing the Financial Prosecutor's Office, which was subordinated to the Ministry of Finance and the regional financial directorate (Korytko, 2017).

On 31 December 1851, a law was adopted that improved the regulatory framework for the functions of the prosecutor's office. In particular, its competence was clarified. The structure and procedure of the prosecutor's office were regulated by a decree of the Minister of Justice. According to O. Kondratiuk, the prosecutor's office functionally supervised the activities of investigative bodies, the organisation and conduct of trials in district and county courts, brought and supported public prosecution in cases of anti-state activities, murders, robberies, arson, etc. (Kondratiuk, 2011). And in fact, all these components of prosecutorial activities in the Austro-Hungarian Empire were regulated as of 1851. According to M.H. Tverdokhlib, deputy state prosecutors or prosecutorial officials carried out their activities in the courts of first instance at the county level. In other words, as envisaged by the above-mentioned Resolution, the prosecutor's office functioned in the courts of first instance as a single state body (Tverdokhlib, 2015). State prosecutors represented the interests of citizens in the courts of first instance in certain categories of civil cases (e.g., divorce cases or cases of declaring a person dead). Moreover, the higher state prosecutor's offices were granted special powers (e.g., the right to appeal against decisions to remove records from land cadastres), which suggested that they had more authority. State prosecutor's offices were subordinated to the Minister of Justice and did not belong to the executive branch.

Therefore, the analysis of the first period of formation of prosecutorial activities in the Austro-Hungarian Empire (1849–1855) enables to identify the following events which became key to the further development of the institution under study: first, at this stage, a system of prosecution bodies was formed which was not typical for previous historical periods and was in line with European models of organisation of these bodies; second, at this stage a large number of legal regulations on the prosecutorial activities were adopted; third, the competence of prosecutors, established in the above-analysed legislative acts, was much broader than in previous historical stages.

3. Establishment and development of specialised prosecutor's offices

The next period we have identified is dated 1851–1867. During this phase, specialised prosecutor's offices were established and developed. Considering the previous period analysed, one may notice an inconsistency in the chronology. This can be explained by the fact that the formation of specialised prosecutor's offices essentially took place in parallel with the formation of prosecutorial activities in the Austro-Hungarian Empire in general, but this process is still characterised by its own chronological framework.

For example, the existence of a specialised financial prosecutor's office in the system of the state mechanism of the Austrian, and later the Austro-Hungarian Empire is considered in the scientific literature as an important attribute of the prosecutorial system of that time, since this prosecutor's office ensured the representation of public interests in the interests of the state, in the field of economic, civil, property and administrative relations, within the economic orientation (Zhuvaka, 2019). The financial prosecutor's offices were under the control of the Ministry of Finance, which had the exclusive right to issue regulations to ensure the operation of financial prosecutor's offices. The process of organising financial prosecutor's offices to protect the property and related interests of the Austrian and later the Austro-Hungarian empires in Austria began in the eighteenth century, and in the nineteenth century such prosecutor's offices began to appear, including in Ukrainian lands. According to M.V. Nykyforak, in contrast to the general organisation of the system of prosecutor's offices, which, as we have established, were established at each county, county collegiate and regional court, and at each higher regional, higher judicial and cassation tribunal, financial prosecutor's offices were established exclusively in the main cities of each crown land and had no lower levels. Therefore, along with the financial prosecutor's offices of such cities of the empire as Vienna, Linz, Salzburg, Graz, Innsbruck, Klagenfurt, Leibach and Prague, a financial prosecutor's office functioned in Lviv (Nykyforak, 2001). When analysing how specialised

prosecutor's offices were established and developed, it is important to note that specialised financial prosecutor's offices operated separately from state prosecutor's offices. Moreover, financial prosecutor's offices were independent of the courts and were created separately from them. That is why, in our opinion, the processes of creation and development of specialised prosecutor's offices should be considered separately from the formation of prosecutorial activities in the Austro-Hungarian Empire in general.

There are different approaches in the scientific literature to determining the date of establishment of financial prosecutor's offices in the Ukrainian lands of the Austro-Hungarian Empire. Earlier in this paper, we presented the most generally accepted approach, according to which the financial prosecutor's office began its activities on 13 August 1851 in connection with the adoption of a relevant order of the Ministry of Finance (Korytko, 2017). According to other sources, in 1854, the Galician Financial Prosecutor's Office was established in Lviv, with one of its departments serving Bukovyna (Sukhonos, 2010). However, O.V. Kondratiuk in his study emphasises that as early as 16 June 1773, a financial administration was established in Lviv, which was reorganised into a financial board in 1775. On 31 January 1852, the financial board was transformed into a financial chamber, on the basis of which on 1 June 1852 the Galician Financial Prosecutor's Office was established, which was directly subordinated to the Austrian Ministry of Finance (Kondratiuk, 2011). Therefore, the preconditions for the emergence of financial prosecutor's offices were created long before the actual establishment of this institution. Consequently, the establishment and development of this body, as well as its subordinate ekspozituras (departments), was carried out in accordance with special legislation adopted for this purpose.

The financial prosecutor's office of Galicia was headed by a prosecutor who was subordinate to the Minister of Finance of the Empire. The Krakow ekspozitura was also managed by a prosecutor who was directly subordinate to the Galician financial prosecutor (Panych, 2008). In his research, N. Panych assessed the activities of the Galician Financial Prosecutor's Office in the Kingdom of Galicia and Lodomeria as being carried out at a high level and regulated perfectly by law. According to the researcher, "the perfect regulatory framework for its activities at the time, as well as the constant attention of the Austrian government to its reform and improvement, were prerequisites for the effective functioning of this body" (Panych, 2008). This indicates that the activities of this body were properly regulated. However, there is no information in the scientific literature that the legislator, when deciding to establish this body, adopted the necessary legislation, and from the very first steps of the financial prosecutor's office, it exercised its competence adequately to the tasks assigned to it. In his other work, N.Yu. Panych admits that "the functioning of this body cannot be called exemplary". This can be explained by the fact that its activities covered the territory of one of the largest lands of the Austrian and later Austro-Hungarian monarchies. Therefore, the small staff of the Galician Financial Prosecutor's Office could not respond promptly and thoroughly to all cases it had (Panych, 2008). That is, on the one hand, financial prosecutor's offices of the Austro-Hungarian Empire should be considered as a part of the prosecutor's office system. However, on the other hand, they actually constituted an independent system of state bodies with special functions and competence. The literature review reveals that the competence of financial prosecutors' offices was to represent the interests of the state (the Austrian and later the Austro-Hungarian monarchy) in resolving legal disputes and to provide legal representation in cases involving state property and funds equivalent to it (Panych, 2008; Lytovka, 2013).

However, N.Yu. Panych states, "the activities of the Galician financial prosecutor's office were regulated by separate legislative acts, which testified to the special position of this body in the system of governance of the Kingdom of Galicia and Volodymeria", that is, such legislation was subsequently adopted (Panych, 2008). Moreover, different scientific sources contain different information about how such regulatory framework was implemented. According to O. Kondratiuk, despite the fact that the financial prosecutor's office began its activities on 1 June 1852, its competence and tasks were regulated by the order of the Minister of Finance of 16 February 1855 (Kondratiuk, 2011). In other words, according to the researcher, the regulation on the competence and tasks of the financial prosecutor's office was the relevant decree of the Minister of Finance of 16 February 1855. Panych notes that the main legal regulation governing the activities of the Galician Financial Prosecutor's Office was adopted on 16 February 1855, and it was a decree of the Ministry of Finance approving the temporary service instruction for financial prosecutors' offices (Panych, 2008). Therefore, all of the above indicates that as of 1855, the Austro-Hungarian Empire adopted a regulation which actually governed the activities of this body, establishing its competence and functions.

According to N.Yu. Panych, the main powers of the financial prosecutor's office included representation of the state's interests in resolving legal disputes and judicial representation in cases involving state property and funds equated to it (Panych, 2008). In addition to this function, V.M. Lytovka identified the following functions of developing juridical opinions and participating in the implementation of legal regulations concerning state property and funds that were equated to them (Lytovka, 2013). Therefore, the functions of specialised financial prosecutor's offices in the Ukrainian lands of the Austro-Hungarian Empire were as follows: 1) representing the interests of the state in resolving legal disputes (including cases related to the oil industry, mining, glassworks, communications, state monopolies, state estates, fines imposed by courts in disputes between large capitalist monopolies (syndicates, trusts); 2) court representation in cases involving state property and equivalent funds, and, as a result, protection of the state's property interests; 3) filing charges in court disputes concerning state property; 4) drafting court opinions; 5) legal assistance to state organisations, their advice when entering into legal contracts; 6) participation in the implementation of legal regulations concerning state property and funds that were equated to them. It is important to note that when representing the interests of state bodies in courts, financial prosecutors' offices enjoyed the procedural rights of a plaintiff or defendant.

Another important event for the period of creation and development of specialised prosecutor's offices was the establishment of the Chernivtsi Financial Prosecutor's Office. Until 1867, the powers of the Galician Financial Prosecutor's Office extended to the territory of Bukovyna, but on 31 December 1867, the official government gazette reported that the Bukovyna Financial Prosecutor's Office in Chernivtsi had begun its activities (Nykyforak, 2001). From that moment on, the competence of the Galician Financial Prosecutor's Office was limited to Galicia (eastern and western). Meanwhile, the Bukovinian Financial Prosecutor's Office in Chernivtsi was also subordinated to the Austrian Ministry of Finance and the regional financial directorate, and the only separate department of the Galician Financial Prosecutor's Office remained in Krakow as an ekspozitura.

Therefore, in the course of analysing the period of creation and development of specialised prosecutor's offices, we have identified the following key events: first, the establishment of the Galician Financial Prosecutor's Office and its ekspozituras; second, the regulatory framework for the activities of the Galician Financial Prosecutor's Office and its ekspozituras; third, the establishment of the Chernivtsi Financial Prosecutor's Office.

4. Expansion of prosecutor's powers

The last period we have identified dates from 1867–1918 and includes numerous attempts by the legislator to expand prosecutorial powers. The study reveals that, in fact, a system of prosecutor's offices was established in the Austro-Hungarian Empire by 1855, and a system of specialised financial prosecutors by 1867. Since then, and until 1918, when the Austro-Hungarian Empire was divided into a number of independent states after its defeat in the First World War, only a few changes were made to the legal framework for prosecutorial activities. In general, the district prosecutor's offices, the prosecutor's offices of the Supreme Court and Cassation Tribunal and the Higher Regional Courts, and the special financial prosecutor's offices with their expozituras functioned on the legal framework that we have established in this paper.

For example, as we have established above, among the functions performed by prosecutors in the Austro-Hungarian Empire in accordance with the legislation adopted in the period from 1849 to 1855, it is worth highlighting supervision over compliance with the law in the enforcement of court decisions in criminal cases; supervision over the activities of investigative bodies, the organisation and conduct of trials in district and county courts; initiating and maintaining public prosecution in cases of anti-state activities, murders, robberies, arson; representing citizens in courts of first instance in certain categories of civil cases. However, in 1863, the powers of the prosecutor's office were supplemented by supervision over disciplinary violations of judicial officials, and in 1865 – supervision over the activities of prisons (Kondratiuk, 2011). Therefore, the functions of the prosecutor's office gradually expanded, and with them the importance of prosecutorial activities for society. It is evident that the influence of prosecutors on the courts was only expanding, despite the fact that, as we have established above, the principles of judicial independence in the Austro-Hungarian Empire were not properly ensured, and judges were accountable to prosecutors in their official activities. Since 1863, prosecutors have additionally supervised the disciplinary proceedings against judges, which has further increased their influence on the judiciary.

Further changes in the regulatory framework for prosecutorial services in the Ukrainian territories of the Austro-Hungarian Empire were introduced as part of the 1873 reform, which changed the names of some

of the positions related to prosecutorial activities. While the prosecutor of the Supreme Court and the Court of Cassation continued to be called the Prosecutor General, prosecutors of the Higher Regional Courts were called senior prosecutors, and prosecutors of the District Courts were called public prosecutors. In addition, as a result of the reform, prosecution in district courts was supported by deputy public prosecutors (Kondratiuk, 2011). As we can see, these changes were both purely formal in the context of the names for the position and directly related to the functions of prosecutors, namely the expansion of the functions of their deputies.

The next important change in the regulatory framework for prosecutorial activity dates back to 1898. When analysing the stage of creation and development of specialised prosecutor's offices, we noted that the functioning of financial prosecutor's offices was regulated by the Provisional Instruction of the Austrian Ministry of Finance of 1855. In 1898, it was reissued and improved. According to M.V. Nykyforak, the new Service Instruction for financial prosecutors' offices largely duplicated the provisions of the previous Provisional Instruction, but improved the legal status of financial prosecutors' offices in the empire (Nykyforak, 2001). It should be noted that the organisation of the prosecutor's office in the Ukrainian lands that were part of Austria-Hungary was created on the basis of the European model, as reflected in the productive experience that was important for the creation of this institution. The expansion of the powers of financial prosecutors' offices shows the continued focus of the legislator on the activities of financial prosecutor's office. This can be explained by the fact that Galicia, as a region rich in raw materials, contributed to the state treasury. Moreover, the expansion of the powers of financial prosecutors contributed to the establishment of the institution of representing the interests of citizens and the state in court. This Service Instruction was in force until 1918, that is, until the collapse of the Austro-Hungarian Empire.

Based on the analysis of the third period of formation of prosecutorial activities in the Austro-Hungarian Empire, we have identified the following key points for this phase:

First, the functions of the public prosecutor's office and the financial prosecutor's office were expanded;

Second, the names of positions related to prosecutorial activities were changed.

5. Conclusions

Therefore, having examined the history of the formation and development of prosecutorial activity, we can conclude that the system of public prosecution bodies has existed since ancient times and has undergone changes on different historical paths of its development, but the role of this body remains invaluable to this day. The historical analysis of the development of the provisions regulating prosecutorial activities enables to conclude that the idea of the prosecutor's powers and his/her procedural status has been constantly changing throughout the entire period of formation and development of the prosecution institution. Such changes were caused by the development of statehood, progress towards the rule of law and civil society.

Thus, the prosecution bodies and their activities on the territory of Ukraine during the period when it was part of the Austro-Hungarian Empire were characterised by a number of particularities due to the specifics of the territory. Therefore, an important prerequisite for Ukraine's accession to the European legal space is to allow for the domestic process of prosecution in Austria-Hungary. Furthermore, historical and legal research suggests that the structure of the prosecution service and its competence should be improved in accordance with the generally accepted European standards.

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Womit eine neue provisorische Strafprozessordnung mit der Bestimmung kundgemacht wird, dass der Tag, an welchem sie in Wirksamkeit zu treten hat, erst nachtraglich bekannt gegeben wird: Kaiserliches Patent vom 17 Januar 1850 № 25 / Allgemeines Reichs-Gesetz – und Regierungsblstt fur das Kaiserthum Osterreinh. 1850. XVII. Stuck, pp. 287–395 [in German].

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ЗАСАДИ ФОРМУВАННЯ ПРОКУРОРСЬКОЇ ДІЯЛЬНОСТІ В АВСТРО-УГОРСЬКІЙ ІМПЕРІЇ

Анотація. ***Мета.*** Метою статті є визначення специфіки прокурорської діяльності на українських землях в Австро-Угорській імперії та її сучасне становище. ***Результати.*** Функціями спеціалізованих фінансових прокуратур на українських землях у складі Австро-Угорської імперії були: 1) представництво інтересів держави під час вирішення правових спорів (у тому числі у справах, які належали до сфери нафтової промисловості, гірничої справи, скловиробних заводів, установ зв'язку, державних монополій, казенних маєтків, штрафів, що накладалися судами у спорах великих капіталістичних монополій (синдикатів, трестів); 2) судове представництво у справах, предметом розгляду яких були державне майно та прирівняні до нього фонди, і, як наслідок, захист майнових інтересів держави; 3) висунення звинувачень у судових спорах, що стосувалися державного майна; 4) вироблення правових висновків; 5) юридична допомога державним організаціям, консультування їх для укладання юридичних договорів; 6) участь у реалізації правових актів, що стосувалися державного майна та фондів, які до них прирівнювалися. Важливо при цьому зазначити, що, здійснюючи представництво інтересів державних органів у судах, фінансові прокуратури користувалися процесуальними правами позивача чи відповідача. ***Висновки.*** Зроблено висновок, що система органів прокуратури існує ще з найдавніших часів, а на різних історичних шляхах свого розвитку зазнавала змін, але роль цього органу залишається неоціненою і до сьогодні. Історичний аналіз розвитку положень, які регламентують прокурорську діяльність, дає змогу сформулювати висновок про те, що уявлення про повноваження прокурора, його процесуальний статус протягом усього періоду становлення й розвитку інституту прокуратури постійно змінювалися. Такі зміни були зумовлені розвитком державності, просуванням до побудови правової держави та громадянського суспільства. Отже, діяльність органів прокуратури на території України під час перебування їх у складі Австро-Угорської імперії характеризувалася рядом особливостей, зумовлених специфікою території. Тому важливою передумовою входження України у європейський правовий простір є врахування вітчизняного процесу прокурорської діяльності в Австро-Угорщині. Крім того, історико-правові дослідження свідчать про доцільність

удосконалення структури діяльності органів прокуратури та її компетенції відповідно до європейських стандартів, які є загальновизнаними.

Ключові слова: система органів прокуратури, законодавство, правовий статус, спеціалізована прокуратура.

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THEORETICAL AND LEGAL BASIS FOR PRE-TRIAL INVESTIGATION OF CRIMES AGAINST CHILDREN

Abstract. ***Purpose.*** The article focuses on the need to create: an effective legal mechanism for ensuring the rights of the child in any contact with the justice system, as well as additional procedural guarantees for the treatment of minors involved in criminal proceedings; professional approach of persons authorized to work with children, etc. ***Research methods.*** The work was developed based on general scientific and special methods of scientific knowledge. In particular, comparative and legal method made it possible to equate the norms of national legislation with the content of international treaties, defining the requirements for the procedure for pre-trial investigation of crimes against children. Summarization method made it possible to consistently consolidate isolated facts and formulate reasoned conclusions aimed at improving the legislative regulation of the researched issue, overcoming its conflicts and gaps. Logical method of scientific knowledge serves as a methodological basis for the study of problematic issues of pre-trial investigation of criminal offenses, in which the victims are children. ***Results.*** It was determined that the effective implementation of pre-trial investigation of crimes against children depends on ensuring an individual approach to their documentation, coordination of the actions of the law enforcement officials of various departments and specialists in the relevant area, who provide and collect evidence immediately after the commission of the offence, which will allow their effective use in decision-making by both domestic judicial bodies and international institutions, in particular the International Criminal Court. International documents indicating the need to mitigate the procedure of interviews and interrogations of children who have become victims or witnesses of crimes were analyzed. ***Conclusions.*** To ensure the principle of equality before the law and the court regarding criminal proceedings in which the victims or witnesses are children, based on the analysis of legal instruments, it was concluded that the Criminal Procedure Code of Ukraine should be amended.

Keywords: child, pre-trial investigation, martial law, criminal proceedings, minor, juvenile prevention.

1. Introduction

Since the introduction of martial law on the territory of Ukraine in connection with the aggression of the russian federation, 505 children have died and 1129 children have been injured. As of October 06, 2023, 19,812 children were reported missing to the National Police. To date, 1,206 children are still actively wanted, of which: 1,182 have disappeared in the territory of hostilities (Donetsk, Luhansk, Kherson, Kharkiv, Zaporizhzhya, Mykolaiv, and Kyiv regions); 617 were forcibly removed by the occupation authorities according to the available information, they were forcibly removed by the occupation authorities out of residence).

So far, the prosecutor's office has recorded a number of serious violations against children by military personnel of the aggressor state. According to international humanitarian law, these violations are war crimes, namely: recruitment and use of children; murder and maiming, rape and other forms of sexual violence, attacks on schools, hospitals and protected persons

associated with them, child abduction, denial of access to humanitarian aid, etc.

This indicates the need to create: an effective legal mechanism for ensuring the rights of the child in any contact with the justice system under the armed conflict; additional procedural guarantees for the treatment of minors involved in criminal proceedings; professional approach of persons authorized to work with children, etc.

The problem of crimes against children, especially under martial law, is quite acute, complex and unpredictable. When a child is subjected to criminal acts, law enforcement agencies, prosecutors, judges, social services, medical institutions, etc. are obliged to promote the rights of the child and to act in his (her) best interests. However, these actors do not always work in harmony.

It should be noted that, unfortunately, crimes against children are particularly dangerous in terms of the duration of negative effects on the child's psyche and unpredictable impacts on their future. Generally, a child victim passes through a number of institutions and has been repeatedly interrogated by different specialists and different places, using different methods of gathering information, which can cause him to re-traumatize. Besides, repeated interrogations by specialists who have not undergone special training can distort the child's story about the events and negatively affect the course of the pre-trial investigation.

