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HISTORICAL DEVELOPMENT OF INSURANCE LEGAL RELATIONS IN THE TRANSPORT SECTOR

Abstract. ***Purpose.*** The purpose of the paper is to identify and briefly describe the historical legal periods of development of legal relations on insurance in the transport sector of Ukraine, which will later allow for the determination of the area of development and adoption of relevant legislation in the modern period. ***Research methods.*** The purpose was achieved by using a set of traditional methods of scientific knowledge known to humankind, which are based on the principles of materialistic dialectics. During the preparation of the present paper, historical legal and comparative legal methods were widely used, which made possible to identify and characterize the features of individual historical legal periods in the development of insurance legal relations in the transport sector of Ukraine; to compare legal relations and legal rules of different times in different geographical regions of Ukraine. Applying the axiomatic method contributed to identifying and describing individual insurance legal relations in the transport sector within the principles and functions of various branches of law. The system structural method was applied to clarify the relationship between different participants in insurance legal relations in the field of transport in different periods and systematize historical legal periods of development of insurance legal relations in the transport sector of Ukraine already in the process of preparing this paper. As a result, the article was categorized following the the names of the identified periods. ***Results.*** Among the historical legal periods of development of legislation on insurance activities in the transport sector, the following can be distinguished:

I. The Greco-Roman period.

II. Medieval period.

III. The period of development of the world economy and the role of transport.

IV. The period at the turn of the 19th and 20th centuries.

V. Soviet period.

VI. The period when the formation of the insurance market in the transport sector took place in the 1990s until 2014, as well as the formation and permanent updating of legislation.

VII. Modern (military) period (from 2014 to the present), during which subjects of insurance activities in the field of transport operate in unfavorable conditions, face force majeure circumstances, legislation is formed given wartime requirements, the use of digital technologies is spreading, the beginning of legal regulation of insurance relations in transport in outer space.

Conclusions. The research conducted and the generated periodization of the development of the principles of legal support for insurance processes in the transport field indicate a constant complication of legislative rules and a gradual strengthening of public interests in these processes. The formation of an insurance company, the initiative (usually on the part of the transport company or the owner (recipient) of the cargo) to conclude an insurance contract, was caused by the need to realize private interests. The most challenging period for the adequate functioning of insurers and transport companies is the modern (military) period. However, even here, due to the increasing importance of the role of transport (especially sea, rail and road transport), the insurance market is developing.

Key words: insurance, transport, business entity, transportation, legal custom, transport legislation, insurance relations, historical legal periods, cargo, property, life and health, passenger, ship, seaport, railway, airport.

1. Introduction

The development of civilization directly depends on the economy's development. It is dialectically dependent on the progress of the transport sector. The economy requires regular transportation of raw materials, goods,

fuel, and labor over long distances. Therefore, according to the law of the supply and demand ratio, its development leads to the development of the transport sector. Conversely, the construction of capital concrete and railway roads, railway stations, sea and river ports, and airports encourages the construction and development of cities and other localities and the construction of new industrial facilities. In turn, transporting expensive cargo or high-ranking passengers should be safe. In ancient times, this was provided by organizing numerous armed protection of vehicles and patrolling transportation routes. In times of developed civilizations, insurers protect the interests of vehicle and cargo owners and passengers' lives and health.

Among the oldest types of transport were horse-drawn and water transport, which were divided into sea and river transport. It is no coincidence that all major ancient civilizations were formed around powerful river arteries, in which rivers, among other vital functions, served as communication routes. In the ancient Ukrainian lands, for a long time, the primary means of transportation was horse-drawn transport. Depending on the size of the cart and types of equipment, the vehicles were named as follows: brychka (in the steppes), mazhara (in the southern Ukrainian lands), fira (in the western Ukrainian lands), beztarka (for grain transportation), various kinds of sleigh (for winter transportation) (Klepikova, 2019, p. 11). The vast majority of modern most prosperous states received primary capital through the use of sea routes. Even in ancient times, trade and communication between nations occurred along rivers or the sea coast. Sea trade routes were equipped with ports and lighthouses, and the provision of services by professional pilots who knew the local fairway, currents, and climate features began to take shape. Large cities and entire states were built along the great river routes of Europe. Kyiv itself was founded long before the officially recognized date of 482. The city grew, became famous, and allowed to unite different tribes into a single state at a time when it was in the middle of a well–known path from the countries of the Scandinavian Peninsula to Greece-the path "from the Varangians to the Greeks." On land, transportation was associated with the mechanical labor of domestic draft animals – horses, elephants, oxen, camels, donkeys, and the mechanical labor of people – enslaved people or servants. Native American civilizations did not know the wheel. However, the American continent has paved roads seven meters wide. The latest development of human civilization should be due to attempts to find new ways to get to India and the almost accidental discovery of America.

Along with the development of relations in the transport sector, humanity has come to the idea of introducing insurance for its activities in case of various unfavorable natural and climatic circumstances and the negative impact of other people and peoples. Everyone knows the biblical example of King David's insurance against drought by creating a strategic grain reserve. A little later, in the ancient countries that carried out sea and land transportation, in particular in Egypt, Ancient Rome, the states of Greece and others, funds began to be created in case of loss of a sea or river vessel, cargo, crew, passengers, etc. The person who kept the money and issued compensation to victims was the prototype of a modern insurer.

Thus, with the development of civilization, transport legislation was formed, as well as legislation on the insurance of various risks, relations, and property – the life and health of draft animals, cargo and baggage, vehicles, the life and health of people, etc. The genesis of such legislation and relations in interrelation and development requires research.

Literature review. Various relations in the transport sector have been the subject of research by many Ukrainian scientists. The following researchers are among them: Klepikova (Klepikova, 2019; Klepikova, 2011), Khovavko (Khovavko, 2012), Obikhod and Bilenchuk (Obikhod and Bilenchuk, 2023), and others. The following Ukrainian scientists are among the researchers of insurance relations: Adamov (Adamov, 2008; Adamov, 2009), Nechyporenko (Nechyporenko, 2021), Popova (Popova, 2022), Sobol (Sobol, 2010), Uralova (Uralova, 2018), Zavoloka (Zavoloka et al., 2020), and others. In the works of some scientists, studies of relations in the field of transport with insurance relations were combined. These are the works of such scientists as Brunko (Brunko, 2012), Derevianko and Rodina (Derevianko and Rodina, 2010), and others. However, these studies are insufficient to form a holistic view of the progressive dialectical development of insurance relations in the transport field.

It should be noted that an attempt to identify periods or stages of development of legislation in the field of transport insurance in Ukraine was made earlier by Brunko, whose study identified seven relevant stages (Brunko, 2012), which should be clarified, developed, and supplemented taking into account today's realities. The periodization of the formation and development of the legal basis of intermediary activity in the insurance sector during Ukraine's independence, with the allocation of three main stages: the first – from 1991 to 2004; the second – from 2005 to 2013; the third – from 2014 to the present, which are characterized by cer-

tain features of economic and legal regulation of this activity, was carried out by Uralova (Uralova, 2018, p. 8). However, such conclusions only touch on the relationships under study. Therefore, it will be important to identify the main historical legal periods of the processes under study based on the article.

Purpose. To identify and briefly describe the historical legal periods of development of legal relations on insurance in the transport sector of Ukraine, which will later allow for the determination of the area of development and adoption of relevant legislation in the modern period.

Research methods. The purpose was achieved by using a set of traditional methods of scientific knowledge known to humankind, which are based on the principles of materialistic dialectics. During the preparation of this paper, historical legal and comparative legal methods were widely used, which made it possible to identify and characterize the features of individual historical legal periods in the development of insurance legal relations in the transport sector of Ukraine; to compare legal relations and legal rules of different times in different geographical regions of Ukraine. Applying the axiomatic method allowed identifying and describing individual insurance legal relations in transport within the principles and functions of various branches of law. The system structural method was applied to clarify the relationship between different participants in insurance legal relations in the field of transport in different time periods and systematize historical legal periods of development of insurance legal relations in the transport sector of Ukraine already in the process of preparing this paper. As a result, the article was categorized following the names of the identified periods.

2. The Greco-Roman period of development of insurance legal relations in the transport sector

As Klepikova points out, even in ancient times in the city-states of Greece, particularly on the island of Rhodes, local lawyers and economists formed and described the institute of general accident. Based on this institute, already in those days, a rule was formed about the priority of losing a smaller or part to save a larger or all. A general accident is usually understood as losses that the participants in the transportation process must bear. In other cases, they are about rules governing recognizing and distributing a common accident (Klepikova, 2011, p. 20). After the law of states on the territory of Ancient Greece, this rule passed to the law of Ancient Rome and later Byzantium, the countries of Europe and Asia. Various methods of risk insurance have been used since ancient times to protect owners of sea and river vehicles, draft animals, cargo, and other material values in the field of transport. At the same time, relations on the insurance of interests, property, life and health of individuals or business entities, particularly economic and commercial activities, were not divided. Individual insurance institutions, such as the mandatory targeted use of insurance payments, the timeliness and regularity of contributions, the application of force majeure clauses, and others, have been preserved to a greater or lesser extent to this day. When insuring the life of a passenger, ship crew member, or other insured person and in the event of an insured event, i.e., the death of the insured person, only the heir under the will of such person could receive the insurance payment.

