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ON LEGAL SUPPORT FOR THE PROCESSES OF ADOPTION, APPROVAL AND IMPLEMENTATION OF THE DEBTOR REHABILITATION PLAN

Abstract. ***Purpose.*** The purpose of the paper should be the following: based on the use of analysis and other methods of scientific knowledge, to identify inaccuracies in the legal support of adoption, approval and implementation of the rehabilitation plan, to identify and systematize measures to restore the debtor's solvency, which contain the rehabilitation plan, to make suggestions to improve theory, practice, and legislation. ***Research methods***. An analysis of the provisions of the Code of Ukraine on Bankruptcy Procedures (CUBP) and the theoretical views of researchers was conducted to find new ways to protect debtors in the reorganization procedure and to improve existing ways to protect debtors. The dialectical method allowed for studying the theoretical aspects of applying various measures to restore the debtor's solvency in the rehabilitation procedure. The method of formal logic contributed to the study of legal provisions, particularly in identifying gaps and arguing theoretical proposals. Comparative legal and historical legal methods made it possible to identify practical examples in different countries and the works of researchers at various times to argue for the possibility of their implementation in domestic theory, practice, and legislation. ***Results.*** In the course of studying the relationship during the transition from the procedure for disposing of the debtor's property to the procedure for the rehabilitation, it is necessary to eliminate the inappropriateness in the sequence of regulation of the content of the rehabilitation plan, the processes of consideration and acceptance of the rehabilitation plan by creditors. These issues should be determined before completing the procedure for disposing of the debtor's property. The corresponding provisions should be specified in Section II «Disposition of the Debtor's Property» of the CUBP, since the last article of this section states that the rehabilitation plan is approved by the meeting of creditors even before the end of the procedure for disposing of the debtor's property and Article 50 «Introduction of the Rehabilitation Procedure» of Section III begins with the provision that the economic court approves the rehabilitation plan and issues a ruling on the introduction of a rehabilitation procedure. If the administrator of the debtor's property fails to fulfill the obligation to develop a rehabilitation plan or the rehabilitation plan is not approved by the body authorized to manage the debtor's property, the economic court is authorized to make a decision only on the application of economic and legal means to them. The paper highlights the need to bring such an administrator of the debtor's property to disciplinary, administrative, civil or criminal liability outside the bankruptcy case on the initiative of a state body on bankruptcy issues, a self-regulatory organization of arbitration managers, the owner of the debtor's property, any of the creditors, a representative of the law (for example, prosecutor), a member of the public. ***Conclusions***. To increase the effectiveness of the application of measures to restore the debtor's solvency, it is proposed to supplement Section III «Debtor Rehabilitation» of the CUBP with the articles that will regulate the legal basis for the application of all measures to restore the debtor's solvency, referred to in the second part of Article 51 «Debtor Rehabilitation Plan» of the CUBP.

Key words: bankruptcy, rehabilitation of the debtor, disposal of the debtor's property, rehabilitation plan, creditor, economic court, Code of Ukraine on Bankruptcy Procedures, arbitration manager, debtor's property, measures to restore the debtor's solvency, meeting of creditors.

1. Introduction

The economic situation in Ukraine has been quite difficult for several years. Despite the hard work of most employees, the initiative and ingenuity of entrepreneurs, and the attempts of the authorities to help busi-

nesses, the war still leaves its negative imprint. The well-known saying among financiers that money loves silence has not been canceled and is unlikely to be refuted. Economic activity, and entrepreneurship within its limits, by definition, is risky. In war conditions, the number and scale of risks certainly increases. Therefore, the number of enterprises, institutions, and organizations subject to bankruptcy proceedings (disposal of the debtor's property, rehabilitation of the debtor, liquidation) potentially and increases. It is unprofitable for business entities that planned to conduct economic activities and receive profits and other social effects. It is also unprofitable for the state, whose wealth is directly proportional to the number of business entities and the income from taxes they pay. Creditors are also not interested in bringing their debtor to bankruptcy since they may not receive the entire amount of debt in full in this case. For these reasons, compared with the liquidation procedure, the effective application of the rehabilitation procedure looks more promising.

Literature review. Various theoretical and practical aspects of bankruptcy as a legal institution and the specifics of the implementation of various bankruptcy procedures were the subject of research by a significant number of Ukrainian researchers who are scientists, judges of economic courts, arbitration managers, employees, and property owners of business entities that can become participants in bankruptcy procedures – both creditors, debtors or bankrupt. The following are among such Ukrainian researchers: Afanasiev (Afanasiev, 2001), Bilokon (Bilokon, 2005), Biriukov (Biriukov, 1999), Bohatyr (Bohatyr, 2021), Butyrska (Butyrska, 2017), Butyrskyi (Butyrskyi, 2007), Chorna (Chorna, 2018), Dutka (Dutka, 2021), Dzhun (Dzhun, 2009), Hrabovan (Hrabovan, 2017), (Hrabovan, 2019), Hushylyk (Hushylyk, 2019), (Hushylyk, 2020), (Hushylyk, 2021), Kabenok (Kabenok, 2019), Kalchenko (Kalchenko, 2020), Kolisnychenko (Kolisnychenko, 2019), Larionova and Donchenko (Larionova, Donchenko, 2012), Levshyna (Levshyna, 2020), Malyha (Malyha, 1999), Marchenko (Marchenko, 2019), Marchenko (Marchenko, 2019), Minkovskyi (Minkovskyi, 2015), Nosan, Nazarenko S., Nazarenko T. (Nosan, Nazarenko S., Nazarenko T., 2022), Novyk (Novyk, 2021), Pihul and Semenets (Pihul, Semenets, 2020), Poliakov B. (Polyakov B., 2003a), (Polyakov B., 2003b), (Polyakov B., 2003c), Poliakov R. (Poliakov R., 2022), (Poliakov R., 2023a), (Poliakov R., 2023b), Pryhuza (Pryhuza, 2011), Radzyviliuk (Radzyviliuk, 2001), Shara (Shara, 2005), Stepanov (Stepanov, 2006), Tytova (Tytova, 2006) etc. Nevertheless, despite the quantity and quality of previously conducted scientific research, the number of bankruptcies of Ukrainian business entities is not decreasing. Therefore, it is essential to study the procedure for developing a rehabilitation plan by the arbitration manager, approving it at the meeting of creditors, approving it by the economic court, determining its content, and especially rehabilitation measures, particularly for the possibility of implementation. And among the entire array of the above works of Ukrainian authors, as well as an even larger array of other works that were not specified above, there are relatively few works that directly relate to the problems of development (in particular, filling), adoption, approval, implementation of the rehabilitation plan. This also causes the need for research.

Research methods. An analysis of the provisions of the Code of Ukraine on Bankruptcy Procedures (hereinafter referred to as the CUBP) (Code of Ukraine on Bankruptcy Procedures, 2018) and the theoretical views of researchers was carried out to find new ways to protect debtors in the reorganization procedure and to improve existing ways to protect debtors. The dialectical method allowed for studying the theoretical aspects of applying various measures to restore the debtor's solvency in the rehabilitation procedure. The method of formal logic contributed to the study of legal provisions, particularly in identifying gaps and arguing theoretical proposals. Comparative legal and historical legal methods made it possible to identify practical examples in different countries and the works of researchers at various times to argue for the possibility of their implementation in domestic theory, practice, and legislation.

Purpose. The purpose of the paper should be the following: based on the use of analysis and other methods of scientific knowledge, to identify inaccuracies in the legal support of adoption, approval and implementation of the rehabilitation plan, to identify and systematize measures to restore the debtor's solvency, which contain the rehabilitation plan, to make suggestions to improve theory, practice, and legislation.

2. Completion of the property disposal procedure, development, submission, and approval of the rehabilitation plan

Part two of Article 49 «Completion of the procedure for disposing of property» of the CUBP determines that before the end of the procedure for disposing of the debtor's property, the meeting of creditors makes one of the following decisions:

– approve the rehabilitation plan and submit a petition to the economic court for

the introduction of the rehabilitation procedure and approval of the rehabilitation plan;

– submit a petition to the economic court to declare the debtor bankrupt and open a liquidation procedure (Code of Ukraine on Bankruptcy Procedures, 2018).

The second option, i.e., the liquidation procedure will be applied in case of assurance that any rehabilitation or other mechanisms for the enterprise are useless and/or impossible (Bohatyr, 2021, 37). In this case, it is unlikely that creditors can expect full repayment of the debt owed to them. If there are facts that indicate the possibility of saving the debtor, the first option is approved – rehabilitation, which will be beneficial to the debtor, the state, and creditors of the debtor.

In part three of the above-mentioned article of the CUBP, one of the four possible court decisions made by the economic court at the final meeting is a resolution on the introduction of a rehabilitation procedure and approval of a rehabilitation plan if the debtor's rehabilitation plan is approved by the meeting of creditors and its approval by creditors in the manner established by the CUBP (Code of Ukraine on Bankruptcy Procedures, 2018). Thus, at the end of the procedure for disposing of the debtor's property, the rehabilitation plan should already be developed and submitted to the meeting of creditors. Based on part three of Article 44 «Introduction of the procedure for disposing of the debtor's property» of the CUPB, the property administrator is obliged, if possible, to carry out the rehabilitation of the debtor, to develop a rehabilitation plan and submit it for consideration to the meeting of creditors; and on the basis of part ten of Article 45 «Creditors and persons wishing to take part in the debtor's rehabilitation» in the property disposal procedure, the property administrator, with the participation of the debtor, develops a plan for the debtor's rehabilitation in accordance with the requirements of the CUBP and submits it to the meeting of creditors for consideration (Code of Ukraine on Bankruptcy Procedures, 2018). This looks positive compared to the fact that during the first editions of the laws on restoring the debtor's solvency or declaring it bankrupt, the rehabilitation plan should have been developed by the rehabilitation manager and submitted to the meeting of creditors within three months from the date of the resolution on the rehabilitation. The question arose about the loss of at least three whole months, during which the rehabilitation plan could already be implemented. Currently, at the beginning of the procedure for disposing of the debtor's property, the administrator must assess the debtor's prospects for rehabilitation and develop an appropriate rehabilitation plan. The CUBP does not set a deadline for preparing a rehabilitation plan, nor does it determine the deadline for its readiness. However, since even before the end of the procedure for disposing of the debtor's property, such a plan must be reviewed and approved by the committee of creditors, its readiness must be achieved at least several days before the final court hearing in the property disposal procedure (Code of Ukraine on Bankruptcy Procedures, 2018). Hrabovan, referring to the sixth part of Article 51 of the CUBP, points out the obligation of the body authorized to manage the debtor's property to coordinate the rehabilitation plan in cases of bankruptcy of state-owned enterprises without setting the time and consequences of non-fulfillment of such an obligation and recalls that the rehabilitation plan must be developed and submitted for approval by the court in the procedure for disposing of the debtor's property (170 days). The practice of considering bankruptcy cases indicates the existence of a problem of non-fulfillment by these bodies of their obligations to consider the rehabilitation plan within a reasonable time (Hrabovan, 2019, 43). Thus, a controversial issue may arise regarding the further actions of participants in bankruptcy proceedings if the administrator of the debtor's property or the body authorized to manage the debtor's property fails to fulfill the obligation to develop a rehabilitation plan or agree on a rehabilitation plan. In case of improper performance of their duties by the administrator of the debtor's property, the economic court is authorized to make a decision only on the application of means of economic and legal influence, and the issue of bringing such a manager of the debtor's property to disciplinary, administrative, civil or criminal liability should be decided outside the bankruptcy case (Levshyna, 2020, 11). The initiator in this case should be a state bankruptcy authority, a self-regulatory organization of arbitration managers, the owner of the debtor's property, any of the creditors, a representative of a law enforcement agency (for example, a prosecutor), a representative of the public. For most participants in bankruptcy proceedings, it is not the fact of punishing and replacing the arbitration manager that is important, but compensation for damage caused by the fault in the form of intent or unintentional actions, which most likely manifested itself in inaction. As for the possibility of applying liability measures to the body authorized to manage the debtor's property, the question remains open. There is no unambiguous algorithm for answering this question today, only individual proposals of some researchers.

The above-mentioned judge of the economic court Hrabovan drew attention to the revolutionary nature of the provision on restricting the participation of interested parties in voting at meetings of creditors when approving the rehabilitation plan. There was no such provision in the previous legislation of Ukraine. It is contained in part five of Article 52 of the CUBP and provides that the claims of creditors who are interested parties in relation to the debtor are not considered for voting purposes when approving the rehabilitation plan. Article 1 of the CUBP specifies the list of such persons quite broadly (Hrabovan, 2019, 40). On the other hand, Hrabovan does not consider this provision progressive or vice versa. This provision is called revolutionary, i.e., new. In this case, it is necessary to support adding such a provision in the CUBP because creditors from among the persons interested in the debtor do not lose their rights to repay the debtor's obligations to them, i.e., their property rights were not infringed. Such creditors only lose the right to vote when approving the rehabilitation plan.

3. Controversial issues of adoption of the rehabilitation plan. Initiation of the rehabilitation procedure

Ukrainian researchers believe that rehabilitation at its core is a rehabilitation procedure in a bankruptcy case, and the concept of rehabilitation is proposed to be understood as the restoration of rights. Rehabilitation in bankruptcy proceedings also restores the debtor's rights. However, with the restoration of the debtor's rights, creditors' rights are also restored, which is a feature of the rehabilitation procedure (Dutka, 2021, 98; Hushylyk, 2020, 77). Therefore, creditors are often more interested in the qualitative formation and implementation of the rehabilitation plan because only full recovery or rehabilitation and restoration of the debtor's solvency guarantee repayment of their accounts payable in full.

From the moment of transition to the rehabilitation procedure, approval of the rehabilitation plan, and appointment of an arbitration manager – special administrator or rehabilitation manager, the latter accepts the debtor's property under the title of the right of economic management. From now on, this person is responsible for implementing the rehabilitation plan. The qualitative and quantitative content, i.e., the content of the rehabilitation plan, is defined in Article 51 "Debtor Rehabilitation Plan" of the CUBP (Code of Ukraine on Bankruptcy Procedures, 2018). B. Poliakov proved twenty years ago that the rehabilitation plan should be considered as a public legal agreement, since the will of its participants has a common interest – restoring the solvency of an economic entity (Poliakov B., 2003a, 6, 24, 28). It is quite justified to consider such an interest as public law, which integrates the interest of the state and the territorial community in the work of the enterprise, the production of products in demand by society and the economy, the payment of taxes, providing work for citizens, the interest of owners of the company's property, the interest of employees of the enterprise and their families.

CUBP as a whole is built in the order of classical implementation of bankruptcy procedures. Therefore, it is illogical to place Articles 51 «Debtor Rehabilitation Plan» and Article 52 «Consideration of the Rehabilitation Plan by Creditors» of the CUBP in Section III «Debtor Rehabilitation». Two arguments can be given in favor of this: 1) the last article of Section II «Disposition of the Debtor's Property» states that the reorganization plan is approved by the meeting of creditors even before the end of the procedure for disposing of the debtor's property; 2) the very first in Section III «Debtor Rehabilitation», Article 50 «Introduction of the Debtor Reorganization Procedure» begins with the provision that the economic court approves the debtor rehabilitation plan and issues a resolution on the introduction of the rehabilitation procedure (Code of Ukraine on Bankruptcy Procedures). Therefore, the location of the regulation of the rules for approving the rehabilitation plan after the provisions that this plan is already approved by the meeting of creditors and approved by the economic Court looks somewhat ridiculous. It is hardly possible to consider the presence of the word "rehabilitation" in the phrase «rehabilitation plan» and the title of Section III as an absolute argument. Obviously, this situation needs to be corrected in the future.

4. Measures to restore the debtor's solvency

In general, a rehabilitation plan is a kind of action program to restore the debtor's solvency, in particular, due to the alienation of its property and the repayment of creditors' claims in connection with this (Poliakov R., 2023a, 243). Therefore, in the second part of Article 51 «Debtor Rehabilitation Plan» of the CUBP, the main components of the rehabilitation plan are defined as measures to restore the debtor's solvency. In general, this provision contains fourteen types of measures and an indication of their non-exhaustion. They are restructuring of the enterprise; - repurposing of production; - closing of unprofitable production; - deferral, installment payment or forgiveness of debt or part of it; - fulfillment of the debtor's obligation by third parties, etc. (Code of Ukraine on Bank-

ruptcy Procedures, 2018). The measures differ in terms of implementation methods and consequences for the participants in bankruptcy procedures, particularly the debtor. If some measures provide for changes in the organization and production methods, types of activities, products, works, or services that are produced, performed, or provided, then others – the alienation of the debtor's property.

When developing the rehabilitation plan, the manager of the debtor's property may also include measures not mentioned in part two of Article 51 of the CUBP. These can be either measures developed based on the above-mentioned measures or completely different ones. The rehabilitation manager can enter into agreements with the debtor's counterparties – potential current creditors, both defined by the rehabilitation plan and not provided for by it, but necessary for implementing the debtor's current activities and restoring its solvency. On the one hand, this can cause some inconvenience. According to R. Poliakov, the disadvantage of the rehabilitation plan is the lack of an exact liability due to the lack of claims of current creditors that arose after the opening of bankruptcy proceedings (Poliakov R., 2023a, 243–244). This is also noted by Marchenko (Marchenko, 2019, 51), Kolisnychenko (Kolisnychenko, 2019, 65–66), and other researchers of bankruptcy procedures. On the other hand, it is possible that the ingenuity of the rehabilitation manager, making timely decisions in favor of the debtor's interests, will help restore its solvency. However, such decisions can be made by the rehabilitation manager when managing the debtor's current business activities. If certain global measures are implemented to restore the debtor's solvency, it is obvious that they should be specified in the rehabilitation plan. Thus, based on the dissertation research results, B. Poliakov justified the possibility of exchanging debts for shares or equity interests as a form of financial recovery. However, in his opinion, this form is possible in the rehabilitation procedure, provided that it is regulated in the rehabilitation plan (Poliakov B., 2003a, 24). Clarification regarding the mandatory regulation of this in terms of rehabilitation is important from the point of view of preventing the seizure of shares and property of the debtor by perpetrator of illegal seizures, since joint-stock companies are the most vulnerable to such attacks, and one of the most convenient moments for a takeover attempt is the period of bankruptcy proceedings in relation to a joint stock company (Derevyanko et al., 2020, 177–178). Obviously, the legislator listened to the opinions of B. Poliakov, since the CUBP contains Article 53 «Increase in the authorized capital of the debtor». It states, among other things, that all actions regulated in this article are carried out in accordance with the rehabilitation plan and legislation (Code of Ukraine on Bankruptcy Procedures, 2018). In Section III of the CUBP, separate articles regulate measures to restore the debtor's solvency: - sale in the procedure of rehabilitation of the debtor's property as a single property complex (Article 54); - alienation in the procedure of rehabilitation of the debtor's property by replacing assets (Article 55); - sale in the procedure of rehabilitation of a part of the debtor's property (Article 56) (Code of Ukraine on Bankruptcy Procedures, 2018). It seems logical to supplement this section with articles that would regulate the procedure for applying other measures to restore the debtor's solvency, specified in Part Two of Article 52 of the CUBP. The description of other measures in separate articles should contribute to their more frequent inclusion in the rehabilitation plan and wider application in the rehabilitation procedure.

5. Conclusions

In the course of studying the relationship during the transition from the procedure for disposing of the debtor's property to the procedure for the rehabilitation, it is necessary to eliminate the inappropriateness in the sequence of regulation of the content of the rehabilitation plan, the processes of consideration and acceptance of the rehabilitation plan by creditors. These issues should be determined before completing the procedure for disposing of the debtor's property. The corresponding provisions should be specified in Section II «Disposition of the debtor's property» of the CUBP, since the last article of this section states that the rehabilitation plan is approved by the meeting of creditors even before the end of the procedure for disposing of the debtor's property and Article 50 «Introduction of the rehabilitation procedure» of Section III begins with the provision that the economic court approves the rehabilitation plan and issues a ruling on the introduction of a rehabilitation procedure (Code of Ukraine on Bankruptcy Procedures, 2018). If the administrator of the debtor's property fails to fulfill the obligation to develop a rehabilitation plan or the rehabilitation plan is not approved by the body authorized to manage the debtor's property, the economic court is authorized to make a decision only on the application of economic and legal means to them. The paper highlights the need to bring such an administrator of the debtor's property to disciplinary, administrative, civil or criminal liability outside the bankruptcy case on the initiative of a state body on bankruptcy issues, a self-regulatory organization of arbitration managers, the owner

of the debtor's property, any of the creditors, a representative of the law (for example, prosecutor), a member of the public.

To increase the effectiveness of the application of measures to restore the debtor's solvency, it is feasible to supplement Section III «Debtor Rehabilitation» of the CUBP with the articles that will regulate the legal basis for the application of all measures to restore the debtor's solvency, referred to in the second part of Article 51 «Debtor Rehabilitation Plan» of the CUBP.

Further scientific research on the legal support of the rehabilitation procedure should be aimed at finding ways to improve the components of the legal status of participants and maximize the satisfaction of their interests.

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ЩОДО ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ПРОЦЕСІВ СХВАЛЕННЯ, ЗАТВЕРДЖЕННЯ І ВИКОНАННЯ ПЛАНУ САНАЦІЇ БОРЖНИКА

Анотація. ***Мета.*** Мета роботи – на основі застосування аналізу та інших методів наукового пізнання виявити неточності у правовому забезпеченні процесів схвалення, затвердження і виконання плану санації, визначити і систематизувати заходи щодо відновлення платоспроможності боржника, які містить план санації, зробити пропозиції до теорії, практики і законодавства. ***Методи дослідження.*** Для пошуку нових або вдосконалення наявних способів захисту боржників у процедурі санації проведено аналіз положень Кодексу України з процедур банкрутства (КУзПБ), теоретичних поглядів дослідників. Застосування діалектичного методу дало змогу дослідити теоретичні аспекти застосування різноманітних заходів, спрямованих на відновлення платоспроможності боржником у процедурі санації. Формально-логічний метод наукового пізнання сприяв дослідженню норм законодавства, зокрема в частині виявлення прогалин та аргументування теоретичних пропозицій. Порівняльно-правовий та історично-правовий методи дали змогу виявити ефективні приклади у різних країнах, роботах дослідників у різні часи й аргументувати можливість їх запровадження у вітчизняні теорію, практику і законодавство. ***Результати***. У ході дослідження відносин під час переходу від процедури розпорядження майном боржника до процедури санації боржника треба усунути недоречність у послідовності регламентації змісту плану санації, процесів розгляду й ухвалення плану санації кредиторами. Ці питання мають визначатися перед завершенням процедури розпорядження майном боржника, а відповідні норми – розміщатися у КУзПБ у Розділі ІІ «Розпорядження майном боржника», оскільки в останній статті цього розділу вказується, що план санації схвалюється зборами кредиторів ще до закінчення процедури розпорядження майном боржника, а найперша у Розділі ІІІ стаття 50 «Введення процедури санації боржника» розпочинається нормою про те, що господарський суд затверджує схвалений план санації боржника і постановляє ухвалу про введення процедури санації. У разі невиконання розпорядником майна боржника обов'язку з розроблення плану санації або неузгодження плану санації органом, уповноваженим управляти майном боржника, господарський суд уповноважений приймати рішення лише про застосування до них засобів господарсько-правового впливу. Наголошено на необхідності притягнення такого розпорядника майна до дисциплінарної, адміністративної, цивільно-правової або кримінальної відповідальності за межами справи про банкрутство з ініціативи державного органу з питань банкрутства, саморегулівної організації арбітражних керуючих, власника майна боржника, будь-кого з кредиторів, представника правоохоронного органу (наприклад, прокурора), представника громадськості. ***Висновки***. Із метою підвищення ефективності застосування заходів щодо відновлення платоспроможності боржника запропоновано у Розділі ІІІ «Санація боржника» КУзПБ до наявних статей, що регламентують окремі такі заходи, додати статті, якими буде врегульовано основні правові засади застосування усіх заходів щодо відновлення платоспроможності боржника, названих частиною другою статті 51 «План санації боржника» КУзПБ.

Ключові слова: банкрутство, санація боржника, розпорядження майном боржника, план санації, кредитор, господарський суд, Кодекс України з процедур банкрутства, арбітражний керуючий, майно боржника, заходи щодо відновлення платоспроможності боржника, збори кредиторів.