The **purpose of the article** is to study problematic issues of pre-trial investigation of crimes against children under martial law.

2. Problematic issues of pre-trial investigation of crimes against children under martial law

The policy of our State in the field of protection of the child' rights and freedoms is based on the principles enshrined in the rules of domestic and international law. Certain issues of the children's rights protection are related to the proper level of pre-trial investigation of crimes against children in accordance with international legal standards. In particular, the Declaration of the Rights of the Child (United Nations General Assembly, 1959) determines that the child due to his physical and mental immaturity needs special protection and care, including proper legal protection. According to the Convention on the Rights of the Child (United Nations General Assembly, 1959) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse. Part 1, Article 35 of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe, 2007) states that each Party shall take necessary legislative and other measures to ensure that the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings.

Therefore, international documents indicate the need to ensure that interviews and interrogations of children who have become victims or witnesses of crimes, are mitigated. Besides, effective implementation of pre-trial investigation of crimes against children depends on ensuring an individual approach to their documentation, coordination of the actions of the law enforcement officials of various departments prosecutors, Security Service of Ukraine, National Police of Ukraine) and specialists in the relevant area (psychologists, Ministry of Health of Ukraine, specialized state institutions and laboratories and etc.), who provide and collect evidence immediately after the commission of the offence. It is also important to ensure the admissibility of evidence in criminal proceedings by entities authorized to collect it, which will allow their effective use in decision-making by both domestic judicial bodies and international institutions, in particular the International Criminal Court.

At the same time, the law enforcement process has demonstrated that the national legal system is not ready for the challenges, which emerged with the outbreak of full-scale war in Ukraine, primarily related to the detection, documentation and pre-trial investigation of war crimes, including the ones against children.

3. Theory of evidence

One of the most important in the theory of evidence is the problem of inadmissibility of evidence (Vapnyarchuk, 2023). Thus, one of the criteria for the admissibility of evidence in criminal proceedings is that the authorized subject receives it. According to judicial practice, the evidence collected by the pre-trial investigation body in violation of the rules of investigation is inadmissible because it was collected by an unauthorized subject. It should be noted that violation of the laws and customs of war is a war crime and at the same time an international crime. According to Article 216 of the Criminal Procedure Code of Ukraine (Law of Ukraine No. 4651-VI, 2012) pre-trial investigation of the crimes provided for in Article 438 of the Criminal Code of Ukraine (Law of Ukraine No. 2341-III, 2001) is carried out by the investigators of the Security Service of Ukraine. If during the investigation it turns out that part of the related crimes are under investigation by the Security Service of Ukraine, and part – by the National Police of Ukraine or another pre-trial investigation body, the prosecutor identifies the jurisdiction

(Part 10, Article 216 of the Criminal Procedure Code of Ukraine). However, documentation of these types of crimes before the information is entered in the Unified Register of Pre-trial Investigations (hereinafter – URPI) is carried out by law enforcement officers of various departments, including the National Police of Ukraine.

For the purpose of documenting crimes before the information is entered in the URPI in accordance with the rules of the Criminal Procedure Code of Ukraine, inspection of the scene is permitted, the purpose of which is to identify and record evidence regarding the circumstances of the crime. Accordingly, during the prosecution of this category of criminal proceedings, admissibility of this evidence may be questioned in connection with their collection by inappropriate subject.

Another problematic issue during the pre-trial investigation of crimes against children is that, according to Article 226 of the Criminal Procedure Code of Ukraine, interrogation of juveniles or minor is conducted in the presence of a legal representative, a teacher, or a psychologist, and if necessary, a doctor. However, according to Part 2, Article 65 of the Criminal Procedure Code of Ukraine, the legal representative of the victim cannot be questioned as a witness. In accordance with Part 2, Article 97 of the Criminal Procedure Code of Ukraine, the court has the right to admit hearsay evidence regardless of whether the person who provided the primary explanation could be questioned in exceptional cases, if such testimony is admissible evidence under other rules of admissibility of evidence. Along with this, Part 7 of this article states that in any event, hearsay evidence may not be admissible, if they are given by an investigator, a prosecutor, an employee of an operational unit or another person to the explanations of persons given to an investigator, a prosecutor or to an employee of the operative unit in criminal proceedings.

It should be noted that the "Bernahus" model is currently being implemented in Ukraine. This project is designed to adapt the criminal process to the needs of children, to promote their reintegration and rehabilitation. In particular, the new standards of working with children are the creation of comfortable conditions at all stages of co-operating with them, the support of a qualified child psychologist, taking measures to avoid repeated traumatization, which can be achieved by limiting the number of investigative actions involving the child, engaging different specialists for procedural actions taking into account the relevant provisions of the Code of Criminal Procedure of Ukraine, in a child-friendly environment, etc. In view of the above, and with the aim of minimizing injury to the child during her interrogation, we propose to enshrine the provision in the Criminal Procedure Code of Ukraine that if there is a need for additional evidence, then the hearsay may be heard in accordance with Article 97 of the Code of Criminal Procedure of Ukraine, which should be supplemented with Par. 8 to read as follows: "*8. Complexity of interrogation of a juvenile or minor victim or a witness who gave a primary explanation or reasons why such an interrogation is not possible*".

As we have already noted earlier, in accordance with international acts, in order to mitigate the impact on the child's psyche during criminal proceedings, it is recommended to introduce into national legislation the provisions which will ensure that child interviews are conducted without undue delay immediately after the facts have been reported to the competent authorities; limiting the number of child interrogations; interrogation of the child, if necessary, and in a room specially equipped or arranged for these purposes; conducting all interrogations of the child by the same person, if possible, and where appropriate; interrogation of the child by the person specially trained for these purposes, etc.

As we can see, considerable attention is paid to limiting the number of interrogations of the victim, who is a minor. One of the options for solving this problem is the use of audio and video recording of the minor's interrogation for its further use in evidence in this category of criminal proceedings. As we can conclude from the content of Part 5, Article 224 of the Criminal Procedure Code of Ukraine, audio and/or video recording may be used during interrogation. That is, we are just talking about the possibility and not the obligation of using audio and/or video recording. However, in our opinion, in the case when it comes to the interrogation of a juvenile or minor witness or victim at the stage of pre-trial investigation, video recording of the questioning of the specified persons should be mandatory, because it will help to prevent re-traumatization of the child's psyche, and in the future this video recording may be used as evidence in criminal proceedings, including during a court hearing.

Proceedings in cases involving minors are one of the types of differentiated criminal procedural form, regulated by the rules of Chapter 38 of the Criminal Procedure Code of Ukraine. It is a procedural form differentiated by the minor subject of criminal responsibility, in which general rules of pre-trial investigation and court proceedings are combined with special norms guaranteeing the protection of a minor suspect (accused) from unjustified criminal prosecu-

tion and conviction and is also of a preventive and socially restorative nature. The specified chapter of the procedural law defines additional guarantees for the protection of the rights of a minor, the existence of which is due to the characteristics of the person's age (Tsyhaniuk & Kuliebiakin, 2023, p. 353). It should also be noted that the current criminal procedural legislation of Ukraine does not fully comply with the principles of equality before the law and the court regarding proceedings in criminal cases, in which children are victims or witnesses.

Thus, Chapter 38 of the Criminal Procedure Code of Ukraine defines the procedure for criminal proceedings against minor suspects (accused), the circumstances to be established in criminal proceedings against minor suspects (accused), participation of the legal representative of a minor suspect (accused) in criminal proceedings, the procedure for summoning a minor suspect or accused, the interrogation of a minor suspect or accused, cases and procedure for engaging a legal representative, teacher, psychologist or doctor in the interrogation of a minor suspect (accused), etc. However, the norms of this chapter do not apply to victims and witnesses who are minors. In view of the above, we offer:

– title of Chapter 38 of the Criminal Procedure Code of Ukraine should be read as *"Chapter 38. Criminal proceedings against minors and involving them"*;

– title of § 1. redrafted as follows *"§ 1 General rules of criminal proceedings of which a minor is a party"*;

– Article 484 should be amended as follows:

"Article 484. The procedure for criminal proceedings *against minors and involving them*

1. The procedure for criminal proceedings against minors and involving them is determined by the general rules of this Code, taking into account the features provided for in this Chapter.

2. Criminal proceedings against a minor, including if criminal proceedings are conducted against several persons, at least one of whom is a minor, *as well as criminal proceedings in which the victim is a minor*, are conducted by the inquirer, the investigator, who are specially authorized by the head of pre-trial investigation body to carry out pre-trial investigations on minors. In the course of criminal proceedings against a minor, including application of coercive measures of an educational nature, *and in which the minor is the victim*, the inquirer, investigator, prosecutor, investigating judge, the court and all other persons involved in it are required to carry out procedural actions in a less disruptive manner to the minor's normal way of life and corresponds to his (her) age and psychological characteristics, clarify the essence of procedural actions, decisions and their meaning, listen to his arguments in procedural decisions and take all other measures aimed at avoiding negative impact on the minor".

When conducting investigative (search) actions with a minor victim (witness), one should consider his (her) individual psychological and psychophysiological properties, in particular, to question the person being interrogated through the psychologist, to use special methods ("Green Room", "Barnahus", etc.).

3. The provisions of this paragraph are applied in criminal proceedings regarding criminal offenses committed by persons under the age of 18, as well as victims and witnesses who were minors at the time of their involvement in the criminal proceedings.

– add the word *", victim"* to the title of Article 487 after the words "a minor suspect or accused";

– the title of Article 488 should be read as: "Participation of the legal representative of the minor suspect, accused, victim";

– insert *"victim"* after the word "minor" in Part 1, Art. 488;

– insert *"victim"* after the word "minor" in Part 3, of Art. 488;

– the title of Article 489 should be worded as: "*The procedure for summoning a minor victim, witness, suspect or accused*";

– insert the words *"victim, witness"* after the word "minor" in Part 1, Art. 489.

Besides, it should be noted that international standards clearly define that the child's interrogations, if necessary, should take place in a room specially equipped and arranged for these purposes. The above characterizes the basic principles of the "Green Room" method, which involves interviewing the child who has suffered or witnessed crime, in conditions minimizing and preventing repeated traumatization of the child's psyche, considering his (her) individual psychological and psychophysiological properties. However, the problem of using this technique is the lack of a sufficient number of properly equipped "Green Rooms".

Thus, as of 2021, 34 special rooms (child-friendly rooms) were functioning in Ukraine, 25 of which are in police units, 4 – in higher education institutions of the Ministry of Internal Affairs of Ukraine, 3 – in other State agencies, and 2 – in civil institutions. Only 25 rooms were properly furnished. Currently, there is a need to increase the number of such rooms. However, today in Ukraine there are no legal principles for the "Green Rooms" functioning and legal prerequisites for their application in criminal proceedings involving a child. *This predetermines the need to develop and adopt departmental nor-*

mative legal act that will determine the organizational and legal basis of the activity of inquirers, investigators, and employees of juvenile prevention units regarding the application of the "Green Room" methodology.

4. Conclusions.

In today's circumstances, the improvement of the criminal procedural legislation of Ukraine in terms of ensuring the rights of the minor victim in criminal proceedings is a necessary element of its effectiveness. Besides, special methodologies such as "Green Room" and "Barnahus", the application of which during investigative (search) actions with minors will prevent their traumatization, require proper rationing for adequate application.

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ТЕОРЕТИКО-ПРАВОВІ ЗАСАДИ ДОСУДОВОГО РОЗСЛІДУВАННЯ ЗЛОЧИНІВ ПРОТИ ДІТЕЙ

Анотація. ***Мета.*** У статті акцентовано увагу на необхідності створення: дієвого правового механізму забезпечення прав дитини в будь-якому контакті із системою правосуддя, а також додаткових процесуальних гарантій поводження з неповнолітніми учасниками кримінального провадження; професійного підходу осіб, уповноважених на роботу з дітьми, тощо. ***Методи дослідження.*** Робота виконана на підставі загальнонаукових і спеціальних методів наукового пізнання. Зокрема, порівняльно-правовий метод дав змогу порівняти норми національного законодавства зі змістом міжнародних договорів, у яких визначені вимоги щодо порядку здійснення досудового розслідування злочинів проти дітей. Завдяки методу узагальнення вдалося послідовно звести одиничні факти у єдине ціле та сформулювати обґрунтовані висновки, спрямовані на вдосконалення законодавчого регулювання досліджуваного питання, подолання його колізій і прогалин. Логічний метод наукового пізнання слугує методологічною основою для дослідження проблемних питань досудового

розслідування кримінальних правопорушень, потерпілими у яких є діти. ***Результати.*** Визначено, що ефективне здійснення досудового розслідування злочинів проти дітей залежить від забезпечення індивідуального підходу до їх документування, узгодженості дій залучених працівників правоохоронних органів різних відомств та фахівців у відповідній сфері, які забезпечують і здійснюють збирання доказів безпосередньо після вчинення злочину, з метою їх ефективного використання під час прийняття рішення як вітчизняними судовими органами, так і міжнародними інституціями, зокрема Міжнародним кримінальним судом. ***Висновки.*** Проаналізовано міжнародні документи, які вказують на необхідність забезпечення пом'якшення процедури опитувань, допитів дітей, які стали жертвами чи свідками злочинів. З метою забезпечення принципу рівності перед законом і судом щодо процедури провадження у кримінальних справах, у яких потерпілими чи свідками є діти, на підставі аналізу нормативно-правових актів зроблено висновок про доцільність внесення змін до Кримінального процесуального кодексу України.

Ключові слова: дитина, досудове розслідування, воєнний стан, кримінальне провадження, неповнолітній, ювенальна превенція.

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MODERN PROBLEMS OF THE CAUSATION OF CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

Abstract. ***The purpose*** of the study is to analyze the problems of causality of criminal offenses against the environment with the aim of formulating recommendations aimed at preventing and minimizing illegal actions in the researched area. Research methods are chosen taking into account the set goal and objectives of the research, its object and subject. ***The methodological basis*** of the publication was made up of general scientific and special methods, in particular, analysis and synthesis, abstraction and generalization, induction and deduction, description, characterization, especially system-structural, comparative, prognostic methods. ***Results.*** Classification of the causes of crime against the environment was carried out according to the following criteria: according to the level of their action; by sources; by its content; by nature of occurrence; related to the impact on the natural environment and related to illegal use of nature. The following main determinants of criminal offenses against the environment have been identified and investigated: the predominance of anthropocentric ideas in the social sphere; insufficient level of independence and funding of state nature protection structures; insufficient participation of civil society and its representatives in the process of adoption by state authorities and local self-government bodies of environmentally significant decisions; the predominance of economic interests over environmental interests in human activity; imperfection of the current legislation; high level of corruption; self-determination of environmental crime. ***Conclusions.*** It has been established that in most cases, a person himself makes the decision to satisfy his interests in a legal or illegal way, to achieve the desired result. It was established that the main determinant of criminal offenses against the environment is low costs for compliance with environmental regulations. It was concluded that a high level of environmental security can be achieved only if the state develops an effective mechanism aimed at eliminating and neutralizing the determinants of committing criminal offenses against the environment.

Key words: criminal offenses, environment, causes, determinants, legislation, counteraction.

1. Introduction

In the modern conditions of social development, among the priorities of the national interests of Ukraine, the provision of ecologically and technogenically safe conditions for the life of citizens and society, preservation and restoration of the natural environment is especially highlighted (Zarzhytskyi, 2020, p. 3). And this is not accidental, because anthropogenic and technogenic load on the environment leads to an increase in the occurrence of emergency environmental situations, harms people's health, and causes losses in the economy.

Among the main factors of negative impact on the state of the environment, as before, there are still violations of the current environmental legislation, which requires, among other things, the implementation of its criminal law protection. This, in turn, creates an ever-increasing environmental threat, both nationally and internationally.

Effective counteraction to environmental crime is impossible without successive planned and coordinated actions united by one concept, since phenomena that have signs of systemic nature, including environmental crime, require a systematic approach to overcome them (Turlova, 2017, p. 143).

The above testifies to the relevance of the chosen topic of the publication, the importance and timeliness of research devoted to the nature of criminal offenses against the envi-

ronment and the reasons for their commission, with the aim of developing a system of preventive measures in the researched area.

In domestic criminological science, considerable attention traditionally paid to the issue of defining the conceptual foundations of combating crime. Firstly, we should point out the scientific achievements of such criminologists as O.M. Bandurka, V.V. Golina, O.M. Humin, L.M. Davydenko, I.M. Danshin, A.P. Zakalyuk, O.M. Dzhuzha, O.G. Kelman, T.V. Kornyakova, O.M. Kostenko, O.M. Litvak, O.M. Litvinov and others.

Recognizing the importance of the works of these authors, we consider the study of modern problems of causality of criminal offenses against the environment to be relevant and worthy of in-depth study.

We aim to analyze the problems of causality of criminal offenses against the environment, which will contribute to the development of recommendations aimed at preventing and minimizing illegal actions in the researched area. Scientific and research tasks are defined by the purpose of the scientific article: to characterize theoretical ideas about the causality of crimes in the field of the environment; to carry out a scientific analysis of the main determinants of crime against the environment in Ukraine.

The research methodology is chosen taking into account the set goal and tasks of the research, its object and subject. The methodological basis of the publication was the dialectical method, which contributed to the study of environmental crime and the main reasons that lead to the commission of illegal acts in the field of the environment. Also, in the scientific article, general scientific and special methods were used, which made it possible to optimally take into account the specifics of the object and the subject of research. In particular, analysis and synthesis, abstraction and generalization, induction and deduction, description, characterization, system-structural, comparative and prognostic methods contributed to the development of a classification of the causes of committing crimes against the environment, and the identification of the main ones.

2. Theoretical ideas about the causality of environmental crimes

Criminal offenses against the environment can be defined as acts prescribed by the criminal law that encroach on the environment and its components, on the ecological safety of the population and territories, and consist in the direct illegal use of natural objects or in the illegal influence on them, which leads to negative changes in the state and environmental quality. Such criminal offenses have as their generic object social relations that ensure the protection of the natural environment, the protection of the safe ecological state of the biosphere (Murikhin, 2018, p. 53).

Criminal offenses against the environment are usually considered to be offenses without a "direct" victim – damage is caused primarily to the environment and its components, which for obvious reasons cannot independently actively defend their interests in legal proceedings. However, such illegal actions, causing damage to the environment, destroy the biological basis of life and existence of humans and other living beings.

Mass destruction of plant or animal life, poisoning of the atmosphere or water resources, as well as the commission of other actions that can cause an ecological disaster, is defined by the concept of "ecocide". According to international law, facts of purposeful negative impact on the natural environment, including during hostilities, fall under ecocide. A particularly severe form of ecocide is military ecocide - the violation of human habitat ecosystems as a result of hostilities aimed at achieving a military and political goal (Machlis & Hanson, 2008, p. 732). In the context of the commission of such criminal offenses in the conditions of war, O. Stegnii carried out their division according to the criteria of: 1) direct damage to the surrounding natural environment and 2) man-made direction associated with the violation of ecological safety for living nature and humans (Stegnii, 2022, p. 79).

The problem of causation in criminology is important not only for theory, but also for practice, as it makes it possible to fight crime not only by the forces of law enforcement agencies, but also by using economic, social and other levers that society and the state can dispose of (Moiseienko, 2020, p. 50). As noted by A. Zakalyuk, the determination of crime is the whole set of phenomena, processes, facts, manifestations with which it is interconnected and by which it is conditioned (Zakaliuk, 2007, p. 187).

Based on general doctrinal ideas about the classification of the causes of crime, the causes of criminal offenses against the environment can be classified according to their level of action: general causes; causes of certain types of crime (special criminological); reasons for specific criminal offenses; by sources: internal, external (of an international, transnational nature); by content: socio-psychological (most causes of crimes lie in the criminal's psychology); socio-economic; political; ideological; educational; legal; organizational and managerial; by the nature of occurrence: objective, subjective, mixed (most of these reasons have both an objective and a subjective nature).

We can also single out the reasons for committing criminal offenses against the environment: 1) related to the impact on the natural environment; 2) related to illegal use of nature. In our opinion, such a classification, due to its multifaceted nature, requires detailed attention within the limits of a separate scientific article.

In general, we can state that one way or another, most of the causes of criminal offenses against the environment are concentrated in the organizational, technical and legal spheres. The causal complex of crime against the environment in Ukraine is no exception in this regard.

3. Characteristics of the main determinants of environmental crimes

The number of objective and subjective determinants that affect a person is so great that it is hardly possible to fully consider them. A complex of factors determines each offense against the environment. Given the variety of forms of committing such offenses, it is impossible to cover all the causal links of the specified illegal acts and to carry out their in-depth analysis. We describe the main determinants of environmental crime.