Since ancient times, there has been not only a division of law into private and public (today, we can point out the inaccuracy of such a division. In addition to this division of law, in Ancient Rome, insurance was divided into mutual (joint) and insurance based on regular contributions (Svitlychnyi, 2023, p. 24–25).

3. The Medieval period of development of insurance legal relations in the transport sector

Mutual or joint insurance appeared for the first time in the fields of transport insurance and life insurance. This type of insurance was conditionally assigned to "wholesale" insurance, which is now considered insurance of legal entities. Insurance based on regular contributions is conditionally referred to as "retail" insurance (Adamov, 2009, p. 253). "Wholesale" transport insurance of cargo and sea vessels prevailed in the sphere of management, starting with trade or sea insurance (old policies that have survived were issued in Italy in the XIV century – the first of the insurance policies that have survived to this day was issued in medieval Italy in 1347 in connection with sea transportation) (Adamov, 2009, p. 253). Based on maritime trade, legal customs were formed that stimulated the emergence and registration of the then-trade law, based on which modern economic law was formed. The legal regulation of insurance activities at the first stages of its formation was based mainly on maritime legal customs.

Among the types of legal customs, port customs (customs of the port) are separately distinguished, which are rules established by practice that determine the relationship between the shipowner, shipper, and consignee when loading and unloading a sea or river vessel, rationing cargo operations, the procedure for calculating parking time, etc. (Shelukhin, Antoniuk, Vyshnyvetska, 2008, p. 24). Even

today, those who are engaged in international transportation through seaports know which of the participants in the transportation process is responsible for the cargo and provide its support, including financial support, at a particular stage of transportation. Accordingly, participants who have committed loss or damage to cargo or a sea vessel at a particular stage of the transportation process must also engage with the insurer on compensation for losses. Port customs apply in cases where the maritime transport agreement does not contain relevant provisions and instructions. If legal customs that do not contradict the current legislation of Ukraine are considered unconditional (Shelukhin, Antoniuk, Vyshnyvetska, 2008, p. 25). The positive aspect of the Middle Ages was the transition from legal customs to the formation of systematized acts, by which these customs acquired the form of written regulatory legal acts. The most famous is the Amalfi table, organized in the Italian shopping center of the Middle Ages – the city of Amalfi. In the Middle Ages, with the formation of large trading companies, the question of insurance of risks for carriers and cargo owners arose. This gave an impetus to the formation of the insurance services market. The first professional insurers were moneylenders, bankers, notaries, and other participants in financial relations. They already had some experience working in the financial markets and therefore specified insurance cases, terms of compensation for losses, terms, etc., in contracts more carefully than in ancient times. It was often stipulated that the policyholder would be deprived of insurance payments in case of improper, i.e., negligent attitude to the safety, protection, and maintenance of vehicles, cargo, or baggage. Gradually, insurers began to unify their services, essential terms of contracts, insurance rules, etc. To comply with this, insurers, like other employees on a professional basis, were united in guilds and other self-governing associations.

According to Klepikova, the beginning of regulatory regulation of vehicle ownership relations – the right to own a vehicle, the right to use it, transfer it to other persons for use, etc. – is associated with the emergence of an insurance case. Marine insurance is an ancient institution, which is confirmed by the Rhodes General Accident Law, compiled in the ninth century BC. Later, marine insurance was developed in northern Italy, southern France, etc. (Klepikova, 2019, p. 12–13). On the territory of Kievan Rus, relations in the field of transport gradually developed and became more complicated. The achievements of European countries in the legal support of relations in the field of transport were gradually introduced into economic practice. The development of insurance was challenging. This is associated with significant risks for both river and sea trade and land trade. Usually, the passage of water and land caravans was provided either by military detachments, which significantly increased the cost of delivery, or by an agreement on the safety of caravans with the peoples and tribes through whose lands they passed. In the latter case, the agreement was either mutual, according to which the Kyivan Princes guaranteed the passage of foreign caravans through their lands or was provided with payment. It also increased the cost of transportation. Obviously, in all cases, the activities of insurers looked redundant.

To encourage carriers, Prince Oleg signed a treaty with Byzantium in 911. Progressivity was that in medieval Western Europe, there was a "coastal law" in force, according to which the remains after a shipwreck went to the owner of the land to which they were nailed. Kyivan Rus was forced to accept progressive conditions mainly due to the refusal of many merchants to deliver goods due to natural risks and the dominance of thieves and pirates. Later treaties between Kyivan Rus and Byzantium in 944 and 971 extended the borders of merchant shipping first to individual Mediterranean countries and then to Alexandria, North Africa, and Spain (Klepikova, 2019, p. 13). Thus, the transport sphere in Kyivan Rus developed, and the insurance sphere began to form already at the time of the appearance of the Milky Way – the merchant class of Ukrainians in the 13th and 14th centuries. The chumaks used joint insurance, in which each of the chumaks made a contribution to the joint insurance fund before the campaign. After that, the general cash register was divided in half. Half remained in the community and was used after the completion of the transport and trade operation and confirmation of information about losses on the way incurred by a certain chumak. The other half of the cash register was taken with chumaks and used to cover expenses, repair vehicles, buy new animals to replace the dead or sick, etc.

Insurance of various risks in the professional activities of chumaks absorbed the progressive features available in the insurance activities of the most economically developed countries of that time and brought Ukrainian features to these relations. This is one of the first forms of formation of the insurance fund of transport organizations on Ukrainian lands. It can be attributed more to joint insurance than to commercial insurance carried out by professional insurers. This form of insurance in the field of transport activity was not historically the first in Ukrainian lands. However, it was promising for its time. In this form of insurance of risks

associated with the trade and transport activities of small Ukrainian merchants, private and public interests are flexibly intertwined. It was this form of insurance that influenced the traditions of developing not only insurance activities but also the cooperative spirit with all its forms and manifestations in the Ukrainian lands for the next few centuries after the termination of trade activities by chumaks and their transformation into industrialists, merchants, and bankers of the highest degree of economic development. Insurance of property, life and health, and transport liability was not left out (Svitlychnyi, 2023, p. 26).

4. The period of development of the world economy and increasing the role of transport

With the development and complication of economic relations, joint insurance began to give way to professional insurance, which was voluntary by established insurers. As mentioned above, their founders were various participants in relations in the financial markets. The emergence of insurance companies was associated with the development of capitalism, primarily in maritime transport and trade, where since the Middle Ages, there has been accumulated experience of various models of protection of owners of ships and cargo in case of their destruction, damage, or robbery during the voyage.

Due to the established traditions in insurance and insurance law in England and later in the German states in our time, Great Britain and Germany are among the world leaders in insurance of risks, property, and other tangible and intangible assets in the field of transport. Until now, international transportation is considered safe all over the world if the sea carrier insured its risks and received the so-called "Lloyd's form", which was generally formed and adopted by a large association of participants of insurance companies in the UK back in 1779 (Svitlychnyi, 2024, p. 72).

Since the emergence of the russian empire, a significant part of the Ukrainian lands has been forcibly incorporated into it. Mutual insurance of chumaks, artisans, and other producers and merchants was decentralized and became an alternative to centralized insurance at that time, which was formed in the recognized centers of the empire. As Adamov points out, in the russian empire, the first insurers began working in Riga in 1765 and only later in St. petersburg and moscow (Adamov, 2009, p. 254).

5. The development period of insurance legal relations in the transport sector at the turn of the 19th and 20th centuries

The central russian government tried to develop the economy to a greater extent on the historical moscow lands. Still, the ancient customs of doing business led to the formation of significant trade, transport, and financial (in particular, insurance) companies and associations in Kharkiv, Kyiv, Odesa, and other cities and towns. Adamov mentioned above points out that one of the essential insurance centers was Odesa, where, due to its important geographical location, both local insurers and branches of well-known world insurance companies and companies with centers on russian territory worked. Because of its geographical location, Odesa insurers provided their services to sea carriers, insuring merchant sea vessels, cargo and freight, rolling stock of private railways, and cargo transported by rail (Adamov, 2009, p. 255). However, the situation with Odessa is the exception rather than the rule. In general, at the turn of the 19th and 20th centuries, in general, the level of insurance in the field of transport within the Russian empire was significantly lower than the corresponding level in the capitalist states of Europe and America. The development of insurance was mainly aimed at personal insurance, and insurance of relations in the field of transport at that time was not widespread enough. The same can be said about the Ukrainian lands that were and developed as part of other countries and other empires.