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THE ESSENCE AND CONTENT OF PRINCIPLES OF THE REGULATORY FRAMEWORK FOR ATYPICAL FORMS OF EMPLOYMENT WITH THE USE OF BORROWED LABOUR

Abstract. ***Purpose.*** The purpose of the article is to establish the scope, as well as the essence and content of the principles of the regulatory framework for atypical forms of employment with the use of borrowed labour. ***Results.*** The article, relying on the analysis of scientific perspectives of scholars and provisions of current legislation, establishes the scope and reveals the content of key principles of the regulatory framework for atypical forms of employment with the use of borrowed labour. It is noted that today, the principles of the regulatory framework for borrowed labour have not actually found their legislative consolidation, which is undoubtedly due to a poor and inefficient regulatory framework for labour relations with the category of employees under study, and therefore this gap needs to be addressed. It is revealed that the essence of the principle of legal liability is that legally liable may be: a) borrowed employees who do not perform or improperly perform their labour duties; b) employers, in case of violation of the applicable labour law (in relation to employees) and civil law, in case of violation of a civil law agreement with intermediary entities; c) private employment agencies that have violated the applicable provisions of law in the relevant field. It is emphasised that the growth of labour efficiency ensures an increase in real product and income, and therefore it is a very important indicator of enterprise growth. Therefore, the essence of the above principle is to ensure the most efficient use of labour resources within the enterprise, which should be facilitated by such atypical form of employment as borrowed labour. ***Conclusions***. The author concludes that as of today, the principles of the regulatory framework for atypical forms of employment with the use of borrowed labour have not actually found their legislative consolidation, which is undoubtedly due to a poor and inefficient regulatory framework for labour relations with the category of employees under study. This gap needs to be addressed through the adoption of a modern Labour Code, which should focus on regulating of atypical forms of employment in a separate chapter.

Key words: principles, regulatory framework, atypical forms of employment, borrowed labour.

1. Introduction

An analysis of the current state of the Ukrainian labour market reveals that the use of borrowed labour is spreading, which already covers about 2.5% of the employed population of Ukraine, while the scope of standard employment is steadily shrinking (Vasylenko, 2018). The widespread use of borrowed labour is currently confirmed by a large number of cases of application of this practice at Ukrainian enterprises. A striking example of the functioning of the borrowed labour system is the use of out-staffing schemes, which are widespread in heavy industry and metallurgy, whereby employees remain at their previous jobs (or vice versa) and enter into labour relations with another institution (or recruitment agency) (Krasylshchykov, 2011). Moreover, in order for the regulatory system of the labour of borrowed workers to be effective and efficient, it must be based on a system of starting points, input ideas, which are commonly called principles.

The problem of the regulatory framework for atypical forms of employment with the use of borrowed labour has been studied by various scholars. In particular, it has been under focus by: A.O. Demchenko, P.S. Yeshchenko, M.L. Zakharov, M.M. Klemparskyi, V.P. Komarova, M.O. Mishchuk, O.I. Momot, Yu.I. Palkin, E.H. Tuchkova, I.Yu. Philipp, A.M. Tsiatkovska and many others. However, despite the considerable scientific heritage, scholars have paid

rather little attention to the issue of understanding the principles of the regulatory framework for atypical forms of employment with the use of borrowed labour.

That is why the purpose of the article is to establish the scope, as well as the essence and content of the principles of the regulatory framework for atypical forms of employment with the use of borrowed labour.

2. The regulatory framework for the conclusion of an employment contract

It should be noted that the system of principles of the regulatory framework for atypical forms of employment with the use of borrowed labour is represented by a large number of principles of both general legal and intersectoral nature. However, in our opinion, it is most appropriate to focus on special principles that most meaningfully characterise the essence and content of the regulatory framework.

First of all, the principle of duality of contractual regulatory mechanism for labour should be highlighted. All scholars agree that, as an institution of labour law, an employment contract in a market economy occupies a central place in this branch of law, and, according to M. Mishchuk, the legal and economic significance of an employment contract is that it is: 1) the main legal form of involvement of employees in the labour sector, distribution, consolidation and rational use of labour resources of Ukraine; 2) an important prerequisite for the parties to it to have labour rights and obligations provided for by other labour law institutions (working time, rest time, remuneration, etc.); 3) the ground for inclusion of an employee in a labour team and the legal form of inclusion of an employee in social labour cooperation; 4) protective, i.e. protects an employee from harmful working conditions, his/her honour and dignity in labour activities (Mishchuk, 2008; Tsesarskyi, 2011).

The purpose of an employment contract is to receive remuneration in the form of a salary, «the amount of which depends on the complexity and conditions of the work performed, the employee's professional and business qualities, and the results of his or her work». In the course of work, the employee reaches the appropriate professional level. N. Hetmantseva emphasises that, given the fact that money is a special type of movable property, the purpose of a civil contract is «to obtain a certain property result of work». The purpose of any contract determines its subject matter as one of the essential terms of the contract. The author emphasises that judicial practice also follows this path. The subject matter of an employment contract is labour, while the subject matter of a civil law contract is the performance by a party of a certain amount of work (Letter from the Ministry of Labour and Social Policy of Ukraine regarding the staff list, 2007).

Therefore, as we noted above, the principle of contractual labour regulation has a dual nature. On the one hand, it means that the category of employees under study shall perform their work exclusively on the basis of an employment contract, and the employer cannot allow them to perform their work duties without signing the relevant contract. On the other hand, the meaning of this principle is that the parties to the agreement on the use of borrowed workers (employers and private employment agencies) also act on the basis of the relevant agreement.

The next principle we will focus on is the principle of an optimal balance between specialisation and universalisation of production processes. A production process is a complex technological interaction between employees, labour and nature for the purpose of producing a certain end product that will meet the needs of the consumer. The main component of the production process is a set of actions aimed at changing and determining the state of the object of labour in the technological process, its characteristic features inherent only in this stage of the production process. Production is the creation of a final, socially and economically justified product by synthesising it through manufacturing at each stage of the production process, which is specific to that stage of the product (Buzhyn, 2006). The principle of specialisation is a form of division of labour characterised by the manufacture of a limited range of products, minimisation of types of work, processes, operations, processing modes and other elements of the production process. Specialisation increases the degree of homogeneity of production at workplaces, sites and workshops; increases the output of homogeneous products; simplifies the organisation of production and creates an enabling environment for mechanisation and automation of all processes; promotes the efficient use of equipment and production space, improves economic performance through the use of special, more efficient equipment, and reduces costs and improves product quality. In turn, universalisation is a kind of antithesis of specialisation. In this case, the activities of a business entity with a natural form of production are aimed at meeting its own needs. Moreover, manual labour is the dominant type of labour: each worker performs all the basic work with the simplest tools (hoes, shovels, axes, etc.). However, within the subsistence economy, labour is divided between individuals and their groups (Ieshchenko, 2005 Therefore, the essence

of the above principle is that by using borrowed labour, an employer can optimise production processes and promptly and efficiently provide staff with professional specialists.

Closely related to the above principle is the principle of legality and stability of labour relations with the category of employees under study. In general, legality is a legal expression of legitimacy: the ability to be embodied in the provisions of law, to function within the law (Skakun, 2001). Therefore, legal labour is work that is recognised and permitted by law, which in turn clearly defines the obligations and rights of the parties to labour relations, and guarantees that the state will take care of their fulfilment by each party: both an employer and an employee. The most appropriate guarantees include the following: clearly defined and enshrined in the employment contract working conditions (place of work, working hours, job duties, salary); payment of salary twice a month, in the amount not less than the minimum established by law; the possibility of training, retraining, and professional development at the expense of the employer; insurance period for unemployment benefits and pensions; the right to paid leave: annual leave (at least 24 calendar days), social and additional leave as provided for by the Labour Code of Ukraine; the right to sick leave pay; social services and payments in the event of an accident at work and occupational disease; protection against unlawful dismissal, transfer to another position, change of working conditions (without notice and consent of the employee); severance pay in case of dismissal at the initiative of the employer; a number of other rights and social guarantees provided for by the current legislation (Official website of the State Employment Service, 2021).

Therefore, despite the fact that an employee formalises labour relations with an agency and performs a labour function for another employer, he or she shall have all basic labour rights on an equal footing with other employees of this enterprise. The salary of such employee shall not be lower than the salary received by the employee directly from the employer. Therefore, if a private employment agency complies with the requirements of the employment legislation, job seekers will be employed in legal jobs (Official website of the State Employment Service, 2021).

3. The regulatory framework for atypical forms of employment

The next important principle of the regulatory framework for atypical forms of employment with the use of borrowed labour is the principle of ensuring dynamic sustainability of labour relations. In general, scientists characterise the concept of sustainability as: a) a high level of organisation (clear and strict discipline, coherence of actions of all group members, perfect subordination of all group members to its leader); b) stability (unchanged composition of participants over the long term of its operation, common views, life values, common social orientation of group members) (Brazhnyk and Tolkachenko, 2000). The principle of sustainability of the management system assumes that the management system should not undergo radical changes when the external and internal environment of the company changes. Sustainability is determined by the quality of strategic plans and management efficiency, the adaptability of the management system to changes in the external environment (Website of the National Academy of Internal Affairs, 2021). Therefore, the essence of the principle of ensuring the dynamic sustainability of labour relations is that borrowed employees are used for the purpose of: a) covering the need of an enterprise, institution, organisation for certain categories of employees with a certain set of special knowledge, skills and abilities; b) reducing the risks of negative external impact on the business entity's activities.

An equally important principle of the regulatory framework for atypical forms of employment with the use of borrowed labour is the principle of combining labour productivity and management efficiency. In general, according to A.O. Demchenko and O.I. Momot, efficiency is an indicator of development. It is also its most important incentive. In an effort to improve the efficiency of a particular type of activity and their combination, we identify specific measures that contribute to the development process and cut off those that lead to regression. As a category, it has two sides - qualitative and quantitative. The qualitative side reflects its logical, theoretical content, i.e., the essence of the category. The quantitative side reveals the effect of the law of time saving, namely, it reflects the time savings in achieving the goals of social production in the course of the entire reproduction process and at its individual phases on the scale of the entire national economy, its individual regions, industries, and economic entities. In other words, at all historical stages of human society's development, it should spend its efforts economically, achieving an increase in output with minimal expenditure of funds. This is an objectively existing criterion of economic efficiency at all levels of society development (Demchenko, Momot, 2013). S.M. Rohach argues that labour productivity is the ability of a particular labour to create a certain amount of output per unit of working time.

Labour productivity increases when output per unit of working time increases or labour costs per unit of output decrease (Rohach, Hutsul, Tkachuk, 2015). Thus, the growth of labour efficiency leads to an increase in real output and income, and therefore it is a very important indicator of enterprise growth. Therefore, the essence of the above principle is to ensure the most efficient use of labour resources within the enterprise, which should be facilitated by such atypical form of employment as borrowed labour.

The principle of prohibition of any pressure on an employee should be analysed comprehensively, in particular, with regard to changing the terms of the employment contract, working conditions, which, especially, are unfavourable for him or her. The content of this principle is derived from the provisions of the Labour Code of Ukraine. Thus, Article 9 of the Labour Code prohibits forcing an employee to enter into an employment contract containing terms and conditions on which the employee and employer have not reached a mutual agreement. It is prohibited to engage in night work (Article 55): 1) pregnant women and women with children under the age of three (Article 176); 2) persons under the age of eighteen (Article 192); 3) other categories of employees provided for by law. Women may not work at night, except as provided for in Article 175 of the Code. Work by persons with disabilities at night is allowed only with their consent and provided that it does not contradict medical recommendations (Article 172) (Code of Labour Laws of Ukraine, 1971).

The next in the list, but not in importance, is the principle of inadmissibility of narrowing the content and scope of employees' rights and freedoms when adopting new or amending existing regulations. International and national legislation does not allow any limitations on human rights, in particular on the grounds of race, colour, gender, political, religious and other beliefs, ethnic and social origin and other grounds. However, the Universal Declaration of Human Rights states that in the exercise of his/her rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Moreover, the main condition for the application of legal limitations is that they shall not contradict the principles of a democratic legal state established by the Basic Law. The regulatory framework for labour relations imposes restrictions on employees' labour rights by establishing limitations on certain actions, excluding certain powers from these rights, as well as by establishing a certain procedure for exercising the guaranteed right (Filipp, 2011). It should be underlined that certain rights of citizens, including labour rights, may be restricted under martial law. This issue is regulated by the provisions of the Law of Ukraine «On the Organisation of Labour Relations under Martial Law».

The principle of interaction is interesting from the perspective of application. Interaction is a general form of connection of objects, phenomena of objective reality, as well as the connection of thoughts, which reflects objects, phenomena and their connections and relations in the human mind. Interaction is not just an external collision of objects, but a connection of internal moments, not just a causal relationship, but also a transformation of interacting objects into each other (Kondakov, 1971). Therefore, the content of this principle within the framework of the presented issue consists of several aspects: a) joint activities in the format of an employment agency and an employee; b) cooperation between employers and entities that search for and/or «give» their employees to work for another enterprise.

And the last principle to focus on within the scope of the presented issues is the principle of legal liability. According to Yu.S. Shemshuchenko, legal liability is a type of social responsibility, the essence of which is to apply to offenders (individuals and legal entities) sanctions provided for by law and enforced by the State. Legal liability is a legal relationship between the state, represented by its specially authorised bodies, and the offender, who is subject to legal sanctions with negative consequences for him/her (Shemshuchenko, 1998). Therefore, the essence of the principle of legal liability is that legally liable may be: a) borrowed employees who do not perform or improperly perform their labour duties; b) employers, in case of violation of the applicable labour law (in relation to employees) and civil law, in case of violation of a civil law agreement with intermediary entities; c) private employment agencies that have violated the applicable provisions of law in the relevant field.

4. Conclusion.

As a result, the author's research enables to state that as of today, the principles of the regulatory framework for atypical forms of employment with the use of borrowed labour have not actually found their legislative consolidation, which is undoubtedly due to a poor and inefficient regulatory framework for labour relations with the category of employees under study. This gap needs to be addressed through

the adoption of a modern Labour Code, which should focus on regulating of atypical forms of employment in a separate chapter.

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СУТНІСТЬ ТА ЗМІСТ ПРИНЦИПІВ ПРАВОВОГО РЕГУЛЮВАННЯ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ З ВИКОРИСТАННЯМ ЗАПОЗИЧЕНОЇ ПРАЦІ

Анотація. ***Мета.*** Мета статті полягає у встановленні кола, а також сутності та змісту принципів правового регулювання нетипових форм зайнятості з використанням запозиченої праці. ***Результати.*** У статті, спираючись на аналіз наукових поглядів учених та норм чинного законодавства, установлено коло та розкрито зміст ключових принципів правового регулювання нетипових

форм зайнятості з використанням запозиченої праці. Відзначено, що сьогодні принципи правового регулювання запозиченої праці фактично не віднайшли свого законодавчого закріплення, що, безумовно, пов'язано з неякісним та неефективним регулюванням трудових правовідносин із досліджуваною категорією працівників, а отже, ця прогалина потребує усунення. З'ясовано, що сутність принципу юридичної відповідальності полягає у тому, що до юридичної відповідальності можуть притягуватися: а) запозичені працівники, які не виконують чи неналежним чином виконують свої трудові обов'язки; б) роботодавці – у разі порушення ними норм чинного законодавства, як трудового (по відношенню до працівників), так і цивільного, у разі порушення цивільно-правової угоди із суб'єктами, які є посередниками; в) приватні агентства з працевлаштування, які порушили норми чинного законодавства у відповідній сфері. Наголошено, що зростання ефективності праці забезпечує підвищення реального продукту і доходу, а тому воно є дуже важливим показником зростання підприємства. А отже, сутність окресленого вище принципу полягає у тому, щоб забезпечити якомога ефективніше використання трудових ресурсів у межах підприємства, чому, власне, і повинна сприяти така нетипова форма зайнятості, як запозичена праця. ***Висновки.*** Зроблено висновок, що сьогодні принципи правового регулювання нетипових форм зайнятості з використанням запозиченої праці фактично не віднайшли свого законодавчого закріплення, що, безумовно, пов'язано з неякісним та неефективним регулюванням трудових правовідносин із досліджуваною категорією працівників. Зазначена прогалина вимагає вирішення шляхом прийняття сучасного Трудового кодексу, у якому регулюванню нетипових форм зайнятості має бути приділено особливу увагу шляхом виділення окремого розділу.

Ключові слова: принципи, правове регулювання, нетипові форми зайнятості, запозичена праця.

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MAIN ASPECTS OF THE IMPLEMENTATION OF FAIR RECRUITMENT POLICY IN THE UKRAINIAN LEGAL REGULATORY MODEL

Abstract. ***Purpose.*** The purpose of the article is to reveal the system of international sources of specialised orientation which provide for the regulatory consolidation of standards for the provision of recruitment services. ***Results.*** The article describes the main aspects of fair recruitment policy in the discourse of its conceptual rules and standards from the perspective of key international organisations. It is specified that fair recruitment policy covers a number of key international documents. In particular, the main legally binding treaties define the duties of states to ensure fair recruitment and use the link between the topic of recruitment and other areas of international law such as forced labour, migrant workers' rights, employment policy, etc. As for the relevant conventions, they focus on specific sectors of employment, defining the basic standards for recruitment and employment procedures for certain categories of workers. It is revealed that international standards and rules specialised in fair recruitment are a more specific characteristic of the general standards on forced labour, labour of migrant workers and the specifics of regulating their employment. Although there are some indications of what a fair recruitment process should be, we have not found a clear algorithm for ensuring this. This leads to the conclusion that it is the exclusive national prerogative to regulate the implementation of fair recruitment policies in the national legal system of a particular country. ***Conclusions***. It is determined that optimisation of domestic legislation with regard to implementation of fair recruitment policy into the Ukrainian regulatory model should focus on: 1) the basic key principles of counteracting global negative factors and phenomena operating in the employment sector – forced labour and other types of exploitation (including human trafficking), discriminatory manifestations, etc., which are largely related to unfair recruitment practices; 2) creating conditions for the development of the labour potential of Ukrainians, expanding their talents and abilities; 3) ensuring a favourable business climate in the country, which will allow organisations to engage in internal development unencumbered by external obstacles (e.g., confusing regulatory frameworks, unbalanced approach to tax administration, or excessive bureaucracy in general).

Key words: administrative and legal framework, international standards, employment mediation, recruiting, recruiting services, recruitment, labour relations, rights of labour emigrants.

1. Introduction

Fair recruitment policy covers a number of key international documents. In particular, the main legally binding treaties define the duties of states to ensure fair recruitment and use the link between the topic of recruitment and other areas of international law such as forced labour, migrant workers' rights, employment policy, etc. As for the relevant conventions, they focus on specific sectors of employment, defining the basic standards for recruitment and employment procedures for certain categories of workers.

In this context, it is relevant to study the main aspects of fair recruitment policy in the discourse of its conceptual rules and standards from the perspective of key international organisations, which will be appropriate for the development of specific initiatives to regulate and optimise the recruitment services market in Ukraine.

In general, the issue of recruitment services in the context of their content and features is a relevant area for the development of scientific discussion. This is particularly true because domestic legislation appeals to a significant number of terminological units that can denote the phenomenon under study both in the general context and highlight its individual components. Accordingly, its legal nature is gen-

eralised or simplified by means of designation with other categories which do not fully reflect its essence. Due to the presence of a significant amount of scientific subjectivity in the disclosure of these issues, the study presented for analysis can be considered to have a significant degree of novelty, since the domestic administrative and legal field of scientific knowledge has not sufficiently focused on the aspects of implementing fair recruitment policy in the Ukrainian legal regulatory model, as evidenced by the absence of any scientific works on this issue at the time of this study.

The purpose of the article is to reveal the system of international sources of specialised orientation which provide for regulatory consolidation of standards for the provision of recruitment services.

2. Standards and rules for the provision of recruitment services

With regard to specialised standards and rules for the provision of recruitment services, primarily the General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (International Labour Organisation, 2023), published by the International Labour Organisation (hereinafter – the ILO) in 2019 should be considered.

The purpose of these non-binding ILO General principles and operational guidelines for fair recruitment is to inform the current and future work of the ILO and other organizations, national legislatures and social partners on promoting and ensuring fair recruitment. They apply to recruitment, regardless of the location of the worker, within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy. Implementation of these principles and guidelines at the national level should occur after consultation between the social partners and the government (International Labour Organisation, 2023).

The following are the thirteen general principles of fair recruitment:

1) Recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation;

2) Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work;

3) Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers;

4) Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications;

5) Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons;

6) Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination;

7) No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers;

8) The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable;

9) Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion;

10) Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment;

11) Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained;

12) Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant

workers should not require the employer's or recruiter's permission to change employer;

13) Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred (International Labour Organisation, 2023).

The instrument also establishes rules and standards for governments, employers and their associations, recruitment service providers (public and private), employee associations, and the media.

In particular, governments bear the ultimate responsibility for advancing fair recruitment, both when acting as regulatory bodies and public employment services. To reduce abuses practised against workers, both nationals and migrants, during recruitment, gaps in laws and regulations should be closed, and their full enforcement pursued. To fulfil this duty, it is important that governments strengthen national laws and regulations related to fair recruitment and, more importantly, engage social partners in meaningful social dialogue to adopt them. To be effective, such laws should cover all aspects of the recruitment process and apply to all workers, especially those in vulnerable situations. However, it is not enough to pass laws on fair recruitment or employment; governments should also ensure that they are effectively enforced, through the work of labour inspectorates.

It should be noted that, according to the recommendations analysed, the main responsibilities of recruiters are: 1) respect for human rights, labour law and current legislation. They should treat workers with dignity and respect, should not abuse or allow abuse of, workers who are under their protection. 2) respect for bilateral or multilateral migration agreements between the countries; 3) ensuring that workers are not deceived with respect to their working and living conditions; 4) with regard to employment agencies and user enterprises, these two actors should agree on the allocation of responsibilities, and inform the workers concerned. Although not exclusively or specifically for them, recruiters are also subject to the following principles and guidelines: a) they should ensure that the workers' written employment contracts are clear and transparent and understandable; b) workers cannot be forced or deceived into signing them, and measures must be taken to prevent contract substitution; c) contract substitution is the practice of changing the terms of employment to which the worker has agreed, usually after arrival in the country of destination; 5) recruiters should respect the freedom of workers to terminate or change jobs or return to their country of origin; 6) they should not retaliate against workers or blacklist them when they report abuse or fraud in the course of employment; 7) workers should be recruited to meet labour market needs, not as a means of displacing or reducing the existing workforce; 8) recruiters should not charge workers any fees or expenses; 9) they should not keep workers' passports and other identification documents; 10) they should respect workers' privacy and not disclose any personal data to third parties without the worker's consent; 11) recruiters may consider establishing schemes to guide professional recruitment standards (International Labour Organisation, 2023).

The above clearly reveals the ILO's focus on the specifics of international recruitment regulation, which is generally understandable given the risks of abuse within its framework. Therefore, in 2019, during a global conference held in Montreal (Canada) and attended by leading experts and practitioners from more than 30 countries, practical guidance and ideas for policymakers and regulators to improve the effectiveness of regulation and control of international recruitment, and protect the rights of migrant workers were developed. They are known as The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation (2020). This document covers a wide range of topics, including the following: (a) recruitment fees; (b) licensing and registration of recruitment agencies; (c) inspections and enforcement; (d) access to grievance mechanisms and dispute resolution; (e) bilateral and multilateral mechanisms; and (f) social security and migrant assistance (The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation, 2023).

It should be noted that these recommendations are based on the IRIS Standard: Ethical Recruitment. This is the ILO's flagship initiative on the ethical recruitment of migrant workers. IRIS priorities include: 1) awareness raising and capacity building, 2) migrant worker voice and empowerment, 3) the regulation of international recruitment, 4) voluntary certification of private recruitment agencies, and 5) stakeholder partnership and dialogue (International Labour Organisation, 2023).

This Standard consists of two main principles and five specific ones, each of which is supported by one or more criteria with corresponding sets of indicators that recruiters must meet. These principles are as follows: a) respect for laws, fundamental principles and rights at work; b) respect for ethical and professional conduct; 1) prohibition of recruitment fees

and related costs to migrant workers; 2) respect for freedom of movement; 3) respect for transparency of terms and conditions of employment; 4) respect for confidentiality and data protection; 5) respect for access to remedy (International Labour Organisation, 2023).

3. Regulations of the World Employment Confederation

In addition, the following instruments, information and analytical documents of the World Employment Confederation should be mentioned:

– "Promoting Fair Recruitment and Employment Practices (Code of Conduct)", which was designed as a tool to distinguish between honest, ethical recruitment and employment agencies and fraudsters (World Employment Confederation, 2023). The Code provides for ten key guidelines for the above, in particular: 1) respect for law; 2) 2) adherence to the highest standards of professional conduct; 3) focus on the social component of recruitment services, in particular, free-of-charge provision of services to jobseekers; 4) compliance with the conditions of transparency of the recruitment process; 5) consideration of specific working conditions in correlation with employee health and safety risks; 6) adherence to the principles of non-discrimination; 7) respect for labour rights; 8) compliance with confidentiality rules; 9) provision of quality services and fair business practices; 10) provision of all possible variations of legal remedies for employees;

– "Compendium of Voluntary Initiatives Promoting Ethical Recruitment Practices (World Employment Confederation, 2023), which highlights the most important initiatives of voluntary associations from different countries in the field of recruitment;

– "Defining the Business Case: Ethical Recruitment" (World Employment Confederation, 2023) – as an informational and educational material, explains why recruitment should always be ethical;

– "Code of Ethical Principles in the use of Artificial Intelligence: What the World Employment Confederation Believes in" (World Employment Confederation, 2023), which contains generalised advantages and key rules for the use of artificial intelligence in the recruitment and employment process.