1. Beliefs, views, ideals, principles, value orientations. At the worldview level, it is possible to identify general, universal ideas and value attitudes that determine the model of illegal behavior in the environmental sphere, and measures of responsibility applied to offenders.

Many Ukrainians still do not feel their responsibility for the state of the environment; they are characterized by social infantilism. People tend to shift responsibility to government officials at all levels who are empowered to protect the environment.

2. Organizational and managerial causal relationships.

State regulation provides for the implementation of comprehensive measures in the field of environmental policy with the aim of streamlining them, establishing general norms and rules of social behavior for the protection of living and non-living nature of the environment, protecting the health and life of the population, organizing and maintaining the rational use and reproduction of natural resources. Under the condition of effective functioning of state regulation, the need for direct intervention of the state and its institutions in the activities of environmental structures is included (Lazor, 2004, p. 8–9).

Under such conditions, it is extremely important that the adoption and implementation of the state environmental policy is carried out in compliance with the ecological, social, humanitarian, ecological and legal principles of preservation, reproduction and improvement of the natural environment, safe and favorable for the health and life of the citizens of Ukraine (Zarzhytskyi, 2020, p. 8).

The insufficient level of financing of state nature protection structures can lead to significant negative consequences for the environment. The problem of ensuring the independence of the activities of state environmental protection structures, which guarantee the interests of society, is relevant in all countries. In states with democratic regimes and free market relations, the probability of lobbying by large corporations and high-ranking representatives of elites remains quite high.

In many countries, wealthy and influential groups prevent the adoption of legislation that would meet higher environmental standards, in particular in terms of granting additional control powers to environmental protection structures. Thus, in one of the reports of the international analytical center Influence Map, for example, there was evidence of lobbying by the largest oil companies for measures aimed at supporting policies against global warming. Such oil giants as ExxonMobil, Shell, Chevron, BP and Total spend almost 200 million dollars a year, including actively using the possibilities of social networks, to block the adoption of political decisions and their compliance with bills to combat climate change (Laville, 2019).

3. Insufficient participation of civil society and its representatives in the process of adoption of environmentally significant decisions by state authorities and local self-government bodies. Despite the fact that this kind of public participation is declared, unfortunately, in many countries, citizens do not actually feel involved in the decisions made at the state and municipal levels that affect the environment. On the one hand, this is due to the lack of desire to take an active civic position on environmental issues, on the other hand, in some cases, citizens are deliberately prevented from participating in consideration of environmentally significant issues.

The development of the Internet and its widespread distribution are becoming important factors that ensure that citizens receive environmentally relevant information.

In 1998 was adopted the Convention of the European Economic Commission of the United Nations "On access to information, public participation in decision-making and access to justice in matters related to the environment" (Konventsiia Yevropeiskoi Ekonomichnoi Komisii OON "Pro dostup do informatsii, uchasti hromadskosti u pryiniatti rishen ta dostup do pravosuddia z pytan, shcho stosuietsia navkolyshnoho seredovyshcha"). Participating states undertook to guarantee a responsible approach and transparency in

the process of making environmentally significant decisions. The mentioned convention contains a significant potential for novelty, and the perception of its approaches by national legal systems requires not only the adoption of new laws, but also, which is much more difficult, the revision of a number of established legal concepts, the internal conviction of law enforcement officers, whose competence includes making environmentally significant decisions.

4. Economic causal relationships. The main cause of environmental criminal offenses is the predominance of economic interests over ecological ones. Most of the world's economy is based on the exploitation of natural resources. Unfortunately, legislative measures do not sufficiently provide the necessary balance. There is a direct relationship between the strictness of legislation in the field of environmental protection and economic benefits for violators.

In Ukraine, the costs associated with the risk of prosecution are lower than the costs of compliance with environmental regulations. In addition, this, in our opinion, is the main factor determining offenses against the environment. Legal costs and fines imposed on large corporations, which are found guilty of the most large-scale and "resonant" environmental pollution, are usually incomparable to their profits.

At the same time, it should be noted that the ecological crisis can be overcome only when an ecological reform is carried out along with an economic one, when ecological requirements are introduced into all links of the economic reform, and the protection of nature is perceived as an opportunity to further increase the economic power of the state. Natural resources should be considered as national economic resources used in production. In addition, they have a corresponding cost that needs to be compensated. This approach of the state will allow balancing the policy of use and reproduction of natural resources (Kruk, 2006, p. 268–269).

5. Imperfect legislation.

The object of environmental offenses is social relations related to the preservation and provision of the proper state of the environment, available at this stage of the development of society, which meets modern requirements, their legal forms and material and resource basis. These social relations are regulated by the norms of environmental law (Zarzhytskyi, 2020, p. 100).

On the one hand, the foundations of legislation aimed at ensuring and protecting the environmental rights of citizens have been formed in Ukraine; the need to implement environmental protection laws is declared at all levels of state power. On the other hand, many norms are not applied in practice, and some environmental problems that require separate legal regulation are generally ignored.

A high negative anthropogenic load on natural resources, which has an extremely adverse effect on the environment, often becomes possible due to violations of environmental legislation, which in some cases acquire such a threatening scale that they require the application of criminal law measures.

It is also necessary to take into account the fact that persons who commit criminal offenses in the investigated area have the ability to transform their methods of illegal activity and easily adapt to new socio-economic conditions. Considering this, the slowness of the legislator in the environmental field can have catastrophic consequences.

6. A high level of corruption is the basis for the growth of environmental crime. The generally recognized connection between corruption and other types of crimes, in particular those committed in the field of the environment.

Corruption in the environmental sphere can manifest itself in various forms: the use of forged or illegally issued permits, licenses and certificates; approval of project documentation for potentially dangerous objects or a risky type of activity, which contains information that does not correspond to reality; illegal trade in various types of flora and fauna; environmental protection structures ignoring illegal activities that harm the environment, etc.

I. Horodetska singled out the following main groups of reasons for the unsatisfactory level of functioning of the state control system in the field of environmental protection: structural and functional in nature (imperfect organizational structure of control subjects, duplication of supervisory (control) functions by central executive authorities, lack of proper coordination of their activities regarding monitoring environment and harmonization of legislation); of an information nature (lack of effective state monitoring of the state of the environment, unified electronic registers of natural resources, unsatisfactory level of information exchange and access to information about the state of the environment and its objects); resource-providing nature (low level of financial, technical and personnel potential) (Horodetska, 2019, p. 196).

7. Self-determination of environmental crime. Crime as a relatively separate social system (subsystem), characterized by self-determination and self-reproduction (Dromin, 2010, p. 13).

Environmental crime is traditionally recognized as one of the most latent types of crime. People rarely report environmental crimes to the police. This can be explained by the spe-

cifics of victimization and the specifics of subjects who commit illegal environmental offenses that cause significant damage. The high level of impunity for acts that cause significant damage to the environment, as well as the inconsistency and inadequacy of punishment measures, determine the commission of new criminal offenses against the environment.

The determination of environmental crime is not limited to the considered reasons. In most cases, a person himself makes the decision to satisfy his interests, to achieve the desired result, in a legal or illegal way.

4. Conclusions

The causes of crime against the environment can be classified according to the level of their action; by sources; by its content; by nature of occurrence; related to the impact on the natural environment and related to illegal use of nature.

The main determinants of criminal offenses against the environment include: predominance of anthropocentric views in the social sphere; insufficient level of independence and funding of state nature protection structures; the inertness of civil society in the process of making ecologically significant decisions by state authorities and local self-government bodies; the predominance of economic interests over environmental interests in human activity; imperfection of the current legislation; high level of corruption; self-determination of environmental crime.

The main factor determining criminal offenses against the environment is that the costs associated with the risk of prosecution in Ukraine are significantly lower than the costs of compliance with environmental regulations. An adequate level of environmental security can be achieved only if the state develops an effective mechanism aimed at eliminating and neutralizing the determinants of committing criminal offenses against the environment.

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СУЧАСНІ ПРОБЛЕМИ ПРИЧИННОСТІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ ПРОТИ ДОВКІЛЛЯ

Анотація. ***Мета*** дослідження полягає в аналізі проблем причинності кримінальних правопорушень проти довкілля для формулювання рекомендацій, спрямованих на недопущення, мінімізацію протиправних дій у досліджуваній сфері. ***Методи дослідження*** обрані з урахуванням поставленої мети і завдань дослідження, його об'єкта та предмета. Методологічне підґрунтя публікації становили загальнонаукові та спеціальні методи, зокрема аналіз і синтез, абстрагування й узагальнення, індукція і дедукція, опис, характеристика, спеціально системно-структурний, порівняльний, прогностичний методи. ***Результати.*** Здійснено класифікацію причин злочинності проти довкілля за такими критеріями: за рівнем їх дії; за джерелами; за змістом; за природою виникнення; пов'язані з впливом на природне середовище та пов'язані з незаконним природокористуванням. Виокремлено та досліджено такі основні детермінанти кримінальних правопорушень проти довкілля: переважання антропоцентричних ідей у соціальній сфері; недостатній рівень незалежності та фінансування державних природоохоронних структур; недостатня участь громадянського суспільства і його представників у процесі прийняття органами державної влади та місцевого самоврядування екологічно значимих рішень; переважання в діяльності людини економічних інтересів над екологічними; недосконалість чинного законодавства; високий рівень корупції; самодетермінація екологічної злочинності. ***Висновки.*** Встановлено, що в більшості випадків особа сама приймає рішення, законним або протиправним способом задовольнити свої інтереси, досягти бажаного результату. Констатовано, що основним детермінантом кримінальних правопорушень проти довкілля є низькі витрати на дотримання екологічних нормативів. Зроблено висновок, що високого рівня екологічної безпеки можна досягти лише в разі вироблення державою ефективного механізму, спрямованого на усунення та нейтралізацію детермінант учинення кримінальних правопорушень проти довкілля.

Ключові слова: кримінальні правопорушення, довкілля, причини, детермінанти, законодавство, протидія.

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PROBLEMATIC ISSUES OF PROVISIONAL SUSPENSION OF A JUDGE FROM ADMINISTRATION OF JUSTICE DUE TO CRIMINAL LIABILITY

Abstract. ***Purpose***. The purpose of the article is to identify the problematic issues of provisional suspension of a judge from the administration of justice due to criminal liability and to determine the ways to resolve them. ***Results.*** The article determines that one of the problems in the field of criminal procedural relations is the issue of bringing to criminal liability persons holding a particularly responsible position, including judges. However, in addition to direct prosecution, the pre-trial investigation also addresses the issue of provisional suspension of a judge from the administration of justice due to criminal liability. A legal state shall ensure that the criminal proceedings against these individuals do not violate constitutional principles, including the equality before the law and courts. This procedure should protect the individual, society, and the state, as well as create an enabling environment for the detection of crimes, exposure of perpetrators and their conviction, that requires the procedure for implementing these guarantees to be clearly regulated by appropriate legal provisions. One of the problems in the field of criminal procedural relations is the issue of bringing to criminal liability persons holding a particularly responsible position, including judges. However, in addition to direct prosecution, the pre-trial investigation also addresses the issue of provisional suspension of a judge from the administration of justice due to criminal liability. ***Conclusions.*** The author concludes that the provisional suspension of a judge from the administration of justice due to criminal liability has a number of problematic aspects: it is questionable whether the High Council of Justice should be vested with the function of making a decision on suspension of a judge from the administration of justice; the issue of appealing against a judge's decision to apply this measure, as well as the procedure for appealing against a decision by the Prosecutor General or his/her deputy to refuse to apply it, remains unresolved; the procedure for applying this measure to judges holding administrative positions is not regulated. The criminal procedure legislation does not provide for a separate procedure for the suspension from office of a judge of the Constitutional Court of Ukraine.

Key words: judge, criminal liability, provisional suspension from administration of justice, regulatory framework, mechanism, problems of implementation.

1. Introduction

One of the problems in the field of criminal procedural relations is the issue of bringing to criminal liability persons holding a particularly responsible position, including judges. However, in addition to direct prosecution, the pre-trial investigation also addresses the issue of provisional suspension of a judge from the administration of justice due to criminal liability. A legal state shall ensure that the criminal proceedings against these individuals do not violate constitutional principles, including the equality before the law and courts. This procedure should protect the individual, society, and the state, as well as create an enabling environment for the detection of crimes, exposure of perpetrators and their conviction. This establishes guarantees for the implementation of legal provisions (Udalova and Babii, 2010, p. 4), but the implementation of these guarantees should be clearly regulated by appropriate legal provisions. In particular, the existing procedure for the provisional suspension of a judge from the administration of justice due to criminal liability raises a number of problematic issues: does the suspension of a judge from the administration of justice entail his or her automatic removal from the administrative position held

in the court? And vice versa, can a judge be removed from his or her administrative position in case of criminal prosecution without being suspended from the administration of justice? It also seems that the provision on the possibility of appealing against the decision of the High Council of Justice to apprehend or detain a judge was not introduced by chance. On the one hand, the High Council of Justice seems to have performed its work in good faith within the scope of its powers and agreed to apply the said measure of restraint to the judge who has violated the requirements of criminal law. On the other hand, the judge cancels the decision of the High Council of Justice on appeal and thereby completely neutralises the activity of this high collegial independent body of justice in this part. The above has given scholars grounds to argue that these provisions of the Law of Ukraine "On the High Council of Justice" contradict certain provisions of the CPC of Ukraine in terms of the possibility of appealing against the decision of the High Council of Justice to grant consent to the detention of a judge, and the provisions on the possibility of appealing against the decision to grant consent to the apprehension of a judge are not provided for by the CPC at all (Fedchenko, Luchko, 2017, p. 180). These and other issues give rise to a number of problematic issues of the said mechanism of suspension of a judge that require appropriate research.

Scholars who have conducted research in this area have identified certain problems of provisional suspension of a judge from the administration of justice. B.M. Fedchenko and O.A. Luchko argue that the legislative position on the possible appeal against the decision of the High Council of Justice to grant consent to the apprehension or detention a judge is not clear, provided that the decision made on this appeal is final and not subject to further appeal (Fedchenko, Luchko, 2017, p. 180). P.D. Arlanova and S.V. Zavada believe that the issue of suspending judges from the administration of justice should be resolved only with the participation of the court, that is, the issue should be resolved exclusively by the Supreme Court of Ukraine and argue that the approach regulated in the legislation of Ukraine to resolving the issue of suspension of judges from the administration of justice contradicts the European principles of justice, since the case law of the ECHR proceeds from the fact that one of the key aspects of the rule of law is a clear control by the courts over the interference of the executive branch in the life of a person (Arlanova, 2017, pp. 148–149). S.V. Hladii proposes to establish a Disciplinary Court of Ukraine, which would deal with issues related to the activities of judges, including their suspension from the administration of justice (Hladii, 2014, p. 65). Thus, it can be stated that the problems of regulating the provisional suspension of a judge from the administration of justice have not been systematised in a comprehensive manner.

The purpose of the article is to identify the problematic issues of provisional suspension of a judge from the administration of justice due to criminal liability and to determine the ways to resolve them.

2. The regulatory framework for a provisional suspension of a judge from administration of justice due to criminal liability

According to the CPC of Ukraine, Article 154, part 3, the issue of suspension from office of persons (judges and judges of the Constitutional Court of Ukraine) appointed by the President of Ukraine is decided by the President of Ukraine on the basis of a motion by the prosecutor in accordance with the manner established by law. Pursuant to Article 80 of the Law of Ukraine "On the Judicial System and Status of Judges", the President of Ukraine appoints judges on the basis of and in the scope of a proposal by the High Council of Justice, without verifying compliance with the requirements for candidates for the position of judge and the procedure for selecting or evaluating candidates. The President of Ukraine issues a decree on the appointment of a judge no later than thirty days after receiving the relevant submission from the High Council of Justice. Moreover, the above rules are general. Special in this case is Article 155-1 of the CPC of Ukraine, which provides that the decision to temporarily suspend a judge from the administration of justice due to criminal liability is made by the High Council of Justice on the basis of a reasoned motion of the Prosecutor General or his/her deputy in the manner established by law. That is, this happens on the basis of an application from an official who is responsible for notifying a judge of suspicion, namely the Prosecutor General or his/her deputy. This procedure is regulated comprehensively in the Rules of Procedure of the High Council of Justice. For example, in accordance with clause 19.1 (Chapter 19 of the Rules), a judge may be suspended from the administration of justice by a decision of the Council: a) due to criminal liability; b) when undergoing a qualification assessment; c) as a matter of a disciplinary sanction. For this purpose, the Prosecutor General or his/her deputy submits a motion to the High Council of Justice regarding a judge who is a suspect, accused (defendant) at any stage of criminal proceedings. The motion shall be well-reasoned and be in line with requirements, namely, include: short statement on circumstances of the criminal

offence with regard to which the motion is being filed; legal qualification of the criminal offence with reference to the article (part of the article) of the law of Ukraine on criminal liability; a statement of circumstances giving grounds to suspect or accuse the judge of committing a criminal offence with reference to the circumstances; the name of the court where the judge holds office; a statement of circumstances providing grounds to believe that the judge while holding the office will destroy or counterfeit items and documents that are of significant importance for the pretrial investigation, by illicit means will influence witnesses and other participants of the criminal proceedings or unlawfully hinder the criminal proceedings in other way; a list of witnesses that the prosecutor considers necessary to be interrogated when the motion is reviewed (Rules of Procedure of the High Council of Justice, 2017). In addition, the motion shall be added with copies of the materials supporting arguments of the motion, together with the documents confirming that the judge was provided with a copy of the motion and the supporting materials. Failure to comply with at least one of these requirements is grounds for returning the motion. The ruling to return the motion shall not be subject to appeal. However, the return of a motion shall not hinder a repeated motion to the Council according to the general procedure after the drawbacks are ousted (Rules of Procedure of the High Council of Justice, 2017).

However, the analysis of the current legislation does not reveal whether the procedure for returning a motion that does not meet the legal requirements is a right or a duty of the High Council of Justice. In addition, neither the Rules of Procedure of the High Council of Justice nor the CPC of Ukraine specify the timeframe within which the motion is returned to the submitter of the motion after the inconsistency is established. This motion shall be reviewed by the Council without delay but no later than seven days after the date of its receipt. The submitter of the motion, as well as the judge in respect of whom it was submitted to the High Council of Justice, shall be notified of the date, time and place of review of the motion no later than three calendar days before the Council session, and the notice of review of the motion shall be immediately published at the official website of the Council. Failure of the judge, his/her representative, the Prosecutor General or his/her deputy, or a prosecutor authorised by either of the two to attend the session of the Council, provided they were properly notified of the date, time and venue of the session, shall not preclude the motion from being reviewed (Rules of Procedure of the High Council of Justice, 2017). This is done regardless of the validity of the reasons for the absence of these participants. Allowing for the above legislative requirements, we see that the judge's explanation of the circumstances set out in the motion is not a prerequisite for continuing the procedure for reviewing the motion. That is, the judge may either provide explanations in writing, express his/her position, or refuse to provide any explanations at all. If the judge, duly notified of the date, time and place of review of the motion, does not appear for its review, but provides written explanations, they are announced in a mandatory manner. The position of the submitter of the motion is heard only if he or she appears at the hearing. In addition, when reviewing a motion for the provisional suspension of a judge from the administration of justice, the Council has the right to hear any person or examine any materials that matter for deciding upon the suspension of the judge from the administration of justice (Rules of Procedure of the High Council of Justice, 2017).

In addition, the Rules of Procedure of the High Council of Justice do not stipulate what circumstances the Council shall establish and consider when reviewing a motion for provisional suspension of a judge from the administration of justice, as well as make a decision based on the results of its review. We believe that the Council should be guided by the general requirements of Article 157 of the CPC of Ukraine, namely: to refuse to satisfy the motion for suspension from the administration of justice unless the prosecutor proves prove existence of reasonable grounds to believe that this measure is necessary to stop a criminal offence, stop or prevent unlawful behaviour of a suspect or accused who, while in office, may destroy or counterfeit items and documents that are of significant importance for the pretrial investigation, by illicit means will influence witnesses and other participants of the criminal proceedings or unlawfully hinder the criminal proceedings in other way. When deciding on this issue, the Council shall consider the following circumstances: the legal grounds for suspension from the administration of justice; sufficiency of evidence indicating that the person has committed a criminal offence; effects of suspension from the administration of justice for other persons (Criminal Procedure Code of Ukraine, 2012).

Therefore, following the review of the motion, the Council may make one of the following decisions: to return the motion due to non-compliance with the requirements of the Law; to provisionally suspend the judge from administering justice due to criminal liability; to dismiss the motion.