6. The Soviet period of development of insurance legal relations in the transport sector

After the fall of the russian empire in soviet russia in 1918, all insurance companies were nationalized. After the capture of Ukraine and its annexation, and then inclusion in the USSR, on the territory of the Ukrainian SSR, insurance of any activity, any property, and any risks was carried out by the state company Gosstrakh, which was part of the USSR Ministry of Finance and had a strict administrative hierarchy: it consisted of the main department of the USSR State Insurance, management in the Ukrainian SSR, city and regional insurance inspectorates. Transport companies-policyholders were formed in the form of state-owned enterprises. Disputes between the insurer and the policyholder, which were state-owned enterprises, were essentially resolved by the state unilaterally, taking into account its own interests. This order existed until Ukraine restored independence in the early 1990s. At this point, the process of ultra-rapid primary capital accumulation by new businesspeople and the formation of many business entities in various sectors and spheres of the economy began. The insurance sector was no exception, and in the mid-1990s, up to a thousand insurers worked in Ukraine. In the first years of independence, insurance relations were regulated either based on Soviet legislation or based on applying

the principles of the analogy of law since there was no separate personal tax code on insurance until May 1993.

7. The period of development of insurance legal relations in the transport sector from 1990 to 2014

The first Ukrainian regulatory legal act on insurance was the decree of the Cabinet of Ministers of Ukraine "On Insurance" as of May 10, 1993, which laid the foundations for insurance activities in independent Ukraine (On Insurance, 1993). In 1992 and 1993, the decrees of the Cabinet of Ministers of Ukraine had the status of legislative acts, changes and additions to which were then made by the laws of Ukraine. To replace this act, the Law of Ukraine "On Insurance" was adopted in 1996 (On Insurance, 1996), which administered and regulated insurance relations, which is why businesses began to withdraw capital from the insurance sector of the economy. Some insurers created associations to diversify their risks. The law increased the requirements for insurance reserve funds of companies and regulated certain types of insurance in detail. Such changes can be considered positive from the perspective of ensuring policyholders' interests. Last but not least, such positive aspects relate to the transport sector. It is in the transport sphere that everything is in motion, which is why criminal encroachments of perpetrators of illegal seizures and other intruders are committed on transport facilities. Criminologists point out that the place of theft mostly does not coincide with the place of its detection; a significant period of time often passes between the commission and detection of theft. In some cases, the consequence of such criminal acts may be obstacles in the operation of transport (flight delays, schedule changes, damage to rolling stock, causing additional damage to transport organizations, creating emergencies, etc.) (Khovavko, 2012, p. 103). This leads to significant monetary costs, which can be partially covered by the insurance company. It is clear that the insurer will calculate its risks and will not work at a loss. In negative cases, insurers will refuse to enter into a contract with a potentially dangerous client transport company from the point of view of the possibility of an attack on it. In positive cases, insurers can diversify risks by reinsuring or redistributing them among other insurers. Perhaps that is why insurers began to unite in associations to protect their interests. In 1997, Ukraine's most influential Insurance Association was formed – the League of Insurance Organizations (Svitlychnyi, 2024, p. 73–74).

The state tried to regulate the activities of insurers through administrative methods, in particular by creating various control bodies, increasing the requirements for insurers, and increasing the minimum size of the authorized capital of the insurer, with differentiation depending on or without life insurance. In general, strengthening control and increasing the size of the authorized capital of the insurer is positive because insurance companies must have the financial capacity to fulfill their obligations to policyholders. Last but not least, this applies to insurers operating in the transport market (Svitlychnyi, 2024, p. 74–75). Despite this, due to the profitability of the insurance business, the number of insurers and the range of their services constantly increased until 2014. In general, in the transport sector, each type of insurance has its own advantages and customers. On the other hand, the same business entities – transport organizations can enter into different insurance contracts with the same insurers, depending on the situation, type of transportation, type of transport, features of counterparties and customers, etc. (Svitlychnyi, 2024, p. 74–75).

8. The modern (military) period of development of insurance legal relations in the transport sector

With the annexation of the Autonomous Republic of Crimea and the outbreak of hostilities in 2014, insurers began to refuse to enter into contracts with potential counterparties more. However, regulatory requirements regarding the mandatory insurance of motor liability of vehicle owners contribute to the survival and even a specific development of insurance activities. The end of the war in favor of Ukraine, which will necessarily take place in the conditions of support of the states of an economically developed Western civilization, will lead to the development of both activities in the field of transport and insurance of these relations (Svitlychnyi, 2024, p. 75). Today, transport insurance relations are regulated by many laws and bylaws. Moreover, on November 18, 2021, a new version of the Law of Ukraine "On Insurance" was adopted. The new law is significant in scope and details approaches to regulating insurance relations in various sectors and spheres of the economy and human activity. In particular, it pays attention to motor transport insurance, tourist insurance when making tourist trips, insurance for employees operating vehicles, civil aviation insurance, risk insurance when carrying out space activities in Ukraine, etc. (On Insurance, 2021).

State regulation of insurance activities in Ukraine should be carried out based on consistency, planning, competence, and transparency, considering the current state of the economy, existing risks, and accepted development

goals (Nechyporenko, 2021). These principles are not fully observed in modern conditions. The regulatory framework should be based on the principles of consistency both in the insurance sector in general and in terms of insurance of activities in the transport sector in particular. However, the current legislation, which today regulates various relations in the field of compulsory insurance, is dispersed and not fully formed. It goes through the optimization stage in difficult wartime conditions. New regulatory legal acts are developed based on the traditions of the historical experience of the Ukrainian people and the leading features of leading countries in insurance issues – primarily the United Kingdom, the United States, and EU member states. The development of new regulatory legal acts and new standards for existing regulatory legal acts is somewhat dependent on the trends laid down during the historical development of the relevant legislation on the implementation of insurance activities in transport. The formation of relevant legislation is influenced by the development of scientific and technological progress and the digitalization of various processes of economic activity. Thus, in the insurance market of Ukraine through online channels, the following insurance services are implemented: internal and external contracts of civil liability insurance of land vehicle owners ("green card"), Casco insurance, voluntary medical insurance, travel, etc. (Popova, 2022). The development of these processes continues. However, this development is hindered by the warnings of drivers and carriers of the older generation, who in the 1970s and 1990s had a negative experience of cooperation with unscrupulous insurers. Insurance without the participation of the insurer's employees through electronic devices increases distrust of the entire insurance market (Zavoloka et al., 2020, p. 105).

Today, both among specialists in technical sciences, as well as among economists, lawyers and other researchers, the possibility of using outer space as a transport route to other planets is being discussed. It is obvious that insurance contracts will be concluded in accordance with the legislation and rules of a particular country – the owner of a space object, the insurer, or a third country by agreement of the parties. After the occurrence of an insured event, compensation for damage is carried out based on a contract, as well as the legislation of a particular state. In this case, the third may be the state where the insured event occurs on the ground or in the airspace. Ukrainian scientists point out that today, in practice, a tacit agreement has been formed to consider outer space above 100–110 kilometers above sea level. Consequently, traffic accidents, damage, etc., at a lower altitude are within the limits of the sovereignty of a particular state and are resolved with its participation (Obikhod and Bilenchuk, 2023, p. 18). The above indicates the emergence and initial development of a new period of legal support for insurance activities in the field of transport.

9. Conclusions

The historical legal periods of development of legislation on the implementation of insurance activities in transport highlighted below will allow for determining the area of development and adoption of relevant legislation. Analysis and understanding of the processes of legislation formation in past epochs of economic relations development will help determine the need for current legislative rules. Among the historical legal periods of development of legislation on the implementation of insurance activities in transport, the following can be distinguished:

I. The Greco-Roman period, during which the norms of primary legislation on transport insurance began to operate, and mutual (joint) insurance and insurance based on regular contributions were allocated.

II. The medieval period, during which insurance activities developed most often within professional guilds and workshops based on customary law. During this period, insurance was developed in the Ukrainian lands within the framework of professional associations of chumaks.

III. The period of development of the world economy and increasing the role of transport is the period of the beginning of industrialization, during which, in the second half of the 18th century, it was necessary to expand the types of insurance relations in the field of transport, develop common principles, rules, and guarantees for ensuring the interests of participants in these relations. In the 19th century, the empires in which the Ukrainian lands were located made attempts to regulate, subdue and monopolize the insurance sector and also developed the principles of insurance in the field of transport.

IV. The period of the turn of the 19th and 20th centuries, during which, from the end of the 19th century to 1918, the insurance business developed and became more complex in the direction of expanding the types of activities and insurance services and types of insurers by organizational and legal form, form of ownership, nationality, etc.

V. The Soviet period, during which there was a monopoly on the implementation of any type of insurance represented by the state enterprise "Sotsstrakh".

VI. The period during which, in the 1990s and 2000s until 2014, there was a formation of the insurance services market in the field of transport, as well as the formation and permanent updating of legislation.

VII. The modern (military) period, during which from 2014 to the present day, subjects of insurance activities in the field of transport operate in unfavorable conditions, face force majeure circumstances, legislation is formed taking into account the requirements of wartime, the use of digital technologies is spreading, the beginning of legal regulation of insurance relations in transport in outer space.