Therefore, these international standards and rules specialised in fair recruitment are a more specific characteristic of the general standards on forced labour, labour of migrant workers and the specifics of regulating their employment. Although there are some indications of what a fair recruitment process should be, we have not found a clear algorithm for ensuring this, and this leads to the conclusion that it is the exclusive national prerogative to regulate the implementation of fair recruitment policies in the national legal system of a particular country.

However, it should be considered that fair recruitment policy is more than just about avoiding the negative impacts of unfair recruitment (International Organisation of Employers, 2021) (it is aimed both at protecting the rights of a potential employee and at preventing the organisation from unnecessary costs and expenses that can be seen, at least in part, by high employee turnover, low productivity, and an inability to attract the talent they need vis-à-vis other employers in the market) (International Organisation of Employers, 2021), since it is about optimising one of the most important investments a business – labour potential.

Therefore, fair recruitment is about ensuring human rights in the workplace, which should be an important priority for employers. It is not just a matter of avoiding violations, but also a proactive strategy for attracting and developing the best talent. Ensuring that employees can make full use of their skills and experience has always been a key asset for any business. Fair recruitment not only promotes high productivity, but also creates an environment for development and collaboration within the organisation.

4. Conclusions

The main purpose of this study is to reveal the procedure for introducing fair recruitment policy into the Ukrainian legal regulatory model. The study enables to determine that optimisation of domestic legislation with regard to implementation of fair recruitment policy into the Ukrainian regulatory model should focus on: 1) the basic key principles of counteracting global negative factors and phenomena operating in the employment sector – forced labour and other types of exploitation (including human trafficking), discriminatory manifestations, etc., which are largely related to unfair recruitment practices; 2) creating conditions for the development of the labour potential of Ukrainians, expanding their talents and abilities; 3) ensuring a favourable business climate in the country, which will allow organisations to engage in internal development unencumbered by external obstacles (e.g., confusing regulatory frameworks, unbalanced approach to tax administration, or excessive bureaucracy in general).

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ОСНОВНІ АСПЕКТИ ВПРОВАДЖЕННЯ В УКРАЇНСЬКУ МОДЕЛЬ ПРАВОВОГО РЕГУЛЮВАННЯ ПОЛІТИКИ СПРАВЕДЛИВОГО РЕКРУТИНГУ

Анотація. ***Мета.*** Метою статті є розкриття системи міжнародних джерел спеціалізованого спрямування, що здійснюють нормативну фіксацію стандартів надання рекрутингових послуг. ***Результати.*** У статті охарактеризовано основні аспекти політики справедливого рекрутингу у дискурсі її концепційних правил та стандартів із позиції ключових міжнародних організацій. Уточнено, що політика справедливого рекрутингу охоплює низку ключових міжнародних документів. Зокрема, основні юридично обов'язкові договори визначають зобов'язання держав щодо забезпечення справедливого рекрутингу та використовують зв'язок між темою найму і такими сферами міжнародного права, як примусова праця, права працюючих-мігрантів, політика зайнятості тощо. Своєю чергою, відповідні конвенції зосереджуються на конкретних секторах зайнятості, визначаючи основні нормативи до процедур рекрутингу та працевлаштування окремих категорій працівників. Виявлено, що міжнародні стандарти і правила спеціалізованого спрямування щодо справедливого рекрутингу є більш конкретизованою характеристикою загальних нормативів щодо примусової праці, праці трудових мігрантів та особливостей регулювання їх зайнятості. Хоча і містяться окремі вказівки на те, яким має бути процес справедливого рекрутингу, чіткого алгоритму щодо забезпечення означеного нами не виявлено. Це спонукає до висновку про виняткову національну прерогативу врегулювання питань забезпечення впровадження політики справедливого рекрутингу в національну правову систему конкретної країни. Визначено, що під час оптимізації вітчизняного законодавства щодо впровадження в українську модель правового регулювання політики справедливого рекрутингу необхідно акцентуватися на: 1) базових ключових засадах протидії глобальним негативним чинникам та явищам, що функціонують у сфері зайнятості: примусова праця та інші види експлуатації (у тому числі торгівля людьми), дискримінаційні прояви тощо, що більшою мірою пов'язані з веденням нечесної практики рекрутингу; 2) створенні умов для розвитку трудового потенціалу українців, розширенні їхніх талантів та здібностей; 3) забезпеченні сприятливого бізнес-клімату в країні, що дасть змогу організаціям сконцентруватися на внутрішньому розвитку, необтяженому зовнішніми перешкодами (наприклад, заплутаному регулюванні, незбалансованому підході до адміністрування податків чи надмірній бюрократії загалом).

Ключові слова: адміністративно-правове регулювання, міжнародні стандарти, посередництво у працевлаштуванні, рекрутинг, рекрутингові послуги, рекрутмент, трудові відносини, права трудових емігрантів.

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KEY TRENDS IN IMPLEMENTING ADMINISTRATIVE LAW MECHANISM FOR THE INTERACTION OF SECURITY AND DEFENCE SECTOR ENTITIES TO ENSURE NATIONAL SECURITY

Abstract. ***Purpose.*** The purpose of the article is to outline the key trends in implementing administrative law mechanism for the interaction of security and defence sector entities to ensure national security. ***Results.*** The issue of the administrative law mechanism for the interaction of security and defence sector entities to ensure national security as an object of study is poorly studied due to its relatively recent actualisation. The study focuses on revealing the main trends in implementing the administrative and legal mechanism for the interaction of security and defence sector entities with regard to ensuring national security. The author clarifies that this issue can be characterised through two parallel discourses – the organisational and implementation aspects, which differ in the essence of administrative and legal relations that mediate these processes. The focus is on the implementation aspect determining that the main trends in implementing the administrative and legal mechanism for the interaction of security and defence sector entities with regard to ensuring national security should be distinguished depending on the field, in which the organisation and implementation of joint activities of entities under study is carried out through the representation of their common tasks, and considering that they can be manifested by fixing the need to organise such interaction within the scope of the powers of a particular actor to ensure its implementation. ***Conclusions.*** The basic trend in implementing the administrative and legal mechanism of interaction of security and defence sector entities with regard to ensuring national security is to prevent and counter threats to the national interests of Ukraine in all sectors of activities of the State and society, as well as to ensure their implementation and preservation. In general, from the theoretical perspective, these trends are: 1) law enforcement – joint implementation of security and protection functions in relation to national security objects (state security, state border, critical infrastructure, etc.); 2) information – exchange of necessary information, including secure and unimpeded access to it; 3) coordination – focus and coherence of activities, enabling to formulate tactics of joint actions in terms of unity.

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

1. Introduction

The trends in implementing the administrative and legal mechanism for the interaction of security and defence sector entities with regard to ensuring national security can be considered in two aspects: first, what are the trends in regulating joint activities of the security and defence sector entities as an organisational and functional component of the activities of authorised entities; second, what are the trends in interaction of the actors under study, which are determined by the authorised entities as being subject to practical implementation (Zhuk, 2021).

This study is focused on addressing this issue from the implementation aspect given the key trends, as follows: 1) it makes sense to distinguish depending on the field, in which the organisation and implementation of joint activities of entities under study is carried out through the representation of their common tasks; 2) they can be manifested by fixing the need to organise such interaction

within the scope of the powers of a particular actor to ensure its implementation.

The issue of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national security as an object of study is generally under-researched, which is due to its relatively recent actualisation. Accordingly, there are currently no scientific works that would address this object and subject matter.

2. Theoretical issues of the functioning of security and defence sector entities

Depending on the sector in which the joint activities of the actors under study are organised and implemented, we can distinguish the interaction of the security and defence sector entities in the following fields: 1) ensuring state security and state border security; 2) defence; 3) protection of critical infrastructure; 4) domestic and foreign policy; 5) social and humanitarian; 6) economic; 7) environmental; 8) scientific and technological, etc.

For example, in the field of ensuring state security, joint activities of the state special-purpose body with law enforcement functions of law enforcement and intelligence bodies and other state bodies and persons involved in ensuring state security in accordance with the legislation of Ukraine are organised and carried out. The purpose of such cooperation is to ensure state security and protect the national interests of Ukraine from external and internal threats, counteract intelligence, subversive, sabotage, terrorist and other activities of intelligence and subversive entities, as well as eliminate the preconditions for their implementation and localise possible negative consequences (Decree of the President of Ukraine On the Approval of the Strategy for Ensuring State Security of Ukraine, 2022). For example, in November 2020, officers of the SBU Special Operations Centre A, together with the National Police, released 13 hostages in Lutsk and arrested an armed terrorist who had hijacked a Krasnylivka-Berestechko bus with passengers in the city centre. Thanks to the Boomerang special operation planned by the SBU Anti-Terrorist Centre, law enforcement officers managed to avoid civilian casualties (The SBU together with the National Police freed 13 hostages in Lutsk and detained a terrorist. Security Service of Ukraine, 2020). In the same year, they also managed to expose the organisers of an interregional group selling weapons and ammunition in Kryvyi Rih. Among other things, the organisers of the group were found to have documentary evidence of their participation in the activities of the so-called 'Assembly of indigenous peoples of the Russian Land 'Veche Rusi', which promotes separatist ideas to the detriment of the territorial integrity of Ukraine. According to operational information, the organisation's foreign curators could have used the cell's representatives in secret to conduct extremist actions during the local self-government elections (In Kryvyi Rih, the SBU together with the National Police exposed an interregional organized group of arms dealers, 2020).

In turn, state border security requires integrated border management, focused on the joint implementation of protection functions by clearly defined security and defence sector entities (the Ministry of Internal Affairs of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the Security Service of Ukraine, the National Police, the National Guard, the Armed Forces (Air Force and Navy)), which act together and also cooperate with the Ministry of Foreign Affairs of Ukraine, the Ministry of Infrastructure of Ukraine, the Ministry of Finance of Ukraine, the State Customs Service, the State Service of Ukraine for Food Safety and Consumer Protection both at the state border, and within the state, making optimal use of national resources to achieve the goals of public policy on integrated border management in order to create and maintain a balance between ensuring an adequate level of border security and maintaining the openness of the state border for legitimate cross-border cooperation, as well as for travellers (Decree of the Cabinet of Ministers of Ukraine On the approval of the Strategy for integrated border management for the period until 2025, 2019).

The 2020-2022 Action Plan for the Implementation of the Integrated Border Management Strategy until 2025 entrusts the Ministry of Internal Affairs of Ukraine with the responsibility to develop a procedure for regulating the interaction between the State Border Guard Service of Ukraine and the National Police in responding to crisis situations at the state border, which shall be formalised by a relevant order. Furthermore, the Ministry of Internal Affairs of Ukraine, together with the Ministry of Finance of Ukraine, should determine the procedure for regulating interaction between the State Border Guard Service of Ukraine and the State Customs Service in the performance of tasks at the state border (Order of the Cabinet of Ministers of Ukraine On the approval Action Plan for the Implementation of the Integrated Border Management Strategy for the period until 2025, 2019).

In addition, the specific areas of implementation of the administrative and legal mechanism for interaction of security and defence sector entities with regard to ensuring national

security in this case are: access to departmental databases, joint activities to achieve unity, improvement of coherence in the tactics of joint actions of the units of the interacting parties, for example, detection of unmanned aerial vehicles or constant search and rescue readiness at sea, risk analysis (Order of the Cabinet of Ministers of Ukraine On the approval Action Plan for the Implementation of the Integrated Border Management Strategy for the period until 2025, 2019), etc.

According to the relevant legislation, in the defence sector, the Ministry of Defence of Ukraine is a responsible entity that ensures the relations of the Armed Forces of Ukraine with state bodies, public organisations and citizens. In its turn, the General Staff of the Armed Forces of Ukraine organises their interaction with ministries, other central executive bodies, defence councils of the Autonomous Republic of Crimea and oblasts, the cities of Kyiv and Sevastopol in the performance of defence tasks (Law of Ukraine On the Defence of Ukraine, 1991).

Evidently, in this field, the interaction between the security and defence sector actors is mainly organised for the purpose of jointly performing defence functions and implementing Ukraine's military policy. In particular, Ukrainian border guards were redeployed in many areas on 24 February and acted together with the Armed Forces of Ukraine (The border guards have been redeployed and are acting together with the Armed Forces of Ukraine - the spokesperson of the State Security Service of Ukraine, 2022). To ensure the effectiveness of joint actions, we would also like to note that relevant training is being actively carried out. For example, large-scale tactical exercises for the airborne defence of the Azov Sea coast were held at the Petrivske training ground near Berdiansk. The military of the Armed Forces of Ukraine and the National Guard of Ukraine, including marines, border guards, military aviation, etc. took part in the combat cohesion. The main purpose of such exercises is to practice the interaction of various units and military management in various types of combat (The Ukrainian military on the coast of the Sea of Azov practiced repelling an enemy attack, 2022). For now, the interaction of the actors under study in the information sector, in particular, refuting fakes and other misinformation spread on the Internet, is extremely relevant.

In the field of critical infrastructure protection, the interaction between the entities being studied is carried out to ensure the security and resilience of facilities that are strategically important for the economy and security of the state, society, and population, and whose disruption may harm the vital national interests of Ukraine (Decree of the Cabinet of Ministers of Ukraine On the approval of the Concept of creating a state system for the protection of critical infrastructure, 2017). The main area of such cooperation is information exchange, the mechanism thereof is determined by the Cabinet of Ministers of Ukraine. The priorities include counteracting foreign economic expansion, preventing the use of financial instruments to create systemic crises in the Ukrainian economy (Protection of critical infrastructure facilities, 2022), anti-subversive protection of such facilities, and cyber defence of state information resources and other critical information infrastructure facilities.

In the domestic political sector, the security and defence sector actors interact, for example, regarding the revitalisation and development of the Crimean Tatar language, allowing for current circumstances, which are largely shaped by the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation (Decree of the Cabinet of Ministers of Ukraine on the approval of the Concept of the Development of the Crimean Tatar Language, 2021). For this purpose, the Ministry of Internal Affairs of Ukraine and the Security Service of Ukraine, in cooperation with other actors, promptly respond to violations of the right to education in the Crimean Tatar language, in particular by introducing special economic and other restrictive measures (sanctions) against individuals and legal entities, taking other measures in accordance with the law (Order of the Cabinet of Ministers of Ukraine Operational Plan for the Implementation of the Strategy for the Development of the Crimean Tatar Language for 2022-2032, 2022).

Another striking example in this area is the interaction of the actors under study in resolving internal contradictions in Ukrainian society on religious grounds, in particular, the activities of the Russian Orthodox Church and related religious organisations in Ukraine. For example, the Security Service of Ukraine, together with the National Guard of Ukraine and the police, conducts counterintelligence activities to prevent the use of religious communities as a centre of the «Russian world» and to protect the population from provocations and terrorist acts (The most massive search by the SBU in the UOC (MP). What is known and to whom they came. BBC Ukraine, 2022).

The activities were intensified, in particular, due to the fact that on 1 December 2022, Decree of the President of Ukraine No. 820/2022 enacted the Decision of the National Security

and Defence Council of Ukraine of 1 December 2022 « On some aspects of the activities of religious organisations in Ukraine and the application of personal special economic and other restrictive measures (sanctions)», which clearly states that the Security Service of Ukraine, together with the National Police of Ukraine and other state bodies, responsible for issues in the field of national security, should intensify measures to identify and counter subversive activities of Russian special services in the religious environment of Ukraine (Decree of the President of Ukraine On the decision of the National Security and Defence Council of Ukraine dated December 1, 2022 «On some aspects of the activities of religious organisations in Ukraine and the application of personal special economic and other restrictive measures (sanctions)», 2022).

3. Activities of the security and defence sector in foreign policy

In the foreign policy sector, the entities under study interact, for example, regarding the application of special economic and other restrictive measures (Law of Ukraine On Sanctions, 2014). The Specialised Law stipulates that sanctions may be imposed by Ukraine against a foreign state, a foreign legal entity, a legal entity controlled by a foreign legal entity or a non-resident individual, foreigners, stateless persons, and entities engaged in terrorist activities, due to the need to protect the national interests, national security, sovereignty and territorial integrity of Ukraine, counteract terrorist activities, as well as prevent violations and restore violated rights, freedoms and legitimate interests of Ukrainian citizens, society and the state. In particular, the Security Service of Ukraine submits proposals for the application, cancellation and amendment of sanctions to the National Security and Defence Council of Ukraine (Law of Ukraine On Sanctions, 2014).

In the social and humanitarian sector, the interaction under study concerns, for example, the prevention of the destruction of basic content of national historical memory, its levelling as an important component of national unity, consolidation of society and government, or increasing the level of trust in the media (Analysis of public policy on national security and defence of Ukraine, 2015). In particular, the latter is a rather difficult task, since such activities can be objectified as the application of appropriate measures (e.g., the National Security and Defence Council of Ukraine apply restrictive sanctions, the Security Service of Ukraine, among other entities, is responsible for ensuring the implementation and monitoring of the effectiveness of these programmes), and by providing official information at joint briefings covered by the media (for example, Ukrainian communicators launched a new platform, Ukraine Media Centre (Kyiv+Lviv), together with the Ministry of Defence and the Ministry of Internal Affairs. Ukraine Media Centre will host daily briefings, events and expert interviews (Together with the Ministry of Defence and the Ministry of Internal Affairs, Ukrainian communicators are launching a new platform - Ukraine Media Center (Kyiv+Lviv), 2022).

In the economic sector, it should be noted that a rather important area of interaction between the actors under study is counteraction to the oligarchisation of the Ukrainian economy. For example, in 2021, Law of Ukraine «On prevention of threats to national security associated with excessive influence of persons having significant economic and political weight in public life (oligarchs)» No. 1780-IX was adopted. It defines the legal and organisational basis for the functioning of the system of preventing excessive influence of oligarchs, the content and procedure for applying measures of influence to these persons. In particular, the decision to recognise a person as having significant economic and political weight in public life (oligarch) is made by the National Security and Defence Council of Ukraine on the basis of a proposal by the Cabinet of Ministers of Ukraine, a member of the National Security and Defence Council of Ukraine, the National Bank of Ukraine, the Security Service of Ukraine or the Antimonopoly Committee of Ukraine (Law of Ukraine On prevention of threats to national security associated with excessive influence of persons who have significant economic and political weight in public life (oligarchs), 2021). It should be noted that the new anti-corruption strategy for 2021-2025 does not specifically mention oligarchs. However, there is an action plan for the implementation of the anti-oligarchic law approved at the government level (We are waiting for the conclusions of the Venice Commission: Deputy Minister of Justice regarding the law on deoligarchization, 2022). The document so far consists of 20 points that envisage a number of measures, starting with the development of a regulation on the register of oligarchs, and sets a time frame for their implementation (Maliuska, 2021). The security and defence sector is not directly involved in the implementation of this plan, but it is possible that they may cooperate with its responsible executors.

In the environmental sector, an important area of interaction between the actors under study is counteraction to threats to environmental safety, including environmental disas-

ters, the timely detection thereof is a guarantee of proper human health protection and ecosystem sustainability. Moreover, analysing the provisions of the Strategy for environmental security and adaptation to climate change for the period until 2030, approved by the Decree of the Cabinet of Ministers of Ukraine No. 1363-r of 20 October 2021 (Decree of the Cabinet of Ministers of Ukraine On the strategy for environmental security and adaptation to climate change for the period until 2030, 2022), the security and defence sector is not involved in addressing the current state of affairs in this field. In particular, there are no provisions on the need to ensure appropriate interaction. In our opinion, this is a miscalculation by strategic planners, as threats to Ukraine's environmental security are formed both gradually under the influence of natural phenomena and deliberately by individuals. At present, the issue of environmental safety during the war is quite relevant, as it includes the loss of biodiversity and threats to Red Data Book species, fires in ecosystems due to hostilities, chemical pollution from shelling and missiles, pollution of soil, sea with oil products, and water with organic matter due to damage to utilities (Omelchuk, Sadohurska, 2022), etc. Therefore, it would be appropriate to define at the legislative level the areas of cooperation between individual actors of the security and defence sector in the field of ecosystem destruction, soil pollution, biodiversity reduction, and the increase in the number of pests in forests, as it is necessary to record the damage that should be compensated by the aggressor in the future (Omelchuk, Sadohurska, 2022).

In the scientific and technological sector, it should be noted that the interaction of the security and with regard to ensuring national security within is manifested, for example, in space activities. According to Law of Ukraine «On space activities» No. 502/96-VR of 15 November 1996, space activities in the field of defence and national security are carried out by the Ministry of Defence of Ukraine and the intelligence agencies of Ukraine, which, together with the relevant ministries and other central executive authorities, are responsible for the implementation of the National Target Scientific and Technical Space Programme of Ukraine in the part related to the creation and use of military and dual-use space equipment. The procedure for interaction between the Ministry of Defence of Ukraine, the intelligence agencies of Ukraine and the central executive body that ensures making public policy on space activities is determined by the Regulations approved by the President of Ukraine (Law of Ukraine On Space Activities, 1996). In particular, in this area, there is interaction on the development of the conceptual framework of the state space policy and the National Target Scientific and Technical Space Programme of Ukraine in terms of the creation and use of space technology in the interests of Ukraine's national security, as well as the formation and organisation of orders for work related to the creation and use of space technology (Law of Ukraine On Space Activities, 1996).

5. Conclusions

Therefore, the basic trend in implementing the administrative and legal mechanism of interaction of security and defence sector entities with regard to ensuring national security is to prevent and counter threats to the national interests of Ukraine in all sectors of activities of the State and society, as well as to ensure their implementation and preservation.

From a scientific perspective, we can identify the following areas trends: 1) law enforcement – joint implementation of security and protection functions in relation to national security objects (state security, state border, critical infrastructure, etc.); 2) information – exchange of necessary information, including secure and unimpeded access to it; 3) coordination – focus and coherence of activities, enabling to formulate tactics of joint actions in terms of unity.

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ОСНОВНІ НАПРЯМИ РЕАЛІЗАЦІЇ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ВЗАЄМОДІЇ СУБ'ЄКТІВ СЕКТОРУ БЕЗПЕКИ Й ОБОРОНИ ЩОДО ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ

Анотація. ***Мета.*** Метою статті є окреслення основних напрямів реалізації адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки. ***Результати.*** Проблематика адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки як об'єкта вивчення загалом є малодослідженою, що зумовлюється порівняно нещодавньою її актуалізацією. Відповідно, наукових праць, які були б звернені до такого об'єктно-предметного поля, на разі немає. Дослідження спрямоване на розкриття основних напрямів реалізації адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки. Уточнено, що ця проблематика може бути схарактеризована через два паралельних дискурси – організаційний та реалізаційний аспект, різниця між якими полягає у сутності адміністративно-правових відносин, що опосередковують ці процеси. Зосереджено увагу на реалізаційному аспекті та визначено, що основні напрями реалізації адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки слід виокремлювати залежно від сфери, у якій здійснюється організація та реалізація спільної діяльності досліджуваних суб'єктів через репрезентацію їхніх спільних завдань, а також з урахуванням, що вони можуть мати прояв шляхом закріплення необхідності організації такої взаємодії у межах повноважень конкретного суб'єкта забезпечення її здійснення. ***Висновки.*** Базовим напрямом реалізації адміністративно-правового механізму взаємодії суб'єктів сектору безпеки й оборони щодо забезпечення національної безпеки визначено запобігання та протидію загрозам національним інтересам України в усіх сферах життєдіяльності держави та суспільства, а також забезпечення їх реалізації та збереження. Узагальнено, що з теоретичного погляду такими напрямами є: 1) правоохоронний – спільна реалізація функцій охорони та захисту щодо об'єктів національної безпеки (державної безпеки, державного кордону, критичної інфраструктури тощо); 2) інформаційний – обмін необхідною інформацією, у тому числі безпечний та безперешкодний доступ до неї; 3) узгоджуваль-

ний – спрямованість та злагодженість діяльності, що дає змогу сформувати тактику спільних дій в умовах єдності.