3. Particularities of the procedure for deciding on provisional suspension of a judge from administration of justice due to criminal liability

The decision of the Council on the suspension shall contain the suspension term, which may not exceed two months. At the trial stage of proceedings, a term of suspension shall be set before a verdict of the court enters into force or criminal proceedings are closed. The resolution part of the decision shall be announced to those present at the session. Copies of the Council's decision shall be sent to the Prosecutor General or his/her deputy, the judge in respect of whom the decision was made, no later than seven working days (Rules of Procedure of the High Council of Justice, 2017).

As for the implementation of this decision, the judge is considered suspended from the administration of justice from the moment the Council issues a ruling on this. Therefore, on the day of the Council's decision, the Chairperson of the court where the suspended judge holds office shall be notified of the decision. The notification shall take place by means of official communication: e-mail and/or fax (telefax) of the respective court, via the Integrated Database of E-mails, fax (telefax) numbers of authorised persons/bodies and data of the official web-portal "The Judiciary" (Rules of Procedure of the High Council of Justice, 2017). If the criminal proceedings against the judge are subsequently closed, the decision to suspend a judge from office shall be discontinued even if the term for which it was imposed has not expired.

Further extension of the term of provisional suspension of a judge from the administration of justice may not exceed two months, and if the indictment is submitted to the court, it shall be until the end of the court proceedings (Rules of Procedure of the High Council of Justice, 2017). For this purpose, the Prosecutor General or his/her deputy shall apply no later than ten days before the expiry of the term for which the judge was suspended. The general procedure for deciding on a motion to extend the suspension is the same as for deciding on the first motion, that is, on the provisional suspension of a judge from the administration of justice. However, it is specific, in particular, it states that a motion to extend the provisional suspension of a judge shall prove that the circumstances that provided grounds for his/her provisional suspension from the administration of justice continue to exist, and the prosecution was unable to reach goals justifying the provisional suspension by other means while the previous decision was effective. Accordingly, the High Council of Justice, when considering this motion, shall establish: the circumstances providing the grounds for the provisional suspension from the administration of justice continue to exist; whether the prosecution was unable to reach the goals justifying the provisional suspension from the administration of justice by other means during the validity of the previous decision was effective (Rules of Procedure of the High Council of Justice, 2017). Therefore, only in the presence of these two circumstances in the aggregate, the Council decides to extend the suspension.

A repeated motion by the Prosecutor General or his/her deputy for provisional suspension of a judge from the administration of justice, as well as a motion for extension of such suspension, due to criminal liability within the same criminal proceedings, if the Council has already made a decision on the merits of this issue, is not allowed, except for cases where the previous decision adopted by the Council is reversed by a court (Rules of Procedure of the High Council of Justice, 2017).

With regard to these issues, it should be assumed that the provisional suspension of a judge from the administration of justice as a measure to ensure criminal proceedings is aimed at preventing a suspect or accused from performing his or her official duties for a certain period of time. This is done in order to stop a criminal offence, to stop unlawful behaviour, to prevent unlawful behaviour of a person who, while in office, can destroy or counterfeit items and documents that are of significant importance for the pretrial investigation, by illicit means will influence witnesses and other participants of the criminal proceedings or unlawfully hinder the criminal proceedings in other way (Tatsiia, Hroshevoho, Kaplinoi, Shylo, 2013, p. 256; Farynnyk, 2014, p. 163). In a narrower sense, it is a measure to ensure criminal proceedings, implying temporary, forced prevention of an official from performing his/her functional duties and applied to a person suspected or accused of committing a crime (Kovalenko, Udalova, Pysmennyi, 2013, p. 200). Therefore, we believe that in order to prevent possible influence on the part of the judge on the pre-trial investigation against him/her, he/she should be completely removed from performing any official duties.

As for the suspension from office of a judge of the Constitutional Court of Ukraine, according to the Law of Ukraine "On the Constitutional Court of Ukraine", Article 9, Part 2, the President of Ukraine, the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine appoint six judges of the Constitutional Court of Ukraine each. Meanwhile, the question arises as to how to

suspend the judges of the Constitutional Court of Ukraine (there are 12 of them left), appointed by the Verkhovna Rada of Ukraine and the Congress of Judges of Ukraine, since the provision of the CPC of Ukraine, Article 154, part 3, refers only to officials appointed by the President of Ukraine. For some reason, the legislator left this issue unaddressed, which deprives law enforcement agencies of the opportunity to dismiss the latter from office.

It should be noted that the procedure for granting consent to the application of measures to ensure criminal proceedings against judges, compared to people's deputies, is more or less clear. Therefore, the procedural mechanism for granting consent to the application of measures of restraint against a judge, in our opinion, seems to be more objective and fairer than in relation to people's deputies. The primary argument in favour of this is that the motion is reviewed by an independent body, the High Council of Justice, where the judge is not an official. In addition, the High Council of Justice is composed of various representatives, namely: ten are elected by the Congress of Judges of Ukraine from among judges or retired judges; two are appointed by the President of Ukraine; two are elected by the Verkhovna Rada of Ukraine, the Congress of Advocates of Ukraine, the All-Ukrainian Conference of Prosecutors, the Congress of Representatives of Law Schools and Research Institutions (Law of Ukraine On the High Council of Justice, 2016). At the same time, a similar procedure is carried out by the Verkhovna Rada of Ukraine in relation to a people's deputy. This is the same as if a panel of judges of a separate court were reviewing a motion or application for an interim measure in criminal proceedings against a judge of the same court. Of course, one can refer to the fact that different political forces are represented in the Parliament, which ensures greater objectivity and impartiality in the review of the motion against a people's deputy. Instead, in order to impose a measure of restraint on a people's deputy, it is necessary to obtain the consent of the Parliament, which, in our opinion, is a significant obstacle to the implementation of these measures, especially if the motion is made against a people's deputy belonging to the ruling majority.

The issue of applying these measures of restraint to a CCU judge is decided at a special plenary session of the Court upon the proposal of the Prosecutor General or a person exercising his/her powers. This approach seems dubious, as it raises the question of the ability of CCU judges to decide on the choice of a measure of restraint objectively and impartially against their colleague. In our opinion, it would be more appropriate to refer this issue to the powers of the High Council of Justice, which, firstly, is an independent constitutional body, and secondly, is a collegial body.

4. Conclusions

The provisional suspension of a judge from the administration of justice due to criminal liability has a number of problematic aspects: it is questionable whether the High Council of Justice should be vested with the function of making a decision on suspension of a judge from the administration of justice; the issue of appealing against a judge's decision to apply this measure, as well as the procedure for appealing against a decision by the Prosecutor General or his/her deputy to refuse to apply it, remains unresolved; the procedure for applying this measure to judges holding administrative positions (the Chairman of the Court and his/her deputy) is not regulated. The criminal procedure legislation does not provide for a separate procedure for the suspension from office of a judge of the Constitutional Court of Ukraine.

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ПРОБЛЕМНІ ПИТАННЯ ТИМЧАСОВОГО ВІДСТОРОНЕННЯ СУДДІ ВІД ЗДІЙСНЕННЯ ПРАВОСУДДЯ У ЗВ'ЯЗКУ З ПРИТЯГНЕННЯМ ДО КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ

Анотація. ***Мета***. Метою статті є виокремлення проблемних питань тимчасового відсторонення судді від здійснення правосуддя у зв'язку з притягненням до кримінальної відповідальності та визначення шляхів їх вирішення. ***Результати.*** У статті визначено, що однією з проблем у сфері кримінальних процесуальних відносин є питання притягнення до кримінальної відповідальності осіб, які займають особливо відповідальне становище, у тому числі і суддів. Але, крім безпосереднього притягнення, у процесі досудового розслідування вирішується також питання тимчасового відсторонення судді від здійснення правосуддя у зв'язку з притягненням до кримінальної відповідальності. Правова держава повинна забезпечити порядок провадження кримінальної справи щодо цих осіб, який не порушуватиме конституційних принципів, зокрема рівності всіх перед законом і судом. Такий порядок повинен стояти на захисті людини, суспільства, держави, а також створювати умови для розкриття злочинів, викриття винних та їх засудження, для чого процедура реалізація цих гарантій повинна бути чітко регламентована шляхом створення відповідних правових приписів. ***Висновки.*** Зроблено висновок, що тимчасове відсторонення судді від здійснення правосуддя у зв'язку з притягненням до кримінальної відповідальності має ряд проблемних аспектів: сумнівним видається наділення функцією прийняття рішення про відсторонення судді від здійснення правосуддя Вищої ради правосуддя; залишається невирішеним питання щодо оскарження прийнятого суддею рішення про застосування такого заходу, а також порядок оскарження Генеральним прокурором або його заступником рішення про відмову в його застосуванні; не унормований порядок застосування такого заходу щодо суддів, які займають адміністративні посади. У кримінальному процесуальному законодавстві не визначено окремий процесуальний порядок відсторонення від посади судді Конституційного Суду України.

Ключові слова: суддя, притягнення до кримінальної відповідальності, тимчасове відсторонення від здійснення правосуддя, регламентація, механізм, проблеми реалізації.

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TACTICS OF PRESENTATION FOR IDENTIFICATION DURING INVESTIGATION OF PROPERTY THEFTS COMMITTED BY JUVENILES

Abstract. ***Purpose.*** The purpose of the article is to highlight the tactics of presentation for identification during the investigation of property thefts committed by juveniles. ***Results.*** The article identifies the particularities of the tactics of certain investigative (search) actions at the subsequent phase of investigation, in particular, identification and investigative experiment. The specificity of the subsequent phase of the investigation, relying on the criminological literature review, is that before it begins, the investigator has sufficient evidence of the involvement of a particular person in the commission of a criminal offence. Analysis of criminal proceedings reveals that the most common items presented for identification were: a) items and documents – 64%; b) suspected juveniles in kind – 54%; c) suspects from photographic images – 21%. The author establishes that the main tactical mistakes made by investigators in conducting an identification are: lack of proper organisation of an identification – 57%; superficial preliminary interrogation – 38%; non-use of technical means of recording the procedural action – 19%; conducting an identification at the subsequent phases of the investigation – 82%; ignoring tactical recommendations for conducting an investigative (search) action – 17%. The study also emphasises that the effectiveness of an identification is largely dependent on the preparation for it. These include preliminary interrogation of the identifying person, during which the possibility of identification is determined. ***Conclusions.*** The identification should be carried out as soon as possible after the investigation is commenced. In the case of an identification of a juvenile, statisticians should not be students from the same educational institution as the person being identified. It is advisable to invite teachers, psychologists who have participated in interrogations, or other persons who are respected by juveniles and can serve as support for them to participate in the identification. It is also advisable to provide psychological preparation to juveniles on the content and significance of an identification. If necessary, identifications may be made from photographs, by voice, etc. This may be due to both security reasons and to avoid the possibility of disruption of the investigative (search) action by the person being identified.

Key words: theft, juvenile, organisation, tactics, presentation for identification, investigation.

1. Introduction

The next phase of the investigation of property thefts committed by juveniles is usually associated with the completion of urgent initial investigative (search) actions, during which: the main sources of evidence are collected; investigative situations are resolved; stories put forward on the basis of analysis of primary materials are checked; perpetrators are identified and apprehended. The specificity of the subsequent phase of the investigation, relying on the forensic literature review, is that before it begins, the investigator has sufficient evidence of the involvement of a particular person in the commission of a criminal offence. At this phase of the investigation, on the basis of the information received prior to its commencement and additionally collected, the issues of solving this crime are being resolved (Gavlo, 1990, p. 19). At the next phase of the investigation, the investigator begins by analysing and evaluating the collected factual data, clarifying the situation, putting forward appropriate stories and determining the further direction of the investigation.

Theoretical and practical issues related to the investigation of theft crimes committed by juveniles have been addressed by well-known domestic and foreign scholars in various fields, in particular: L.P. Bakanova, V.D. Bernaz, P.D. Bilenchuk, V.V. Biriukov, A.F. Volobuiev, O.Yu. Drozd, O.A. Kyrychenko,

A.A. Kravchenko, O.V. Kravchuk, M.N. Kurko, Ye.I. Makarenko, Z.I. Mytrokhyna, H.Ye. Morozov, N.I. Nykolaichyk, S.O. Pavlenko, S.Ye. Petrov, B.V. Romaniuk, V.H. Sevruk, P.N. Sydoryk, S.M. Stakhivskyi, Yu.D. Fedorov, Yu.V. Tsyhaniuk, M.H. Shcherbakovskyi, A.I. Yuryn, and others.

The purpose of the article is to highlight the tactics of presentation for identification during the investigation of property thefts committed by juveniles.

2. Methods of presentation for identification

The phase of investigation of other people's property thefts committed by juveniles is characterised by investigative (search) actions aimed at proving involvement in a comprehensive manner. An important factor at this phase is the possibility of thorough preparation of investigative (search) actions, a comprehensive study of the personality of the juvenile offender and the correct choice of the time of certain procedural actions. In proceedings on the facts of theft, a fairly common investigative (search) action is an identification. An identification is an investigative action that consists in presenting to a witness or other person objects that they have previously observed for the purpose of establishing their identity or group affiliation (Hlibko, Dudnikov, Zhuravel, 2001, p. 314).

According to the methods of presentation for identification, there are: identification of living persons in kind; identification of living persons using non-visual observation; identification of living persons using video images; identification of living persons using gait; identification of living persons using voice; identification of living persons using phonogram; identification using photographic images of objects (Chaplynskyi, 2007, p. 9).

Due to the sufficient focus on this investigative (search) action in the legal literature, we believe that it is necessary to emphasise only key and problematic aspects of its preparation and conduct for law enforcement officers, considering the specifics of the criminal offence under study.

Before the identification, the investigator needs to conduct thorough preparation. The latter is considered by the overwhelming majority of criminalists to be the key to the success of investigative (search) actions. Identifications conducted in cases of juvenile theft of other people's property are no exception.

The preparation of the investigative (search) action includes: additional study of the criminal proceedings; establishment of general features of the suspect's appearance; selection of statisticians; organisation of assistance from related services (Criminal Investigation Department, district police officers), preliminary interrogation of the person to be identified; investigator's assessment of the situation from the point of view of the possibility of conducting an identification; creation of the necessary conditions and environment for its conduct; determination of the necessary set of technical and criminological recording devices.

According to K.O. Chaplynskyi, organisational and preparatory measures for the identification should consist of the following elements: 1) preliminary interrogation of the identifying person (victim, witness); 2) decision-making on identification; 3) determination of time, place and method of identification; 4) determination of the order of presentation for identification (if there are several offenders); 5) creation of optimal environment for conducting this investigative (search) action; 6) determination of the method of recording the course and results of the identification; 7) preparation of the necessary scientific and technical means; 8) ensuring the safety of persons participating in this procedural action; 9) involvement (if necessary) of specialists or an interpreter; 10) selection of objects (statisticians) among whom it is necessary to conduct an identification; 11) drawing up a plan for conducting an identification; 12) involvement of witnesses (at least two); 13) holding an instructional meeting (briefing) among all participants in this investigative (search) action (Chaplynskyi, 2007, p. 14).

The above list of preparatory actions will fully ensure the quality of the procedural action under consideration. Therefore, we consider it necessary to consider the main of these preparatory actions.

Prior to the identification of a suspect, the person who will identify shall be questioned about the suspect's appearance. According to the CPC of Ukraine, article 228, "before presenting a person for identification, the investigator, prosecutor shall find out if the identifying person can identify this individual, interviews him or her..." (Honcharenko, Nor, Shumylo, 2012).

Following the study by K.O. Chaplynskyi, in 90% of cases, witnesses and victims are invited to identify the perpetrators of the attack, the means of committing the crime and other objects they observed in connection with the criminal event (Chaplynskyi, 2007, p. 8).

During the interrogation of the person to be identified, it is necessary to follow the sequence of presentation of the features of a person's appearance according to the following scheme: general physical, anatomical, functional concomitant and special features.

It greatly simplifies the description of appearance features to determine which

of the famous people (politicians, musicians, actors) the person whose features are described resembles. This ensures the formation of a mental image, including that of the investigator, improves the quality of description and composite portraits, and reduces the time required to obtain important information.

The expressions and terms used by the interrogator in describing certain features of the suspect cannot be changed by the investigator in relation to criminological terminology. The testimony is documented verbatim in the record.

It is well known that during perception, noticeable, special features of people are better remembered. This requires establishing whether the person had any such features. If any, what they were, where they were located on the relevant parts of the body and the circumstances under which they were seen. In this case, information relevant for the search for the perpetrator will be obtained. If it is established that the person's features are on parts of the body covered by clothing, and their presentation will require exposure, it is advisable to conduct an examination.

If the interviewee states that he or she heard the suspect speak, it is necessary to find out the pace, use of phrases, terminology, correctness of sentence construction, accent, etc. This will provide some information about the speaker's identity, which will facilitate the search for him or her.

At the end of the interrogation, it is necessary to find out whether the person can identify and on what grounds. As a result, I. Kohutych argues that the purpose of interrogating the person who will identify is to obtain information about the appearance, features and signs of the object previously observed by that person and to find out his or her ability to identify it. After all, if the interrogated person states that he or she does not remember the signs by which he or she could identify the object, it is inappropriate to conduct this investigative action (Kohutych, 2004, p. 412).

During the procedural action in question, the identifying person may name a number of features that he or she did not mention during the interrogation when he or she sees the previously observed object again. Such a situation is logically explainable and should not be regarded as a contradiction between the testimony during interrogation and identification (Lukianchikov, 1990, p. 27).

A different situation may arise when a person lists some features in the record but identifies the person by other features during the identification. In this case, reasonable doubts may arise as to the objectivity of not only the identification, but also the interrogation. Therefore, the investigator should make efforts to ensure that during the interrogation, if possible, the maximum number of features by which the person will be able to make an identification is mentioned. Such a comprehensive clarification of these circumstances is very important both for deciding on the expediency of presenting an object for identification and for assessing the results of the identification (Dzhyha, Baulin, Lukianets, Stakhivskyi, 1999, p. 111).

There are cases when, during interrogation, a victim or witness cannot describe the objects he or she observed but claims to be able to identify them. In this regard, there is a recommendation in the criminological literature to conduct the procedural action in question. In addition, it should be emphasised that the investigator must make a decision on this allowing for other circumstances of the criminal proceedings.

3. Particularities of interrogation of a juvenile

Special attention of the investigator should be paid to the interrogation of a juvenile who will identify. Juveniles may have difficulty describing the content of what they have seen and identifying the features of the perpetrators. This is due to age and mental developmental characteristics. Accordingly, this should not serve as a ground for refusing to conduct an identification.

If the investigator believes that there is a high probability of mistaken identification of another person, it is necessary to make a decision, including on the refusal to conduct this procedural action. This is due to the fact that the suspect and his or her defence counsel will certainly emphasise their non-involvement in the crime, arguing that the investigator needs to work on the involvement of the person identified during the identification and base their line of defence on this. False identification can lead not only to a deterioration of the investigative situation, but also to the inability to prove the guilt of this person. This can have particularly negative consequences when the identifying person is a juvenile. The latter may painfully endure the event, withdraw, refuse to cooperate with the investigation, etc.

An identification is a unique investigative action that is never duplicated, which requires the investigator to carefully prepare for it. Therefore, O.Ya. Baev argues that it is unacceptable to conduct an identification even after an operational identification, in particular, using a photograph of a person who should be presented for identification in the future. After all, in this case it can be regarded as a staging of this important action, which, of course, has no evidential value (Baev, 1992, pp. 166–167).

The criminal procedure legislation of Ukraine requires that the person to be identified shall be presented to the identifying person together with other persons of the same sex in the number of at least three who do not have sharp differences in appearance and clothing. To meet this requirement means that the investigator shall present at least three persons who do not have sharp differences for identification.

When proceeding with an identification, the investigator must ensure that all the requirements necessary for conducting this investigative (search) action are met.

The need to present living persons for identification may arise in cases where: 1) The suspects were not previously known to the victims or witnesses, but were observed by them in connection with criminal events; 2) The suspects impersonate other persons or do not have documents proving their identity, or have presented documents that do not belong to them; 3) The victims or witnesses knew the suspects before, but cannot provide any information about them (for example, they studied together in high school but have not seen each other for 20 years) or name them incorrectly; 4) The identifying person knows the person being presented to him or her and correctly names them, but the latter denies the fact of acquaintance (Chaplynskyi, 2007, p. 29).

The law establishes only the minimum number of persons for the identity parade – not less than three. The maximum number of persons for the identity parade is not defined. This is decided by the investigator on a case-by-case basis.

According to the noteworthy results of a study by P.V. Shyldyrvan, in practice photo tables are prepared in such cases, including photographs of not one, but sometimes ten or twenty (and even more) people from among those who were in the crowd during the riots and could have been active participants or organisers of the riots. These photographs are "diluted" with several depicting persons who are clearly not involved in the events under investigation. Of course, in such cases, there should be no images of persons who would have a sharp difference in appearance with the suspects seen by the witness (victim) (Shyldyrvan, 2005, p. 176).