The research conducted in the paper and the generated periodization of the development of the principles of legal support for insurance processes in the transport field indicate a constant complication of legislative rules and a gradual strengthening of public interests in these processes. The formation of an insurance company, the initiative (usually on the part of the transport company or the owner (recipient) of the cargo) to conclude an insurance contract, was caused by the need to realize private interests. The most challenging period for the normal functioning of insurers and transport companies is the modern (military) period. However, even here, due to the increasing importance of the role of transport (especially sea, rail and road transport), the insurance market is developing.

The post-war restoration of the social sphere and the state economy will lead to a revolutionary increase in the amount of traffic by all modes of transport and, accordingly, the quantitative and qualitative expansion of types of insurance services. Therefore, the legislation of Ukraine is faced with the task of ensuring the implementation of insurance in the field of transport, taking into account the risks of wartime, and at the same time being ready to clarify and expand legislative rules at the beginning of the post-war recovery. To a certain extent, these tasks will be given attention in the subsequent scientific research.

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ІСТОРИЧНИЙ РОЗВИТОК ПРАВОВІДНОСИН ІЗ СТРАХУВАННЯ У ТРАНСПОРТНІЙ СФЕРІ

Анотація. ***Мета.*** Метою статті є: виокремити і стисло схарактеризувати історико-правові періоди розвитку правовідносин із страхування у транспортній сфері України, які пізніше дадуть змогу визначити напрями розробки і прийняття відповідного законодавства в сучасному періоді. ***Методи дослідження.*** Досягти поставленої мети вдалося завдяки застосуванню комплексу відомих людству класичних методів наукового пізнання, які спираються на засади матеріалістичної діалектики. Під час підготовки цієї статті найбільш широко застосовувалися історично-правовий і порівняльно-правовий методи, за допомогою яких вдалося виявити та схарактеризувати особливості окремих історико-правових періодів розвитку правовідносин із страхування у транспортній сфері України; порівняти правовідносини і правові норми різних часів у різних географічних регіонах України. Застосування аксіоматичного методу дало змогу виявити й описати окремі правовідносини із страхування у сфері транспорту в межах принципів і функцій різних галузей права. Системно-структурний метод використовувався для з'ясування взаємозв'язку між різними учасниками правовідносин із страхування у сфері транспорту в різні часові епохи, а також для систематизації історико-правових періодів розвитку правовідносин із страхування у транспортній сфері України вже в процесі написання роботи. Завдяки цьому рубрикацію статті було побудовано за назвами виявлених періодів. ***Результати.*** Серед історико-правових періодів розвитку законодавства про здійснення страхової діяльності на транспорті можна виділити такі:

I. Греко-римський період.

II. Середньовічний період.

III. Період розвитку світової економіки і підвищення ролі транспорту.

IV. Період межі XIX і XX століть.

V. Радянський період.

VI. Період, протягом якого з 1990-х до 2014 року відбувалося становлення ринку страхових послуг у сфері транспорту, а також формування та перманентне оновлення законодавства.

VII. Сучасний (воєнний) період, протягом якого з 2014 року до наших днів суб'єкти страхової діяльності у сфері транспорту діють у несприятливих умовах, стикаються із форс-мажорними обставинами, законодавство формується з урахуванням вимог воєнного часу, поширюється застосування цифрових технологій, початок правового регулювання страхових відносин у транспорті в космічному просторі.

Висновки. Проведене у статті дослідження і згенерована періодизація розвитку засад правового забезпечення процесів страхування у сфері транспорту вказують на постійне ускладнення законодавчих норм і поступове посилення публічних інтересів у цих процесах. І це при тому, що утворення страхової компанії, ініціатива (частіше з боку транспортної компанії чи власника (отримувача) вантажу) в укладенні договору страхування були викликані потребою в реалізації приватних інтересів. Найскладнішим для нормального функціонування страховиків і транспортних компаній є сучасний (воєнний) період. Проте і тут внаслідок підвищення важливості ролі транспорту (особливо морського, залізничного й автомобільного) страховий ринок розвивається.

Ключові слова: страхування, транспорт, суб'єкт господарювання, перевезення, правовий звичай, транспортне законодавство, страхові відносини, історико-правові періоди, вантаж, майно, життя і здоров'я, пасажир, судно, морський порт, залізниця, аеропорт.

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HISTORICAL AND LEGAL ANALYSIS OF FORMATION AND DEVELOPMENT OF THE REGULATORY FRAMEWORK FOR ATYPICAL FORMS OF EMPLOYMENT

Abstract. ***Purpose***. The purpose of the article is a historical and legal analysis of the formation and development of the regulatory framework for atypical forms of employment. ***Results.*** Relying on the analysis of scientific views of scholars, the article provides a historical and legal analysis of the formation and development of the regulatory framework for atypical forms of employment. It is summarised that today the regulatory framework for atypical forms of employment in Ukraine cannot be considered a perfect and complete process, despite the positive course of domestic legislation in the relevant area. ***Conclusions.*** It is concluded that it is advisable to distinguish three main stages of development of atypical forms of employment and the system of its regulatory framework: 1) post-Soviet, which provided for the use of atypical forms of employment as an exception mainly for citizens with special needs, for home-based workers, and persons on leave to care for a child under three years of age. A characteristic feature of this period is the regulatory framework for such forms of employment based on post-Soviet ideas about work outside the workplace; 2) pre-COVID period – 2000s and until the beginning of 2020 – associated with the rapid development of the Internet and computerisation, the transition of the economy and other fields of public life to a digital format, and the development of international cooperation in many sectors of economic activity. This period was characterised by the active use of foreign experience in atypical forms of employment in the absence of a proper regulatory framework for this field of labour relations, regulated mainly through the civil law prism. Furthermore, it became clear that relations arising in the field of atypical forms of employment require to be regulated by the labour law; the third stage (COVID-19 pandemic) – quarantine measures led to a sharp increase in the number of employers using atypical forms of employment. In addition, further terrorist actions of the aggressor country and the war caused massive resettlement of citizens from the areas of active hostilities to calmer places in Ukraine and abroad. Atypical forms of employment have become one of the most active ways for citizens to continue their work. This stage is characterised by active amendments to the current labour legislation to regulate the labour activities of employees working with irregular working hours, raising the issue of regulating the problems of borrowed labour by ratifying relevant international legal acts, providing legal definitions of certain forms of atypical employment, etc.

Key words: history, development, regulatory framework, atypical forms of employment, labour legislation.

1. Introduction

Atypical forms of employment have recently become increasingly popular in Ukraine, due to a number of different factors, both general, global and personal factors of the life circumstances of individuals. It should be noted that such forms of non-standard employment as part-time work; urgent or short-term work; home-based work; remote work; (electronic) work; self-employment; pseudo-employment; temporary agency and contingent employment became widespread in the 70s in Europe and the United States (Prohoniuk, 2021). In Ukraine, such atypical forms of employment have emerged relatively recently, with the start of the gradual market transformation of the economy.

Some problematic issues related to the regulatory framework for atypical forms of employment were considered in their scientific works

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As a result, the purpose of the article is a historical and legal analysis of the formation and development of the regulatory framework for atypical forms of employment.

2. Formation of the international regulatory framework for atypical forms of employment

The regulatory framework for atypical forms of employment in Ukraine is characterised by a rather slow response to social processes in the labour market. One of the first ways to regulate the issues of atypical forms of employment is through the provisions of Article 18 of the Law of Ukraine "On the Fundamentals of Social Protection of Persons with disabilities in Ukraine", which stipulate that the rights of persons with disabilities to work and gainful employment, including under the condition of working at home, shall be ensured by their direct address to enterprises, institutions, organisations or to the state employment service. For persons with disabilities who cannot work at enterprises, institutions or organisations, the State Employment Service assists in employment provided that they work at home (Law of Ukraine on the Fundamentals of Social Protection of Persons with disabilities in Ukraine, 1991). In the early 1990s, it was primarily about ensuring the right to work for people with special needs who were unable to work in a traditional workplace. It was about working at home. Methodological recommendations on the definition of workplaces, approved by the Protocol No. 4 of the Ministry of Labour of Ukraine of 21 June 1995 on workplaces of homeworkers, define homeworkers as workers whose workplace coincides geographically with their place of residence. Their workplaces are equipped mainly with tools, appliances and small machines (Methodological recommendations for determining jobs, 1995).

The situation in the relevant field somewhat changed in the early 2010s. The President of Ukraine's Address to the Verkhovna Rada of Ukraine "On the Internal and External Situation of Ukraine in 2013" specifically mentioned the spread of non-standard forms of employment as a significant drawback that hinders the effective dissemination of positive social effects of economic development. It is noted that the use of borrowed labour in Ukraine within the framework of staff leasing, outstaffing and outsourcing schemes has become increasingly widespread. The legislative unsettledness of these issues leads to the spread of hidden labour relations, which weakens the labour protection of employees. Frequently, temporary employment conditions (fixed-term labour agreements, contracts) are applied to employees working on a permanent basis or performing work that is not temporary (Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine on the internal and external situation of Ukraine, 2013). The means of the regulatory framework for atypical forms of employment in this period was civil law provisions that concealed the actual labour relations (On the feasibility of ratifying the ILO Convention No. 181. Accounting week, 2010).