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

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LEGAL NATURE OF THE STATUS OF ENTITIES EXERCISING STATE SUPERVISION OVER COMPLIANCE WITH LABOUR LAW

Abstract. ***Purpose.*** The purpose of the article is to describe the legal nature of the status of entities exercising state supervision over compliance with labour law. ***Results.*** Based on the review of scientific views of scholars, in particular, representatives of labour and administrative law, the article reveals the legal nature of the status of entities exercising state supervision over compliance with labour law. The author summarises that, within the scope of the problematic issue presented, labour and administrative law provisions cannot be separated from each other, since they are inextricably linked and are aimed at ensuring high-quality and efficient control and supervision activities in the relevant field. It is established that the Labour Code of Ukraine as a fundamental legal instrument for regulating the institution of supervision and control over compliance with labour legislation of Ukraine is characterised by a number of negative aspects, including: 1) the outdated nature of the Labour Code of Ukraine, which currently consists of legal provisions adopted under different historical and economic conditions, and therefore this legal instrument cannot adequately regulate modern labour relations; 2) the Labour Code of Ukraine regulates a limited range of issues related to the institution of supervision and control over compliance with labour legislation of Ukraine; 3) the prospects for improving the provisions of the Labour Code of Ukraine are rather doubtful, since the provisions of the Draft Labour Code of Ukraine in the context of regulating supervision and control over compliance with the labour legislation of Ukraine are ambiguous, may lead to a number of further legal conflicts, and do not regulate some issues to which the legislator has paid due attention in the Labour Code of Ukraine. ***Conclusions.*** The author concludes that the legal status of entities exercising state supervision over compliance with labour law is dual in nature. This is explained by the fact that: firstly, labour law provisions: a) determine the subject matter of supervision and control in the field of labour; b) consolidate the legal status of the main participants in labour relations (employees and employers); c) the activities of certain supervisory and controlling entities are focused exclusively on labour and closely related legal relations; second, the administrative law regulates the activities of the vast majority of state entities exercising supervision and control in the field of labour. In addition, control activities are directly related to management and other administrative activities.

Key words: supervision, control, legal nature, status, entity, legislation, labour, labour law, administrative law.

1. Introduction

Supervision and control, regardless of its scope, is a complex activity by its nature and content, covering many aspects of the functioning of a particular object. Moreover, supervision and control are not carried out "on their own", it is implemented by specially authorised entities, which in turn have their own special legal status. The legal status of entities exercising state supervision over compliance with labour law is a set of elements defined by the provisions of current legislation which, in their unity, determine the place of the relevant entity in the system of legal relations under study, and also outline its role and purpose in terms of control activities in the area under study. It should be noted that the legal status of these entities has its own special legal nature. The latter, in turn, is a set of features that reflect the essence of a particular phenomenon and enable it to be distinguished from similar legal phenomena" (Ianovska, 2015).

Some problematic aspects related to the activities of entities exercising state supervision over compliance with labour law have been considered in their scientific works by:

D.V. Burlachenko, S.I. Dvornyk, I.Yu. Kailo, A.V. Melnyk, Ye.M. Popovych, M.M. Sirant, H.V. Terela and many others. However, despite a considerable number of scientific studies, the legal literature lacks comprehensive scientific research on the legal nature of the status of entities exercising state supervision over compliance with labour law.

That is why the purpose of the article is to describe the legal nature of the status of entities exercising state supervision over compliance with labour law.

2. The status of entities exercising state supervision over compliance with labour law

With regard to the legal nature of the status of entities exercising state supervision over compliance with labour law, it should be noted that there are two polar perspectives in the legal literature on the provisions of which branch of law govern their legal status. For example, the first group of scholars is convinced that the status of these entities is regulated exclusively by labour law, justifying this by the specifics of legal relations arising in the field of labour. Other scholars believe that the existence of relations of a state and administrative nature arising in the course of control and supervision activities necessitates that they be regulated by means of administrative law.

For example, the review of the perspectives of labour law scholars reveals that the opinion of D.V. Burlachenko, who has studied supervision and control over compliance with labour legislation as an institution of labour law, is worth citing. In particular, the author analyses the current legislation of Ukraine on supervision and control over compliance with labour legislation, labour codes of some foreign countries, and the draft Labour Code of Ukraine. The author determines the place of the legal institution of supervision and control over compliance with labour legislation in the labour law system of Ukraine. In addition, the author concludes that supervision and control over compliance with labour legislation as a specific legal institution in the labour law system of Ukraine is defined as a set of legal provisions which consolidate the concept, functions, main tasks, subjects, objects, forms of supervision and control over compliance with labour legislation, and the system and powers of the bodies which exercise them (Burlachenko, 2019).

Another scholar Ye.M. Popovych focuses his dissertation research on supervision and control over compliance with labour legislation of Ukraine. In his scientific work, the scholar paid a lot of attention to the activities of specially authorised entities in the relevant field. The author emphasises that the subject matter of control in the field of compliance with labour legislation is direct (actual) labour and closely related relations, which are specified in the relevant conduct arising between the objects of control - participants in these legal relations. On the other hand, the entities exercising control over compliance with labour legislation are controlling bodies that are different in nature and character and have the relevant powers (Popovych, 2003). Ye.M. Popovych focuses on describing the legal status of these entities, emphasising that their status is of labour law nature.

H.V. Terela highlights the labour law nature of supervision and control in the field of labour. The author emphasises that supervision and control over compliance with labour legislation is a multidimensional, socially valuable legal phenomenon which occupies a prominent place in the legal system. Firstly, it is based on the idea of social justice and social partnership, which is a characteristic feature of labour law control. Secondly, supervision and control act as a link between rulemaking and law application, which is formally reflected in the availability of a range of legal means, including legal provisions, legal procedures, and procedural forms in which supervision and control measures are implemented. Thirdly, social control in the field of labour, including state supervision and control and public control, acts, on the one hand, as a means of state social policy, a component of the social function of the state, and, on the other hand, is an indicator of "feedback" in the control system, the effectiveness of civil society institutions, and social partnership. Accordingly, the social value of control is to ensure stability, decent work, social security, law and order, and thus to balance public and private interests. The realisation of this social value is the main purpose, the strategic goal of supervision and control (Terela, 2020).

In his scientific study, I.Yu. Kailo reveals the advantages and disadvantages of legal framework for supervision and control over compliance with labour legislation of Ukraine in modern conditions, as well as highlights that this institution is based on labour law in general and defines the legal status of authorised entities in particular. Therefore, the author emphasises that the Labour Code of Ukraine as a fundamental legal instrument for regulating the institution of supervision and control over compliance with labour legislation of Ukraine is characterised by a number of negative aspects, including: 1) the outdated nature of the Labour Code of Ukraine, which currently consists of legal provisions adopted under different historical and economic conditions, and therefore this legal instrument cannot adequately regulate modern labour relations; 2) the Labour

Code of Ukraine regulates a limited range of issues related to the institution of supervision and control over compliance with labour legislation of Ukraine; 3) the prospects for improving the provisions of the Labour Code of Ukraine are rather doubtful, since the provisions of the Draft Labour Code of Ukraine in the context of regulating supervision and control over compliance with the labour legislation of Ukraine are ambiguous, may lead to a number of further legal conflicts, and do not regulate some issues to which the legislator has paid due attention in the Labour Code of Ukraine (Kailo, 2020).

Further considering the legal nature of the status of entities exercising supervision and control over compliance with labour legislation, it should be noted that, contrary to the opinion of scholars representing the labour branch of law, experts in administrative law are convinced that the latter are still an institution of administrative law. For example, M.M. Sirant emphasises that the administrative nature of the status of the entities under study is determined by the specifics of their activities. With regard to this opinion, the author emphasises that the State Labour Service is empowered to authorise certain actions by registering them and issuing the relevant permit. State licensing is the recognition by the authorised body, the State Labour Service, of the right of a business entity to carry out entrepreneurial activities, provides administrative supervision over such activities and, in case of violation of the requirements of law by the licence holder, may suspend and/or terminate its validity. The administrative nature of licensing is reflected in the fact that the Law "On Licensing of Economic Activities" provides for the issuance of a permit to an applicant for a specific type of activities. Thereafter, from the date of obtaining the licence, the licensing authority will ensure constant and systematic administrative supervision of the licensee to ensure compliance with the rules, standards and requirements approved by the law and by-laws (Sirant, 2022). Administrative supervision measures can be implemented by the licensing authority by conducting inspections of the licensee's activities and drawing up acts based on the results of the inspections, which will contain the identified violations of licensing requirements and the terms of mandatory elimination. It is not only the State Labour Service that has the right to exercise supervisory powers over business entities to ensure compliance with licensing requirements. Such supervisory powers may be exercised, in particular, by tax authorities, which, upon detection of a relevant offence, notify the licensing authority (Sirant, 2022).

Another scholar, A.V. Melnyk, in her thesis research comes to some interesting conclusions. First of all, the author emphasises that the issues of supervision and control have been studied by representatives of various sciences, but mainly by specialists in the field of administrative law. This is quite natural, since the legal relations of supervision and control are closely related to the concept of public administration and have a state power character, since the supervisory and control bodies are vested with power by the state over employers. In public administration, control is closely related to other management functions and at the same time is intended to assess the compliance of these functions with the tasks set by the management. Control ensures the specificity of management and its implementation in accordance with the decisions made. Through control, the management entity receives information about the results of its activities, as well as about mistakes and changes in the situation that may lead to failure to achieve the set objectives or to obtain unpredictable results (Melnyk, 2019). In addition, the author identifies the following features of the powers of public authorities exercised in administrative relations. Firstly, these powers are exercised at the discretion of the relevant public authority, so administrative relations arise exclusively at the will of this authority. Secondly, the parties to these relations are the authorised state body and the employer's representatives who are subject to administrative liability. Thirdly, the content of these relations is the right of the state body to bring the employer's representative to administrative liability, as well as the duty of the employer's representative to bear the burden of adverse consequences for an administrative offence. Fourthly, the grounds for termination of these relations are the expiry of the term of administrative liability, as well as the execution of the resolution on administrative penalty. Fifthly, these powers have their own procedural formalisation in the form of a protocol and a resolution on an administrative offence. These acts may establish the fact of an administrative offence (Melnyk, 2019). Accordingly, A.V. Melnyk once again emphasises the administrative and legal nature of the status of entities exercising supervision and control over compliance with labour legislation. In addition, this scholar rather interestingly highlights the fact that it is impossible, for example, not to notice interference in the organisational and economic activities of the employer by the structural units of the State labour protection supervision in the process of exercising their powers, such as: organising and directing the work of commissions for special investigation of fatal and group accidents; taking measures to prevent inju-

ries and accidents at all enterprises, institutions and organisations; developing measures to improve the work on occupational safety and health and to prevent accidents, occupational diseases and accidents, etc. The administrative nature of these measures is obvious and is due to the close connection between the bodies exercising control functions (Melnyk, 2019).

3. Subordination of participants in legal relations on supervision and control over compliance with labour legislation

According to N.B. Bolotina, the state of subordination of the participants in legal relations on supervision and control over compliance with labour legislation is typical for administrative and legal relations. Legal relations on supervision and control over compliance with labour and occupational health and safety legislation do not arise with the consent of the parties (which is typical for labour relations), they may also arise against the will of the other party. The administrative and legal nature of legal relations on supervision and control over compliance with labour legislation is also evidenced by the content of these legal relations, which is that the supervisory authority may give the owner of an enterprise, institution, organisation (its authorised body) on behalf of the State power orders which the latter must unconditionally comply with, and in case of violation of labour and occupational health legislation, this authority may apply any administrative penalties (Bolotina, 2008; Burlachenko, 2021). Therefore, N.B. Bolotina concludes that legal relations on supervision and control over compliance with labour and occupational health and safety legislation are administrative and legal and, in relation to labour relations, are external. The only exception is the legal relations of public control over compliance with labour legislation, since its participants are the owner of the enterprise, institutions, organisations and labour collectives through their elected representatives, as well as trade unions and their associations in the course of public control over compliance with labour legislation (Bolotina, 2008; Burlachenko, 2021).

It should be noted that S.I. Dvornyk's scientific position is of particular interest, as based on the above analysis of legal provisions regulating relations in the field of state supervision and control over compliance with labour legislation, he argues that regulatory provisions of labour law and administrative law in this field are intrinsically linked. Since the object of encroachment of administrative offences in the field of labour protection is labour rights and guarantees established by labour legislation, this connection is quite reasonable, since administrative law is a comprehensive branch of law. Based on the analysis made, the author believes that legal relations on state supervision and control over compliance with labour legislation are subject to administrative and legal regulation (Dvornyk, 2018). Therefore, according to this scholar, due to the dual nature of legal regulation, state supervision and control over compliance with labour legislation is subject to legal regulation by administrative law in terms of regulating the activities of the State Labour Service of Ukraine - a public state body. With regard to relations arising from labour relations, the issue of control and supervision over compliance with labour legislation is regulated by labour law. On the one hand, this dual nature of legal regulation proves the interdisciplinary relationship between administrative and labour law, and on the other hand, it may create problems in legal regulation, as duplication of norms or conflicts between them, or gaps between them may negatively affect the development of existing legal relations in the field of supervision and control over compliance with labour legislation. Solving the problem of legal framework for state supervision and control over compliance with labour legislation is of great practical importance for ensuring the effective operation of the State Labour Service of Ukraine (Dvornyk, 2018).

4. Conclusions

Thus, this study allows stating that both labour law scholars and administrative law scholars substantiate their position regarding the legal nature of the status of entities exercising state supervision over compliance with labour law in a fairly substantive manner. However, we are convinced that one cannot unequivocally support one particular position. We argue that the legal status of entities exercising state supervision over compliance with labour law is dual in nature. This is explained by the fact that:

– First, labour law provisions: a) determine the subject matter of supervision and control in the field of labour; b) consolidate the legal status of the main participants in labour relations (employees and employers); c) the activities of certain supervisory and controlling entities are focused exclusively on labour and closely related legal relations;

– Second, the administrative law regulates the activities of the vast majority of state entities exercising supervision and control in the field of labour. In addition, control activities are directly related to management and other administrative activities.

Therefore, in this context, labour and administrative law provisions cannot be separated from each other, since they are inextricably linked and are aimed at ensuring high-quality and efficient control and supervision activities in the relevant field.

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ПРАВОВА ПРИРОДА СТАТУСУ СУБ'ЄКТІВ НАГЛЯДУ І КОНТРОЛЮ ЗА ДОДЕРЖАННЯМ ЗАКОНОДАВСТВА ПРО ПРАЦЮ

Анотація. ***Мета.*** Метою статті є охарактеризувати правову природу статусу суб'єктів нагляду і контролю за додержанням законодавства про працю. ***Результати.*** У статті, спираючись на аналіз наукових поглядів учених, зокрема представників у галузі трудового та адміністративного права, розкрито правову природу статусу суб'єктів нагляду і контролю за додержанням законодавства про працю. Узагальнено, що в рамках представленого проблемного питання норми трудового та адміністративного права не можна відокремлювати одне від одного, адже вони нерозривно пов'язані між собою та спрямовані на забезпечення якісної та ефективної контрольно-наглядової діяльності за відповідним напрямом. З'ясовано, що Кодекс законів про працю України як фундаментальний нормативно-правовий акт для правового регулювання інституту нагляду і контролю за дотриманням трудового законодавства України характеризується і низкою негативних моментів, серед яких: 1) застарілість Кодексу законів про працю України, який сьогодні складається з правових норм, прийнятих за різних історичних та економічних умов, тому даний нормативно-правовий акт не може адекватно регулювати сучасні трудові відносини; 2) урегулювання нормами Кодексу законів про працю України обмеженого кола питань, пов'язаних з інститутом нагляду і контролю за дотриманням трудового законодавства України; 3) перспективи вдосконалення норм Кодексу законів про працю України є доволі сумнівними, оскільки положення проєкту Трудового кодексу України у контексті врегулювання нагляду і контролю за дотриманням трудового законодавства України є неоднозначними, можуть спричинити виникнення низки правових колізій у майбутньому, а також не врегульовують деякі питання, яким законодавець приділив належну увагу в Кодексі законів про працю України. ***Висновки.*** Зроблено висновок, що природа правового статусу суб'єктів нагляду і контролю за додержанням законодавства про працю має подвійний характер. Зазначене пояснюється тим, що: по-перше, за допомогою норм трудового права: а) визначається предмет

нагляду і контролю у сфері праці; б) закріплюється правовий статус основних суб'єктів трудового права (працівників та роботодавців); в) діяльність окремих суб'єктів нагляду і контролю орієнтована виключно на сферу трудових та тісно пов'язаних із ними правовідносин; по-друге, за допомогою норм адміністративної галузі права впорядковується діяльність переважної більшості державних суб'єктів здійснення нагляду і контролю у сфері праці. Окрім того, контрольна діяльність безпосередньо пов'язана із здійсненням управлінської та іншої адміністративної діяльності.

Ключові слова: нагляд, контроль, правова природа, статус, суб'єкт, законодавство, праця, трудове право, адміністративне право.

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LEGAL DOCTRINE OF ARTIFICIAL INTELLIGENCE: CURRENT STATE OF DEVELOPMENT

Abstract. ***Purpose.*** The purpose of the article is to study «human intelligence» in the philosophical aspect and to evaluate it. ***Results.*** The article considers the issue of artificial intelligence and the correctness of the concept of «artificial intelligence» and its comparison with human intelligence. The issue of the effectiveness of artificial intelligence application in a present-day context is revealed. A literature review in this field enables to make conclusions about the philosophical and methodological origin of the concept of «artificial intelligence». The author studies the positions of considering the properties inherent only in human intelligence and comparing biological and semiotic (sign) methods when applying artificial intelligence. However, in recent years, scientists have been conducting research and identifying biological semiotics (biosemiotics) as a separate type of research that can be comprehensively applied when using artificial intelligence. This formulation enables to consider artificial intelligence from a different perspective. In addition, the article addresses the topical issue of the effectiveness of artificial intelligence in a «duel» with human intelligence: the benefits and risks of using artificial intelligence. The advantages of human intelligence are its being more flexible and multifaceted compared to artificial intelligence, though artificial intelligence performs tasks more accurately, efficiently and promptly. ***Conclusions***. Considering the current state of artificial intelligence, the state of research and development prospects, the active application of artificial intelligence in various fields of artificial intelligence, its benefits and risks for humanity are the main issues of today in the field of IT technologies. Artificial intelligence can be applied in various sectors, including medical diagnostics, remote control, design and construction, social communication, web search, commerce, legal proceedings, digital record keeping, etc. In our daily lives, we may encounter artificial intelligence on a daily basis without even thinking about its origins, basis, operations, and liability for errors. However, such questions should be raised by scientists and AI developers.

Key words: artificial intelligence, human intelligence, biosemiotics, risks of artificial intelligence application, nature of artificial intelligence.

1. Introduction

For several decades now, scientists have been facing the difficult task of defining the concept of artificial intelligence and comparing it to human intelligence, as well as of the origins of artificial intelligence and the relevance of artificial intelligence in a present-day context.

The issue of clarifying the concept of artificial intelligence in the philosophical aspect was considered in the studies by: A.V. Kasianenko, O.S. Koval, V.V. Fedotov, I.V. Hryhorenko, K. Jung, N.K. Tymofiieva, O.B. Stoliarenko, O.I. Stebelska, O.Ya. Moroz, and others. However, despite the studies conducted, currently no clear definition of the concept of «artificial intelligence» and no unambiguous answer to the risks of its use exist, which gives rise to further research in this area.

The purpose of the article is to study «human intelligence» in the philosophical aspect and to evaluate it.

2. Principles of legal understanding of artificial intelligence

We have reviewed many definitions of artificial intelligence in different aspects, all of which reflect a certain part of the current state of affairs, but today such a definition is not sufficient, as the latest technologies are moving far ahead.

Artificial intelligence is a software product that receives a specific request, collects and processes data, and then provides a ready-made solution. Such a solution is often perceived as the result of a programme operation that exhibits intelligent behaviour and works in a manner similar to human thinking (Klian, 2022). From a technical perspective, this definition reflects

artificial intelligence as a ready-made software product for use by a machine in making prompt and accurate decisions.

Another aspect of artificial intelligence is more reflective of the metamorphic nature of artificial intelligence and is related to the philosophical origins of this meaning. This is another example of the definition of artificial intelligence and the lack of reference to the literal term «intelligence» discussed earlier. *Artificial intelligence* is a metaphorical name for one of the priority scientific trends that has emerged in the general complex of cybernetic research on the problems of modelling thinking processes, intensification of intellectual activity through computerisation of certain types of it (Shynkaruk, 2002, p. 727). Metaphor (from the Greek μεταφορά – transfer) is a linguistic and mental phenomenon that consists in transferring the properties of one object (phenomenon, action) and its linguistic sign to another object (phenomenon, action) on the principle of analogy or contrast (Kravets, 2023).

The metaphorical meaning of artificial intelligence implies that the comparison of brain and computer systems is based on two metatheoretical metaphors – computer and intelligence (also used as one double metaphor, i.e. with two opposite referents, under the general name «computer metaphor»), which emerged as a result of establishing significant analogies between these systems. According to the first of them, natural intelligence is likened to artificial intelligence (the brain is considered to be similar to a computer in terms of structural organisation and activity); according to the second, the computer functions according to the established principles of brain activity (the computer is supposedly endowed with brain-like structures and functions. They are of importance in understanding the structure of the brain, the mechanism of its activity and the design of intelligent systems capable of performing functions traditionally considered the prerogative of the human brain. However, they should be perceived as purely scientific metaphors. Ignoring them narrows the possibilities of cognition and construction, while absolutisation and literal interpretation can lead to false scientific results and philosophical, methodological and epistemological conclusions (Shynkaruk, 2002, p. 727).

However, today, the various aspects of artificial intelligence we have discussed are correct, but not final. For example, O. Stebelska argues that the issue of creating artificial intelligence is open. It cannot be stated unequivocally that this will never happen, but there are certain fundamental difficulties in solving this problem. The Penrose Theorem addresses this problem in a sharp and categorical manner: «No matter how powerful a device with the architecture of a complete automaton (a computer, in the modern sense) may be, human thinking has some capabilities that are not available to such a device.» It should be noted that the main problems of implementing artificial moral machines are not so much in the technical as in the philosophical and methodological plane (Stebelska, Fedoriv, 2019).

The establishment of significant analogies between the brain and a computer and their functioning led to the formation of a computer metatheoretical metaphor, enabling to emerge a cognitive approach in psychology, artificial intelligence, linguistics, etc. (in fact, it has initiated the formation of cognitive psychology, cognitive linguistics, etc., which form a new complex scientific field – cognitive science or cognitology). This metaphor plays an important role both in the study of the brain structure and mechanisms of its activity, and in the design of intelligent systems – systems capable of performing functions traditionally considered the prerogative of a human being and his or her brain (Moroz, 2014).

Scientists from around the world are still debating the nature of the human brain, and as a result, they have not yet defined clear requirements for artificial intelligence. However, this does not prevent the successful development of artificial intelligence technologies in two areas: *semiotic* (creation of systems that imitate such processes as speech, thinking, and expression of emotions) and *biological* (creation of neural networks based on biological principles). However, the nature of human consciousness is much more universal: a human being can be (or become) anyone, has many opportunities and prospects for development, can act effectively not only in the presence of clearly defined rules, but also in the absence of information in general, and is not limited to one field. When we deep into the problem, it turns out that the field of speech, behaviour, emotions and feelings is far from being fully realised in a technical environment. Machines lack flexibility and spontaneity of action (Stebelska, Fedoriv, 2019). The development of artificial intelligence according to the two criteria mentioned by the authors is quite possible, but we should agree with the position that human intelligence is more universal than artificial intelligence. Moreover, it should be noted that the intellectual capabilities of an individual person are different, they do not have the same abilities, everyone is different. From a technological perspective, artificial intelligence can be used both individually and in series. In the case of serial use, we can hardly speak of intelligence.

3. Trends in artificial intelligence application

Artificial intelligence in its broadest sense (a system/machine that independently performs creative tasks without human intervention) is still only on the horizon of development and human cognition. Although this horizon is approaching, artificial intelligence will not soon replace inventors and creators, neither in technological nor social terms. In the context of generating the results of intellectual and creative activity, artificial intelligence should not do this, its task is only to complement and help, because invention and innovation are often not only an urgent need, but also a human vocation. The current results of testing artificial intelligence in the IT sector suggest that it is gradually becoming an effective auxiliary tool not only for facilitating bureaucratic procedures and filling in template elements of applications for law enforcement documents. Given Ukraine's presence both in the field of research and policymaking and in the generation of artificial intelligence products, we have every chance to promote Ukraine in the global market and create new dimensions and perceptions of artificial intelligence that will be useful for the whole world (Zozuliuk, 2022). We can agree with the author's position that artificial intelligence is not a complete replacement of human intelligence, but only an auxiliary part of it, which is intended to serve to facilitate the existence of humanity (work, education, social sector, medicine, defence, etc.), which we face in everyday life.