In addition, some scholars emphasise the inappropriateness of using a large number of objects in an identification, as the attention of the identifying person is distracted. This can certainly affect the identification results. It should be underlined that an increase in the number of objects, for example, up to 5, is appropriate when the interrogated person could not or was uncertain about the signs of the object that he or she could identify. This, in our opinion, will ensure the objectivity of the procedural action under consideration.

Furthermore, the investigator shall find out from each statistician whether they know the person who will be in the identity parade, whether they have been acquainted before.

The frivolous behaviour of a juvenile who is presented for identification (disorderly behaviour, rude behaviour towards the identifying person) can have a significant impact on the identifying person and reduce the evidential value of the results of this investigative action. Other juveniles, on the contrary, show excessive embarrassment, constraint, and fear of unknown consequences. Given these circumstances, teachers or other acquaintances of juveniles who are not interested in the outcome of the case are invited as attesting witnesses (Lukianchikov, 1990, p. 32). It is not advisable to load the identity parade with juveniles from the same educational institution where the person to be identified and the identifying person study. This may lead to information leakage and further harassment of juveniles by students and, possibly, teachers.

The choice of the time of an identification should depend on the fact that the identifying person eventually forgets the object he or she has observed, and most likely forgets the signs and features on which the identification process is mainly based. Therefore, the identification should be carried out as soon as possible after the commencement of investigation. The place of identification is usually the investigator's office. If necessary, an identification may be conducted in the place where the identifying person observed the object, or in another place determined by the investigator, allowing for the specific circumstances of the case (for example, in an open area if the objects of identification are too bulky, in particular, vehicles) (Vlasenko, Ivanov, 2003).

If the person to be identified is a suspect in custody, it should be determined whether he or she is likely to escape before the identification, in order to take measures to enhance security or arrange for the identification to take place directly in the pre-trial detention centre.

According to Ye.D. Lukianchykov, the investigator shall direct and activate both the mental activity of the identifying person and his or her volitional efforts in advance (Lukianchykov, Moisieiev, 1998, p. 48).

In our opinion, the identifying person should be psychologically prepared (the significance of an objectively conducted identification should be explained to him or her, he or she should be inclined to give truthful testimony, be supported to overcome the feeling of fear

of meeting the persons to be identified, etc.) However, the person should not be guided to identify a specific person.

Providing psychological preparation in proceedings on the criminal offences under consideration is possible, first of all, when the identifying person is a juvenile, or, when due to his or her moral and volitional qualities, psychological characteristics, cannot defend his or her position, anticipating the possibility of further revenge from both suspects and interested parties. In this case, the investigator needs to conduct thorough psychological preparation.

In addition, it should be noted how investigators assess the impact of the measures they take on the course and results of the procedural action: 87% of respondents said that it gave the juvenile self-confidence; raised the level of consciousness and attitude to participation – 85%; ensured the establishment of psychological contact – 81%; allowed a fuller use of tactical techniques and their complexes – 79%; reduced the time for conducting – 77%; improved the understanding of the meaning and content of the investigative (search) action by juveniles – 29%.

The investigator should ensure the participation of a teacher if the identification involves a juvenile witness (victim) under the age of 14 or an accused (suspect) under the age of 16; resolve the issue of participation of legal representatives or close relatives of juvenile participants in the identification (Honcharenko, Nor, Shumylo, 2012). Involvement of a psychologist or teacher who has already participated in the interrogation of a juvenile will help avoid negative influence on the latter and ensure a more predictable result for the investigator. The involvement of these persons should also be regarded as providing psychological support to the juvenile.

According to criminological practice, specialists were involved in 31% identifications, of which psychologists were involved in 64% of the total number of cases, and teachers in 36%.

4. Objects of identification

The objects of identification are usually the stolen property and personal belongings of the thief (items of clothing, burglary tools, etc.) lost or forgotten by the thief at the scene of the theft or thrown away by him or her at the time of arrest or seized from him or her as a result of a personal search or at his or her place of residence, as well as the means of transporting the stolen property. In cases when eyewitnesses remembered the person who committed the theft, the thief him or herself may be identified.

For example, items seized from the accused (or from persons to whom he sold the stolen goods) that look similar to the stolen goods shall be presented to the victim for identification. If the victim identifies these items, it means that the thief has been in possession of the stolen property. Moreover, items with individual branded numbers (e.g. watches, cameras, tape recorders, TV sets, cars, etc.), if the victim has documents for them, usually do not need to be presented to him or her for identification. However, in cases where the number on the stolen items has been removed or destroyed, it is advisable to present the victim for identification based on their appearance.

When investigating the theft of domestic animals and birds, it may be necessary to present both live and dead animals to the victim for identification, including their skin, legs, tail, collar, etc. Animals may be presented in a herd of animals approximately similar in species, breed, sex, age and colour. Individual characteristics include special signs on animal's body, injuries and other consequences of the disease, as well as their reaction to a certain name or appeal of their owner, which should be reflected in the records.

The thief's tools and other personal belongings left by the thief at the scene of the theft may be presented for identification to his or her relatives or acquaintances who may have seen these items. However, persons who are presented with an object seized from a theft scene should not know where it was found and for what purpose it is presented for identification. This allows to exclude cases of deliberate misidentification of objects and, conversely, obviously erroneous misidentification of the presented objects (Makarenko, 2010, p. 34).

If necessary, an interpreter or a person who understands deaf or mute sign language should be provided.

As for the participation of forensic experts, it is recommended to involve a specialist in phonoscopy during voice and speech identification. The criminologist can assist the investigator in recording the results and the identification process by means of photo, audio or video recording. The investigator shall prepare the necessary lighting devices and means of recording the course and results of the identification.

According to the procedural status, the identifying person is warned or not warned of criminal liability under Articles 384 and 385 of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2009).

The investigator asks the identifying person if he or she recognises anyone among those presented for identification. The formulated question is entered into the records. The situation can then develop in two ways. In the first case, the person informs the investigator that he or

she does not recognise anyone in the identity parade.

Usually, a negative answer is preceded by a delay during which the identifying person hesitates, repeatedly examines the persons presented to him or her for identification and holds his or her gaze on them. In this case, the investigator should urge the identifying person not to rush into the identification, to look carefully at the persons in the identity parade. It is also advisable to find out whether the lighting conditions are satisfactory, whether it is necessary for the persons presented for identification to stand up, turn around. It is forbidden to ask them to say certain phrases, as such actions are carried out during a special type of identification – by voice and speech.

In cases when the identifying person states that he or she does not recognise anyone in the identity parade, this investigative action should not be interrupted or terminated, but rather it should be continued after he or she is reassured and offered to look more closely at the persons in the identity parade. If the identifying person does not recognise anyone, the investigator makes a note of this fact in the records and this investigative action is completed (Chaplynskyi, 2007, p. 33).

Otherwise, when such a person identifies someone, the investigator must find out by what features (signs) he or she recognises them. Answers of the identifying person are recorded. There may be a situation that a statistician is listed as an identified person (this is possible because statisticians are similar in general terms to the person being identified). In this case, the investigative (search) action is carried out in the same sequence as if the person being identified had been identified. Upon completion of the investigative (search) action, the identified extra should be questioned about the circumstances of the crime.

The investigator asks the identified person to stand up and state his or her surname, name and patronymic. This proposal and the person's response are also documented in the records. After that, the investigator reads the records aloud (or, if desired, the participant reads the records personally), and it is signed by all participants and persons present. In addition, there should be a note on the presence or absence of statements, comments or additions (Priakhin, 2011).

An identification outside the visual observation of the person being identified is still insufficiently developed in the legal literature and legislation. The main reason for conducting an identification in this form is the statement of the identifying person.

The study of criminological practice does not reveal any cases of identification outside of visual observation in the investigation of thefts of other people's property committed by juveniles.

However, we should not rule out the possibility of conducting this type of identification.

A voice identification differs from the identification based on external features. The identifying person and the attesting witnesses selected for a voice identification are placed in one room, and the identifying person, the investigator and the attesting witnesses are placed in another, adjacent room. The door between the rooms is opened, but the identifying person and the identified person must not see each other. A person assisting the investigator, an operational officer, or another investigator conducts a conversation with the suspect and other participants in this action according to a previously developed programme. In this case, the sound conditions in both rooms should be the same and correspond to the sound conditions under which the speech was perceived. When the identifying person states that he or she can hear the voice of the person being identified, he or she is asked to go to the adjacent room and repeat his or her statement in the presence of the person being identified, indicating which words and voice features he or she recognises (Belkin, Zujkov, 1968, p. 424). If, in addition to the identification by voice and speech, an identification by anatomical features of appearance is to be made, the identifying person shall not enter the room where the person being identified is located.

It may be necessary to present the suspect's voice and speech for identification using a phonogram.

Identification using a phonogram is carried out in cases as follows:

– The identifying person states during interrogation that he or she can identify the suspects by their appearance and voice, but it is impossible to present these persons for identification because they are hiding from the investigation and court, are on a long-term business trip, have died or are physically eliminated, are wanted or their whereabouts are unknown; however, there are audio recordings of their voices;

– The person to be identified by voice refuses to participate in this investigative action, but there is a phonogram with a recording of his or her voice;

– The person suspected of committing a crime refuses to admit that it was his or her voice that was recorded on the tape;

– To prevent negative impact on witnesses and victims, to ensure the safety of persons involved in criminal proceedings, etc. (Chaplynskyi, 2007, p. 56).

According to Articles 223, 228, 231, 231 of the CPC of Ukraine, the records of identification outside of visual observation of the person being identified are documented and signed by all participants in this investigative (search) action. It is advisable to indicate in the records the pseudonyms of the identifying person, attesting witnesses, and, if necessary, statisticians, to ensure their safety in case there is a real threat to their life, health, home or property. It is advisable that each participant in the identification an identification read the content of the records independently, without visual observation of the person. Another option is for the investigator or one of the officers being present to read the records aloud. In our opinion, this is a tactical technique provided for in Article 85 of the CPC of Ukraine. The need to use it arises in some cases when there is a threat of destruction of a procedural document or damage to it by the accused (suspect) (Priakhin, 2011).

In the course of investigating property thefts committed by juveniles, other types of identification may be conducted. The information we have provided shows that a successful identification is not possible without careful preparation.

The complexity of the organisation and tactics, the uniqueness of the procedural action and the importance of its results for criminal proceedings do not allow entrusting it to employees of other units. This is confirmed by the results of our research. For example, the forensic practice review does not reveal a single case of an identification conducted by officers of operational units.

This investigative (search) action can both help establish the circumstances of criminal proceedings and create conditions that will not allow to prove the involvement of the relevant persons in the crime.

5. Conclusions

Therefore, we can emphasise that the effectiveness of an identification is largely dependent on the preparation for it. These include preliminary interrogation of the identifying person, during which the possibility of identification is determined. The identification should be carried out as soon as possible after the investigation is commenced. In the case of an identification of a juvenile, statisticians should not be students from the same educational institution as the person being identified. It is advisable to invite teachers, psychologists who have participated in interrogations, or other persons who are respected by juveniles and can serve as support for them to participate in the identification. It is also advisable to provide psychological preparation to juveniles on the content and significance of an identification.

If necessary, identifications may be made from photographs, by voice, etc. This may be due to both security reasons and to avoid the possibility of disruption of the investigative (search) action by the person being identified. We have considered only the most important and complex aspects of an identification. Compliance with them will ensure the correctness of the procedure and the expected results, which will have a positive impact on the entire investigation process.

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ТАКТИКА ПРЕД'ЯВЛЕННЯ ДЛЯ ВПІЗНАННЯ ПІД ЧАС РОЗСЛІДУВАННЯ КРАДІЖОК МАЙНА ГРОМАДЯН, ВЧИНЕНИХ НЕПОВНОЛІТНІМИ

Анотація. ***Мета.*** Метою статті є висвітлення тактики пред'явлення для впізнання під час розслідування крадіжок майна громадян, вчинених неповнолітніми. ***Результати.*** У статті визначено особливості тактики проведення окремих слідчих (розшукових) дій подальшого етапу розслідування, зокрема пред'явлення для впізнання та слідчого експерименту. Своєрідність подальшого етапу розслідування, як справедливо відзначається в криміналістичній літературі, полягає в тому, що до його початку слідчий має достатні докази про причетність конкретної особи до вчинення кримінального правопорушення. На підставі аналізу кримінальних проваджень встановлено, що здебільшого для впізнання пред'являлися: а) предмети і документи – 64 %; б) підозрювані неповнолітні в натурі – 54 %; в) підозрювані за фотографічними зображеннями – 21 %. Встановлено, що основними тактичними помилками, які допускаються слідчими під час проведення впізнання, є: відсутність належної організації впізнання – 57 %; поверхневе проведення попереднього допиту – 38 %; невикористання технічних засобів фіксації процесуальної дії – 19 %; проведення впізнання на подальших етапах розслідування – 82 %; ігнорування тактичних рекомендацій із проведення слідчої (розшукової) дії – 17 %. Також у статті наголошено, що результативність пред'явлення для впізнання значною мірою обумовлена підготовкою до проведення. До них варто віднести попередній допит особи, яка впізнає, під час якого з'ясовують можливості впізнання. ***Висновки.*** Пред'явлення має бути проведене якомога швидше з моменту початку розслідування. Статистами у випадку пред'явлення для впізнання неповнолітнього не доцільно брати учнів того ж навчального закладу, що й особа, яка пред'являтиметься. До участі в проведенні пред'явлення для впізнання доцільно запрошувати педагогів, психологів, які брали участь у допитах, або інших осіб, які користуються авторитетом у неповнолітніх і можуть слугувати для них підтримкою. Доцільно також здійснювати психологічну підготовку неповнолітніх із визначенням змісту та значення проведення пред'явлення для впізнання. У разі потреби можуть проводитися пред'явлення для впізнання за фотознімками, за голосом тощо. Це може бути обумовлено міркуваннями безпеки й уникнення можливості зриву слідчої (розшукової) дії особою, яка пред'являтиметься для впізнання.

Ключові слова: крадіжка, неповнолітній, організація, тактика, пред'явлення для впізнання, розслідування.

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THEORETICAL FRAMEWORK FOR COMBATING CRIME AS A BASIS OF THE INVESTIGATOR'S PROCEDURAL ACTIVITIES

Abstract. ***Purpose.*** The purpose of the article is to determine the ways of theoretical basis for the investigator's procedural activities. ***Results.*** In the article, it is underlined that the activities of specific law enforcement entities are the focus of research of the relevant, to some extent disparate, sectoral legal sciences, each of which uses different terms to refer to actions and processes which are identical in content. It is thought that although scholars have considered individual theories of legal sciences stating their interconnection, they have not taken the next step of combining these theories into a common megatheory – the fight against crime. Due to this situation, the procedural role of the investigator (as activities performed by him/her in different areas) should be clarified using the provisions of the general theory of combating crime. The most effective way to theoretically substantiate the investigator's procedural activities within the general theory of combating crime is to expand scientific knowledge, deepen it and involve knowledge from other branches of (related to) legal science. ***Conclusions.*** It is concluded that the general theory of combating crime, as a higher-level theory in relation to the theory of criminal procedure, allowing for the importance of pre-trial investigation bodies in the field of implementation of the law enforcement function of the State, should be used as the theoretical basis for the investigator's procedural activities. The theoretical basis for the investigator's procedural activities implies the following: The expansion of knowledge is implemented through proposals and research of additional powers, procedural means, new principles of criminal procedural activities, application of additional measures to ensure criminal proceedings, additional actors, new forms of investigator's activities, forms of his/her interaction with other actors; The deepening of knowledge is realised through the study of the particularities of application of already introduced criminal procedural institutions in the activities of the investigator, study of their legal nature, and determination of ways of their possible improvement; The attraction of knowledge from other fields of science is realised through the application of sociological, general legal knowledge, results of research in natural sciences, technical, humanitarian sciences, etc.

Key words: investigator, procedural activities, combating crime, sectoral legal sciences, theoretical basis.

1. Introduction

As well as a number of other terms, the fight against crime, crime counteraction are used to define a process that includes much more than the components included in the content of these terms. If we consider these terms in relation to their meaning, we can note that their use has become a certain compromise between representatives of different legal sciences that create a theoretical basis for law enforcement activities of criminal justice authorities. Law enforcement activities are performed allowing for the provisions of criminal and criminal procedure legislation, theoretical and practical knowledge accumulated in the field of criminalistics, legal psychology, criminology, forensic exam-

ination, operative-search activities and other fields of human knowledge that can be useful in combating crime. The activities of specific law enforcement entities are the focus of research of the relevant, to some extent disparate, sectoral legal sciences. Each of these sciences uses different terms to refer to actions and processes that are identical in content, for example, the theory of operative-search activities uses the terms search activity, documentation, implementation (or legalisation) of operational materials, and the theory of criminal procedure uses other terms to refer to the same actions: detection of crimes, establishment of circumstances, use of materials of operative-search activities. In light of this, the problem of determining the socio-legal role of the investigator in combating crime, carried out by him/her in the course of criminal procedural activities within specific criminal proceedings, remains beyond the focus of scholars. Clarification of this role of the investigator using the provisions of the general theory of combating crime will allow to consider these activities carried out by him/her in different areas from a new perspective.

The theory of combating crime was partially considered by A.Yu. Hnatiuk, who underlines that the social function of the prosecutor's office to maintain law and order in the state and to combat crime in general in criminal proceedings is transformed into quite specific functions that allow the prosecutor to perform his/her social (state) function. After all, in criminal proceedings, criminal law is implemented, which establishes what constitutes a criminal offence and what penalties should be applied to those guilty of committing them. Ultimately, the criminal law is applied by the court, but the function of combating crime is not entrusted to the court, but to the prosecutor (Hnatiuk, 2016).

S.V. Domenko studies of the fight against crime in the context of criminology and criminal law, emphasising the importance of its theoretical function and the need to focus on "the fight against crime" as an element of the subject matter of criminology, and on the interdisciplinary significance of this concept, noting that the evolution from "criminal policy", " policy on combating crime" to the regional legal category "the fight against crime" has contributed to the development of criminal cycle sciences (Domenko, 2013).

P.L. Fris defines policy on combating crime as a general line developed by the Ukrainian state that determines the strategy, basic concepts, trends, goals and means of influencing crime by forming criminal, criminal procedural legislation, criminal executive legislation (basic level), as well as legislation that enhances (catalyses) the solution of these tasks (supporting level), control of their application, development and implementation of measures aimed at preventing crime. The basic level is formed by those branches of law that are directly responsible for combating crime. It is the criminal law that defines the boundaries of the offence, while the criminal procedure law defines the procedure for finding a person guilty, determining the optimal type and amount of punishment to be applied to the perpetrator as an adequate response of the state to the crime committed (Fris, 2012). That is, scholars have considered individual theories of legal sciences stating their interconnection, but they have not taken the next step of combining these theories into a common megatheory – the fight against crime.

The purpose of the article is to determine the ways of theoretical basis for the investigator's procedural activities.

2. Specificities of the general theory of combating crime

The achievements of individual legal sciences on combating crime, due to a common basis, are formally "united" at the theoretical level into a general theory of combating crime [4, p. 260–509]. The prerequisite for such unity is a joint criminal policy of the state for all law enforcement bodies, which is a directive and constituent criminal and political doctrine of the Verkhovna Rada and the Government, enshrined in a system of regulations that define the tasks, ultimate goals, strategies and general principles of combating crime in the Ukrainian state. Its daily implementation by all law enforcement bodies is a real fact, formative for a general theory of combating crime, which is not only its guide, but also the scientific basis for the activities of all law enforcement bodies to implement criminal policy, implement its principles and strategic guidelines [4, p. 295–296]. In support of the idea of developing a general theory of combating crime, the following theoretical provisions are presented: The idea of the fight against crime is the core of all theories of combating crime; The objective existence of various special legal sciences of the fight against crime is sufficient grounds for concluding that they have something in common which unites these sciences into an integral system; The deepening of knowledge about the fight against crime within the framework of private theories about this fight has led to an increasing individualisation of their subject matter and, on this basis, to a weakening of their interconnectedness and interdependence; The need to create a general theory of the fight against crime is evidenced by the actual tendency in science to develop "cross-cutting" problems, as well as problems common to several criminal law sciences (Zelenetskii, 2012).