The literature review reveals increasing popularity of atypical forms of employment in Ukraine due to the following circumstances: 1) flexibility of employment forms due to the massive entry of women, students, and pensioners into the labour market; 2) the conscious rejection of high income, responsibility, and social status by some categories of people who fundamentally change the structure of their consumption, switching to quiet, low-paid work and flexible hours; 3) the presence of categories of the population that often need periods of unemployment due to childcare, education, medical treatment, other individual requests, and the remote production activities, which make their labour careers less stable and standard (Ostapenko, 2020). However, it should be emphasised that the flexibility of employment forms allows for additional income, which is a significant incentive for their popularisation among the general population.

The quarantine measures introduced in response to the spread of COVID-19 have become an important factor in stimulating the regulatory framework for atypical forms of employment. According to available sociological studies, during the COVID-19 pandemic, more than 35% of employees switched to working from home. The pandemic has triggered a long-overdue stage of technological and social experiments that are having a significant impact on the future of office workers (Bezzub, 2020).

Comparing the global data on the number of remote workers before the pandemic, D.O. Pliekhov emphasises the fact that according to the Global State of Remote Work (Owl Labs, 2018), only slightly more than half (56%) of companies worldwide as of 2018 provided at least some form of remote work for female employees. An important distinction here is that before the pandemic, it was mostly self-employed people who worked from home. Accord-

ing to ILO, only 19% of those who worked from home permanently before the COVID-19 pandemic were female employees; in the EU, only 3% of employees were women, while the share of self-employed people working from home has been steadily increasing, reaching 19% in 2019. The pandemic, however, has changed the situation as expected. For example, at the height of the pandemic, in March-April, two-thirds (62%) of all US workers worked from home to some extent (according to Gallup panel data). In EU countries, these figures were slightly lower, but the difference with the situation before the pandemic is significant. For example, in the same period in Germany and Hungary, a quarter of the total employed population did some form of work at home, while in the Czech Republic and Poland, almost a third of such workers did so (Pliekhov, 2021). Global trends have not spared Ukraine.

In the summer of 2020, the ILO issued a Practical Guide on "Remote work during and after the COVID-19 pandemic", which provides guidance for workers and employers, addresses the main issues and challenges of remote work and suggests possible solutions. The document notes that before the pandemic, only a small proportion of the world's workers occasionally worked remotely. As a result of anti-covid measures, almost four in ten workers in Europe have switched to remote working, with this figure being higher in countries where remote working was more developed before the pandemic. It turned out that with the right use of technology and communication tools and changes in the organisation of the labour process, much more work can be done remotely than previously thought. According to the ILO, the vulnerabilities of remote workers are as follows: restrictions or lack of direct communication with colleagues can lead to fewer opportunities to acquire new skills, specific health problems, lower levels of social protection, and a tendency for remote workers to receive lower salaries than office workers, including highly qualified specialists (Pliekhov, 2021). These recommendations are aimed at ILO member countries on how to direct state support for remote workers.

3. Formation of the regulatory framework for atypical forms of employment in Ukraine

At the end of 2020, the Ministry for Development of Economy, Trade and Agriculture of Ukraine prepared a draft Law of Ukraine "On Amendments to the Labour Code of Ukraine Regulating Certain Non-standard Forms of Employment" (hereinafter referred to as Draft No. 2), which proposed the structure of an employment contract with unfixed working hours (hereinafter referred to as the "employment contract"). It should be noted that this is the second "attempt" to initiate the design of the employment contract. The first attempt was made in the "scandalous" draft Labour Law No. 2708 of 28 December 2019 (hereinafter referred to as Draft No. 1). Such an agreement had the same name and, in accordance with Article 17, was a type of employment contract, and its definition and terms were set out in Article 22. For example, an employment contract with unfixed working hours is a special form of employment agreement, according to which the employee's duty to perform work arises only if the employer provides available work, without guarantees that such work will be provided on a regular basis (Svichkarova, 2021).

In September 2021, the Verkhovna Rada of Ukraine adopted as a basis the Draft Law on Amendments to Certain Legislative Acts of Ukraine Regarding Legal Framework for Certain Non-standard Forms of Employment, which aims to regulate the issue of non-standard forms of employment for individuals, who perform work on a non-permanent basis, ensuring flexibility in choosing the organisation of labour relations, enhancing employee mobility in exercising the right to work (Draft Law On Amendments to Certain Legislative Acts of Ukraine Regarding Legal Framework for Certain Non-standard Forms of Employment, 2021).

Consequently, on 18 July 2022, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Legal Framework for Labour Relations with Unfixed Working Hours" was adopted, which resulted in amendments to a number of laws of Ukraine. First of all, the Labour Code of Ukraine was supplemented with Article 21-1, which introduces an employment contract with unfixed working hours. According to this article, it is a special type of employment contract, the terms of which do not establish a specific time for the performance of work, the employee's duty to perform, which arises only if the employer provides the work stipulated by this employment contract, without guaranteeing that such work will be provided permanently, but in compliance with the remuneration conditions provided for in this article (Code of Labour Laws of Ukraine, 1971).

Despite certain successes of Ukraine in the regulatory framework for atypical forms of employment, the regulatory process cannot be considered complete. O.S. Prylypko, considering the unstoppable development of labour relations and new information technologies, argues that the use of telework in the sense of remote work is expedient from a practical point of view in modern realities, moreover,

the use of telework in Ukraine requires bringing national legislation in line with international provisions governing telework, in particular, the development and adoption of a regulation on teleworkers' labour, which would include the provisions of international legal acts on telework (Prylypko, 2013).

In December 2020, the Draft Law of Ukraine "On Ratification of the International Labour Organization Domestic Workers Convention No. 189" was initiated, which planned that the Convention was to enter into force for Ukraine twelve months after the date of registration of Ukraine's instrument of ratification with the Director-General of the International Labour Office (Draft Law of Ukraine on Ratification of the International Labour Organization Domestic Workers Convention No. 189, 2020). However, the Convention has not yet been ratified by the Verkhovna Rada of Ukraine. The lag of Ukrainian legislation from the modern needs of society in regulating labour relations on atypical forms of employment and from the pan-European trends in this field is reflected in the legal literature. For example, O. Kostiuchenko insists on the legislative definition of the concepts of labour leasing, outsourcing, outstaffing (Kostiuchenko, 2012).

Certain changes to the regulatory framework, including atypical forms of employment, were introduced in connection with the adoption of the Law of Ukraine "On the Organisation of Labour Relations under Martial Law", which defines the specifics of civil service, service in local self-government bodies, and the specifics of labour relations of employees of all enterprises, institutions, organisations in Ukraine, regardless of their form of ownership, type of activity and industry, representative offices of foreign business entities in Ukraine, as well as persons working under an employment contract concluded with physical persons (hereinafter referred to as employees) under martial law. For example, it is established that under martial law, the parties shall agree on the form of an employment contract. When entering into an employment agreement under martial law, the condition of probation during employment may be established for any category of employees. The start and end times of daily work (shifts) are determined by the employer. The duration of weekly uninterrupted rest may be reduced to 24 hours (Law of Ukraine on the Organisation of Labour Relations under Martial Law, 2022).

To sum up, it should be noted that today the regulatory framework for atypical forms of employment in Ukraine cannot be considered a perfect and complete process, despite the undoubtedly positive course of domestic legislation towards their "legalisation", but this can only be called initial steps. The literature review reveals that the main areas of modernisation of the regulatory framework for the remote form of labour organisation include: the provision of separate chapters in the new Labour Code of Ukraine, which will clearly regulate the issue of remote employment; defining the characteristics of a remote worker, his or her scope of rights and duties, prohibiting discrimination against these workers on any grounds; ensuring professional development and training of remote workers; ensuring that the population and employers of Ukraine are sufficiently informed about the possibility of using remote forms of employment; regulatory provisions according to which the state will ensure the development of remote employment; institutions that will provide and coordinate remote employment; public policy on employment, which will be primarily aimed at stimulating the development of this form of employment (Taran, Vasechko, 2021).