Modern futurists are also constantly predicting an impressive future, but so far, scientists have not been able to create a machine that is equivalent to a human in terms of its capabilities. This is due to many reasons discussed above. But the main problems lie in the *philosophical and methodological* plane. First of all, it is unclear how to create a smart machine. In addition, research in the field of artificial intelligence has one common drawback: scientists try to model and prescribe something that they themselves cannot explicitly and clearly explain: consciousness, morality, imagination, creativity, emotions and feelings, freedom, etc. Human consciousness is such a complex, ambiguous, multifaceted phenomenon that it is currently not amenable to technologicalisation. Even the term «intelligence» itself has no clear definition. However, the aforementioned obstacles in creating intelligent machines have a positive side: the more we try to create artificial intelligence, the more we deepen our understanding of our own nature (Stebelska, Fedoriv, 2019).

For example, O.E. Radutnyi outlines the benefits of using artificial intelligence and argues that due to robotisation and automation of routine or risky processes, humans are gradually being removed from the process of information processing, making and implementation of decisions. In many cases, this is entirely justified, as it is increasingly impossible to compete with artificial intelligence algorithms that are designed to outperform humans in a specific activity, eliminate the human factor in the form of errors, mistakes, and imperfections in cognitive functions (poor memory, concentration, stress, etc.) and physical capabilities (strength, endurance, perception of all signals from the world around us, etc.) (Radutnyi, 2021). Of course, the so-called «human factor» cannot be dismissed in the work, as the author considers the «weaknesses» of a human being, in addition to the above, one can also allow for the state of health, stress resistance, intellectual and mental abilities, mood, external stimuli (comfortable conditions, temperature, weather) and many other factors that may affect the final result of a human being's work. As for the machine, such factors do not affect the final result and therefore it will always be predictable. However, it is also necessary to consider certain conditions for the machine to perform such work, for example, the availability of power, material support, certain resources for creating a programme and running it, and other factors that are not required by humans.

Research into the cognitive structures of knowledge, comparison of the ways in which knowledge is represented in the brain and computer, and the forms and possibilities of their use, have prompted a revision of views not only on the ways in which knowledge is stored in the memory of people and intelligent systems, but also on the logic used by people and applied in the creation of these systems, which has led to the need to make certain adjustments. The implementation of a powerful knowledge-based system is carried out with the help of an appropriate knowledge representation. The need to capture the difference between data and knowledge has led to the need to build certain formalisms in the form of models (languages) for representing knowledge in a computer, which reflect such features that characterise knowledge as internal interpretability, structuredness, coherence and activity. The problem of teaching a computer *to understand* natural language has become one of the main issues not only in machine translation but also in artificial intelligence (Moroz, 2014). This creates requires computational linguistics, which is closely related to artificial intelligence.

Furthermore, artificial intelligence application requires to focus on certain problems that may arise. For example, O. Stebelska argues that

the main problems faced by scientists trying to create smart machines include the following:

1) When creating intelligent machines, scientists cannot endow them with understanding, including understanding of themselves (or self-awareness);

2) The second obstacle to the creation of artificial intelligence is the problem of uncertainty: we live in a fluid world that is constantly changing;

3) An integral part of a human being is his or her physicality, through which he or she is able to perceive the world in which he or she lives;

4) The human value dimension is a difficult problem in the process of implementing artificial intelligence;

5) The problem of responsibility is clearly interconnected with the problem of freedom;

6) Another reason for the difficulties faced by researchers is the nature of qualia («an unusual term for something we are familiar with: the way things look to us»);

7) One of the main features of a human being is the creative nature of his or her activity, the ability to create something that did not exist in nature before and could not exist before;

8) People often act and draw conclusions based on common sense (Stebelska, Fedoriv, 2019).

The draft strategy for the development of artificial intelligence in Ukraine specifically consideres artificial intelligence specifically and notes that models of artificial consciousness should be based on the results of research into human consciousness in the biological, medical, and psychological fields. The result of these processes is the properties of consciousness: a wide range of conscious contents, informativeness, adaptability and transience of conscious manifestations, internal consistency, limited capacity and consistency, self-awareness, accurate reporting, subjectivity, focal-edge structure, facilitated learning, stability of contents, allocentricity, controlled knowledge and decision-making. Therefore, the modelling of artificial consciousness should include two areas: modelling the attention scheme as a mechanism for selecting and disseminating information (C1 according to the classification); modelling the coordination mechanism that ensures subjective perception of reality and control (C2 according to the classification) (Shevchenko, 2022).

O.S. Koval discusses several stages that artificial intelligence goes through in its development. For example, the question of the genesis of artificial intelligence and the development from the Turing test to the current capabilities of mankind and the active use of artificial intelligence in various spheres of life, scientists also distinguish the so-called intermediate stage of artificial intelligence. The main point is that the intermediate stage of artificial intelligence similar to human intelligence is likely to start with modern chatbots and will be a synthesis of existing technologies. It will: be able to communicate freely with people, answer their questions, form their own, etc.; have a number of external settings that will make up its personality, namely everything related to voice and image; have an imitation of its own «character», a complex character profile and the ability to customise features that will be superimposed on a neutral communication system; have a flexible (probably in graphical form) system of tasks, connections, fears, sequences of actions, any logical markers required for realistic simulation; be able to freely and quickly change all these parameters for a particular artificial intelligence, thereby changing its personality (Koval, 2020).

4. Conclusions

Therefore, the very concept of artificial intelligence has a philosophical meaning of existence that pervades it completely and does not require its literal understanding and interpretation in the way we perceive human intelligence. Having considered the issues in various aspects of the philosophical origins of the concept "artificial intelligence," we can argue that the path to the decade is quite complex and controversial. Of course, there are fears that drawing an analogy with human intelligence in the literal sense may lead to a false definition. It should be considered that it is still impossible to accurately define and measure human intelligence. Recent years of medical development have enabled scientists to make significant advances in this area and in the specificities of human brain activity and human consciousness. Such research will also lead to a significant breakthrough in the creation of artificial intelligence.

While we say that artificial intelligence has been studied in recent decades, it has been impossible to comprehend the understanding and capabilities of human intelligence since ancient times, millennia ago. Drawing a parallel, we can note that the process of understanding artificial intelligence and its consolidation will be similarly difficult and controversial.

Therefore, we can try to define artificial intelligence, namely, the ability of a technological software system to achieve any complex goal through processes comparable to human cognitive processes, recognising various tasks and modelling the situation to achieve the programmed goal.

This definition describes the result of artificial intelligence's activity not only by perform-

ing a human-programmed task and achieving the goal, but also by solving a more complex task that may go beyond the mission, which will allow changing the algorithm for solving and achieving the goal with the least resistance. We have described the algorithm of human action in non-standard situations, using intuition, deduction and other methods that help us solve our tasks.

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ПРАВОВА ДОКТРИНА ШТУЧНОГО ІНТЕЛЕКТУ: СУЧАСНИЙ СТАН РОЗВИТКУ

Анотація. ***Мета.*** Метою статті є проведення дослідження щодо «інтелект людини» у філософському аспекті та оцінки. ***Результати.*** У статті розглянуто питання штучного інтелекту та правильність формулювання поняття «штучний інтелект» і співставлення з інтелектом людини. Розкрито питання ефективності застосування штучного інтелекту в умовах сьогодення. Зроблено аналіз публікацій за цим напрямом, що дало можливість зробити власні висновки стосовно філософсько-методологічного походження поняття штучного інтелекту. Розглянуто позиції урахування під час застосування штучного інтелекту властивостей, які притаманні лише людському інтелекту, та співставлення біологічного та семіотичного (знакового) методів. Хоча за останні роки науковці проводять дослідження і виділяють як окремий вид біологічну семіотику (біосеміотику), який можна комплексно застосовувати під час використання штучного інтелекту. Така постановка дає змогу розглянути штучний інтелект в іншому аспекті. Також розглянуто актуальне питання щодо ефективності дії штучного інтелекту в «дуелі» з інтелектом людини: переваги та ризики застосування штучного інтелекту. Щодо переваг людського інтелекту як більш гнучкого та багатогранного порівняно зі штучним інтелектом штучний інтелект більш точно, якісно і швидко виконує поставлені завдання. ***Висновки.*** Активне використання штучного інтелекту в різних галузях штучного інтелекту, його переваги та ризики для людства є основними питаннями сьогодення у галузі ІТ-технологій. Штучний інтелект має багато сфер застосування, до основних можна віднести: медичну діагностику, дистанційне керування, проєктування та будівництво, соціальне спілкування, вебпошук, торгівлю, судочинство, цифрове діловодство та ін. У повсякденному житті ми можемо щоденно стикатися зі штучним інтелектом, навіть не замислюючись над його витоками, основою, діяльністю та від-

повідальністю за похибки. Однак такі питання повинні поставати перед ученими та розробниками штучного інтелекту.

Ключові слова: штучний інтелект, інтелект людини, біосеміотика, ризики використання штучного інтелекту, природа штучного інтелекту.

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PARTICULARITIES OF FUNCTIONING OF CIVIL-MILITARY ADMINISTRATIONS ON THE TERRITORY OF UKRAINE DURING ITS BEING PART OF THE RUSSIAN EMPIRE

Abstract. ***Purpose. Results.*** The relevance of the article is due to the fact that an important issue is the legal formalisation of the status of the Governor-General and, accordingly, of the Governorate-General as a civil-military administration. It is necessary to dwell on this comprehensively. For a long time, the Russian Empire lacked unifying norms that would regulate the activities of governorates-general and their heads, while the powers were determined for each specific governorate by separate regulations. The Russian imperial authorities' policy on the process of incorporating the Ukrainian Hetmanate into the administrative system of the Russian Empire should be noted. Despite the fact that the Hetman's Cossack statehood was granted autonomy and a unique status, the Russians gradually (it took them about 150 years) took steps to limit it. The process resulted in the extension of the administrative-territorial imperial system to Ukrainian lands, the elimination of all democratic institutions, and the entire population being absorbed into the feudal structure of the Russian social order. This happened without any significant armed resistance, etc. ***Conclusions***. Ukrainian history experienced the functioning of military and civilian institutions already during the Ukrainian State of Pavlo Skoropadskyi. In general, this talented politician was able to build an effective and efficient administrative and territorial apparatus in a short time in extremely difficult conditions. It is concluded that in the Russian Empire, governorates-general performed a number of important tasks for the tsarist regime in terms of military control and the development and implementation of a new civil administration and administrative system in the newly annexed territories. In addition, due to the combination of military and civilian powers, governors-general pursued an active policy on unification and "harmonisation" (so to speak) of local regional specificities in various sectors of society to the general imperial standards. During the Ukrainian State, P. Skoropadskyi built a model of effective local authority, within a limited timeframe and budget, as well as in the context of domestic and foreign policy crises.

Key words: governor-general, empire, central authority, powers, administrative system.

1. Introduction

In the current realities faced by Ukraine, it will be especially valuable to study the experience of governorate-generals on the territory of Ukraine when it was part of the Russian Empire. The governor-general's administration in the empire was a civil-military administration, the head of which, i.e. the governor-general, received a huge amount of authority in the military and civilian sectors. Governorates-general as administrative-territorial units emerged after the abolition of the institution of viceroyalties (which performed identical functions) in 1796. The governor-general was appointed directly by the emperor. The institution of the Governorate-General was used in the nineteenth century in the ethno-national regions of the empire, where there were difficulties with the implementation of the all-Russian legislation on administrative and territorial governance. In Ukraine, there were Governorates of Malorossiia, Kyiv, Novorossiia, and Bessarabia. This form of administration was used to subjugate and russify the regions incorporated into Russian statehood. The main goal of the governorates was the gradual elimination and unification of the regional particularities that existed in the newly annexed lands (Shandra, 2004).

The scope of powers for each Governorate-General was unique, as it depended on

the specifics of the region where the Governorate-General was introduced, especially the nature of the accession (voluntary or as a result of aggression), the term the region had been part of the empire, the particularities of the pre-existing institutions of power, the legislative system, local self-government, etc. The governor-general was in charge of eliminating particularities and unifying legal and other norms in accordance with the general imperial legislation. He controlled the spread of the Russian language in all sectors of society and the administrative mechanism of the state. Since 1862, the governor-general automatically became the head of the military district. If the Governorate-General was abolished, it served as an indicator that the territory was fully assimilated and integrated, and that there was no longer any need for such a structure (Shandra, 2004).

2. The functioning of Governorates-General on the territory of Ukraine during the period of its being part of the Russian Empire

Initially, by tradition, all governors-general were military officers with the rank of general. Due to the fact that the Governorate-General was introduced in the newly annexed territories, the governor-general had to exercise control over the border as well as over the local armed forces. Thanks to his control over the police, he was able to exercise coercion during recruitment (in the Russian Empire, recruitment meant serving in the army for 25 years, given the average age at that time, as well as the level of sanitation, etc. in the Russian army, this actually meant that a person had to serve for life and most likely die in the army, which probably did not cause much excitement in the new territories, leading to resistance), tax collection. The governor-general was responsible for appointing officials and had the right to dismiss them. In addition, only through his review and approval the candidates were elected for provincial and district leaders of the nobility. In addition to supervising the feudal classes of society (after the incorporation of new territories, the feudal class system of the Russian Empire, which included serfdom, etc., was immediately introduced, which could also cause social tensions), the governor-general exercised supervisory functions over local courts. For example, the death penalty as a sentence was agreed with the governor-general. If the governor-general considered court decisions to be unreasonable, he could appeal against them, submit them to the Senate (the highest judicial authority in the empire), and even the most resonant decisions could be submitted to the emperor. V. Shandra argues regarding the status of governor-general: "Enjoying the personal trust of the monarch, knowing the 'intentions of the supreme power', governors-general 'were a law unto themselves and ruled at their own discretion', coordinating the actions of the local administration. Therefore, the governors-general functioned as institutions of military and administrative-political supervision, which was due to the lack of basic separation of powers and clear boundaries between administrative and judicial functions. Dependent only on the emperor, the governors-general were treated as semi-sovereign monarchs..." (Shandra, 2005, p. 49).

For example, in the Governorate-General of Kyiv (operated from 1832 to 1914). In order to gradually integrate and russify the region, this authority was granted a special status. It included three provinces: Kyiv, Podillia, and Volyn. The official reason for the introduction of the Governorate-General was the Polish uprising of 1830. The emperor delegated some of his powers to the Governor-General, who, as already mentioned, was dismissed and appointed personally by the emperor. His powers were regulated by special laws, as well as by the "Instructions to governors-general" of 29 May 1853, and, of course, by special imperial orders. He was also partially subordinated to the Senate, the Committee of Ministers, the Ministry of Internal Affairs, the Military Ministry and the Ministry of Justice. The governor's corps and police institutions were subordinated to the governor-general. The Governorate-General chancellery with executive powers operated under him. The power of the governor-general was sole. He embodied the highest administrative power, the right of legislative initiative, and determined the extent to which the provisions of imperial legislation were applied in the territory of the Governorate-General. The Kyiv governor-general supervised the activities of all government agencies and officials. He appointed senior officials in provincial representative offices. He was even given foreign policy functions. In addition, military power in the region was concentrated in his hands, as he was the commander-in-chief of the Kyiv Military District. He also oversaw the implementation of the liberal reforms of the 1860s and 1870s in the region (Shandra, 2007).

According to V. Shandra, in general, the specifics of the activities of such civil-military administrations varied and went through several stages. Initially, the governor-general assessed the situation in the region and monitored the possibilities of relying on some representatives of local elites in his activities. Having completed the first task, the governor-general moved on to the second phase: he conducted a serious analysis of local regional

particularities and differences from other parts of the empire in the political, cultural and religious spheres, as well as in the economic sphere. After collecting the information, he would pass it on to the central authorities, and they would discuss it in order to mutually develop a plan for further action in the region. At the third stage, the aforementioned particularities were gradually eliminated due to the huge amount of powers granted, and, as mentioned above, the process of "russification" of the legal, political, cultural and economic spheres was underway. The main goal of such actions was to prevent even theoretically any separatist and centrifugal tendencies (Shandra, 2007, p.157).

It should be noted that, in accordance with the powers of the Governorate-General, there were several main fundamental trends in activities. Of course, the most important thing, as already noted, is the problem of overcoming separatist tendencies on the part of local elites who had previously participated in the management of their own statehood (by the way, the Russian imperial authorities were quite wise in dealing with representatives of the Cossack officers, granting them the privileges of noble status, which almost completely removed the motivation to resist). Moreover, the governor-general pursued a policy of appointing to certain positions persons who publicly demonstrated their loyalty to the empire, as well as if such persons adopted Russian culture, etc. Another area of the governor-general's activity was to take political, socio-cultural, and economic measures to integrate the local political elite (Shandra, 2007, p.158).

3. The powers of Governorates-General on the territory of Ukraine during the period of its being part of the Russian Empire

Social policy was an important area of ensuring stability in the newly annexed regions. The governor-general controlled the fiscal and financial activities of local state imperial institutions and self-government bodies. He also monitored the pricing of goods of strategic importance at the time, such as timber, bread, and land.) In addition, it was the governor-general who dealt with disaster relief, organised social assistance to the population in the event of epidemics and crop failures. In terms of social policy, he encouraged foreign and domestic migrants to resettle in the region under his jurisdiction and monitored the sanitary level (Shandra, 2007, p.159).

Another strategic orientation was personnel policy. As noted above, it was the governor-general who appointed some of the top officials in the provinces. However, he was also tasked with organising the employment conditions of local elites in such a way that they would actively forget about "local interests" and think in terms of the general imperial one. Therefore, the staffing was based on the principle of "carrots and sticks". If representatives of the local elite showed demonstrative loyalty, they were promoted to civil service. In other cases, either the activities of local representatives were controlled, or disloyal individuals were completely deprived of the opportunity to hold a certain position.

The governor-general's educational and cultural activities were also an important area of focus. He initiated the introduction of the Russian language and culture into all sectors of life in the region. It was the governor-general who oversaw the opening of educational and cultural infrastructure institutions that became centres and sources of dissemination of Russian civilisational markers (Shandra, 2007, p.159).

The governor-general, of course, had an apparatus that assisted him in the exercise of his powers. He had a special chancellery under him. This office was granted the status of the highest supervisory and administrative regional state institution, which stood above the provincial authorities. Each governor-general, due to the uncertainty of the legislation and the particularities of the situation in the region, concentrated different amounts of power in his hands, and accordingly formed his chancellery. In addition to the officials of the chancellery, the governor-general had officials on special assignments as his assistants. These were representatives of the highest official hierarchy, and they were entrusted with the most difficult tasks by the leadership. Such officials were not constrained by any job description in their actions (Shandra, 1999, p. 104).

The entire bureaucracy was conditionally divided into managerial and clerical branches. The managers, in addition to officials on special assignments, included heads of departments and chancellors. All of them were in direct contact with the governor-general and were responsible for carrying out his instructions. Others prepared documents, kept archives, etc. (Shandra, 1999, p. 108).

An important issue is the legal formalisation of the status of the Governor-General and, accordingly, of the Governorate-General as a civil-military administration. It is necessary to dwell on this comprehensively. As noted above, for a long time the Russian Empire lacked unifying norms that would regulate the activities of governorates-general and their heads, while the powers were determined for each specific governorate by separate regulations.

On 13 October 1831, the Senate issued a decree "On the permission for governors-general to conclude contracts for up to 25 thou-

sand rubles". This document outlined the scope of the governor-general's powers. In terms of socio-economic issues, it was determined that the governor-general should lead the provincial government like the governors of the internal provinces. Subsequently, a "decree" was issued to governors in 1837, which stated that governors should coordinate their actions with governors-general on security issues (in case of detection of secret societies) and on the establishment of printing houses. In addition, the powers of governors-general specified that they: "... exercised control over fiscal and financial operations, and therefore approved zemstvo estimates and guaranteed the use of funds in the public interest; controlled the conclusion of contracts for ransom. The governor-general was responsible for approving court cases that were conducted by order of the emperor. Moreover, the governor-general had the final say in the verdicts of military courts. It was once again emphasised that the dignitary was appointed to this position by the emperor and was his confidant. By order of Nicholas I, it was the governors-general who were charged with approving the development of provincial and county towns" (Shandra, 2005, p. 55).

On 29 May 1853, the first legal regulation summarising the status of governors-general was issued, entitled "General instruction to governors-general" ("Общая инструкция генерал-губернаторам" in original). In the monograph " Governorates-General in Ukraine...", this instruction was characterised as follows: it "...became the first generalising regulatory document that consolidated their position, defined their official rights and duties. From now on, governors-general were subordinated to the Ministry of Internal Affairs. The annual salary of the chief governor of the province was significantly increased to 15,000 rubles, and his convoy was increased to 25 people. The initiator and one of the authors of the instruction was the then Minister of Internal Affairs D.H. Bibikov (in 1852-1855). The Instruction legitimised the already established areas of activity of governors-general, gave them universality, and depersonalised the position as such. The governor-general remained the guardian of the inviolability of the supreme rights of the autocracy, and had to take care of the state's benefit, the common good. It confirmed his responsibility for internal security, healthcare and food supply, the judiciary, and the personnel of the local bureaucracy (distinguishing between state and elected positions) and granted him the right to eliminate anything that did not comply with the "intentions of the supreme power". The governor-general was outside the provincial administration, had no advisory bodies, and was supported only by a small chancellery and officials on special assignments" (Shandra, 2005, p. 57).

These instructions should be analysed comprehensively. In the introduction, the first paragraph already indicated the person who appoints the governor-general. Regarding his status, paragraph 2 stated that he was the main guardian of the foundations of autocracy in the region, compliance with imperial laws and government orders. Paragraph 4 specified him as a local senior law enforcement and security official who was to constantly carry out audits of the authorities under his jurisdiction to ensure that laws were not violated. Paragraph 5 outlined in general terms the subjects of the governor-general's jurisdiction: internal security, public welfare and food issues, issues of the national economy, and the administration of justice (General instructions to the governors-general, 1853).

The first section was focused on the issues of security in the Governorate-General. According to paragraphs 6 and 7, he was to monitor the mood among the nobility as a pillar of the autocracy, whether their actions were in conflict with the foundations of imperial power. In addition, paragraph 8 requires him to monitor the situation of retired military personnel, their social security and financial situation. Moreover, it was supposed to control the ideas that were circulating among representatives of other segments of the population. If the unrest could not be dealt with by local officials on their own, he was to intervene. Clause 12 set out the tasks of assisting the population during emergencies (General instructions to the governors-general, 1853).

In addition, the legal regulation defined the procedure for the relationship between the head of the civil-military administration and purely civilian provincial administrations, other local authorities. According to paragraph 40 of Section III, all governors, as well as other institutions and officials that were part of the provincial government, had to comply with all legal requirements, proposals and instructions of the governor-general. In cases where during the audit of a region the governor-general encountered facts of unrest and so on that required his special orders, he had to inform the relevant provincial authorities of all such orders (General instructions to the governors-general, 1853).

The study of the experience of functioning of civil-military administrations in the form of governorates-general is important in terms of the tasks that were set for it, as well as the conditions and situation in the territories where it was introduced. This is because the reasons for the establishment of such civil-military administrations could be uprisings, incorporation of terri-

tories with a different ethnic composition or their unique cultural and political traditions, and mechanisms of state structure. We should not forget about the historical experience of governors-general in the tasks of spreading culture, education, and language in new territories. The Ukrainian authorities will eventually face the issue of restoring not only Ukrainian administrative institutions in the temporarily occupied territories, but also the problem of reintegrating the region into the Ukrainian cultural and linguistic space, etc.

The Russian imperial authorities' policy on the process of incorporating the Ukrainian Hetmanate into the administrative system of the Russian Empire should be underlined. Despite the fact that the Hetman's Cossack statehood was granted autonomy and a unique status, the Russians gradually (it took them about 150 years) took steps to limit it. The process resulted in the extension of the administrative-territorial imperial system to Ukrainian lands, the elimination of all democratic institutions, and the entire population being absorbed into the feudal structure of the Russian social order. This happened without any significant armed resistance, etc.

Ukrainian history experienced the functioning of military and civilian institutions already during the Ukrainian State of Pavlo Skoropadskyi. In general, this talented politician was able to build an effective and efficient administrative and territorial apparatus in a short time in extremely difficult conditions.

With regard to the civilian component of the administrative system, it should be noted that P. Skoropadskyi abolished the previously existing system of government under the Central Rada and introduced a system of division into provinces and counties. He introduced the institutions of provincial and county elders, who, in fact, had the same powers as the respective leaders of the Russian Empire. They represented the central executive branch in the regions and monitored the implementation of laws and government orders by local authorities. The commissioners organised the functioning of local police institutions (state guards) (Halatyr, 2011, p. 329).

The civilian administrations were accompanied by military commandants. A. Sydorenko argues: "Order No. 159 of the Military Office of the Ukrainian State of 15 May 1918: 'The power of the Governorate and County Commandants is formed... to assist the civil authorities (provincial and county starostas) in cases of need to suppress anarchy and riots'" (Sydorenko, 2015, p. 146).