It is important for an actor that constantly operates under time constraints to receive specific and scientifically sound advice on its law enforcement activities without spending a lot of time clarifying contradictions in theoretical issues related to it. This is especially true of an actor of criminal proceedings, who begins to implement public policy on combating crime already at the stage of pre-trial investigation – the investigator. Therefore, the general theory of combating crime, as a higher-level theory in relation to the theory of criminal procedure, allowing for the importance of pre-trial investigation bodies in the field of implementation of the law enforcement function of the State, should be used as the basis for integrating certain knowledge related to the fight against crime. Criminal procedure itself is a means of implementing criminal law provisions, and therefore it is closely related to the theoretical knowledge gained in the science of criminal law. Other theories that address problematic issues of combating crime and are relevant to the criminal procedural activities of an investigator include criminalistics, legal psychology, legal statistics, criminal executive law, criminology, operative-search activities, etc. All of these theories have their individual subject matter, but they also have a common subject matter – the fight against crime, which became the basis for a new theory in the legal science – the theory of combating crime. The process of combating crime involves many actors. In criminal proceedings, the function of combating crime is performed by the prosecution. The investigator plays the main role among these actors in most of states. This actor is referred to in different ways in the legislation of other states: "inquiry officer", "investigator", "detective", "investigating officer", etc. The core is that the investigator at the pre-trial investigation stage performs the task of establishing the circumstances of a criminal offence, information about which is entered into the Unified Register of Pre-trial Investigations. The fulfilment of this task is the basis for the implementation of the main task of the prosecution in the pre-trial investigation to prepare the indictment for the purpose of its transfer to the court in collaboration with the prosecutor. The investigator's procedural activities to fulfil these tasks is carried out by him/her in order to overcome crime and thus perform the state function, the content of which is the fight against crime.

The legal activities of investigative bodies, as well as other state bodies, consists of such professional, labour, state power activities mediated by law and involving legal decisions of competent authorities, which are aimed at fulfilling public functions and tasks (creation of laws, administration of justice, specification of law, etc.) and thus meeting both public, group and individual needs and interests (Kartashov, 1989). The investigator's criminal procedural activities, carried out in accordance with the requirements of the CPC, is aimed at meeting not only the individual needs of the participants in the pre-trial investigation, but also the public need to combat crime.

3. The functioning of theories of combating crime

Scholars believe that the provisions substantiated in the general theory of combating crime are relevant for all specific theories of combating crime, including the theory of criminal procedure, and from this perspective, this theory is, so to speak, in a relationship of "subordination" with the theory of criminal procedure (Yurchyshyn, 2016). The theory of combating crime is implemented in the activities of criminal justice authorities, courts and the bar on the basis for the provisions of a number of branches of law. Each of them (branches) has its specifics, leaves a certain imprint on the forms and methods of implementation. Despite their specificities, all of them ensure the solution of a single task – the fight against crime. From the theoretical perspective, this gives grounds to distinguish the field of combating crime as an integral social regulatory system, its individual subsystems: criminal law, criminal procedure, criminal executive and criminological (preventive) policy (Fris, 2012). In our opinion, the theory of combating crime within criminal procedure developed by V.S. Zelenetskii (Zelenetskii, 2012) can be considered an integral part of the theoretical basis for the criminal procedure policy of combating crime. However, a number of other scholars have significantly contributed to the developments of this scholar.

For example, O.M. Lytvynov identifies several levels of functioning of the actors in the fight against crime: The first level is characterised by the development of crime that is virtually uncontrollable by the actors of combating crime, and their role under such organisation of work is limited to registration and stating the very fact of committing an unlawful act; The second level is characterised by the fact that law enforcement bodies are struggling to counter the overall volume of crime (with virtually no forces and means left to prevent crimes in preparation and to solve serious and especially serious crimes committed in conditions of uncertainty); The third level is characterised by the fact that law enforcement bodies manage to take meaningful and often effective measures to solve non-obvious crimes, as well as crimes that have caused a wide public outcry; The fourth level is achieved when law enforcement bodies can carry out extensive preventive, oper-

ational search and criminal procedure activities, as a result of which there are objective prerequisites for minimising crime and neutralising the enabling factors (Lytvynov, 2012).

V.M. Yurchyshyn argues that theories of the general scientific level perform a certain function in relation to research in the theory of criminal procedure. The author develops the idea that criminal procedure is a branch of knowledge related to the study of the grounds and procedure for determining whether a criminal offence has been committed, whether a particular person has committed it and whether he or she is subject to criminal liability in this regard. That is, in his opinion, criminal procedure is a means of implementing criminal law, and therefore it is closely related to the knowledge gained within the theory of criminal law. Theories that address the issues of crime prevention and counteraction also include criminalistics, criminal executive law, criminology, operative-search activities, etc. All of these theories develop their own aspect of crime prevention and counteraction, but they also have a common focus of research, which is crime prevention and counteraction (Yurchyshyn, 2016).

The review of opinions of these and other scholars who have carried out scientific research in the field of the theories of combating crime enable, in development of their thoughts, to argue that the development of the theory can the following trends: to cover a significant number of objects from various related legal fields with the aim of determining the possibilities of combining them with common features in the theory of combating crime; to clarify the deep content, the essence of the objects already established for the theory in order to find common features that allow them to be attributed to the general theory of combating crime; to change some provisions of the theory of related legal fields in order to bring them in line with the general theory of combating crime; to involve knowledge from other fields of science, which can be essentially positioned as "interdisciplinary", in the general theory of combating crime.

Moreover, the most effective way to theoretically substantiate the investigator's procedural activities within the general theory of combating crime is to expand scientific knowledge, deepen it and involve knowledge from other branches of (related to) legal science.

4. Conclusions

The use of the provisions of the general theory of combating crime with regard to the theoretical issues of criminal procedure, within which the State decides on criminal liability of a particular person, ensures the reliability of scientific results of the sectoral science – the criminal procedure. The general theory of combating crime, as a higher-level theory in relation to the theory of criminal procedure, allowing for the importance of pre-trial investigation bodies in the field of implementation of the law enforcement function of the State, should be used as the theoretical basis for the investigator's procedural activities.

The theoretical basis for the investigator's procedural activities implies the following: The expansion of knowledge is implemented through proposals and research of additional powers, procedural means, new principles of criminal procedural activities, application of additional measures to ensure criminal proceedings, additional actors, new forms of investigator's activities, forms of his/her interaction with other actors; The deepening of knowledge is realised through the study of the particularities of application of already introduced criminal procedural institutions in the activities of the investigator, study of their legal nature, and determination of ways of their possible improvement; The attraction of knowledge from other fields of science is realised through the application of sociological, general legal knowledge, results of research in natural sciences, technical, humanitarian sciences, etc.

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ТЕОРЕТИЧНЕ ОБҐРУНТУВАННЯ БОРОТЬБИ ЗІ ЗЛОЧИННІСТЮ ЯК ОСНОВА ПРОЦЕСУАЛЬНОЇ ДІЯЛЬНОСТІ СЛІДЧОГО

Анотація. ***Мета.*** Метою статті є визначення шляхів теоретичного обґрунтування кримінальної процесуальної діяльності слідчого. ***Результати.*** У статті зазначено, що діяльність конкретних суб'єктів правоохоронної діяльності є предметом дослідження відповідних, певною мірою розрізнених між собою, галузевих правових наук, кожна з яких використовує різні терміни для позначення дій, процесів, які за змістом тотожні. Розвивається думка, що хоча науковці розглядали окремі теорії юридичних наук, позиціонуючи їх взаємозв'язок, але не робили наступного кроку, об'єднання цих теорій у загальну мегатеорію – боротьби зі злочинністю. Такий стан обумовлює необхідність з'ясування процесуальної ролі слідчого (як діяльності, здійснюваної ним у різних напрямах) з використанням положень загальної теорії боротьби зі злочинністю. Найбільш ефективним шляхом теоретичного обґрунтування кримінальної процесуальної діяльності слідчого в рамках загальної теорії боротьби зі злочинністю є розширення наукових знань, їх поглиблення шляхом залучення знань з інших областей (дотичних) юридичної науки. ***Висновки.*** Зроблено висновок, що загальну теорію боротьби зі злочинністю як теорію вищого рівня щодо теорії кримінального процесу з урахуванням значення діяльності органів досудового розслідування в царині реалізації правоохоронної функції держави доцільно використовувати як теоретичну основу процесуальної діяльності слідчого. Теоретичне обґрунтування кримінальної процесуальної діяльності слідчого здійснюється такими шляхами: розширення знань реалізується через пропозиції та дослідження додаткових повноважень, процесуальних засобів, нових засад кримінальної процесуальної діяльності, застосування додаткових заходів забезпечення кримінального провадження, додаткових суб'єктів, нових форм діяльності слідчого, форм його взаємодії з іншими суб'єктами; шляхом поглиблення знань реалізується через дослідження особливостей застосування вже запроваджених кримінальних процесуальних інститутів у діяльності слідчого, вивчення їх правової природи, визначення на цій підставі шляхів їх можливого вдосконалення; шляхом залучення знань з інших областей науки реалізується через застосування соціологічних, загально-правових знань, результатів досліджень природничих наук, технічних, гуманітарних тощо.

Ключові слова: слідчий, процесуальна діяльність, боротьба зі злочинністю, галузеві правові науки, теоретичне обґрунтування.

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INTERROGATION TACTICS AT THE INITIAL STAGE OF INVESTIGATION OF ACCEPTANCE OF AN OFFER, PROMISE OR RECEIPT OF UNDUE BENEFIT

Abstract. ***Purpose.*** The purpose of the article is to determine the particularities of interrogation tactics at the initial stage of an investigation of acceptance of an offer, promise or receipt of an undue benefit by an official. ***Results.*** The article emphasises that interrogation is one of the most important investigative (search) actions by which an investigator or prosecutor obtains evidence of a person's involvement in a crime and verifies other factual data collected; it is the most common investigative (search) action in the investigation of acceptance of an offer, promise or receipt of an undue benefit by an official. The author examines the particularities of interrogation of various categories of persons involved in the initial stage of investigation of acceptance of an offer, promise or receipt of an undue benefit by an official (giver (complainant), witness and beneficiary (suspect). For each of these categories, the particularities that affect the tactics of interrogation are identified: for the complainant and the victim, there is a need to clarify the circumstances of the source of information about the crime; the official who committed it or is preparing to commit it; the object of the undue benefit; the goal, the achievement thereof is a condition for the provision of an undue benefit; the presence or absence of the fact of extortion of an undue benefit; identification of other witnesses, which leads to interrogation to clarify the circumstances that will further allow verification of other information about the facts obtained during the pre-trial investigation. ***Conclusions.*** The author concludes that the interrogation tactics in situations where a suspect denies involvement in a crime and/or refuses to testify are identified. It is determined that in the first case, the main focus is on clarifying the circumstances preceding the crime and indicating the actions of the suspect during its commission, with the need to detail the answers to enable their verification and refutation in the future, and in case of refusal to testify, it is necessary to apply tactical techniques aimed at overcoming the suspect's position by holding a conversation on an abstract topic to establish psychological contact, during which explanations and convincing that the position taken is disadvantageous for the suspect.

Key words: receipt of undue benefit, pre-trial investigation, initial stage, interrogation, tactics of conducting.

1. Introduction

Interrogation in criminal proceedings is the most common investigative action aimed at obtaining (collecting) evidence or verifying evidence already obtained in a particular criminal proceeding. The literature review reveals that interrogation during pre-trial investigation in criminal proceedings is an investigative (search) action aimed at collecting, verifying, evaluating evidence by obtaining verbal testimony from the interrogated person about the circumstances of the criminal offence known to him/her or about such circumstances that are relevant to the criminal proceedings and subsequently recording them in the protocol or in other manner, provided for by law, by the relevant actors of criminal procedure (Avramenko, Blahuta, Hutsuliak, 2013, p. 54). The CPC does not define the concept of interrogation, but only sets out the conditions under which it should be conducted. However, these conditions are extrapolated both to the type of crime (which is being investigated and for which an investigative (search) action is being taken) and depending on the specific situation that has arisen as a result of the crime (as well as because of the actions of the actors in the course of the investigation), this requires to consider interrogation as one of the most important investigative (search) actions at the first

stage of pre-trial investigation of acceptance of an offer, promise or receipt of an undue benefit by an official.

The general provisions of interrogation have repeatedly been the focus of research by scholars and practitioners, such as R.S. Bielkin, N.V. Hryshchenko, V.K. Veselskyi, V.O. Konovalova. Some issues of interrogation during the investigation of the offence being studied are described in the works by V.Yu. Shepitko, V.M. Lishchenko, Ya.Ye. Myshkov, A.I. Shyla. However, a number of controversial issues regarding admissibility and necessity of using tactical techniques to obtain the most complete information about the crime committed during the interrogation of the complainant, witnesses, suspect remain unresearched, as well as the development of tactics for interrogating the above persons in the investigation of accepting an offer, promise or receipt of an undue benefit by an official.

The purpose of the article is to determine the particularities of interrogation tactics at the initial stage of an investigation of acceptance of an offer, promise or receipt of an undue benefit by an official.

2. Interrogation of a complainant as the initial stage of an investigation of acceptance of an offer, promise or receipt of an undue benefit

The analysis of investigative practice shows that the investigation of crimes under Article 368 of the CC in terms of investigative (search) actions should begin with the interrogation of the complainant, who, according to Part 1 of Article 60 of the CPC, is a natural or legal person who has filed a statement or report of a criminal offence with a public authority responsible for commencing pre-trial proceedings and is not a victim. Given that the CPC does not provide for a separate interrogation of the complainant, under specific circumstances, a person who has filed a complaint about a crime under Article 368 of the CC may be interrogated as a witness (it is inappropriate to interrogate the complainant as a victim at the initial stage of the investigation). Then, if it is established that moral, physical or material damage has been caused to a person, the investigator has the right to question the complainant as a victim but allowing for the fact that when complainants apply to law enforcement agencies with statements about extortion of undue benefits (often at the initiative of law enforcement), and the fact of extortion is subsequently refuted in court. The tactics of interrogation and the list of circumstances to be established depends on the situation reported by the complainant and depends on the specific situation, namely, whether the complainant reports the fact of acceptance of the offer or the promise of receiving an undue benefit; reports the fact of receiving an undue benefit in the past; reports the fact of receiving an undue benefit in the future; reports the fact of receiving an undue benefit, whether or not combined with extortion of an undue benefit.

The complainant is interrogated: at the place of pre-trial investigation; at the place of residence, work, at medical institution, café, premises of the operational unit (if there are circumstances that may indicate disclosure of the fact of the person's appeal to law enforcement bodies). Since in most cases the complainant provides truthful testimony, a commonly used tactic is to recreate the forgotten based on the use of associative connections (referring to circumstances adjacent in time or space, creating a situation of recall and a detailed description of the conversation, place, environment, etc.) (Veselskyi, Kuzmichov, Matsyshyn, 2005, p. 22). Interrogation of the complainant may be conducted with the use of audio or video recording, provided that in a particular situation it is necessary to conduct investigative search actions (CISA) immediately, and there is no time to draw up an interrogation records, or if the investigator or prosecutor has reason to fear that the complainant will refuse to give evidence in case of opposition to the investigation (influence, threats, family relations between the complainant and the beneficiary, etc.)

During the interrogation, it is necessary to clarify the circumstances depending on the situations described above, namely: how long the complainant has known the person who accepted the offer or promise; on whose initiative and under what circumstances they met; the occupation of the person who has accepted the offer or promise; the location of the person's office, how to get there, with a detailed description of the setting; whether the fact of the visit is reflected in any documents (Cherniavskyi, Vakulenko, Tolochko, 2014); how it became known about the acceptance of the offer or promise of undue benefit (if from the words of another person, it is necessary to find out their personal data and the circumstances under which these facts became known); information about the object of the undue benefit; for performing what actions (inaction) the official accepted the offer or promise of an undue benefit; a detailed description of actions that indicate the acceptance of the offer or promise by the official (conversation, conclusive actions, gestures, writings on paper); what exactly was the acceptance of the offer or promise; under what circumstances, in what place the conversation took place, who could have witnessed it; whether the fact of acceptance

of the offer or promise was recorded by technical means (voice recorder, mobile phone, fixed surveillance cameras, other means of communication, by sending a message, via the Internet, social networks, Skype, etc.); if recorded, for what purpose; under what conditions; in what environment (place of recording); what kind of technical device (analogue or digital) was, find out under what conditions the person who accepted the offer or promise acquired or received the technical device, its brand, series, number; whether there are any other records on the technical device; what means of communication (mobile phone number, email address, web addresses of pages on social networks) the person who accepted the offer or promise uses; who else is aware of the facts of acceptance of the offer, promise of obtaining an undue benefit; what prompted the complainant to report the bribe to law enforcement bodies (fight against bribery, personal hostility to persons involved in the crime, violation of his/her personal interests, promotion, prestigious job, business trips that are of interest to him/her) (Myshkov, 2003, pp. 178–182); whether the company is ready to take part in a tactical operation to expose the beneficiary. This list of questions is necessary but not exhaustive (as it can be expanded depending on the situation). For example, if a person reports the fact that an official received an undue benefit in the past to an investigator, the prosecutor needs to make additional inquiries: how the complainant became aware of the facts of receipt of an undue benefit by a particular official; the mechanism of transfer of the object of the undue benefit reported by the complainant (type, way of transfer, with or without an intermediary, place, environment, etc.); the time and place of the transfer, the circle of persons who could have known about the consequences of its transfer, information about possible intermediaries, etc.; find out the source of the funds provided to the official, as well as establish to whom he or she told about the giving of the undue benefit, for what actions; how long it took to perform the actions for which the undue benefit was given after the receipt of the undue benefit; if the actions were not performed in the interests of the person who provided the undue benefit, find out when the last time he/she communicated with the official on this issue, whether the issue of returning the subject of the undue benefit was raised, whether there is any evidence of the transfer of the undue benefit (receipts, electronic payments, promissory notes, entries in notebooks, other documents, records of mobile phone conversations); what prompted the person to file a voluntary report with law enforcement agencies, whether the report is a kind of blackmail to return the subject of the undue benefit.

This situation in the practice of investigating this category of proceedings usually occurs in the case of systematic receipt of an undue benefit by an official, or a one-time receipt on condition of non-performance or improper performance of actions agreed with the giver in his/her interests, so it is necessary to find out all possible actions of the complainant with the subject of the undue benefit, as this may contribute to obtaining other indisputable evidence.

If the complainant reports the official's intention to receive an undue benefit in the future, the following circumstances should be investigated during the interrogation, considering the specific situation, in addition to the issues we have mentioned in the case of the notification of acceptance of the offer or promise of an undue benefit, namely: whether the complainant has taken provocative actions aimed at inciting the official to receive an undue benefit and artificially creating an environment for obtaining an undue benefit; if the complainant provides a sound or video recording of a conversation about agreeing on the terms of obtaining an undue benefit, it should be established in detail where the conversation took place and under what conditions the recording was made (outdoors, indoors, in a dark or well-lit place, on a digital or analogue technical device, mobile phone), what the serial number and brand of the technical device was; how many people participated in the conversation recorded on the technical device, whether the file with the conversation was re-recorded to another medium, and if so, whether they can provide it for the examination; who advised to record the conversation; whether the intermediary was mentioned in the conversation, if so, find out all possible information about this person known to the complainant (personal data, description of appearance, where he/she works, how the beneficiary introduced him/her, etc;) circumstances that indicate that the beneficiary made certain records on the amount of the undue benefit, the terms of the transfer, the person to whom the transfer should be made, the account number to which the funds should be transferred, etc;) if the complainant reports the fact of extortion of an undue benefit, it is additionally necessary to find out what kind of actions manifest the extortion (verbally, conclusively, by making decisions not in favour of the complainant, creating an environment in which the undue benefit should be provided, what explanations it was accompanied by, etc.) Clarification of the above issues will enable to further plan and control the commission of a crime in the form of a special investigative

experiment in conjunction with other investigative (search) actions and the NSDI.

The next category of persons subject to interrogation in criminal proceedings being studied is a witness. The tactics of interrogating witnesses depend on the investigative situation and other objective circumstances, which leads to their division according to certain criteria, namely: persons who depend on the beneficiary; persons who do not depend on the beneficiary; persons who may have participated in criminal acts. In view of this, the following persons are subject to interrogation as witnesses: complainants; persons from whom the undue benefit was extorted; accidental witnesses of the crime; persons working together with the beneficiary, including both subordinate and non-subordinate; heads of higher authorities under whom the beneficiary worked; colleagues; witnesses to the apprehension of the beneficiary; persons who have applied to the institution where the beneficiary works to resolve certain issues and have information about possible abuses by the beneficiary, his/her behaviour in the exercise of official powers, etc; persons who witnessed the beneficiary making expensive acquisitions; persons working in public establishments where the beneficiary rested or held meetings; persons in whose interests the beneficiary performed the relevant actions for a fee; persons recorded by means of conducting the CISA when transferring money to the beneficiary; attesting witnesses involved in the control of the crime in the form of a special investigative experiment; attesting witnesses who were present during other investigative (search) actions; persons who are aware of the relationship between the giver and the beneficiary; persons who have previously appealed against the actions and decisions of the beneficiary; under the specific investigative situation, other persons who may provide information about circumstances relevant to the criminal proceedings (for example, whose data was discovered during the examination of documents, search of the suspect's home or other property, his/her office (draft records, letters in both paper and electronic form, documents on the purchase of real estate, cars, or receipt of valuable gifts at reduced prices)).