4. Conclusions

Therefore, we can identify three main stages in the development of atypical forms of employment and the system of its regulatory framework:

– The first stage (post-Soviet), which provided for the use of atypical forms of employment as an exception mainly for citizens with special needs, for home-based workers, and persons on leave to care for a child under three years of age. A characteristic feature of this period is the regulatory framework for such forms of employment based on post-Soviet ideas about work outside the workplace;

– The second stage (pre-COVID period) of the 2000s and early 2020 is associated with the rapid development of the Internet and computerisation, the transition of the economy and other fields of public life to a digital format, and the development of international cooperation in many sectors of economic activity. This period was characterised by the active use of foreign experience in atypical forms of employment in the absence of a proper regulatory framework for this field of labour relations, regulated mainly through the civil law prism. Furthermore, it became clear that relations arising in the field of atypical forms of employment require to be regulated by the labour law;

– The third stage (COVID-19 pandemic) – quarantine measures led to a sharp increase in the number of employers using atypical forms of employment. In addition, further terrorist actions of the aggressor country and the war caused massive resettlement of citizens from the areas of active hostilities to calmer places in Ukraine and abroad. Atypical forms of employ-

ment have become one of the most active ways for citizens to continue their work. This stage is characterised by active amendments to the current labour legislation to regulate the labour activities of employees working with irregular working hours, raising the issue of regulating the problems of borrowed labour by ratifying relevant international legal acts, providing legal definitions of certain forms of atypical employment, etc.

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ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ СТАНОВЛЕННЯ ТА РОЗВИТКУ ПРАВОВОГО РЕГУЛЮВАННЯ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ

Анотація. ***Мета.*** Мета статті полягає в здійсненні історико-правового аналізу становлення та розвитку правового регулювання нетипових форм зайнятості. ***Результати***. У статті, спираючись на аналіз наукових поглядів вчених, автор здійснив історико-правовий аналіз становлення та розвитку правового регулювання нетипових форм зайнятості. Узагальнено, що на сьогодні нормативно-правове регулювання нетипових форм зайнятості в Україні не можна вважати досконалим і завершеним процесом, незважаючи на позитивний рух вітчизняного законодавства у відповідному напрямі. ***Висновки.*** Зроблено висновок про доцільність виділення трьох основних етапів розвитку нетипових форм зайнятості та системи її нормативно-правового регулювання: 1) пострадянський, який передбачав використання нетипових форм зайнятості як виняток переважно для громадян з особливими потребами, для надомників, осіб, що перебувають у відпустці по догляду за дитиною до трьох років. Характерною властивістю цього періоду є нормативно-правове регулювання таких форм зайнятості на базі пострадянських уявлень про працю поза межами робочого місця; 2) доковідний – 2000-ні роки і до початку 2020 року пов'язаний із стрімким розвитком інтернету та комп'ютеризації, переходом економіки й інших сфер суспільного життя в цифровий формат, розвитком міжнародного співробітництва в багатьох галузях господарської діяльності. Характерними рисами цього періоду є активне використання закордонного досвіду щодо нетипових форм зайнятості за відсутності належного нормативно-правового регулювання цієї сфери трудових відносин, за якого основний зміст правового регулювання відбувався крізь цивільно-правову призму. При цьому з'явилося чітке розуміння потреби саме в трудо-правового регулювання відносин, що виникають у сфері нетипових форм зайнятості; третій етап (пандемія COVID-19) – проведення карантинних заходів призвело до різкого зростання кількості роботодавців, що використовують нетипові форми зайнятості. Крім того, подальші терористичні дії країни-агресора, війна викликали масове переселення громадян із місць ведення активних бойових дій до більш спокійних місць України та за кордон. Одним з активних способів продовження подальшої трудової діяльності громадян стали якраз нетипові форми зайнятості. Характерним для цього етапу є активне внесення змін до чинного трудового законодавства з метою упорядкування трудової діяльності працівників, що працюють із нефіксованим робочим часом, постановка питань про врегулювання проблем запозиченої праці шляхом ратифікації відповідних міжнародних нормативно-правових актів, надання правового визначення окремим формам нетипової зайнятості тощо.

Ключові слова: історія, розвиток, правове регулювання, нетипові форми зайнятості, трудове законодавство.

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NEW DIMENSION OF STATE REGULATORY FRAMEWORK FOR RECRUITMENT ACTIVITIES IN UKRAINE

Abstract. ***Purpose***. The article describes the regulatory framework for recruitment activities of public and private entities. ***Results.*** It is revealed that the State regulatory framework for recruitment activities in Ukraine is currently in the process of formation. It is specified that there is a need to form a regulatory framework that will become the basis for implementing a fair recruitment policy. The author emphasises that despite the fact that under current conditions the legislative orientation in the field of employment is aimed at ensuring the exercise of the right to work, it is possible that during the recovery period the implementation of a business-oriented approach to employment and the labour market will continue. It is determined that the updated legislation should be aimed at creating an environment favourable for entrepreneurs, which will enable them to hire and support the best employees, develop their professional skills and talents for the benefit of the organisation. In the long run, this will contribute to the creation of competitive and efficient organisations and the economic growth of the entire country. It is emphasised that such business-oriented approach to employment must be based on the correlation of the organisation's benefits with the inviolability of the postulate of observance and consideration of the rights and interests of employees. In other words, when developing the relevant legislation, it is necessary to allow for both the rights and interests of the organisation and social guarantees for employees, enabling to achieve sustainable and equal opportunities for all in employment. ***Conclusions***. It is concluded that, in general, a new dimension of the State regulatory framework for recruitment activities in Ukraine should be aimed at creating modern conditions for the development of an innovative and technology-oriented market for recruitment services by means of: 1) improvement of the regulatory framework for the provision of recruitment services in general, including the development of modern and implementation of international standards of recruitment activities; 2) improvement of the process of information exchange between all market parties; 3) stimulation of the use of innovative technologies in the field of employment; 4) introduction on digital platforms and recruitment tools in the public sector.

Key words: administrative regulatory framework, employment agency, recruitment, recruitment services, recruitment, labour relations.

1. Introduction

It is quite natural that economic globalisation, new information technologies and the rapid development of society (Nahornyi, Kostiuk, Pernykoza, 2020) are the result of various processes and factors that contribute to the creation of a more connected and globalised world. Therefore, it is logical that changes in the structure of any organisation are inevitable: approaches to management, including HR, are being optimised.

In modern conditions, it has already become clear that one of the main competitive advantages of an organisation in the market is talented, highly qualified employees (Shypulina, Kaspruk, 2012). However, the understanding of staff as a necessary component of the organisation's successful functioning and one of the key factors to be considered when developing the organisation's development strategy has taken some time. In particular, historically, human resources departments (HR departments), which have always been part of the structure of such organisations, have been responsible for the selection and recruitment of personnel for an organisation. A well-known American business analyst, Dr Jac Fitz-enz, who, while working at Monster Worldwide, wrote many books on human resource management analytics, noted

that HR departments were always treated as a "dumping ground for organisational losses". It was seen as being staffed by nice people without any specialised training who were not able to perform other tasks (Fitz-Enz, 2009). Indeed, for years, it was believed that organisations could not assess or quantify what the HR department had achieved or its overall contribution to the organisation. As a result, most HRM departments did not have access to the organisation's strategic planning processes and were forced to react to them rather than collaborate with other management teams to make policies and set future goals. Over the years, it became clear that this approach was wrong. Studies in the private sector have revealed that the return on a balanced and strategic HRM policy can exceed the return on other resources (Fitz-enz (Fitz-Enz, 2009); Jean Paul Isson & Jesse S. Harriott (Isson, Harriott, 2016); Joan E. Pynes (Pynes, 2013)). That is why everything has changed. Today's HR professionals manage change and resilience in their organisations, ensuring that they are ready for the next stage of transformation with the right people and a culture that attracts and retains the best talent in challenging market conditions.

Therefore, in the context of rapid globalisation and socio-economic changes, the institution of human resource development has taken a new turn in development, and an integral part of it is now the recruitment and selection of qualified and value-oriented employees who are aligned with the culture of a particular organisation.

Aspects of the recruitment services market in Ukraine have been studied by scholars such as N. Bazaliiska, A. Vasylyk, V. Vashchenko, T. Vonberh, R. Halaz, O. Hapeieva, V. Herasimova, V. Domuschi, I. Zhyliaieva, O. Zinchenko, O. Kirianova, I. Krasko, V. Kremena, S. Kulakova, A. Lobza, V. Martovytskyi, H. Makhova, V. Petiukh, Y. Pechuliak, H. Pysarevska, N. Pryvalova, Ya. Proskurkina, S. Svetlichna, Y. Siemieniak, K. Skibska, T. Stoliarchuk, H. Tokhtar, V. Chentsov, Yu. Shchehelska, and others. However, the issues proposed for analysis are different from those proposed by these scholars. Its specificity lies in the focus on revealing the general and specific administrative and legal principles of functioning of the recruitment services market in Ukraine and identifying legislative gaps within the framework of the State regulatory framework for social relations within it.

The purpose of the article is to reveal, on the basis of a systematic analysis of current regulatory sources and established scientific positions, the new dimension of the State regulatory framework for recruitment activities in Ukraine.

2. History of recruitment agencies in Ukraine

It should be noted that in Ukraine, the first recruitment agencies began to appear only in the early 1990s, the period of formation of market relations (Kulakova, Kopeikina, Zotova, 2018). Their services were related to intermediary activities in the field of employment.