4. Conclusions

Therefore, in the Russian Empire, governorates-general performed a number of important tasks for the tsarist regime in terms of military control and the development and implementation of a new civil administration and administrative system in the newly annexed territories. In addition, due to the combination of military and civilian powers, governors-general pursued an active policy on unification and "harmonisation" (so to speak) of local regional specificities in various sectors of society to the general imperial standards. During the Ukrainian State, P. Skoropadskyi built a model of effective local authority, within a limited timeframe and budget, as well as in the context of domestic and foreign policy crises.

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ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ВІЙСЬКОВО-ЦИВІЛЬНИХ АДМІНІСТРАЦІЙ НА ТЕРИТОРІЇ УКРАЇНИ У ПЕРІОД ПЕРЕБУВАННЯ У СКЛАДІ РОСІЙСЬКОЇ ІМПЕРІЇ

Abstract. ***Результати***. Актуальність статті полягає у тому, що важливим питанням є правове оформлення статусу генерал-губернатора та, відповідно, такої військово-цивільної адміністрації, як генерал-губернаторство. Необхідно на цьому зупинитися більш детально. Як уже було сказано, у Російській імперії тривалий час відчувався брак уніфікаторських норм, які б урегульовували діяльність генерал-губернаторств та їхніх голів, а повноваження визначалися під кожне конкретне генерал-губернаторство окремими актами. Необхідно зауважити на політику російської імперської влади щодо самого процесу інкорпорації Української гетьманської держави до адміністративної системи Російської імперії. Незважаючи на те що гетьманська козацька державність отримала автономію, унікальний статус, росіяни поступово (приблизно їм знадобилося 150 років) здійснювали кроки з її обмеження. Процес завершився тим, що на українські землі було поширено адміністративно-територіальну імперську систему, усі демократичні інститути ліквідувалися, а все населення влилося до феодальної структури російського суспільного устрою. Це відбулося без суттєвого збройного спротиву тощо. ***Висновки***. Українська історія знає ще досвід функціонування військових та цивільних інстанцій за часів Української держави Павла Скоропадського. Загалом цей талановитий політичний діяч у короткі строки зміг вибудувати ефективний та дієвий адміністративно-територіальний апарат у надскладних умовах. Зроблено висновок, що в Російській імперії генерал-губернаторства виконували низку важливих для царату завдань із військовому контролю та розбудови й упровадження нової цивільної адміністрації та адміністративного устрою на нових приєднаних територіях. Окрім того, завдяки поєднанню військових та цивільних повноважень генерал-губернатори проводили активну політику уніфікації та «гармонізації» (якщо можна так сказати) місцевих регіональних особливостей у різних сферах життя суспільства до загальноімперських стандартів. За часів Української держави П. Скоропадський вибудовував модель ефективної влади на місцях в умовах обмежених хронологічних рамок та бюджету, а також кризових внутрішньо- і зовнішньополітичних явищ.

Ключові слова: генерал-губернатор, імперія, центральна влада, повноваження, адміністративна система.

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FORMS OF EXERCISING POWERS BY THE HEAD OF A PRE-TRIAL INVESTIGATION BODY

Abstract. ***Purpose.*** The purpose of the article is to define and classify the main forms of exercising the powers of the head of a pre-trial investigation body. ***Results.*** The article identifies and classifies the main forms of exercising powers by the head of a pre-trial investigation body. It is proved that the head of a pre-trial investigation body organises pre-trial investigation and controls the pre-trial investigation. The procedural powers of the head of a pre-trial investigation body to entrust an investigator with the pre-trial investigation can only have the expected positive effect if the head of a pre-trial investigation body allows for the situation in the investigative unit headed by him/her: staffing, workload of investigators, their specialisation, qualifications, experience, leave schedule, upcoming business trips, etc. Prompt and efficient execution of the instructions of the head of a pre-trial investigation body by the investigator is possible only with well-established cooperation, which requires the head of a pre-trial investigation body to use his/her administrative powers, including as one of the heads of the territorial body. The organisational powers of the head of a pre-trial investigation body are sometimes so closely linked to procedural powers that it is difficult to distinguish between them. The distribution of criminal proceedings and materials is organisational work, while the assignment of pre-trial investigation is procedural side. In this case, the adoption of a procedural decision is preceded by organisational work, in particular, to assess whether the decision to entrust procedural activities to the investigator is optimal. The author proves the connection between the organisational and procedural powers of the head of a pre-trial investigation body. ***Conclusions.*** The author concludes that since the entry into force of the Criminal Procedure Code of Ukraine in 2012, the scope of procedural powers of the head of a pre-trial investigation body has not been changed even though this need has been reasonably emphasised by scholars and practitioners. Therefore, despite the positive experience of implementing the provisions of the CPC of Ukraine, certain issues of the regulatory framework for powers of the head of a pre-trial investigation body remain unresolved and require the development of legislative provisions with due regard to the need to increase the efficiency of pre-trial investigation.

Key words: organisation of pre-trial investigation, procedural control, head of a pre-trial investigation body, full powers, procedural guidance.

1. Introduction

The head of a pre-trial investigation body is responsible for resolving fundamental issues related to ensuring the legality, timeliness and efficiency of the procedural activities of investigators, for the implementation of which he or she is vested with the relevant powers. Moreover, the head of a pre-trial investigation body has procedural and organisational powers (Order of the Ministry of Internal Affairs of Ukraine on the organization of the activities of investigative units of the National Police of Ukraine, 2017), that are much broader than those defined in the CPC of Ukraine. Despite the fact that the procedural figure of the head of a pre-trial investigation body is of particular importance in the science of criminal procedure and law enforcement, important issues remain unresolved that complicate or reduce the effectiveness of his/her control activities.

The issues of the regulatory framework for and practical implementation of procedural and organisational powers of the head of a pre-trial investigation body have been under focus by scholars, which indicates their relevance. These issues have been studied in the works by V.P. Ashytko, E.I. Voronin, Yu.V. Derishev, V.V. Kalnytskyi, H.M. Mamka, P.I. Miniukov, M.A. Pohoretskyi, V.A. Sementsov, O.Yu. Tatarov, L.D. Udalova, V.I. Farynnyk, M.M. Cherniakov, H.P. Khimicheva and other scientists, which contributed to the forma-

tion of a number of significant theoretical approaches and practical recommendations that are currently the basis for further research.

The purpose of the article is to define and classify the main forms of exercising the powers of the head of a pre-trial investigation body.

2. Legislative consolidation of the status of the head of a pre-trial investigation body

In the current version of Article 39 of the CPC of Ukraine, the legislator has abandoned the use of the term "control", which, despite the actual correspondence of the powers of the head of a pre-trial investigation body to the content of control activities, is perceived differently by scholars and practitioners, because for example, Article 114-1 of the CPC of 1960 stipulated that the head of the investigative department shall control the timeliness of actions of investigators to solve crimes and prevent them, take measures to ensure the most complete, comprehensive and objective conduct of pre-trial investigation in criminal cases.

This problem can and should be solved by supplementing the CPC of Ukraine, Article 39, part 1, with a provision stating that the head of a pre-trial investigation body shall organise the pre-trial investigation and control the pre-trial investigation. This will facilitate uniform application of the law and eliminate the inconsistency of the CPC of Ukraine, Article 39, parts 1 and 2.

The head of a pre-trial investigation body as an actor of control and supervision is an official who heads the relevant pre-trial investigation body, is empowered to organise pre-trial investigation and control the legality of pre-trial investigation and is identified in the URPI in a specific criminal proceeding.

Furthermore, scholars propose a different regulatory construction. For example, I.V. Hloviuk argues that procedural guidance is characterised by an organisational and controlling element. In order to distinguish this function from the form of exercising the function of prosecutorial supervision in pre-trial proceedings and the function of the head of a pre-trial investigation body to organise the activities of the pre-trial investigation body, the author makes a proposal to call it departmental procedural guidance of pre-trial investigation, which consists in taking managerial and control measures to ensure a lawful, impartial and effective investigation of criminal offences by pre-trial investigation bodies (Hloviuk, 2015).

While generally agreeing with the need to distinguish between these concepts and to provide for their respective regulatory consolidation, we believe that the concept of "control" is more appropriate in this case. The interpretation of the term "procedural guidance" has many interpretations and is not defined by law. Therefore, the introduction of the similarly undefined concept of "departmental procedural guidance" will complicate the formation of a unified approach to its understanding.

Indisputably, the control of the pre-trial investigation body by the head of a pre-trial investigation body is an important factor in the effective solution of the tasks assigned to investigators. According to O. Tatarov, control is needed in all "human communities", and especially in large-scale organisations with numerous functions, such as the investigative apparatus (Tatarov, 2012).

Inadequate procedural control is often a prerequisite for investigators to violate the law and reasonable investigation timeframes. The situation is objectively complicated by a significant decline in the level of professionalism of investigative units' staff (Miniukov, Miniukov, 1999).

Scientific approaches to understanding the role of the head of a pre-trial investigation body in criminal proceedings vary from the thesis that the heads of the pre-trial investigation body should act as organisers of the work of investigators and perform purely organisational, managerial, resource and material support for the pre-trial investigation (Mirkovets, 2012) to definition of the control function of the head of a pre-trial investigation body as exclusively procedural with the justification of the need to expand the procedural powers of the head of a pre-trial investigation body (Mykhailenko, Yurchyshyn, 2006).

The legal status of the head of a pre-trial investigation body is characterised by a combination of administrative and procedural powers. Their imbalance can affect the procedural independence of the investigator, the resolution of procedural issues through the use of administrative levers, which is unacceptable. On the contrary, the balance of powers of different legal nature has a positive impact on the effectiveness of the investigator's procedural activities.

The head of a pre-trial investigation body, on the one hand, manages the activities of the investigative unit in general, providing it with resources and methodology, and, on the other hand, organises the work of a particular investigator. The organisational capabilities of the head of a pre-trial investigation body are aimed at ensuring the effectiveness of criminal investigations.

The correct organisation of the pre-trial investigation, the means of its implementation, their optimal set and sequence of realisation

allow the head of a pre-trial investigation body to ensure that all the circumstances of the offence are established. However, it is objectively impossible to ensure the organisational procedure for each criminal offence at the regulatory level in a proper and complete manner, so even in bylaws the organisational and managerial process is defined in general terms. General, typical elements of the organisational and managerial activities of the head of a pre-trial investigation body are: selection, placement, training of personnel and ensuring their professional development; timely and correct assignment of tasks to subordinates; effective control over timely and high-quality investigation of criminal offences; material, technical, methodological and legal support for investigative activities; proper information and analytical activities, accounting and reporting. The organisation as a function of management of pre-trial investigation bodies is aimed at coordinating the activities of personnel of investigative units, creating a system of information, selection, placement, training and education of investigators (Sychov, Yukhno, 2018).

The organisational powers of the head of a pre-trial investigation agency can be effectively linked to procedural powers but should not replace them. Moreover, some procedural powers are exercised only in combination with the organisational capabilities of the head of an investigative unit.

For example, the procedural powers of the head of a pre-trial investigation body to entrust an investigator with the pre-trial investigation can only have the expected positive effect if the head of a pre-trial investigation body allows for the situation in the investigative unit headed by him/her: staffing, workload of investigators, their specialisation, qualifications, experience, leave schedule, upcoming business trips, etc. Prompt and efficient execution of the instructions of the head of a pre-trial investigation body by the investigator is possible only with well-established cooperation, which requires the head of a pre-trial investigation body to use his/her administrative powers, including as one of the heads of the territorial body.

The organisational powers of the head of a pre-trial investigation body are sometimes so closely linked to procedural powers that it is difficult to distinguish between them. The distribution of criminal proceedings and materials is organisational work, while the assignment of pre-trial investigation is procedural side. In this case, the adoption of a procedural decision is preceded by organisational work, in particular, to assess whether the decision to entrust procedural activities to the investigator is optimal.

3. Main forms of exercising the full powers of the head of a pre-trial investigation body

Relying on the analysis of the CPC of Ukraine and other legal regulations [1], we have identified and classified the main forms of exercising the powers of the head of a pre-trial investigation body:

I. Procedural:

a) Organisational:

- To determine the investigator(s) who will conduct the pre-trial investigation (Article 214, part 1, Article 39, part 2, para 1 of the CPC of Ukraine);

- To create an investigative team and appoint a senior investigator who will supervise the actions of other investigators (the CPC of Ukraine, Article 39, part 2, para 1);

- To remove the investigator from the pre-trial investigation and appoint another investigator: a) on the initiative of the prosecutor; b) on his/her own initiative (the CPC of Ukraine, Article 39, part 2, para. 2);

- To appoint another investigator if there are grounds: a) for his/her recusal; b) in case of ineffective pre-trial investigation (the CPC of Ukraine, Article 39, part 2, para. 2);

- To initiate consideration of the issues raised in the investigator's motion to the investigating judge to apply measures to ensure criminal proceedings, conduct investigative (search) actions or covert investigative (search) actions before a superior public prosecutor, in cases where the prosecutor refuses to approve it (the CPC of Ukraine, Article 40, part 3);

- To authorise investigators to carry out investigations in criminal proceedings: a) in respect of a juvenile, in particular, if criminal proceedings are carried out in respect of several persons, at least one of whom is a juvenile, b) in respect of the application of compulsory educational measures (the CPC of Ukraine, Article 484, part 2, Article 499, part 2);

- To grant access to specific secret information and its material carriers (the CPC of Ukraine, Article 517, part 4);

b) Controlling:

- To familiarise with the materials of the pre-trial investigation (the CPC of Ukraine, Article 39, part 2, para. 3), including by studying the materials of criminal proceedings, holding hearings, and requesting certain procedural documents;

- To provide the investigator with written instructions (the CPC of Ukraine, Article 39, part 2, para. 3);

- To take measures to eliminate violations of the requirements of the criminal procedure legislation (the CPC of Ukraine, Article 39, part 2, para. 4);

c) Those related to personal participation in the pre-trial investigation:

- To conduct a pre-trial investigation, using the powers of an investigator (the CPC of Ukraine, Article 39, part 2, para. 6);

- To approve investigative (search) actions and to extend the term of their conduct (the CPC of Ukraine, Article 39, part 2, para. 5, part 5 of Article 246, part 2 of Article 272 of the CPC of Ukraine);

- To make a decision on the use of pre-identified (marked) or bogus (imitation) means during covert investigative (search) actions (the CPC of Ukraine, Article 273, part 1);

- To make a decision on disclosing true information about a person acting without disclosing reliable information about him or her, the circumstances of the production of things or documents or the special formation of an enterprise, institution or organisation (the CPC of Ukraine, Article 273, part 3);

- To submit motions to extend the pre-trial investigation period by the appropriate prosecutor, as well as motions to send criminal proceedings to law enforcement agencies of other countries in accordance with international treaties of Ukraine.

II. Administrative and representative:

a) Managerial:

- To organise the work of investigators at the scene, including personal visits. For example, in the National Police the head of a pre-trial investigation body of the regional level shall personally visit the scene of premeditated murders, other exceptionally grave crime, as well as criminal offences that cause a significant public outcry, to supervise the work of the investigative team during the inspection of the scene, and, if necessary, to make a decision to involve a specialised mobile forensic laboratory in the examination of the scene of the incident, and sends a written request to the management of the relevant unit of the MIA Expert Service (as an exception, to orally approve the issue with further submission of a written request);

- To coordinate the activities of the pre-trial investigation body and the operational and technical units and the operational service in relation to the conduct of covert investigative (search) actions by operational units;

- To organise the interaction of investigators with operational units, forensic bodies, prosecutors and courts;

- To apply to the appropriate prosecutor to determine the jurisdiction of the criminal offence (including to a higher or lower pre-trial investigation body);

- To organise the planning of investigations into specific proceedings;

- To provide methodological and practical assistance in the pre-trial investigation of complex, multi-episodic criminal offences;

b) Staffing and logistics:

- To initiate, approve or make a decision to conduct an internal investigation into violations of the law by investigators;

- To initiate, approve or make a decision on the appointment or dismissal of subordinate employees;

- To initiate, approve or make a decision on rewarding investigators and imposing disciplinary sanctions on them, assigning special ranks, class ranks, granting leave, setting salaries;

- To organise an audit of the storage of material evidence and conducting an inventory of criminal proceedings;

c) Representative and managerial:

- To perform general management of the pre-trial investigation body;

- To define the functional responsibilities of employees of the pre-trial investigation body and establish the specialisation of investigators in the investigation of certain categories of criminal offences;

- To organise the consideration of citizens' appeals;

- To organise planning and reporting on the activities of the pre-trial investigation body;

- To organise control and supervisory proceedings;

- To ensure that investigators (investigative teams) are on duty to visit the scene of the crime, and in case of deficiencies in the inspection of the scene, to organise its re-conduct;

- To organise the activities of forensic inspectors (forensic technicians) to ensure proper technical and forensic support of criminal proceedings.

4. Conclusions

Since the entry into force of the Criminal Procedure Code of Ukraine in 2012, the scope of procedural powers of the head of a pre-trial investigation body has not been changed even though this need has been reasonably emphasised by scholars and practitioners. Therefore, despite the positive experience of implementing the provisions of the CPC of Ukraine, certain issues of the regulatory framework for powers of the head of a pre-trial investigation body remain unresolved and require the development of legislative provisions with due regard to the need to increase the efficiency of pre-trial investigation.

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ФОРМИ РЕАЛІЗАЦІЇ ПОВНОВАЖЕНЬ КЕРІВНИКОМ ОРГАНУ ДОСУДОВОГО РОЗСЛІДУВАННЯ

Анотація. ***Мета.*** Метою статті є визначення та класифікація основних форм реалізації повноважень керівника органу досудового розслідування. ***Результати.*** Визначено та класифіковано основні форми реалізації повноважень керівником органу досудового розслідування. Обґрунтовано, що керівник органу досудового розслідування здійснює організацію досудового розслідування і контроль за досудовим розслідуванням. Процесуальне повноваження керівника органу досудового розслідування щодо доручення слідчому провадження досудового розслідування може принести очікуваний позитивний ефект тільки в разі, якщо керівник органу досудового розслідування ураховує ситуацію в очолюваному слідчому підрозділі: укомплектованість, навантаження слідчих, їхні спеціалізацію, кваліфікацію, досвід, графік відпусток, майбутні відрядження тощо. Швидке та ефективне виконання доручень керівника органу досудового розслідування слідчим можливо тільки за налагодженої взаємодії, для чого необхідне використання керівником органу досудового розслідування його адміністративних повноважень, зокрема і як одного з керівників територіального органу. Організаційні повноваження керівника органу досудового розслідування іноді настільки тісно пов'язані з процесуальними, що їх складно розмежувати. Розподіл кримінальних проваджень і матеріалів – організаційна робота, а доручення здійснення досудового розслідування – процесуальна. У цьому разі прийняттю процесуального рішення передує організаційна робота, зокрема за оцінкою оптимальності рішення про доручення процесуальної діяльності слідчому. Доведено зв'язок організаційних та процесуальних повноважень керівника органу досудового розслідування. ***Висновки.*** Зроблено висновок, що з набранням чинності Кримінального процесуального кодексу України 2012 р. обсяг процесуальних повноважень керівника органу досудового розслідування не змінювався жодного разу, хоча про таку потребу обґрунтовано наголошувалося науковцями й практиками. Таким чином, незважаючи на позитивний досвід реалізації норм КПК України, окремі питання правової регламентації повноважень керівника органу досудового розслідування залишаються не до

кінця вирішеними і потребують розроблення законодавчих норм з урахуванням необхідності підвищення ефективності досудового розслідування.

Ключові слова: організація досудового розслідування, процесуальний контроль, керівник органу досудового розслідування, повноваження, процесуальне керівництво.

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DUTIES AND RIGHTS OF PARTIES TO CRIMINAL PROCEEDINGS WITH REGARD TO APPLICATION OF MEASURES TO ENSURE CRIMINAL PROCEEDINGS

Abstract. ***Purpose.*** The purpose of the article is to determine the correlation between the rights and duties of the parties to criminal proceedings with regard to proving the need (or lack thereof) for application of measures to ensure criminal proceedings. ***Results.*** The article studies the correlation of rights and duties of the parties to criminal proceedings with regard to proving the need for application of measures to ensure criminal proceedings. It is noted that the investigator and the prosecutor are responsible for proving to the investigating judge and the court the existence of grounds for applying measures to ensure criminal proceedings, and therefore they shall justify the need to apply a particular measure. In this case, it is the duty of the prosecution to prove the necessity of applying measures to ensure criminal proceedings. ***Conclusions.*** With regard to the defence, in this context, arguments are made for granting the right to prove the absence of the need to apply measures to ensure criminal proceedings, since the burden of proof is not provided by measures of legal liability, but rather by the interests of the defence. That is, if the prosecution is interested in applying measures to ensure criminal proceedings, it is the prosecution that should initiate and collect the necessary arguments to make a decision on their application. If the defence is interested in applying (or not applying) measures to ensure criminal proceedings, it is the defence that should select the necessary arguments, and in our opinion, both parties should have equal opportunities to both collect the necessary arguments (proof of their position) and prove them. However, on the part of the defence, this only concerns proving the absence of the need for application of measures to ensure criminal proceedings (and is positioned as an interest, not a duty). On the part of the prosecution, the use of the term «interest» is questionable, since the actors cannot be interested, but they shall take all possible measures to prove the suspect's guilt, so it is necessary to use the term «duty to prove the need to apply measures to ensure criminal proceedings

Key words: criminal proceedings, provisional measures, parties to criminal proceedings, proving, application, duties and rights.

1. Introduction

The CPC allows both the defence and the prosecution to initiate the application of measures to ensure criminal proceedings, which is one of its most progressive provisions. However, in addition to initiating the application, the actor shall prove the necessity of applying the measures in question. When this proof (justification of the necessity) is carried out by the prosecution, it looks logical, since all actions of the actors are focused precisely on proving certain facts, for which they have all the necessary tools at their disposal (the possibility of giving assignments, instructions, a well-established mechanism for such actions, etc.) However, in addition to the investigator with the consent of the prosecutor (in accordance with paragraph 5 of the letter of the High Spe-

cialised Court of Ukraine No. 223-558/0/4-13 of 5 April 2013 «On some issues of the exercise of judicial control by the investigating judge of the court of first instance over the observance of rights, freedoms and interests of persons during the application of measures to ensure criminal proceedings» in the absence of the prosecutor's consent (approval), the investigator is not entitled to apply to the court with a motion for the application of measures to ensure criminal proceedings) (Letter of the Higher Specialised Court of Ukraine On some issues of the exercise of judicial control by the investigating judge of the court of first instance over the observance of the rights, freedoms and interests of individuals during the application of measures to ensure criminal proceedings, 2013) and the prosecutor, the following actors have right to submit a motion to the investigating judge to apply: a summons – the suspect, his/her defence counsel, the victim, his/her representative (Article 134 of the CPC); a forced appearance before court – a party to the criminal proceedings, the victim (Article 140(2) of the CPC); temporary access to things and documents – parties to the criminal proceedings (Article 160 of the CPC); seizure of property – a civil plaintiff (Article 171 of the CPC). The practice of initiating the application of measures to ensure criminal proceedings by the defence and other participants (as opposed to the prosecution) is not widespread today, since although, according to part two of Article 22 of the CPC, the parties to criminal proceedings have equal rights to collect and submit to the court items, documents, other evidence, motions, complaints, as well as to exercise other procedural rights provided for by the CPC (Farynnyk, 2012, p. 4), but there are a number of legal conflicts and «silences» in the CPC provisions that do not allow other parties to the criminal proceedings to act on an «equal footing» both in the process of collecting evidence in general and in justifying (proving) the need to apply (or not to apply) measures to ensure criminal proceedings. Although the Law of Ukraine «On the Bar and Practice of Law» allows an advocate to collect information about facts that can be used as evidence, adversariality as a general principle of criminal proceedings during pre-trial investigation is not fully implemented, due to a number of objective and subjective factors (Nykonenko, 2014, p. 10). The imperfection of certain provisions of the CPC, which make it impossible to fully exercise the rights of the defence counsel, including the right to collect evidence (Tatarov and Cherniavskyi, 2015, pp. 77–84), leads to impossibility of justifying motions for the application of measures to ensure criminal proceedings properly.

A number of scholars have considered the issues related to the participation of the parties to criminal proceedings in proving the need for application of measures to ensure criminal proceedings. L. M. Loboiko and O. A. Banchuk argue that unlike the duty to prove, which consists in proving the guilt of a person in committing a criminal offence before the court, the burden of proof relates to other circumstances. Placing the burden of proof on the defence to prove these circumstances does not contradict the presumption of innocence (Loboiko and Banchuk, 2014, p. 177). V. V. Vapniarchuk insists on the need to distinguish and recognise legal duty and burden of proof as independent legal phenomena. However, he believes that the difference between them is that the burden of proof is not provided by measures of legal liability, but rather by the interest (rather than coercion) pursued by the parties in criminal proceedings (Vapniarchuk, 2017, pp. 351–352). In fact, this issue is poorly researched and therefore of scientific interest.