In case of a special investigative experiment conducted to record criminal acts, as a result of which the beneficiary is apprehended, it is necessary to use the factor of surprise (Shylo, 2013, p. 161), which eliminates the possibility of thinking through the testimony and coordinating it with the testimony of other interested parties, so there is no time to properly prepare for the interrogation of witnesses at the initial stage of the investigation. Therefore, it is necessary to immediately determine the place of interrogation of the witness, since if witnesses, especially those who are officials, are interrogated in any place that gives the person an impression of privilege (their office, the office of the prosecutor or the head of the investigative unit), it makes the investigator psychologically dependent on these persons. In our opinion, the interrogation should be conducted in the investigator's office, since the very fact that the interrogated person is in the office has a psychological impact on him/her, and the official nature of the interrogation is a guarantee of proper awareness of the seriousness of the events, (but if it is necessary to conceal information from unauthorised persons about the fact of interrogation, it is advisable to interrogate such a person in another place – this decision depends on the witness's classification as one of the categories of persons mentioned above).

3. Tactical techniques during the interrogation of a witness in the course of an investigation of the acceptance of an offer, promise or receipt of an undue benefit

During the interrogation, it is necessary to apply tactical techniques allowing for actions in a conflict situation, based on the fact that the witness has a negative attitude to the investigation (given that during the investigation of this type of crime, random persons are practically not in the focus of the investigation): sudden presentation of evidence, rapid interrogation and other techniques used during interrogation in a conflict situation. Although (in case of a witness's unfriendly attitude towards the beneficiary) it is necessary to establish comprehensively all cases of obtaining an undue benefit, facts of abuse, giving illegal instructions, etc. but it is necessary to find out the reason for the unfriendliness (the testimony of such persons is subject to detailed verification). In the course of interrogation, the following circumstances are established: ones related to the acceptance of an offer, promise or receipt of an undue benefit by a particular person; ones confirming or refuting the suspect's version; ones confirming or refuting information about facts obtained as a result of other investigative (search) actions and the CISA; ones characterising the suspect; other circumstances in a particular investigative situation.

The next category of persons subject to interrogation in criminal proceedings being studied is the suspect (beneficiary). The tactics of interrogation of a suspect depend mainly on the nature of the information and evidence available to the investigator, on the characteristics of the person being interrogated (degree of legal awareness, experience, posi-

tion held, corruption ties, etc.) (Veselskyi, Kuzmichov, Matsyshyn, 2005), as well as on the line of behaviour chosen by the suspect (to give truthful testimony; to build his/her story of the circumstances of the case, which may be completely false or distorting the truth; to refuse to testify on the basis of the Constitution of Ukraine, Article 63 and the provisions of the CPC, Article 42, Part 3). Given that we consider the tactics of interrogating a suspect at the initial stage of the investigation, in particular, immediately after a special investigative experiment and apprehension of a person while receiving an illegal benefit, the initial stage of the investigation is characterised by the lack of comprehensive information about the crime, the difficulty of conducting the first interrogation of a suspect is that at this stage the investigator has only information about events of the offence, the fact of apprehension of the person while receiving an undue benefit and the circumstances reported by the complainant. Meanwhile the suspect has a wide range of information about the circumstances of interest to the investigation, so whether the investigator or prosecutor can obtain it during the interrogation of the suspect depends on his or her professional abilities, the conditions of the particular situation, and objective reasons. Interrogation tactics imply consistent clarification of the circumstances related to the statement of an undue benefit or the apprehension of a person. The purpose of the interrogation is to establish a range of facts that testify to the actions of the suspect during the commission of a criminal offence (Myshkov, 2005). For tactical reasons, it is advisable to conduct this interrogation with the use of video recording, which will subsequently enable to resolve the issue of the reliability or unreliability of the testimony provided, subject to appropriate examinations.

It should be noted that the information provided by the suspect during the first interrogation may be the only confession at the stage of both pre-trial investigation and trial of criminal proceedings. In view of this, the main purpose of interrogating a suspect is to clarify the suspect's position, arguments in his or her defence, interpretation of the circumstances of the apprehension and the fact of finding the subject of the undue benefit, as well as to establish maximum information about the events preceding the apprehension by asking detailing questions. At this stage of the interrogation of the suspect, no techniques should be used to expose lies, it is necessary to create a situation of trust in his/her position as much as possible, to set it out in the interrogation report using the phrases used by the suspect. This will lead to the establishment of psychological contact, a kind of trust in the investigator, enabling to obtain the necessary information from the suspect in the future. The investigator must first verify the falsity of the interrogated person's testimony, and only then, during subsequent interrogations, use the entire "arsenal" of tactical techniques to expose lies, present evidence, etc.

In a conflict situation, accompanied by denial of involvement in the commission of a crime, the relationship between the suspect and the person who gave the undue benefit to the investigator, concealment of certain circumstances, it is possible to change this situation by creating the impression that the investigation has full information about the incident, demonstrating awareness of the suspect's individual life events (Veselskyi, Kuzmichov, Matsyshyn, 2005, p. 24), previous behaviour before the arrest, the facts recorded during the CISA; a proposal to conduct an interrogation with the use of a polygraph (Turovets, 2014). In this situation, the main role is played by the investigator's detailing and clarifying questions aimed at confirming or refuting the suspect's version. Allowing for the specific situation, it is recommended to clarify the following questions: how the person who gave an undue benefit got to the place where an undue benefit was handed over; the nature of the relationship between the suspect and the person who provided an undue benefit; how the presence of traces of special chemicals on the hands, clothes or other items of the office can be explained; how the presence of a recorded conversation about agreeing on the terms of the bribe can be explained, etc.

If during the first interrogation the suspect refuses to testify, this may indicate that at this stage of the investigation the defence does not have information about the sufficiency of evidence of the person's guilt, so until the opening of the criminal proceedings and, accordingly, the receipt of information about the existence of evidence of guilt collected by the prosecution, the suspect does not give any testimony. If a person categorically refuses to testify, the investigator should not persuade him or her, as no tactical techniques in this case can change the suspect's mind. From a tactical point of view, if the suspect refuses to testify, it is necessary to create a situation of a simple conversation in which the arguments of the suspect and his/her defence counsel are heard, then recorded and investigated. In this case, it is important that the suspect discloses his or her position as fully as possible.

Therefore, it should be noted that interrogation is one of the most important investigative (search) actions by which an investigator

or prosecutor obtains evidence of a person's involvement in a crime and verifies other factual data collected; it is the most common investigative (search) action in the investigation of acceptance of an offer, promise or receipt of an undue benefit by an official.

4. Conclusions

The tactical features of interrogating a complainant or victim are the need to clarify the circumstances of the source of information about the crime; the official who committed it or is preparing to commit it; the object of the undue benefit; the goal, the achievement thereof is a condition for the provision of an undue benefit; the presence or absence of the fact of extortion of an undue benefit; identification of other witnesses, which leads to interrogation to clarify the circumstances that will further allow verification of other information about the facts obtained during the pre-trial investigation. In most cases, a suspect is interrogated if he or she denies involvement in the crime or refuses to testify. In the first case, the main focus is on clarifying the circumstances preceding the crime and indicating the actions of the suspect during its commission, with the need to detail the answers to enable their verification and refutation in the future. In case of refusal to testify, it is necessary to apply tactical techniques aimed at overcoming the suspect's position by holding a conversation on an abstract topic to establish psychological contact, during which explanations and convincing that the position taken is disadvantageous for the suspect.

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ТАКТИКА ПРОВЕДЕННЯ ДОПИТУ НА ПОЧАТКОВІЙ СТАДІЇ РОЗСЛІДУВАННЯ ЩОДО ПРИЙНЯТТЯ ПРОПОЗИЦІЇ, ОБІЦЯНКИ АБО ОДЕРЖАННЯ НЕПРАВОМІРНОЇ ВИГОДИ

Анотація. ***Мета.*** Метою статті є визначення особливостей тактики проведення допитів на початковій стадії розслідування щодо прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою. ***Результати.*** У статті наголошено, що допит є однією з найважливіший слідчих (розшукових) дій, за допомогою якої слідчий, прокурор отримує докази причетності особи до вчиненого злочину та перевіряє інші зібрані фактичні дані, виступає найбільш поширеною слідчою (розшуковою) дією у розслідуванні прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою. Розглянуто особливості допиту різних категорій осіб, які беруть участь на початковій стадії розслідування щодо прийняття пропозиції, обіцянки або одержання неправомірної вигоди службовою особою (вигодонадавача (заявника), свідка та вигодоодержувача (підозрюваного). Для кожної із зазначених категорій визначено особливості, які впливають на тактику допиту: для заявника, потерпілого є необхідність з'ясування обставин про джерело отримання відомостей про вчинення злочину; службову особу, яка його вчинила чи готується до його вчинення; предмет неправомірної вигоди; мету, досягнення якої є умовою надання неправомірної

вигоди; наявність чи відсутність факту вимагання неправомірної вигоди; встановлення інших свідків, що зумовлює проведення допиту для з'ясування обставин, які в подальшому нададуть можливість перевірити інші здобуті під час проведення досудового розслідування відомості про факти. ***Висновки.*** Зроблено висновок, що виокремлено тактики допиту в ситуаціях, коли підозрюваний заперечує причетність до вчинення злочину та\або відмовляється від надання свідчень. Визначено, що в першому випадку основна увага спрямовується на з'ясування обставин, які передують події злочину та свідчать про дії підозрюваного під час його вчинення, з необхідністю деталізації відповідей для можливості їх перевірки та спростування в майбутньому, а у випадку відмови від надання показань потрібно застосувати тактичні прийоми, спрямовані на подолання позиції підозрюваного, шляхом проведення розмови на абстрактну тему для встановлення психологічного контакту, під час якої застосувати роз'яснення та переконання в тому, що зайнята позиція є невигідною для підозрюваного.

Ключові слова: одержання неправомірної вигоди, досудове розслідування, початкова стадія, допит, тактика проведення.

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ANALYSIS OF INTERNATIONAL AND EUROPEAN ENTITIES INVOLVED IN CONTROL AND SUPERVISION IN THE FIELD OF COMBATING DOMESTIC VIOLENCE

Abstract. ***Purpose.*** The purpose of the article is to analyse the system of actors involved in control and supervision in the field of combating domestic violence which have the status of international and European (regional) entities. ***Results.*** It is stated that the system of actors involved in control and supervision activities in the field of combating domestic violence consists of numerous bodies, institutions or organisations which are designed to monitor the discipline of the tasks assigned to the authorised entities, as well as the dynamics of eradicating this socially dangerous phenomenon. This system may include both public and private actors; both state and international as well as regional. Each of these actors has its own responsibility and a list of instruments for achieving the goal of its implementation. The article analyses the system of international and European bodies and structures that exercise control and supervision in the field of combating domestic violence. An important body in the field of combating domestic violence, which has specific control and supervisory functions, is UN Women. The body promotes gender equality worldwide and opposes all forms of gender-based violence, including domestic violence. ***Conclusions.*** It is stated that the key international bodies involved in combating domestic violence are the UN Committee on the Rights of the Child and UN Women. At the European level, such bodies are the Lanzarote Committee and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). It is determined that international and regional entities involved in control and supervision in the field of combating domestic violence exercise their powers on the basis of international conventions and treaties. For the most part, they perform control and supervisory functions through monitoring. However, the conclusions based on its performance are advisory in nature, that is, they are not binding on countries. However, failure to comply with them may have political consequences. It is clarified that in most cases, international control and supervisory bodies work in close dialogue with countries and provide them with the opportunity to present their position and provide comments on the recommendations, which can facilitate constructive cooperation.

Keywords: control and supervision, combating domestic violence, system of actors, international bodies, European bodies, monitoring, reporting.

1. Introduction

The concept of "system" first appeared in Ancient Greece 2500–2400 years ago and meant "combination", "organism", "organisation" (Kustovska, 2005). In Greek, "systema" means a whole composed of parts, a combination; a set of interacting elements united by the common goals that form a certain integrity; it is an object that is determined by a set of elements, transformations, the properties of which are not reduced to the properties of the object itself (Educational materials for students and schoolchildren of Ukraine, 2022).

The modern interpretation of "system" can have different meanings depending on the context in which it is used. The main definitions of "system" are as follows: 1) a set of interconnected, interdependent elements of any nature, which are combined by some systemic features, form a single whole and are subordinated to a certain common goal (Sharapov, Derbentsev, Semonov, 2004); 2) an object that is characterised by the composition of elements, the structure of their connections, parameters and has at least one input and one output that provide communication with the external environ-

ment, characterised by the laws of behaviour and changes behaviour when controlling influences are received (Kovalenko, Bidiuk, Hozhyi, 2004); 3) a set of objects of varying complexity (cell, tissue, organ, organ system, organism, biocenosis, ecosystem, biosphere), which include the maximum number of known levels of structural and functional organisation, each of which is a set of interdependent elements (Institute of Encyclopedic Research of the National Academy of Sciences of Ukraine, 2023); 4) a set of organisational and technical means for storing and processing information to meet the information needs of users, etc.

That is, both in ancient philosophy and in modern times, the term "system" is defined through a certain interconnected set of elements intended to achieve a certain goal in unity.

Therefore, when we speak of a "system of actors", we are talking about a complex network of interactions between different actors or entities. With this in mind, we can confidently state that the system of actors involved in control and supervision activities in the field of combating domestic violence consists of numerous bodies, institutions or organisations which are designed to monitor the discipline of the tasks assigned to the authorised entities, as well as the dynamics of eradicating this socially dangerous phenomenon. This system may include both public and private actors; both state and international as well as regional. Each of these actors has its own responsibility and a list of instruments for achieving the goal of its implementation.

The purpose of the article is to analyse the system of actors involved in control and supervision in the field of combating domestic violence which have the status of international and European (regional) entities.

2. Ensuring counteraction to domestic violence at the international level

Under international law, states have clear obligations to address domestic violence. States are required to exercise due diligence to prevent acts of violence against women; to investigate, prosecute and punish perpetrators; and to provide assistance to victims and redress for harm. The requirements for the adoption and implementation of national action plans to combat violence against women are set out in international and regional human rights instruments and policy documents. The adoption and implementation of multisectoral national action plans to combat domestic violence is one of the key requirements in the global fight against all types of violence against women around the world, as identified by the UN Secretary-General in his report "UniTE to end violence against women" (UNITE to End Violence against Women Campaign, 2022).

A database on violence against women was launched in 2009 as the first global "one-stop site" for information on measures undertaken by UN Member States to address violence against women. It will also help identify practices that can fight impunity and put an end to attitudes and stereotypes that permit or condone violence (United Nations Agencies Forward Together in the Response to Violence Against Women, 2009).

It should be noted that one of the key international bodies working in the field of combating domestic violence is the UN Committee on the Rights of the Child (2023). It is responsible for monitoring the implementation of the UN Convention on the Rights of the Child (2003), which contains a number of provisions on the protection of children's rights and safety, including combating domestic violence. Each State party to the Convention is required to report periodically to the Committee on the steps it takes to fulfil its obligations under the Convention. It also evaluates these reports, makes recommendations to States, engages in dialogue with Governments and other stakeholders, and draws conclusions on the situation of children's rights, including domestic violence.

The Committee encourages international, regional, national and local organisations to submit written reports on the implementation of the Convention in the country. Information may be submitted by individual non-governmental organisations or coalitions of non-governmental organisations, as well as by national human rights institutions and ombudsmen. It encourages civil society to coordinate and submit joint comprehensive reports to strengthen cooperation at the national level and increase the impact of the monitoring and reporting process (Information for civil society, NGOs and NHRIs, 2023).

Another important body in the field of combating domestic violence, which has specific control and supervisory functions, is UN Women. This body promotes gender equality worldwide and opposes all forms of gender-based violence, including domestic violence.

3. Ensuring counteraction to domestic violence in Ukraine

In Ukraine, the current scope of UN Women's activities includes targeted assistance to national partners in three thematic areas defined in the effective Strategic Note (2018–2022): women, peace and security; elimination of violence against women and girls; governance, leadership and participation (UN Women in Ukraine, 2023). Although this body does

not have direct control functions in the field of combating domestic violence, it is actively involved in the implementation of such measures (for example, joint monitoring groups are formed with the Secretariat of the Verkhovna Rada Commissioner for Human Rights) and in general, its activities are aimed at promoting non-violent models of masculinity, gender equality and human rights, respectful relationships and non-violent communication skills.

It should be noted that in 2012, Ukraine ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007). The Lanzarote Committee is a body established to monitor whether States effectively implement the provisions of the Lanzarote Convention. The Committee is also mandated to facilitate the collection, analysis and exchange of information, experiences and best practices in order to increase potential to prevent and end sexual exploitation and sexual abuse of children. The Committee regularly publishes progress reports, conclusions and declarations. This is in line with the 2019 Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse, which states that Member States of the Convention shall ensure "effective monitoring of the practices and standards, to prevent/combat child sexual abuse" (2.vi.) (Methodological recommendations for monitoring compliance with children's right to protection from violence and ill-treatment, 2021). In other words, the Lanzarote Committee is an important international mechanism for protecting children's rights against sexual exploitation and sexual abuse, as well as for strengthening international cooperation in this field.

The Istanbul Convention is the basic document that provides for a regional monitoring mechanism for combating domestic violence in practice. Such monitoring is possible thanks to the work of two important institutions, namely: The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (Council of Europe, 2022) (an independent expert body) and the Committee of the Parties (Committee of the Parties, 2022) which is the political body of the Istanbul Convention monitoring mechanism (under the Council of Europe), composed of official representatives of the Member States of the Istanbul Convention (Rosokhata, Krushynska, 2022).

GREVIO is composed of 10–15 representatives from Member States (the number of experts depends on the number of Member States). GREVIO members are selected with gender and geographical balance. The following requirements are set for the candidates: 1) interdisciplinary experience in the field of human rights, gender equality, violence against women and domestic violence or in assisting and protecting victims; 2) honesty, competence, independence and openness; 3) knowledge of English and/or French; 4) citizens of the Member States of the Convention (Council of Europe, 2022).

Article 67, paragraph 2, of the Istanbul Convention entrusts the Committee of the Parties with the task of electing the members of GREVIO (Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), 2011). On the basis of GREVIO's reports and findings, it further adopts recommendations indicating the measures to be taken to implement the conclusions contained in the report. It also monitors the implementation of its own recommendations after the end of the three-year implementation period, using a standardised reporting form that member states are required to complete in accordance with the supervisory procedure adopted at its 10th meeting on 13 April 2021 (Committee of the Parties, 2022).

4. Conclusions

International and regional entities involved in control and supervision in the field of combating domestic violence exercise their powers on the basis of international conventions and treaties. For the most part, they perform control and supervisory functions through monitoring. However, the conclusions based on its performance are advisory in nature, that is, they are not binding on countries. However, failure to comply with them may have political consequences, including public pressure in the country's domestic policy to fulfil international obligations. In most cases, international control and supervisory bodies work in close dialogue with countries and provide them with the opportunity to present their position and provide comments on the recommendations, which can facilitate constructive cooperation.

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АНАЛІЗ МІЖНАРОДНИХ ТА ЄВРОПЕЙСЬКИХ СУБ'ЄКТІВ КОНТРОЛЬНО-НАГЛЯДОВОЇ ДІЯЛЬНОСТІ У СФЕРІ ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ

Анотація. ***Мета.*** Метою статті є аналіз системи суб'єктів контрольно-наглядової діяльності у сфері протидії домашньому насильству, які мають статус міжнародних та європейських (регіональних). ***Результати.*** Стверджується, що система суб'єктів контрольно-наглядової діяльності у сфері протидії домашньому насильству складається із чисельних органів, установ чи організацій, які покликані відстежувати дисципліну виконання покладених на уповноважених суб'єктів завдань, а також динаміку викорінення цього суспільно-небезпечного явища. Ця система може охоплювати як публічних суб'єктів, так і приватних; як державних, так і міжнародних та регіональних. Кожен із цих суб'єктів має свою зону відповідальності та перелік інструментів досягнення мети її реалізації. Ця стаття присвячена аналізу системи міжнародних та європейських органів і структур, які здійснюють контрольно-наглядову діяльність у сфері протидії домашньому насильству. Важ-

ливим органом у сфері протидії домашньому насильству, який має окремі контрольно-наглядові функції, є «ООН-жінки». Цей орган сприяє гендерній рівності в усьому світі та виступає проти всіх форм гендерно-обумовленого насильства, у тому числі домашнього. ***Висновки.*** Констатовано, що ключовими в системі міжнародних органів, що працюють у сфері протидії домашньому насильству, є Комітет ООН з прав дитини та «ООН-жінки». На європейському рівні такими органами є Лансаротський комітет і Група експертів з дій проти насильства стосовно жінок і домашнього насильства (GREVIO). Визначено, що міжнародні та регіональні суб'єкти контрольно-наглядової діяльності у сфері протидії домашньому насильству здійснюють свої повноваження на підставі міжнародних конвенцій і договорів. Здебільшого контрольно-наглядові функції вони виконують шляхом здійснення моніторингу. Але висновки на підставі його проведення мають рекомендаційний характер, тобто для країн вони не є обов'язковими. Водночас недотримання таких рекомендацій може мати політичні наслідки. Уточнюється, що в більшості випадків міжнародні контрольно-наглядові органи працюють у тісному діалозі з країнами та надають їм можливість представити свою позицію і надавати коментарі до рекомендацій, що може сприяти конструктивній співпраці.