In general, with the declaration of Ukraine's independence, the issue of reforming all sectors of public life arose. The provision of employment services also needed to change. In the first version of Law of Ukraine No. 698-XII On Entrepreneurship of 7 February 1991 (Law of Ukraine On Entrepreneurship, 1991), the provision of services related to vocational guidance and employment agency services, including abroad, was not subject to licensing. This requirement was introduced in 1995 (Law of Ukraine On Amendments and Additions to Article 4 of the Law of Ukraine "On Entrepreneurship", 1995), after amendments were made to the Law of Ukraine "On Entrepreneurship". In 1996, a number of regulations were approved that detailed this requirement. For example, the "Instruction on the Procedure for issuing special permits (licences) to business entities for intermediary activities in employment, including abroad" and the "Instructions on terms and rules of intermediary activities in employment, including abroad and control over their compliance" were approved (Order of the Licensing Chamber under the Ministry of Economy of Ukraine and the State Employment Centre of the Ministry of Labour of Ukraine On the approval of the Instructions on the procedure for issuing special permits (licenses) to business entities for employment mediation, including abroad, and the Instructions on terms and rules of intermediary activities in employment, including abroad and control over their compliance, 1996). This was followed by Resolution of the Cabinet of Ministers of Ukraine No. 1020 of 3 July 1998 "On the Procedure for licensing entrepreneurial activities", which was followed by the new "Instruction on terms and rules of intermediary activities in employment abroad and control over their compliance" of 22 February 1999. Such changes to the rules for employment activities have been made on a regular basis with an approximate frequency of five years. The following version was approved on 19 December 2001 (Order of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship, Ministry of Labour and Social Policy of Ukraine On Approval of Licensing Conditions for Conduct-

ing Economic Activity Mediating Employment Abroad, 2001), which was cancelled on 6 September 2010 by No. 285/271 (Order of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship, Ministry of Labour and Social Policy of Ukraine On recognizing as invalid the orders of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship and the Ministry of Labour and Social Policy of Ukraine, 2010).

Already in 2000, the Law of Ukraine "On Licensing of Certain Types of Economic Activity" (Law of Ukraine On Licensing of Certain Types of Economic Activity, 2000) was adopted, which at the legislative level defined the types of economic activities subject to licensing, the procedure for their licensing, established state control in the field of licensing, and the liability of business entities and licensing authorities for violations of licensing legislation. The novelty of this law was that it required licensing only for activities related to mediation in employment abroad (clause 32, part 3, p. 9), while other activities could be carried out without a licence. This gave impetus to the development of recruitment services in Ukraine.

At the current stage of development, the main legal regulation on the labour market is the Law of Ukraine "On Employment of the Population", which defines the legal, economic and organisational framework for the implementation of public policy on employment, state guarantees for the protection of citizens' rights to work and the exercise of their rights to social protection against unemployment (Law of Ukraine On Employment of the Population, 2012). It also sets out the main terms and powers of the bodies responsible for the formation and implementation of public policy on employment, defines social services and measures to promote employment, and, most importantly, a whole section is devoted to employment mediation services, which are actually of two types: 1) job search for the unemployed population, which is an activity related to assisting a person in exercising his/her right to employment; 2) recruitment of employees in accordance with employers' requirements (Law of Ukraine On Employment of the Population, 2012). In particular, the latter is the current objectification of the legislative understanding of recruitment activities in Ukraine.

3. Establishment and development of the State Employment Service

It should be noted that, in accordance with international standards, the country must have a state employment service. For example, Decree of the President of Ukraine No. 19/2013 of 16 January 2013 established the State Employment Service of Ukraine and approved its regulations (Decree of the President of Ukraine on the State Employment Service of Ukraine, 2013). The previous document that regulated the activities of the state employment service was Resolution No. 381 of the Council of Ministers of the Ukrainian SSR "On the creation of the state employment service in the Ukrainian SSR" of 21 December 1990 (Resolution of the Council of Ministers of the Ukrainian SSR on the creation of the state employment service in the Ukrainian SSR, 1990). The State Employment Service of Ukraine was recognised as a central executive body, whose activities were directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Social Policy of Ukraine (Decree of the President of Ukraine on the State Employment Service of Ukraine, 2013). Then, without cancelling the above provision, which was approved by a Decree of the President of Ukraine (the decree was cancelled only on 20 June 2019 (Decree of the President of Ukraine On recognition of certain decrees of the President of Ukraine as invalid, 2019)), a new "Regulations on the State Employment Service" was approved (Order of the Ministry of Social Policy of Ukraine Approving the Regulations on the State Employment Service, 2015) but already by Order of the Ministry of Social Policy of Ukraine No. 41 of 20 January 2015. As a result, the State Employment Service moved from the status of a "central executive body" to a "centralised system of state institutions activities thereof are directed and coordinated by the Ministry of Social Policy of Ukraine" (Order of the Ministry of Social Policy of Ukraine Approving the Regulations on the State Employment Service, 2015). It should be noted that the Regulations on the Employment Service have been constantly revised, in particular in 2016 (Order of the Ministry of Social Policy of Ukraine Approving the Regulations on the State Employment Service, 2016) and 2019 (Order of the Ministry of Social Policy of Ukraine on the approval of the Regulations on the State Employment Service, 2019). The last valid version No. 2663 was adopted on 16 December 2020 formalised by a relevant Order (Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine on the approval of the Regulation on the State Employment Service, 2020), however, the Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine (now the Ministry of Economy) Accordingly, in modern context, the State Employment Service is a centralised system of state institutions whose activities are directed and coordinated by the Ministry of Economy of Ukraine (Order of the Ministry of Economic Development, Trade and Agricul-

ture of Ukraine on the approval of the Regulation on the State Employment Service, 2020).

Such constant changes and reorganisation could not have had a positive impact on the activities of this entity, but it also indicates that the reorientation of its activities from the social to the economic sphere was expected to have such an effect in the future. In particular, it was believed that such a step would help to harmonise the activities of the bodies responsible for economic development and the regulatory mechanism for employment, since the regulatory mechanism for employment requires simultaneously allowing for the measures determined by the state to promote economic growth and improving social support and the well-being of Ukrainian citizens (Official website of the Ministry of Economy of Ukraine, 2020).

Therefore, we can determine that the State Employment Service of Ukraine functions to provide socio-economic services that organically combine employment mediation activities with recruitment activities in its modern sense. Whether this is true is an open question, as the process of its reform is not yet complete. However, it is already declared that its activities have been reoriented to a new ideology, which is permeated with the basic tenets of fair recruitment.

In particular, according to the legislative discourse, the main tasks of the State Employment Service at the present stage are: 1) implementation of public policy on employment and labour migration, social protection against unemployment; 2) analysis of the labour market; 3) assistance to citizens in finding suitable work; 4) recruitment services provision to employers; 5) participation in the organisation of public and other temporary works; 6) assistance to citizens in organising entrepreneurial activities, in particular by providing individual and group advice; 7) participation in measures aimed at preventing mass dismissal of employees, prevention of an insured event, promotion of labour mobility and employment in regions with the highest unemployment rates, mono-functional cities and settlements dependent on city-forming enterprises; 8) organisation of training, retraining and advanced training of the unemployed, in view of current and future labour market needs, and confirmation of the results of non-formal vocational training; 9) professional orientation of the population; 10) additional assistance in the employment of certain categories of citizens who are uncompetitive in the labour market; 11) submission of proposals to the Ministry of Economy on the formation of public policy on employment; 12) control over the use of the Fund's resources by employers and the unemployed (Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine on the approval of the Regulations on the State Employment Service, 2020).

It should also be noted that, according to a new report by the International Labour Organization, about 4.8 million jobs have been lost in Ukraine since the beginning of Russian aggression. The study estimates that if hostilities escalate, job losses will increase to 7 million. In response to the shock to the labour market, the government responded with legislative changes. On 21 April, the Verkhovna Rada adopted a law simplifying the procedure for obtaining unemployment status and unemployment benefits during the war. In addition, employers have been provided with additional economic incentives to employ internally displaced persons: they can receive an allowance of UAH 6,500 to pay salaries to such persons. Moreover, in late May, the State Employment Service, with the participation of the Ministry of Economy, signed an agreement on cooperation and information interaction with the largest job websites. This cooperation will result in the creation of a unified database with vacancies. The database will be filled by the State Employment Service and job search agencies. The resource will be updated in real time (Official website of the State Employment Centre, 2023). In other words, the focus of the State Employment Service and public policy in this field in general during the war is on employment in order to maximise the assistance to a person in exercising the right to work. However, the above does not mean that recruitment activities have been ousted from the field of view of legislators or from the practical and implementation activities of entities providing such services in general. It is logical to assume that as soon as the situation in the country stabilises, the economic development mechanisms launched will start to function with a new productive impetus, which will create conditions favourable for expanding recruitment activities. In particular, organisations will be able to actively expand their staff again, attracting talented employees rather than filling vacant positions with temporary staff. In addition, there may be a demand for specialised recruitment services, which will allow recruitment agencies to continue to play an important role in shaping the labour market and helping companies find the right employees.