The purpose of the article is to determine the correlation between the rights and duties of the parties to criminal proceedings with regard to proving the need (or lack thereof) for application of measures to ensure criminal proceedings.

2. Principles of the concepts of «duties» and «rights» of the parties to criminal proceedings

An important rule (condition for the legitimacy) of the application of measures to ensure criminal proceedings is the «duty» of proving, which, in accordance with the provisions of the CPC, is imposed on the investigator and the prosecutor, and in some cases (although this is not provided for in part three of Article 132 of the CPC) – on the party to the criminal proceedings that files the motion. In this context, it should be noted that in the vast majority of cases, it is the investigator and the prosecutor that are responsible for proving to the investigating judge and the court the existence of grounds for applying measures to ensure criminal proceedings, and therefore they shall justify the need to apply a particular measure. In this case, it is the duty of the prosecution to prove the necessity of applying measures to ensure criminal proceedings.

However, before describing it, two terms should be correlated: «duty to prove» and «burden of proof», enabling to clearly define the actors of the respective duty and burden in criminal proceedings. The analysis of doctrinal sources in this regard enables to agree with those scholars who argue for the position of distinction between these legal phenomena. When distinguishing between these categories, a num-

ber of scholars proceed from the subject matter of proving, justifying their opinion by the fact that the burden of proof in criminal proceedings is a legal phenomenon, implying the procedural need of a certain actor of proving to defend its legal position with positive and objectively achievable statements, due to the interest of the procedural need (Vapniarchuk, 2017, pp. 351–352). This scientific position is worth supporting and can be extrapolated with regard to proving the necessity of applying measures to ensure criminal proceedings.

The literature review reveals that the legislator has established a rebuttable presumption against the use of measures to ensure criminal proceedings (Kivalov, Mishchenko, Zakharchenko, 2013), which is associated with the assumption that the effectiveness of criminal proceedings can be achieved without the use of these measures. That is why the burden of proof in this case is defined as the need for the investigator, prosecutor to provide appropriate, admissible, reliable and sufficient evidence that the application of a measure to ensure criminal proceedings is necessary to ensure the effectiveness of criminal proceedings (Hloviuk, 2013, pp. 84–89). We advocate this but consider it appropriate to once again emphasise that it is the responsibility of the prosecution to prove the necessity of applying measures to ensure criminal proceedings (as well as extending their validity). In this context, it is worth referring to the ECHR case-law, according to which placing the burden of proof on the detainee in such matters amounts to an inverted rule of Article 5 of the Convention: a provision that considers detention an exceptional derogation from the right to personal freedom, which is permissible only in exhaustively listed and clearly defined cases.

In our opinion, the following provisions stipulate that the investigator and the prosecutor have the duty to prove the circumstances provided for in part three of Article 132 of the CPC: first, the need to prove the legality and validity of the respective measure is dictated by the interest of the criminal prosecution authority in its application; second, the proving is carried out in the order of using the authority to initiate such a decision (Lastochkina, 2005, p. 7); third, no one has the right to compel the criminal prosecution authority to prove; fourth, refusal to prove or improper proving does not entail sanctions against the investigator or prosecutor, but it also does not allow them to achieve the desired result – to apply measures to ensure criminal proceedings.

The literature review reveals that the duty to prove is logically conditioned by the following circumstances: first, it is the investigator who directly conducts the pre-trial investigation, as well as the prosecutor who is entrusted with procedural guidance of the pre-trial investigation, should not only determine the need to apply measures to ensure criminal proceedings, but as the actors most aware of the actual grounds for their application, provide the court with relevant arguments confirming such a need, and persuade it to make the appropriate procedural decision (issue a ruling); second, the value of the judicial procedure for deciding on the application of these measures, in particular, is that, being independent and impartial, the court issues a ruling based on its own conviction that there are sufficient grounds for this, which is the result of the investigation of the circumstances and evidence provided by the parties (Bandurka, Blazhivskyi, Burdol, Farynnyk, 2012).

In this aspect, the perspective that if the duty of the investigator or prosecutor to prove to the investigating judge the existence of grounds for the application of measures to ensure criminal proceedings is legally binding, it effectively eliminates the possibility of these persons filing an unreasonable motion with the investigating judge deserves support, as in this case, the initiative itself is levelled and the court's decision is quite predictable not in favour of the initiator of the motion (Hroshevyi, Tatsii, Tumaniants, 2013, pp. 259–260). Another thing is that, according to law enforcement practice, cases of filing ungrounded «initiatives» are not uncommon and, unfortunately, the burden of proof is not currently correlated with the justification of the relevant motion. However, this is another aspect of this issue, which concerns the legal consciousness of both the prosecution and the investigating judge, whose exclusive competence is to decide on the application of measures to ensure criminal proceedings during the pre-trial investigation.

3. Particularities of the duty of the burden of proof in criminal proceedings

Good faith fulfilment of the burden of proof a priori requires the initiator of the motion, the prosecutor, to personally participate in the court hearing on the motion. Therefore, the failure of the investigator or prosecutor to appear at the hearing of the motion, in our opinion, is in fact a failure of these entities to fulfil their duty to prove the circumstances justifying the need to apply the relevant measure to ensure criminal proceedings. This, in turn, deprives the investigating judge of the opportunity to fully and comprehensively clarify the set of circumstances with which the law relates the decision on their application. If the investigator or prosecutor fails to appear at the appointed time, the investigating judges should also reject such

motions, given that one of the general principles of criminal proceedings is the adversarial nature of the parties (Article 22 of the CPC), which provides for the prosecution and the defence to independently defend their legal positions, and the court only creates the necessary conditions for the parties to exercise their procedural rights and fulfil their procedural duties. Therefore, the prosecution shall ensure personal appearance and the presentation of relevant evidence (Chvankin, 2014).

In addition, it is even provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms (Law of Ukraine On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention, 1997) that the presumption in favour of liberty (Article 5) is underlined by the imperative requirement to ensure that, firstly, deprivation of liberty is no longer than absolutely necessary and, secondly, that it is returned immediately if it is unjustified. The second requirement is evidenced by the provision that anyone deprived of his or her liberty has the right to a trial. This indicates that the burden of proof is on those who deprived a person of their liberty: they shall prove not only that powers to apply this measure are within the context of one of the grounds specified in Article 5 of the Convention, but also that its application was lawful under the specific circumstances of the deprivation of liberty. Such a burden inevitably means that those who may exercise powers that may result in deprivation of liberty shall conduct a critical analysis of the situation in order to ensure that the limits set by the law are always respected in the actual exercise of these powers (Kononenko, 2012, pp. 127–131). The question of the respective «duty to refute» the arguments of the investigator or prosecutor by the defence remains open, since the CPC of Ukraine, Article 132, part 5, does provide that «when considering the application of measures to ensure criminal proceedings, parties to criminal proceedings should present to investigating judge or court evidence on circumstances to which they refer.» However, does this mean that the duty to prove is shifted to the defence (Bushchenko, 2017)? In our opinion, in this particular case, it is not a duty to apply measures to ensure criminal proceedings, and the driving force should be interest. That is, if the prosecution is interested in applying measures to ensure criminal proceedings, it is the prosecution that should initiate and collect the necessary arguments to make a decision on their application. If the defence is interested in applying (or not applying) measures to ensure criminal proceedings, it is the defence that should select the necessary arguments, and in our opinion, both parties should have equal opportunities to both collect the necessary arguments (proof of their position) and prove them. However, on the part of the defence, this only concerns proving the absence of the need for application of measures to ensure criminal proceedings (and is positioned as an interest, not a duty), while on the part of the prosecution, the use of the term «interest» is questionable, since the actors cannot be interested, but they shall take all possible measures to prove the suspect's guilt, so it is necessary to use the term «duty to prove the need to apply measures to ensure criminal proceedings. In the light of this conclusion, the most reasonable position is that the defence shall not prove the opposite, and the failure of the investigator or prosecutor to prove the need to apply a measure to ensure criminal proceedings entails the rejection of the motion; this does not apply only to those measures to ensure criminal proceedings that the investigating judge has the right to choose on his/her own initiative: summons, forced appearance before court, and monetary penalty (Hloviuk, 2013, pp. 84–89).

Furthermore, it is necessary to conceptually distinguish between «the party's duty to prove the circumstances to which it refers» and «the party's duty to prove the absence of risks that necessitate the application of the measure» (Bandurka, Blazhivskyi, Burdol, Farynnyk, 2012), as the party shall prove that the circumstance to which it refers exists but does not have to prove that this circumstance excludes any risk. This latter is not a circumstance within the meaning of Article 132 of the CPC but is the subject of judicial review. The presence or absence of a risk, as well as the possibility or impossibility of preventing such a risk, are not circumstances in this sense. While the rule of Article 132 of the CPC applies in the former case, it does not in the latter. The duty to prove the risks and necessity of detention always remains with the prosecutor, as the defence always has the presumption of liberty, as set out in Article 29 of the Constitution and Article 5 of the Convention (Bandurka, Blazhivskyi, Burdol, Farynnyk, 2012).

However, for example, when considering a motion for temporary access to items and documents, it becomes necessary (and therefore the prosecution is obliged) to prove that there are sufficient grounds to believe that the «necessary» items or documents are or may be in the possession of the relevant individual or legal entity; by themselves or in combination with other items and documents of the criminal proceedings, in connection with which the motion

is filed, are essential for establishing important circumstances in criminal proceedings; do not constitute or do not include items and documents containing a secret protected by law, the duty to prove is on the party to the criminal proceedings (Article 163 of the CPC). Similarly, when considering the motion of a party to criminal proceedings on a forced appearance before court during proceedings, the duty to prove the motion's validity should be on the party filing it. In our opinion, in this context, the defence should prove the need to apply measures to ensure criminal proceedings, since it (the burden of proof) is provided not by measures of legal liability, but by the interests of the defence, which are the driving force in determining the form of legal conduct by its actors. Moreover, the burden of substantiating the circumstances that preclude the application of criminal proceedings cannot be placed on the defence: otherwise, it would contradict the principle of the presumption of innocence. If the defence party refers to circumstances that preclude the application of criminal proceedings, they shall also provide the investigating judge or court with evidence of the circumstances to which they refer (Hloviuk, 2013, pp. 84–89).

4. Conclusions

The investigator and the prosecutor are responsible for proving to the investigating judge and the court the existence of grounds for applying measures to ensure criminal proceedings, and therefore they shall justify the need to apply a particular measure. In this case, it is the duty of the prosecution to prove the necessity of applying measures to ensure criminal proceedings. With regard to the defence, in this context, arguments are made for granting the right to prove the absence of the need to apply measures to ensure criminal proceedings, since the burden of proof is not provided by measures of legal liability, but rather by the interests of the defence. That is, if the prosecution is interested in applying measures to ensure criminal proceedings, it is the prosecution that should initiate and collect the necessary arguments to make a decision on their application. If the defence is interested in applying (or not applying) measures to ensure criminal proceedings, it is the defence that should select the necessary arguments, and in our opinion, both parties should have equal opportunities to both collect the necessary arguments (proof of their position) and prove them. However, on the part of the defence, this only concerns proving that there is no need to apply measures to ensure criminal proceedings (and is positioned as an interest, not a duty). On the part of the prosecution, the use of the term «interest» is questionable, since the actors cannot be interested, but they shall take all possible measures to prove the suspect's guilt, so it is necessary to use the term «duty to prove the need to apply measures to ensure criminal proceedings.

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ОБОВ'ЯЗКИ ТА ПРАВА СТОРІН КРИМІНАЛЬНОГО ПРОЦЕСУ ЩОДО ЗАСТОСУВАННЯ ЗАХОДІВ ЗАБЕЗПЕЧЕННЯ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ

Анотація. ***Мета.*** Метою статті є визначення співвідношення прав та обов'язків сторін кримінального процесу стосовно доведення необхідності (або відсутності необхідності) застосування заходів забезпечення кримінального провадження. ***Результати.*** У статті розглядається співвідношення прав та обов'язків сторін кримінального процесу щодо доведення необхідності застосування заходів забезпечення кримінального провадження. Зазначено, що доказування перед слідчим суддею, судом наявності підстав застосування заходів забезпечення кримінального провадження покладено на слідчого та прокурора, у зв'язку з чим вони повинні обґрунтувати необхідність застосування того чи іншого заходу. У цьому разі йдеться про обов'язок доказування стороною обвинувачення необхідності застосування заходів забезпечення кримінального провадження. ***Висновки.*** Стосовно сторони захисту в цьому контексті наводяться доводи щодо надання права доказування відсутності необхідності застосування заходів забезпечення кримінального провадження, оскільки тягар доказування забезпечується не заходами юридичної відповідальності, а саме інтересами захисту. Тобто якщо у застосуванні заходів забезпечення кримінального провадження зацікавлена сторона обвинувачення, саме вона повинна бути ініціатором та зібрати необхідні доводи для прийняття рішення про їх застосування. Якщо у застосуванні (або не застосуванні) заходів забезпечення кримінального провадження зацікавлена сторона захисту, то саме вона повинна підібрати необхідні аргументи, і, на нашу думку, обидві сторони повинні бути рівні у можливості як зібрати необхідні аргументи (докази своєї позиції), так і довести їх. Але з боку сторони захисту це стосу-

ється лише доведення відсутності необхідності застосування заходів забезпечення кримінального провадження (і позиціонується як зацікавленість, а не обов'язок). А з боку сторони обвинувачення сумнівним виглядає використання терміна «зацікавленість», оскільки суб'єкти не можуть бути зацікавлені, а вони саме зобов'язані прийняти всі можливі заходи для доведення вини підозрюваного, тому необхідним є використання терміна саме «обов'язок» довести необхідність застосування заходів забезпечення кримінального провадження.

Ключові слова: кримінальне провадження, заходи забезпечення, сторони кримінального процесу, доведення, застосування, обов'язки та права.

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PARTICULARITIES OF OBTAINING AND POTENTIALS OF USING COVERTLY OBTAINED INFORMATION IN CRIMINAL PROCEEDINGS

Abstract. ***Purpose.*** The purpose of the article is to determine the ways of legal justification for the use of covertly obtained information in criminal proceedings. ***Results.*** The article reveals that the search and cognitive capabilities of covert investigative (search) actions are important for establishing the circumstances of criminal offences and solving other tasks of criminal proceedings, however, since the introduction of this institution in criminal proceedings, a number of problematic issues have emerged regarding the use of information obtained as a result of covert investigative (search) actions (which is actually covertly obtained information) in criminal proceedings. There is an ambiguous attitude towards the legislator's interpretation of the equivalence of the results of covert investigative (search) actions to the results of investigative (search) actions. The investigating judge shall consider the motion in accordance with the requirements of Articles 247 and 248 of this Code and shall reject it unless the prosecutor, inter alia, proves the legality of obtaining the information and the existence of sufficient grounds to believe that it indicates the detection of signs of a criminal offence. ***Conclusions.*** It is proved that the results of covert investigative (search) actions shall be verified and confirmed by public investigative (search) actions. The procedural form of public investigative (search) actions, during which information confirming the results of covert investigative (search) actions is obtained, will compensate for vagueness of the procedural form of covert investigative (search) actions, which is objectively necessary for the effective conduct of covert investigative (search) actions. Therefore, the final assessment of the results of covert investigative (search) actions to decide whether to use them as evidence in the pre-trial investigation is possible only after their verification and confirmation based on the results of other procedural actions (covert investigative (search) actions, investigative (search) actions, etc.) A specific and mandatory condition for the use of information obtained during a covert investigative (search) action as evidence in adversarial criminal proceedings is the removal of the secrecy stamp from its protocol and annexes thereto, as well as from the petition and procedural decision on its conduct.

Key words: criminal proceedings, covert investigative (search) actions, information, covert obtaining, use.

1. Introduction

One of the key structural changes in the pre-trial investigation of crimes that had a significant impact on the transformation of the criminal proceedings paradigm was the inclusion of covert investigative (search) actions (CISA) in its structure, which almost completely replaced operative-search activities from the pre-trial investigation stage. This was made possible primarily due to the growing global awareness of the problem of determining the most effective means of criminal prosecution for grave and exceptionally grave crimes. The modern toolkit of procedural activities of investigators has been significantly expanded by CISA, as operative-search activities, relatively speaking, have become part of criminal procedural activities for pre-trial investigation of crimes, and therefore, the following terms have been introduced: investigative (search) and covert investigative (search) actions. The search and cognitive capabilities of CISA are important for establishing the circumstances of criminal offences and solving other tasks of criminal proceedings. However, since the introduction of this institution in criminal proceedings, a number of problematic issues have emerged regarding the use of information

obtained as a result of CISA (which is actually covertly obtained information) in criminal proceedings.

According to M.A. Pohoretskyi, covert investigative means are key in the world practice of law enforcement bodies, as they are responsible for solving and investigating more than 85% of grave and exceptionally grave crimes (Pohoretskyi, 2016). D.B. Serheieva argues that: covert investigative (search) actions, on the one hand, have the same epistemological nature and algorithm of implementation as eponymous search operations, since they are carried out using identical methods of cognition of the crime event, under the same secrecy regime. However, covert investigative (search) actions and search operations differ significantly in terms of their scope and legal regime by: the purpose and objectives of the conduct; the factual and legal grounds for the conduct; the legal status of the actors of their conduct (even if conducted by operational officers, they enjoy the rights of an investigator), and accordingly, the nature of legal relations arising in the course of their implementation; the procedural significance of the results obtained; the object, forms and methods of departmental control and prosecutorial supervision over their implementation (Serheieva, Pohoretskyi, 2014).

M. Shumylo believes that the current CPC of Ukraine lacks effective mechanisms to ensure that reliable results are obtained in the course of CISA (Shumylo, 2013).

Therefore, it can be stated that the problematic issues of using the results of CISA in criminal proceedings are not sufficiently developed, do not lose their relevance and are of interest for research.

The purpose of the article is to determine the ways of legal justification for the use of information obtained covertly in criminal proceedings.

2. General principles of covertly obtained information in criminal proceedings

When considering the informational capability of CISA in criminal proceedings, it is necessary to highlight a number of problematic issues related to both the conduct of CISA and the use of its results in criminal proceedings.

When investigating a crime, the investigator and the prosecutor, who is the procedural supervisor in criminal proceedings, should allow for that in practice there is an ambiguous attitude towards the legislator's interpretation of the equivalence of the results of CISA to the results of investigative (search) actions. M. Shumylo argues that, unfortunately, the new law, in addition to the good intentions of its makers, provides *volens nolens* for the possibility of very real abuses, for example, the potential criminality «inherent» in the procedures for inspecting inaccessible places, housing or other property of a person, exercising control over the commission of a crime, etc. This poses a serious threat to the rights and freedoms of individuals, the legitimacy and fairness of justice, so in our realities, the role of the procedural form should not be underestimated, especially where there are significant risks of human rights violations and falsification of evidence (Shumylo, 2013). It should be noted that similarly D.B. Serheieva (2014) underlines this in the context of identifying and analysing the content of problematic aspects of using the results of information retrieval from transport telecommunication networks as evidence in criminal proceedings, and N.V. Hlynska, L.M. Loboiko and O.H. Shylo (2015) highlight corruption factors of the criminal procedural legislation of Ukraine. Developing his perspective, M. Shumylo proposes to enshrine in Article 256 of the CPC of Ukraine the rule that the results of CISA may be recognised as evidence if they are confirmed by a sufficient set of evidence obtained from independent sources during public investigative (search) actions (Shumylo, 2013). In general, we agree with M. Shumylo that it would be advisable to clarify the provisions of Article 256 of the CPC in terms of strengthening the guarantees of protection of rights and freedoms of a person during covert investigative (search) actions, but we cannot support his proposal to introduce the term «interdependent source of evidence» because we expect that if it is introduced into the CPC of Ukraine in the absence of its definition in the current CPC of Ukraine and in the theory of evidence, the question will raise in practice regarding the correlation between the interdependence of sources of evidence and the legislator's requirement in the CPC of Ukraine, Article 94, part 1, to assess the totality of the evidence collected in terms of their interconnection. Through information about the circumstances of the criminal offence and the persons involved, which are mutually confirmed from different sources, the relationship between these sources of evidence is formed. In this regard, the Plenum of the Higher Specialised Court of Ukraine in its Resolution No. 3 of June 03, 2016 «On review of the practice of consideration of criminal proceedings regarding crimes against life and health of a person» states that evidence should be based on a set of signs or irrefutable presumptions that are sufficiently weighty, clear and consistent with each other, and in the absence of such signs, it cannot be stated that the guilt of the accused has been proved beyond reasonable doubt. Reasonable doubt is a doubt that is based on certain circumstances and common sense, arises from

a fair and balanced consideration of all relevant and admissible information recognised as evidence, or from the absence of such information, and is such that it would make a person abstain from making a decision in matters of importance to him or her (Resolution of the Plenum of the Higher Specialized Court of Ukraine on consideration of civil and criminal cases «On review of the practice of consideration of criminal proceedings regarding crimes against life and health of a person», 2016).

We believe that the results of CISA shall be verified and confirmed by public investigative (search) actions. The procedural form of public investigative (search) actions, during which information confirming the results of covert investigative (search) actions is obtained, will compensate for the lack of clarity of the procedural form of covert investigative (search) actions, which is objectively necessary for the effective conduct of CISA.

We argue that such a statutory requirement will not reduce the evidentiary value of the records of CISA, audio or video recordings, photographs, and other results obtained through the use of technical means, objects and documents seized during such actions or copies thereof, but on the contrary, will deepen the level of public trust in CISA and significantly reduce the risks of abuse by persons carrying out such procedural actions. The exceptional nature of CISA as a means of collecting evidence also requires special requirements for verification of their results. To resolve this issue, it would be possible to go another way: to detail the legal regulatory framework for the procedural form of conducting certain CISA by enshrining the methods of their conduct in the CPC of Ukraine. However, this will significantly reduce the effectiveness of the use of these exceptional means of collecting evidence, as well as search operations identical to them in terms of their epistemological nature, which, in turn, will have an extremely negative impact not only on the ability of law enforcement bodies to detect and stop crimes, but also on ensuring the national security of our State.

Therefore, we propose to make the following amendments and additions to the CPC, Article 256, part 1: *«1. Records on covert investigative (search) actions, audio or video recordings, photographs, other results obtained through the use of technical means objects and documents seized during such actions or copies thereof, may be used in proving, provided that they are confirmed by a sufficient set of evidence obtained in the course of investigative (search) actions and the procedure for conducting covert investigative (search) actions complies with the requirements of this Code.»*

3. Prospects for improving the regulatory framework for using the results of covert investigative (search) actions

The title of Article 257 of the CPC of Ukraine states that the results of CISA may be used for purposes other than those provided for in Article 256 of the CPC of Ukraine. The analysis of the text of this article shows that one of the purposes is to use information on signs of a criminal offence obtained as a result of conducting a criminal investigation only in another criminal proceeding (which is not being investigated in this criminal proceeding) (the CPC, Article 257, part 1). Such information transmitted to another criminal proceeding, in accordance with the procedure set out in the CPC of Ukraine, Article 257, paragraphs 1, 2, in turn, is used in this criminal proceeding in accordance with the provisions of Article 256 of the CPC of Ukraine. In other words, the legislator has actually determined that the results of CISA can only be used in proving. Article 257 of the CPC does not contain any direct regulatory provisions on the use of information obtained in the course of CISA: to search for a person or to establish the location of objects, money, valuables. Although such a possibility can be seen from the provisions of the CPC, Article 249, part 4, which states that for the purpose of CISA, which is conducted to establish the location of a person hiding from the pre-trial investigation authorities, investigating judge or court, and is declared wanted, it may continue until the person's whereabouts are established, as well as the CPC, Article 269-1, part 1, which states that bank account monitoring is conducted to find property subject to confiscation or special confiscation in criminal proceedings under the jurisdiction of the NABU.

Since these actions coincide with the objectives of criminal proceedings, and moreover, their conduct, allowing for the information already obtained, is much more effective (and in some cases, even necessary) for the search for a person, objects, etc., the question of an appropriate regulatory framework arises.

We propose to amend and supplement the CPC, Article 257, paragraphs 1 and 2, and to set it out in the following wording:

«1. *The results of covert investigative (search) actions may be used to search for persons or property subject to confiscation or special confiscation in criminal proceedings in the course thereof they are conducted.*

2. If the conduct of a covert investigative (detective) action resulted in finding signs of a criminal offence which is not the subject of the criminal proceedings concerned, *or in obtaining data on a wanted person or property*

subject to confiscation or special confiscation in another criminal proceeding, the information obtained may be used in another criminal proceeding only on the basis of a ruling of the investigating judge, made on a motion of the public prosecutor.