Ключові слова: контрольно-наглядова діяльність, протидія домашньому насильству, система суб'єктів, міжнародні органи, європейські органи, моніторинг, звітування.

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LEGAL GUARANTEES OF JOURNALIST'S ACTIVITIES IN THE CONDITIONS OF WAR

Abstract. ***Purpose.*** The purpose of the publication is to determine, based on the analysis of available scientific and regulatory sources, legal guarantees of the rights and freedoms of journalists and their family members under martial law. ***Research methods.*** The methodological basis of the scientific article was made up of such general scientific methods as dialectic, analysis, synthesis, deduction, induction, analogy and abstraction, as well as special scientific methods (formal-logical, comparative-legal, dogmatic and systemic-structural), the use of which contributed to the study of the problem guarantees of the activities of journalists in the conditions of war in the unity of their social content and legal form. ***Results.*** The concept of legal guarantees for the activities of journalists, as stipulated by international treaties, conventions, declarations, and other national legal acts of the system of norms, principles, legal and organizational means, conditions and requirements, which are used to observe, ensure, protect and protect the rights of journalists, is formulated and their family members. It has been established that the Constitution of Ukraine and other laws provide for the use, along with domestic guarantees, of international legal guarantees of the activities of mass media representatives. ***Conclusions.*** According to the provisions of international humanitarian law, journalists can have two statuses in wartime: 1) military correspondents who have the right to receive the status of a prisoner of war in case of capture and 2) journalists who perform their functions in the zone of armed conflict, which are equated to civilians, and cannot be considered as prisoners of war, although they have the right to respect and protection. It is summarized that any illegal actions against journalists in the conditions of martial law should be considered a violation of the ethics and rules of war against the civilian population. At the same time, it was emphasized that the provisions of international humanitarian law impose on journalists the duty to respect the inviolability of private life and the dignity of the dead, to refrain from close-up coverage of scenes of violence and their consequences, to maintain a balance between the public interest in complete and accurate information and the need to be compassionate, as well as not to disclose information defined by national legislation as potentially threatening territorial integrity and national interests.

Key words: journalists, martial law, legal guarantees, legal status, prisoners of war, protection.

1. Introduction

From the moment of Russia's large-scale military invasion of Ukraine on February 24, 2022, timely, reliable and non-committal information of citizens and the world about the course of the war plays an important role in resisting the enemy. In this context, the contribution of Ukrainian media becomes even more powerful than ever (Pro pravovyi rezhym voiennoho stanu: Zakon Ukrainy, 2015). Every day, thousands of journalists report breaking news about evacuations, alerts or the deployment of hostilities, helping to prevent panic and coordinate the actions of the civilian population.

Under such realities today, the work of journalists is becoming more and more dangerous, especially when it comes to the performance of professional duties in occupied territories and areas of hostilities.

Therefore, given the extreme importance of the information front, the issue of the legal status of media representatives and the proper

protection of journalists during the war becomes more urgent, and requires the introduction of additional guarantees for them and their family members.

Certain aspects of legal guarantees of journalists' activities were studied in the scientific works of V.S. Solovyov, M.V. Vitrua, L.D. Voyevodin, V.V. Golovchenko, V.A. Kartashkin, A.M. Kolodiy, V.O. Kuchinsky, A.I. Marushchak, N.I. Matuzov, V.S. Nersesyants, A.Yu. Oliynyk, V.F. Pohorilko, N.I. Titov, O.P. Tsurkan, V.M. Chhikvadze and many other scientists. However, a general theoretical study of the guarantees of journalists' activities in wartime based on the analysis of the relevant legislative framework, under modern conditions, has not been carried out in Ukraine.

In the conditions of the war unleashed on the territory of Ukraine, there is a threat of hindering the legitimate professional activities of journalists, restrictions on freedom of speech, prohibitions on access to information, and the risk of physical and psychological impact on the mentioned persons and their family members increases. That is why the number of proposals for improving the professional activity of journalists, covering information of public interest is increasing; incorrectly fixed provisions at the legislative level that limit the professional activity of journalists and other mass media representatives.

The purpose of this article is to determine, based on the analysis of available scientific and regulatory sources, legal guarantees of the rights and freedoms of journalists and their family members under martial law. Achieving the set goal is possible thanks to the following tasks: to determine the international legal guarantees of the rights of journalists; carry out an analysis of national legislation on the protection of journalists' rights.

The methodological basis of the scientific article was made up of the methods and techniques of scientific knowledge. The leading research method is dialectical, with the help of laws and categories, the main legal guarantees of journalists and their family members at the national and international level are clarified. The use of methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction) and special scientific methods (formal-logical, comparative-legal, dogmatic and systemic-structural) contributed to the study of the problem of guaranteeing the activities of journalists in the conditions of war in the unity of their social content and legal form.

2. International legal guarantees of the rights of journalists in conditions of war

An indispensable condition for the reality of human rights is the presence of corresponding obligations of other subjects, the state, etc. and, above all, the obligation not to violate them. At the same time, the state that recognizes human rights also has the obligation to guarantee them. At the same time, states, as participants in international cooperation in the field of human rights, assume relevant international legal obligations and, by mutual agreement, determine the means of their international legal support. Such legal means are legal phenomena that, due to their properties, are capable of being instruments of influence on states' fulfillment of their obligations: to guarantee fundamental rights and freedoms to every person under their jurisdiction (Shmelova, 2004, p. 99).

Studying the provisions of international humanitarian law leads to the conclusion that legally, journalists who perform their professional duties in places of military conflicts can have two statuses:

– Military correspondents (or journalists assigned to military units) - have the status of civilians, accreditation in the armed forces, accompany military formations, but are not their members. According to Art. 4A (Pershyi Dodatkovyi protokol do Zhenevskykh konventsii, 1949) of the 1949 Convention on the Treatment of Prisoners of War (Konventsiia pro povodzhennia z viiskovopolonenymy, 1949) they have the right to receive prisoner of war status if captured. If there is doubt as to the applicability of this status, the person remains under the protection of international humanitarian law until the issue is resolved by a competent court. At the same time, it is important that the status of a military correspondent does not involve participation in hostilities, the use of weapons or intelligence activities, otherwise he loses the status of a civilian and acquires the status of a participant in hostilities;

– Journalists who are on dangerous business trips to armed conflict zones have the status of civilians and an editorial task to prepare material in the armed conflict zone. According to the First Additional Protocol to the Geneva Conventions of 1949 (Pershyi Dodatkovyi protokol do Zhenevskykh konventsii, 1949) customary norms of international humanitarian law (Rekomendatsiia Komitetu ministriv Rady Yevropy № R (96) 4, 1996), they cannot be regarded as prisoners of war, but have the right to respect and protection, as long as they do not take part in hostilities.

According to the First Additional Protocol to the Geneva Conventions of 1949, confirmation of the status of a journalist is a journalist's certificate issued by the state authorities. If

a person works as a freelance journalist, blogger, civilian journalist or a journalist in the territory of which an armed conflict is taking place (not accredited by the state to work in the territory where hostilities are taking place), he has the same rights and protection in the field as an average civilian population (Pershyi Dodatkovyi protokol do Zhenevskykh konventsii, 1949).

If we talk about the guarantees of the rights of journalists and their family members, then they are reflected at the international and national level. Let's consider them in more detail, having analyzed the provisions of international legislation.

International legal guarantees are contained in various conventions, directives and declarations. In particular, the Recommendations of the Committee of Ministers of the Council of Europe No. R (96) 4 "On the protection of journalists in conditions of conflict and pressure" contain the following guarantees:

– creation of proper protection and assistance conditions for journalists working in conflict zones;

– ensuring non-discrimination of journalists on any grounds;

– sufficient insurance coverage in case of illness, bodily injury, capture or death (Rekomendatsiia Komitetu ministriv Rady Yevropy № R (96) 4, 1996);

– Resolution of the Parliamentary Assembly of the Council of Europe No. 1438 (2005) "Freedom of the press and working conditions of journalists in conflict zones" defines the following guarantees:

– the obligation for the parties to the conflict to guarantee safe working conditions for journalists on their territory;

– investigation of cases of violence or deaths involving journalists that occur on their territories (Rezoliutsiia Parlamentskoi asamblei Rady Yevropy № 1438, 2005).

The Declaration of the Committee of Ministers on the Protection of Journalism and the Safety of Journalists and Other Media Participants contains the following guarantees:

– ensuring protection of journalists from illegal violence;

– creation of conditions for the prevention of violence against journalists and all kinds of threats;

– prosecution for murder or acts of violence against journalists;

– implementation by states of compensation mechanisms for victims of crimes against journalists and their family members;

– financial compensation for the costs of treatment and rehabilitation of injured journalists (Rekomendatsiia CM / Rec (2016)4).

From the analysis of the provisions of international humanitarian law, it can be seen that journalists do not have a special status in the conditions of an armed conflict, because they are practically equal to ordinary civilians, who are provided with a system of guarantees in times of war.

In terms of protecting the rights of journalists under such a special legal regime, the Convention on the Protection of the Civilian Population in Time of War should be considered a key legal act, which, among other things, enshrines: the prohibition of violence against life and person; ban on taking hostages; prohibition of insulting human dignity; prohibition of conviction and punishment without a court decision; prohibition of forced mobilization by the party that occupied the territories; ensuring fundamental rights (treatment, food, housing, etc.); compensation for moral and property damage, as well as damage to health caused during the war (injury, mutilation, death of a person) (Konventsiia pro zakhyst tsyvilnoho naselennia pid chas viiny, 1949).

In general, international legal guarantees of the activities of journalists can be interpreted as a system of international norms, principles, legal and organizational means, conditions and requirements provided for by international treaties, conventions, declarations and other international documents, with the help of which the observance, provision, protection and protection of rights is carried out journalists and their family members.

3. National guarantees for the protection of journalists' rights

Special attention needs to be paid to the analysis of national guarantees for the protection of journalists' rights, which are reflected in the normative legal acts of domestic legislation.

In particular, the Law of Ukraine "On State Support of Mass Media and Social Protection of Journalists" contains the following guarantees:

– the right to labor protection, benefits and compensation for work with difficult and harmful working conditions, to medical examinations, social insurance, to a comprehensive investigation of accidents, death and damage caused to health in the performance of official duties, and the right to appropriate reimbursement;

– the right for family members of deceased journalists to financial aid and burial assistance;

– the right for family members of deceased journalists to one-time cash assistance in the amount of 100 subsistence minimums, established by law for able-bodied persons at the time of payment;

– the right for journalists to a one-time monetary assistance in the amount of 50 subsistence minimums established by law for able-bodied persons at the time of payment in the event of an injury (concussion, trauma or mutilation) caused to the journalist during the performance of his professional duties (Pro derzhavnu pidtrymku zasobiv masovoi informatsii ta sotsialnyi zakhyst zhurnalistiv. Zakon Ukrainy, 1997).

It should be noted that there are no other special legal acts on the social protection of journalists in Ukraine.

In the Order of the Ministry of Defense of Ukraine "On approval of the Instruction on the procedure for the implementation of norms of international humanitarian law in the Armed Forces of Ukraine" it is noted that journalists have the status of civilians. But being civilians, at the national level they also enjoy all the guarantees provided for by the legislation of Ukraine (payments in case of temporary resettlement, the right to compensation for destroyed housing, etc.) (Nakaz Ministerstva oborony Ukrainy № 164, 2017).

It is also worth recalling that on April 14, 2022, the Verkhovna Rada of Ukraine adopted the Resolution "On the Statement of the Verkhovna Rada of Ukraine on the Value of Freedom of Speech, Guarantees of Activities of Journalists and Mass Media During Martial Law", which, in particular, states that: one of one of the key tasks of the Ukrainian state should be to ensure the guarantees of freedom of speech, free obtaining, collection and distribution of information established by the Constitution of Ukraine, taking into account the restrictions established by the laws of Ukraine, related to martial law. The Ukrainian state has no right to copy the totalitarian practices of the aggressor state. Any illegal attempts to interfere in the work of journalists and mass media, any crimes against journalists or cases of technical shutdown of pro-Ukrainian TV channels from the air should receive a decisive reaction of law enforcement agencies and bring the guilty to justice. In the conditions of martial law, the state will support honest journalists, independent mass media, which is a sign of any democratic society, which, of course, is the society of Ukraine (Postanova № 2190-IX, 2022).

The rules for the work of journalists, approved by Order No. 73 of the Commander-in-Chief of the Armed Forces of Ukraine on March 3, 2022, regulate the procedure for accreditation of mass media representatives during martial law, determine the list of information that is prohibited from being disclosed, and establish the procedure for the work of journalists in the combat zone Nakaz Holovnokomanduvacha Zbroinykh Syl Ukrainy №73, 2022). Among other things, it is noted that the list of information, the disclosure of which can lead to the awareness of the enemy and negatively affect the performance of tasks, includes: information about the system of protection and defense of the system of military facilities and means of protection of personnel, weapons and military equipment that are used. At the same time, it is clarified that it is not about those objects that are visible or obviously expressed (Nakaz Holovnokomanduvacha Zbroinykh Syl Ukrainy № 73, 2022).

In addition, the Law of Ukraine "On the Legal Regime of Martial Law" provides for a temporary, threat-driven, restriction of the constitutional rights and freedoms of a person and a citizen, and the rights and legal interests of legal entities, with an indication of the period of validity of these restrictions. Including restrictions may apply to freedom of speech. These restrictions are related to the fact that the release of some information may pose a risk to civilians and the military (Pro pravovyi rezhym voiennoho stanu, Zakon Ukrainy № 389-VIII, 2015).

Due to the absence of a monopoly on the dissemination of information in Ukraine, the events of a full-scale war can be covered by both professional and citizen journalists (bloggers).

The Law of Ukraine "On Media" adopted on March 31, 2023 defines that a journalist is a creative employee of a subject in the field of media who professionally collects, receives, creates, edits, distributes and ensures the preparation of information for the media (Pro media, Zakon Ukrainy № 2849-IX, 2023). From this definition, we can see the key feature by which a journalist differs from a blogger – "professionally".

If we talk about how the reports of military personnel differ from the streams that are constantly conducted by the military themselves in terms of accuracy, relevance, efficiency, compliance with certain ethical norms, then there are differences between them. Professional journalists: specially trained to collect, verify and present information; they shoot not what they want, but what is socially important; availability of editorial policy, plans and tasks; compliance with journalistic standards and the Code of Ethics. A lack of balance and subjectivism is often observed in the activities of the military (Rol profesiinykh zhurnalistiv i bloheriv pid chas viiny, 2022).

Restrictions on the distribution of certain information during martial law can create difficulties for journalists trying to cover socially important topics. However, martial law does not preclude the media from making efforts to honestly inform the public. Journalists must adhere

to ethical norms and professional standards to ensure quality and objective coverage of topics important to all Ukrainians (Rol profesiinykh zhurnalistiv i bloheriv pid chas viiny, 2022).

We also note that Armed Forces of Ukraine Order No. 73 refers to the following list of information that cannot be disclosed in the media:

– names of military units and other military facilities in the areas where combat missions are carried out, geographical coordinates of their locations;

– number of personnel of military units and units;

– the number of weapons and combat equipment, material and technical means, their condition and storage locations;

– descriptions, images and conditional marks that identify or can identify military objects;

– information about hostilities or operations that are being conducted or planned;

– information on the system of protection and defense of military facilities and means of protection of personnel, weapons and military equipment used (except for those that are visible or obviously expressed);

– procedure for engaging forces and means to perform combat tasks;

– information on the collection of intelligence data (methods, methods, forces and means involved);

– information on the movement and deployment of its troops (name, number, locations, districts, routes);

– information about military units, methods or tactics of their actions;

– information on conducting unique operations with an indication of techniques and methods used;

– information on the effectiveness of the enemy's radio-electronic warfare forces and means;

– information about postponed or canceled operations;

– information about a missing or downed aircraft or a missing ship and search and rescue operations that are planned or carried out;

– information on the planning and implementation of measures to ensure the security of the use of troops (disinformation, imitation, demonstrative actions, masking, countering technical intelligence and information protection);

– photo and video recording and other visual information with representatives of illegal armed formations (Nakaz Holovnokomanduvacha Zbroinykh Syl Ukrainy № 73, 2022).

Summarizing this subsection, we note that ensuring the guarantees of freedom of speech, free receipt, collection and dissemination of information defined by the Constitution of Ukraine (taking into account the restrictions established by the laws of Ukraine related to martial law) is one of the key tasks of the state, which is properly reflected in national legislation, and under the condition of adequate application by authorized subjects of the state, is an important tool in the mechanism of ensuring the rights of representatives of mass media.

4. Conclusions

Legal guarantees of the activities of journalists – a system of norms, principles, legal and organizational means, conditions and requirements provided for by international treaties, conventions, declarations and other national legal acts, with the help of which the rights of journalists and their family members are observed, ensured, protected and protected. Legal guarantees for journalists and their family members are reflected at the international legal and national level.

According to the provisions of international humanitarian law, journalists can have two statuses in wartime: 1) military correspondents who have the right to receive the status of a prisoner of war in case of capture and 2) journalists who perform their functions in the zone of armed conflict, which are equated to civilians, and cannot be considered as prisoners of war, although they have the right to respect and protection.

From the content of national and international legislation, it can be seen that any illegal actions against journalists in the conditions of martial law should be considered a violation of the ethics and rules of war against the civilian population. At the same time, the provisions of international humanitarian law impose on journalists the obligation to respect the inviolability of private life and the dignity of the dead, to refrain from close-up coverage of scenes of violence and their consequences, to maintain a balance between the public interest in complete and accurate information and the need to be compassionate, as well as not to disclose information, defined by national legislation as potentially threatening territorial integrity and national interests.

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ПРАВОВІ ГАРАНТІЇ ДІЯЛЬНОСТІ ЖУРНАЛІСТІВ В УМОВАХ ВІЙНИ

Анотація. ***Метою*** публікації є визначення на підставі аналізу наявних наукових і нормативних джерел правових гарантій прав і свобод журналістів та членів їх сімей в умовах воєнного стану. ***Методи дослідження.*** Методологічну основу наукової статті становили такі загальнонаукові методи, як діалектичний, аналізу, синтезу, дедукції, індукції, аналогії та абстракції, а також спеціально наукові методи (формально-логічний, порівняльно-правовий, догматичний і системно-структурний), використання яких сприяло дослідженню проблеми гарантій діяльності журналістів в умовах війни в єдності їх соціального змісту та правової форми. ***Результати.*** Сформульовано поняття правових гарантій діяльності журналістів як передбаченої міжнародними договорами, конвенціями, деклараціями й іншими національними нормативно-правовими актами системи норм, принципів, правових і організаційних засобів, умов і вимог, за допомогою яких здійснюється дотримання, забезпечення, охорона та захист прав журналістів і членів їх сімей. Констатовано, що Конституція України й інші закони передбачають використання поряд із внутрішньодержавними гарантіями і міжнародно-правових гарантій діяльності представників засобів масової інформації. ***Висновки.*** Відповідно до положень міжнародного гуманітарного права в умовах війни журналісти можуть мати два статуси: 1) військові кореспонденти, які мають право отримати статус військовополоненого в разі потрапляння в полон, і 2) журналісти, які виконують свої функції в зоні збройного конфлікту, які прирівнюються до цивільних осіб, та не можуть розцінюватися як військовополонені, хоча й мають право на повагу і захист. Резюмується, що будь-які неправомірні дії щодо журналістів в умовах воєнного стану слід вважати порушенням етики та правил війни щодо мирного населення. Водночас наголошено, що положення міжнародного гуманітарного права покладають на журналістів обов'язок поважати недоторканність приватного життя і гідність мертвих, утримуватись від висвітлення крупним планом сцен насильства та їх наслідків, дотримуватись балансу між суспільним інтересом щодо повної і точної інформації та потребою бути співчутливими, а також не розголошувати інформацію, визначену національним законодавством як таку, що може загрожувати територіальній цілісності та національним інтересам.

Ключові слова: журналісти, воєнний стан, правові гарантії, правовий статус, військовополонені, захист.

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