The investigating judge shall consider the motion in accordance with the requirements of Articles 247 and 248 of this Code and shall reject it unless the prosecutor, inter alia, proves the legality of obtaining the information and the existence of sufficient grounds to believe that it indicates the detection of signs of a criminal offence.

3. The information obtained as a result of covert investigative (search) actions is transmitted only through the prosecutor» (Shevchyshen, 2016).

To sum up, the final assessment of the results of CISA for use as evidence in criminal proceedings is possible only after their verification and confirmation based on the results of other procedural actions (Shevchyshen, 2016). Furthermore, prosecutors and investigators should do so on the basis of not only the provisions of the CPC of Ukraine, but also the decisions of the European Court of Human Rights in specific cases on these issues.

4. Conclusions

The results of CISA shall be verified and confirmed by public investigative (search) actions. The procedural form of public investigative (search) actions, during which information confirming the results is obtained, will compensate for the lack of clarity of the procedural form of covert investigative (search) actions, which is objectively necessary for the effective conduct of CISA.

The procedural form of public investigative (search) actions, during which information confirming the results of CISA is obtained, will compensate for vagueness of the procedural form of covert investigative (search) actions, which is objectively necessary for the effective conduct of CISA. Therefore, the final assessment of the results of covert investigative (search) actions to decide whether to use them as evidence in the pre-trial investigation is possible only after their verification and confirmation based on the results of other procedural actions (covert investigative (search) actions, investigative (search) actions, etc.) A specific and mandatory condition for the use of information obtained during a covert investigative (search) action as evidence in adversarial criminal proceedings is the removal of the status of classified information from its records and annexes thereto, as well as from the motion and procedural decision on its conduct.

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ОСОБЛИВОСТІ ОДЕРЖАННЯ ТА МОЖЛИВОСТІ ВИКОРИСТАННЯ НЕГЛАСНО ОДЕРЖАНОЇ ІНФОРМАЦІЇ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

Анотація. ***Мета.*** Метою статті є визначення способів правового обґрунтування використання інформації, отриманої негласним шляхом, у кримінальному провадженні. ***Результати.*** У статті зазначено, що пошуково-пізнавальні можливості негласних слідчих (розшукових) дій мають велике значення для встановлення обставин події кримінальних правопорушень та вирішення інших завдань кримінального провадження, але за період від уведення зазначеного інституту у кримінальний процес виокремилася низка проблемних питань стосовно використання інформації, отриманої у результаті проведення негласних слідчих (розшукових) дій (яка, власне, й є негласно одержаною інформацією) у кримінальному провадженні. Спостерігається неоднозначне ставлення щодо визначення законодавцем рівнозначності результатів негласних слідчих (розшукових) дій до результатів слідчих (розшукових) дій. Слідчий суддя розглядає клопотання згідно з вимогами статей 247 та 248 цього Кодексу і відмовляє у його задоволенні, якщо прокурор, окрім іншого, не доведе законність отримання інформації та наявність достатніх підстав уважати, що вона свідчить про виявлення ознак кримінального правопорушення. ***Висновки.*** Доведено, що результати негласних слідчих (розшукових) дій повинні бути обов'язково перевірені та підтверджені гласними слідчими (розшуковими) діями. Процесуальна форма гласних слідчих (розшукових) дій, під час яких отримуються відомості, котрі підтверджують результати негласних слідчих (розшукових) дій, компенсуватиме об'єктивно необхідну для ефективного проведення негласних слідчих (розшукових) дій нечіткість процесуальної форми їх проведення. Тому кінцева оцінка результатів здійснення негласних слідчих (розшукових) дій для прийняття рішення щодо використання їх у доказуванні під час досудового розслідування можлива лише після їх перевірки та підтвердження за підсумками інших процесуальних дій (негласних слідчих (розшукових), слідчих (розшукових) дій тощо). Специфічною та обов'язковою умовою для використання відомостей, одержаних під час негласної слідчої (розшукової) дії, у доказуванні у змагальному кримінальному провадженні є зняття з її протоколу та додатків до нього грифу таємності, а також із клопотання та процесуального рішення щодо його проведення.

Ключові слова: кримінальне провадження, негласні слідчі (розшукові) дії, інформація, негласне одержання, використання.

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CURRENT DIRECTIONS FOR THE IMPROVEMENT OF PROSECUTORIAL ACTIVITIES IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to identify directions for the improvement of prosecutorial activities. ***Results***. It is determined that the very concept of prosecutors' liability embodied in the new law needs to be improved. It seems that the regulatory mechanism for only disciplinary liability of prosecutors at the level of the basic law calls into question the existence of legal grounds for bringing prosecutors to other types of legal liability. Therefore, we believe that it is necessary to provide for a general section on «Prosecutors' Liability» and to state that they bear criminal, administrative, civil, disciplinary and material liability. In terms of exercising supervisory powers over persons held in places of apprehension, prosecutors have the authority to supervise the execution of court decisions in criminal proceedings, as well as the application of other coercive measures related to the restriction of personal liberty of citizens. To increase the effectiveness of supervision, the law should clearly define the grounds for the prosecutor to submit certain acts of prosecutorial response to identified violations of the law in penal institutions. ***Conclusions***. It is concluded that liability of prosecutors should be optimised by structuring it in the relevant section of the basic law and creating a legal framework for delineating all types of liability imposed on prosecutors by virtue of the provisions of the new law. Moreover, it is important to bring substantive laws establishing specific corpus delicti into line with the updated legislation governing prosecutorial activities. The key role of the prosecutor's office in the process of ensuring fundamental human and civil rights, the need to determine a gradual strategy of transition to a separate, independent prosecutor's office with interests in ensuring guarantees of equal and objective treatment of everyone who seeks protection from the prosecutor through the directions for improving the prosecutorial activities. Since prosecutorial activities are the type of governmental activities, we believe that it is necessary to define key criteria for interaction between civil society, the state and the prosecutor's office on a partnership basis.

Key words: function, coordination, law enforcement bodies, regulatory framework, public relations.

1. Introduction

The system of prosecution bodies is dynamic, constantly transforming, improving and requiring changes in its regulatory and legal support. Prosecutorial activities are regulated by Law of Ukraine No. 1697-VII «On the Prosecutor's Office» of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014), other laws, international treaties and agreements, orders of the Prosecutor General of Ukraine, etc. The issue of reforming the criminal justice system, prosecution authorities and prosecutorial activities, improving the current legislation on prosecution, improving law enforcement and other important issues has been discussed in academic circles for a long time, and moreover, the national legislator is actively working on drafting legislation in these areas. Therefore, the search for ways to improve the functioning of the prosecutor's office is carried out simultaneously by a large number of actors, since today, obviously, the legislation on the prosecutor's office is not perfect.

2. Justification for the need to reform the prosecution service

Analysing the concept of «direction», we note that this concept has a rather large number of different interpretations. For example, in one of the dictionaries of the Ukrainian language, this concept finds its three-dimensional understanding: 1) a line of movement or a line of location of someone or something; 2) the way of activities, development of someone, something; the focus of an action, phenomenon; 3) the focus of thoughts, interests (Order of the Prosecutor General of Ukraine on approval of the Regulations on the procedure of internship in the prosecutor's office of Ukraine, 2009). Instead, the term «improve» means to make something/someone more per-

fect, better (Bilodida & Buriachok, 1979). According to Ye.V. Pohorielov, improvement of the regulatory mechanism is the activities of the competent state authorities to maintain the quality of the legal framework (quality of its content and form) in accordance with the needs of development of social relations, aimed at ensuring the effectiveness of regulatory mechanism (Pohorielov, 2007). The comprehensive analysis of these concepts enables to state that the regulatory mechanism for prosecutorial activities in Ukraine requires significant reformatting with the use of the content and essence of the basic concepts. Since the features of the direction for improving the regulatory mechanism are the presence of a clear goal, legal security, certainty of the latest approach to the regulatory mechanism, and deepening trends towards updating the legal framework, the analysis of the above positions, allowing for their essential characteristics, enables to define the direction of improving the functioning of the prosecutor's office as a way of developing the regulatory mechanism for the prosecutor's office aimed at achieving the results of transition to an optimised organisational, legal and functional structural features of the prosecutor's office.

Relying on the analysis of the essential characteristics of the basic concept, we believe that it is necessary to consider the system of areas for improvement of legislation in a holistic manner, considering the features identified above:

1. Establishment of legal mechanisms to implement general supervision in certain specific areas, along with its general abolition (amendments to the Law of Ukraine «On the Prosecutor's Office» to extend general supervision to the area of access to public information, citizens' appeals, protection of state secrets, etc.);

2. Improvement of the procedure for selection, appointment, promotion and transfer of prosecutors, as well as improvement of the procedure for their disciplinary liability (defining the criteria of «moral and business qualities», differentiating between types of liability);

3. Establishment of public control over prosecutorial activities (defining in the Section «State and public control over prosecutorial activities» of the Law of Ukraine «On the Prosecutor's Office» the powers of the territorial community to express no confidence in the prosecutor of the appropriate level);

4. Improvement of the powers of the prosecutor within the scope of pre-trial investigation;

5. Modernisation of the functions of the prosecutor's office in line with the needs of civil society, including: a) the organisational structure of the system of prosecutor's offices of different levels regulated by the legislation of; b) improvement of the prosecutor's human rights function; c) improvement of the judicial and representative function; d) improvement of supervisory functions; e) improvement of the public prosecution function; f) improvement of coordination and other functions.

6. Establishment of new requirements for prosecutors to be held legally liable for offences.

According to L.R. Hrytsaienko, the elimination of the supervisory function of the prosecutor's office deprives it of supervision not only over the implementation of laws, but also over the observance of human and civil rights and freedoms, thus creating an obstacle to Ukraine's transformation into a legal State (Hrytsaienko, 2009). Moreover, S. Kholmes argues that liberal democratic freedoms cannot be achieved by simply reducing the powers of the prosecutor's office. In all Western European countries, the goal of reforming the prosecutor's office is to transfer its powers to other bodies, including pre-trial investigation bodies, courts and ombudsmen. However, changes in criminal procedure legislation alone will not automatically entail corresponding changes in the way of thinking, expectations or professional skills. If an individual finds himself or herself in a situation where his or her rights are illegally violated by an official, he or she will be forced to go to the prosecutor's office rather than to court. The main reason may be the fact that the first way is not formally associated with financial costs, while the second way involves the participation of a lawyer, and therefore entails costs» (Kholms, 2009). Therefore, when applying to the prosecutor, a person does not need to hire a representative or another attorney, as these functions are performed by the prosecutor. However, when applying to the court, a person shall pay a court fee and, of course, the best way out is to choose a trained lawyer to represent his/her interests.

According to M.I. Mychko, at the stages of pre-trial investigation, the prosecutor acts in two ways: on the one hand, he is a guardian of law and order, and on the other hand, he is a body for the criminal prosecution of persons who have committed crimes (Mychko, 2002).

It should be noted that there are no grounds or provisions in the constitutional and legal norms that would make it impossible for prosecutors to conduct pre-trial investigations. In this regard, it is difficult to agree that the investigation of criminal proceedings by the prosecutor is unconstitutional, as this would call into question the essence of prosecutorial supervision in general. Moreover, the national doctrine has repeatedly determined that from the perspective of prosecutorial supervision law,

the prosecutor's authority to personally investigate criminal proceedings is the highest form of prosecutorial supervision over the observance of laws within the pre-trial investigation (Mychko, 2002).

Another direction for improving the regulatory mechanism for the functioning of the prosecutor's office is the modernisation of the functions of the prosecutor's office allowing for the needs of civil society. The *Dictionary of foreign words* defines «modernisation» as derived from the French word «modernisation» (updating) with the meaning: 1) a general name for trends that are characterised by the rejection of traditional forms, the search for new principles, and a break with realism; 2) updating, improving, giving a more modern look, processing in accordance with modern requirements; 3) transferring modern concepts, terminology, etc. to the concepts of the past (Morozov and Shkaraputa, 2000).

O.V. Muza argues that it is required to provide for a direction of modernisation of the management work of law enforcement bodies such as the regulatory framework for the organisational structure of the system of prosecutor's offices of different levels in Ukraine (Muza, 2011). In addition, O.F. Yefremov emphasises that prosecutorial supervision as a special type of state power in Ukraine should be strengthened in the current conditions, and first of all, in the direction of protection of human and civil rights and freedoms (Yefremov, 2007).

In connection with the reorientation of the prosecutor's office from a pre-trial investigation body to the exercise of procedural control, it should be noted that the implementation of the prosecutor's human rights function needs to be improved in this regard. In particular, Part 5 of Article 208 of the Criminal Procedure Code of Ukraine (2012) provides that the prosecutor shall be notified in case of apprehension of a person on suspicion of committing a crime. This implies that the prosecutor does not have to be notified of the facts of apprehension of a person for criminal misdemeanours. In this context, E.F. Iskenderov argues that the textual interpretation of Part 5 of Article 208 of the CPC of Ukraine enables to conclude that the requirement to serve the apprehension report immediately applies only to the person himself, and the prosecutor is stated to be «sent» the report. Therefore, there should be a legislative requirement to immediately notify the prosecutor of the apprehension of a person on suspicion of committing a criminal offence (Iskenderov, 2013). The fact that the prosecutor is not mentioned among the persons who should be immediately notified of a person being apprehended on suspicion of committing a criminal offence is generally illogical, since the prosecutor shall prove the need to apply measures to ensure criminal proceedings, one of which is apprehension, and he/she also personally applies to the court for permission to apprehend a person suspected or accused of committing a criminal offence, for the purpose of bringing him/her to participate in the consideration of a motion for a preventive measure in the form of apprehension, or approves the submission of such a motion by the investigator or applies to the court for the application of a preventive measure to the person, apprehended without a warrant for apprehension on suspicion of a criminal offence or approves the submission of such a request by the investigator.

In this respect, the prosecutor also has certain powers that should be distributed in the human rights field (the prosecutor's duty to take measures to assist a person in contacting a defence counsel) (Criminal Procedure Code of Ukraine, 2012).

Regarding the redistribution of the functional purpose of the prosecutor's powers, Kovalova argues that the current Criminal Procedure Code of Ukraine should provide for the duty of the prosecutor participating in the trial and supporting the prosecution to respond to violations of the law committed by the participants in the process during the trial (Kovalova, 2009). We advocate this proposal and support the expansion of the procedural powers of the prosecutor in court proceedings with the indication of the grounds for exercising his/her powers in the trial.

3. Regulatory and legal framework for the powers of the Prosecutor's Office of Ukraine

E.F. Iskenderov suggests that it is advisable to introduce a special instruction of the Prosecutor General on the procedure for registration of applications and reports of criminal offences in case of emergency situations, in particular, due to man-made or natural causes that do not allow using the Unified Register of Pre-trial Investigations (Iskenderov, 2013). Furthermore, we advocate this opinion and, relying on the above analysis, argue that the procedure for maintaining public prosecution should be well analysed, thought out, and significantly improved in view of the needs to ensure human and civil rights and freedoms within criminal proceedings. It should also be noted that when assisting the court in fulfilling the requirements of the law on comprehensive, full, objective and fair (impartial) trial, the prosecutor shall provide a proper legal assessment of both the circumstances that incriminate and exonerate the participant in the trial. It should be borne in mind that the prosecutor's exercise

of human rights powers continues at the stage of appeal and cassation proceedings.

The exercise of supervisory powers by the prosecutor's office is also quite important and requires modernisation in other fields. For example, the function of control and supervision implies the exercise of administrative supervision over persons released from prison by law enforcement bodies, on the basis of the current legislation, and the exercise of other control and supervision powers (Dikhtiievskyi, 2009). In terms of exercising supervisory powers over persons held in places of apprehension, prosecutors have the authority to supervise the execution of court decisions in criminal proceedings, as well as the application of other coercive measures related to the restriction of personal liberty of citizens. To increase the effectiveness of supervision, the law should clearly define the grounds for the prosecutor to submit certain acts of prosecutorial response to identified violations of the law in penal institutions.

In this context, the internal affairs bodies do not comply with the requirements of the European Committee against torture, expressed during the last visit of the delegation in October 2014, to immediately end the illegal and long-term detention of apprehended and arrested persons in the institutions of the internal affairs bodies, which may result in the application of Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Ukraine in the form of a public statement on the matter.

The unsatisfactory state of compliance with the laws on the involvement of convicts in work in penitentiary institutions, which makes it impossible for them to compensate for damages and pay alimony, significantly violates the rights of convicts and the interests of the state. Therefore, it is necessary to expand the powers of prosecutors in exercising the function of supervision over the observance of laws in the enforcement of court decisions in criminal proceedings, as well as in the application of other coercive measures. According to Ye.M. Popovych, the prosecutor's office may be able to increase the effectiveness of this function by vesting it with the following powers: to demand explanations for the violations committed from officials of bodies, penal and other institutions that enforce court decisions in criminal proceedings, as well as to conduct inspections; to immediately stop the unlawful use of special means (straitjackets, handcuffs, etc.) on persons held in places of detention; to take measures to bring to justice those who have violated the law (Popovych, 2009). In support of this position, we argue that the following amendments to Law of Ukraine No. 1697-VII «On the Prosecutor's Office» of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) are required due to the increase in the effectiveness of prosecutorial supervision in the area under study and will more reliably ensure compliance with the procedure and conditions of detention and serving of sentences by persons in these institutions, their rights and performance of their duties.

Considering the modernisation of the function of coordination of law enforcement bodies, we argue that there is currently a problem of determining the list of bodies covered by the coordination function of the prosecutor's office. This list is open-ended, as it applies to «all other bodies performing law enforcement functions». Moreover, the provision on the inclusion of fishery protection bodies and control and audit service bodies in this list deserves justified criticism, since for them the performance of law enforcement functions is not the main activity. In addition to the theoretical importance, this problem is also of considerable practical one, since the list of bodies covered by the coordination function of the prosecutor's office needs to be improved. We believe it is necessary to provide for a closed list of such bodies and define their clear functional focus. For such bodies, the performance of the law enforcement function should be a priority.

In our opinion, the next direction of improvement of the functioning of the prosecutor's office is the establishment of new requirements for bringing prosecutors to legal liability for offences. It should be noted that liability as a social category is the most important measure ensuring the normal functioning of social relations.

It should be noted that according to Section VI of the new basic law, the disciplinary liability of prosecutors is already regulated by law, not by the Disciplinary Statute, which is a positive novelty. However, the title of Section VII of this law «Dismissal of a prosecutor from office», termination, suspension of his powers in office is illogical. It is well known that dismissal is one of the measures of disciplinary sanction. It is not clear why the law distinguishes between these concepts.

Furthermore, the very concept of prosecutorial liability embodied in the new law is rather ambiguous and requires improvement. It seems that the regulatory mechanism for only disciplinary liability of prosecutors at the level of the basic law calls into question the existence of legal grounds for bringing prosecutors to other types of legal liability. Therefore, we believe that it is necessary to provide for a general section on «Prosecutors' Liability» and to state that they bear criminal, administrative,

civil, disciplinary and material liability.

In addition, it is problematic that the Code of Ukraine on Administrative Offences currently defines the offence in Part 2 of Article 15 as follows: «Liability of military men and other persons subject to disciplinary statutes for committing administrative offences» (Code of Ukraine on Administrative Offences, 1984). The sanctions of this article provide for enhanced liability for such persons. Previously, before the adoption of the basic law, liability of prosecutors was covered by Article 15(2) of the Code of Administrative Offences. However, this article now needs to be clarified, as liability of prosecutors is currently regulated by law. Moreover, the issue of the correlation between disciplinary and administrative liability will be difficult in this case. The grounds for distinguishing between the criteria for bringing prosecutors to each type of liability should be defined at the level of the basic law.

In our opinion, the new provisions of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) are aimed at strengthening official discipline and substantial democratisation of relations between employees in the prosecutor's office. The latter is particularly important in terms of reforming and improving the functioning of the prosecution service, as it covers important procedural aspects. All of this calls for the establishment of strong legal guarantees of immunity of prosecutors from unreasonable and unfair disciplinary proceedings. According to Recommendation No. 19 (2000) of the Committee of Ministers to the members of the Council of Europe: «States should take effective measures to ensure that disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review» (Recommendation No. 19 (2000) of the Committee of the Council of Ministers to the member states of the Council of Europe regarding the role of the public prosecutor's office in the criminal justice system: adopted by the Committee of Ministers of the Council of Europe, 2000). Relying on the analysis of the content of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of 14 October 2014, it should be noted that according to Article 20 of this legal act, «damage caused by unlawful decisions, actions or inaction of the prosecutor shall be compensated by the state regardless of his/her guilt in the manner prescribed by law» (Law of Ukraine On the Prosecutor's Office, 2014). However, the Law does not specify what this liability may be, except for the section on disciplinary liability. In practice, prosecutors may be subject to other types of legal liability. For example, as can be understood from the provisions of Law of Ukraine No. 266/94-VR «On the Procedure for compensation for damage caused to a citizen by illegal actions of bodies carrying out operational-investigative activities, pretrial investigation bodies, the prosecutor's office, and the court» of 01 December 1994 and Article 20(2) of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014), prosecutors may be held financially liable. Thus, the state compensates for the damage caused by the prosecutor in the course of his/her official activities, but the state has the right to claim back the compensation paid to him/her. It is also clear that prosecutors can be held criminally and administratively liable. According to the Note to Article 364 of the Criminal Code of Ukraine (2001), prosecutors are officials within the meaning of this code, and therefore they are subject to all articles of this legal regulation on criminal liability of officials. In addition, prosecutors can be held administratively liable.

4. Conclusions.

Therefore, we believe that liability of prosecutors should be optimised by structuring it in the relevant section of the basic law and creating a legal framework for delineating all types of liability imposed on prosecutors by virtue of the provisions of the new law.

Moreover, it is important to bring substantive laws establishing specific corpus delicti into line with the updated legislation governing prosecutorial activities.

Thus, the key role of the prosecutor's office in the process of ensuring fundamental human and civil rights, the need to determine a gradual strategy of transition to a separate, independent prosecutor's office with interests in ensuring guarantees of equal and objective treatment of everyone who seeks protection from the prosecutor through the directions for improving the prosecutorial activities. Since prosecutorial activities are the type of governmental activities, we believe that it is necessary to define key criteria for interation between civil society, the state and the prosecutor's office on a partnership basis.

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АКТУАЛЬНІ НАПРЯМИ ВДОСКОНАЛЕННЯ ФУНКЦІОНУВАННЯ ПРОКУРОРСЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Анотація. ***Мета.*** Метою статті є визначення напрямів удосконалення функціонування прокурорської діяльності. ***Результати.*** Визначено, що потребує удосконалення сама концепція відповідальності прокурорських працівників, що втілена у новому законі. Видається, що правове регулювання лише дисциплінарної відповідальності прокурорів на рівні базового закону ставить під сумнів наявність правових підстав для притягнення прокурорів до інших видів юридичної відповідальності. Тому вважаємо, що необхідно передбачити загальний розділ «Відповідальність прокурорів» і зазначити, що вони несуть кримінальну, адміністративну, цивільну, дисциплінарну та матеріальну відповідальність. У частині здійснення наглядових повноважень за особами, що перебувають у місцях позбавлення волі, у прокурорів наявні повноваження щодо нагляду за виконанням судових рішень у кримінальних провадженнях, а також під час застосування інших заходів примусового характеру, пов'язаних з обмеженням особистої свободи громадян. Для підвищення ефективності нагляду необхідно в законі чітко сформулювати підстави для внесення прокурором окремих актів прокурорського реагування за виявленими порушеннями закону в установах кримінально-виконавчої системи. ***Висновки.*** Зроблено висновок, що відповідальність прокурорів підлягає оптимізації шляхом структурування її у відповідний розділ базового закону та створення правових засад для розмежування всіх видів відповідальності, що покладається на прокурорських працівників у силу положень нового закону. Також важливо привести у відповідність акти матеріального права, що встановлюють конкретні склади правопорушень у зв'язку з оновленням законодавства, що регулює прокурорську діяльність. Ключова роль прокуратури полягає у забезпеченні основоположних прав людини і громадянина, необхідності через напрями вдосконалення функціонування прокурорської діяльності визначити поступову стратегію переходу до відокремленої, самостійної, незалежної прокуратури з інтересами щодо забезпечення гарантій однакового й об'єктивного ставлення до кожного, хто звернеться за захистом до прокурора. Оскільки прокурорська діяльність є одним із різновидів владної діяльності, на нашу думку, необхідно визначити ключові критерії взаємодії громадянського суспільства, держави і прокуратури на партнерських засадах.

Ключові слова: функція, координація, правоохоронні органи, правове регулювання, суспільні відносини.

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