4. Conclusions

To sum up, it is logical to conclude that the state regulatory framework for recruitment activities in Ukraine is currently in the process of formation. It is necessary to form an appropriate regulatory framework that will become the basis for implementing a fair recruitment

policy. Despite the fact that under current conditions the legislative orientation in the field of employment is aimed at ensuring the exercise of the right to work, it is possible that during the recovery period the implementation of a business-oriented approach to employment and the labour market will continue. In particular, the legislation should be aimed at creating an environment favourable for entrepreneurs, which will enable them to hire and support the best employees, develop their professional skills and talents for the benefit of the organisation. In the long run, this will contribute to the creation of competitive and efficient organisations and the economic growth of the entire country.

However, it should be borne in mind that such business-oriented approach to employment must be based on the correlation of the organisation's benefits with the inviolability of the postulate of observance and consideration of the rights and interests of employees. In other words, when developing the relevant legislation, it is necessary to allow for both the rights and interests of the organisation and social guarantees for employees, enabling to achieve sustainable and equal opportunities for all in employment.

In addition, in general, a new dimension of the State regulatory framework for recruitment activities in Ukraine should be aimed at creating modern conditions for the development of an innovative and technology-oriented market for recruitment services by means of:

– Improvement of the regulatory framework for the provision of recruitment services in general, including the development of modern and implementation of international standards of recruitment activities;

– Improvement of the process of information exchange between all market parties;

– Stimulation of the use of innovative technologies in the field of employment;

– Introduction of digital platforms and recruitment tools in the public sector.

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НОВІТНІЙ ВИМІР ДЕРЖАВНОГО РЕГУЛЮВАННЯ РЕКРУТИНГОВОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Анотація. ***Мета.*** У статті схарактеризовано нормативне підґрунтя для здійснення рекрутингової діяльності публічними та приватними суб'єктами. ***Результати.*** З'ясовано, що державне регулювання рекрутингової діяльності в Україні наразі перебуває в процесі становлення. Уточнюється про необхідність формування нормативного базису, який стане основою для впровадження політики справедливого рекрутингу. Акцентується, що попри те, що за сучасних умов законодавча орієнтація у сфері зайнятості населення спрямована на забезпечення реалізації особи права на працю, невиключним є те, що в період відновлення буде продовжено реалізацію впровадження бізнес-орієнтованого підходу до сфери зайнятості та ринку праці. Визначено, що оновлене законодавство має бути спрямоване на створення сприятливого середовища для підприємців, що забезпечить можливість останнім наймати й утримувати найкращих співробітників, розвивати їхні професійні навички та таланти з користю для організації. У перспективі означене сприятиме створенню конкурентоспроможних та ефективних організацій і економічному зростанню країни загалом. Акцентовано, що такий бізнес-орієнтований підхід до зайнятості обов'язково має базуватися на кореляції вигід організації з непорушністю постулату дотримання та врахування прав та інтересів працівників. Тобто під час розроблення відповідного законодавства потрібно враховувати як права й інтереси організації, так і соціальні гарантії для працівників, що дасть змогу досягти сталих і рівних можливостей для всіх у сфері зайнятості. ***Висновки.*** Узагальнено, що новітній вимір державного регулювання рекрутингової діяльності в Україні має бути спрямований на створення сучасних умов для розвитку інноваційного та технологічно-орієнтованого ринку рекрутингових послуг шляхом: 1) удосконалення нормативного регулювання надання рекрутингових послуг, зокрема формування сучасних і впровадження міжнародних стандартів рекрутингової діяльності; 2) удосконалення процесу обміну інформацією між усіма сторонами ринку; 3) стимулювання використання інноваційних технологій у сфері зайнятості населення; 4) впровадження цифрових платформ та інструментів рекрутингу в публічному секторі.

Ключові слова: адміністративно-правове регулювання, посередництво у працевлаштуванні, рекрутинг, рекрутингові послуги, рекрутмент, трудові відносини.

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THE ROLE OF THE STATE TAX SERVICE OF UKRAINE IN CONTROL OF COMPLIANCE WITH TAX AND OTHER LEGISLATION

Abstract. ***Purpose.*** The purpose of the article is to determine the role of the State Tax Service of Ukraine in control of compliance with the requirements of tax and other legislation. ***Results.*** The relevance of the article is due to the fact that successful implementation of tax reform in Ukraine is associated with the need to reform tax administration as one of the main elements of the effective tax system and the economy of the entire State. First of all, it implies completeness, timeliness and voluntary payment of taxes and fees, the need to minimise administrative costs for the maintenance of the State Tax Service of Ukraine, and the creation of appropriate conditions for taxpayers to fulfil their tax obligations. The current imperfect tax administration system in Ukraine results in an unproductive burden on business entities and requires significant time and resource for tax reporting, which leads to an increase in tax evasion, imbalanced actions of the authorised state bodies, and an increase in tax offences, etc. This is confirmed by the Association Agreement between Ukraine and the European Union, under which the parties undertook to cooperate to improve tax administration in order to further develop financial and economic relations, trade, investment and fair competition. ***Conclusions.*** It is concluded that tax control in Ukraine develops in difficult conditions, primarily due to the instability of tax legislation, problems in the organisation of work of tax authorities, negative attitude of taxpayers to the tax system, etc. This has a certain impact on the organisation and effectiveness of tax control. Tax control activities should be performed in accordance with the principle of tax saving, in particular, the costs of control activities should not exceed the revenues from these activities. Therefore, it is important to reduce the state's costs on tax collection by improving the methods and techniques of the controlling authorities. Moreover, the initial costs of the state to create the material basis for tax control, which are usually high, should be recouped as soon as possible by reducing the costs of the ongoing maintenance of tax authorities.

Key words: controlling authority, non-commodity, business transactions, taxpayer, personnel.

1. Introduction

The successful implementation of tax reform in Ukraine is associated with the need to reform tax administration as one of the main elements of the effective functioning of the tax system and the economy of the entire State. First of all, it implies completeness, timeliness and voluntary payment of taxes and fees, the need to minimise administrative costs for the maintenance of the State Tax Service of Ukraine (hereinafter referred to as the "STS"), and the creation of appropriate conditions for taxpayers to fulfil their tax obligations.

The current imperfect tax administration system in Ukraine results in an unproductive burden on business entities and requires significant time and resource for tax reporting, which leads to an increase in tax evasion, imbalanced actions of the authorised state bodies, and an increase in tax offences, etc. This is confirmed by the Association Agreement between Ukraine and the European Union, under which the parties undertook to cooperate to improve tax administration in order to further develop financial and economic relations, trade, investment and fair competition.

2. Principles of functioning of the state financial system and control of its state

An essential element of any area of public administration, an important prerequisite for the country's social development and an urgent need for its economic growth is control, which is an important condition for the effective functioning of the financial system and the country's economy in general.

The financial support of the state and its socio-economic stability are largely dependent on taxes, the timely and full collection of which should be properly controlled. Among the organisational and economic mechanisms used by the state to realise its interests in the course of tax deductions, control is the most significant. Improving the efficiency and effectiveness of tax authorities' control activities is an important condition for ensuring the successful functioning of the tax system.

In the context of competition between public and private interests in the field of taxation, the state, defending public interests, applies a special mechanism of interaction with each taxpayer to ensure tax compliance behaviour (Pylypenko, 2009). This is control as a function of public administration, which provides feedback between the object and the subject of management (Teremetskyi, 2012).

Control is one of the most important functions of public administration, along with planning, regulation, organisation, management and coordination. Control is a means of fulfilling an important task facing the state – the establishment of law and order. Control enables to check the compliance of the behaviour and activities of entities being controlled (state bodies, organisations and individuals) with the requirements of legal regulations, assesses the discipline of compliance with the requirements of legislative acts, which in turn allows eliminating shortcomings in the functioning of the objects of management. In addition, it is impossible to determine the effectiveness of regulatory mechanism in a particular field of administration, the compliance of legal regulations with the essence and patterns of social relations being regulated without an important regulatory mechanism such as control.

In the field of tax legal relations, control is classified by type. The criteria for classifying control are the content of control activities, the nature of controlling entities, their tasks, the nature of the relationship between the controlling entities and the object being controlled, the stages of management at which control is exercised, the nature of control powers, legal consequences of control, etc.

Depending on the entity exercising control, it is advisable to distinguish between state and public (non-state) control in the field of tax relations.

The most effective and extensive type of public control in the field of tax relations is state control, which is performed only by state bodies within their competence and in accordance with their controlling powers in order to fulfil the goals and tasks assigned to them in accordance with tax and other legislation and is aimed at ensuring the regime of legality and tax discipline in the activities of entities being controlled (Teremetskyi, 2012). This type of control is one of the functions of public administration. It is performed by state controlling bodies (controlling entities) in relation to the structures under their control (objects being controlled) in order to facilitate the implementation of public policy in certain areas of public life. Subtypes of state control include parliamentary, presidential, governmental control, control of ministries and agencies, control of local state administrations and other local authorities, and judicial control (Teremetskyi, 2012).

An effective means for civil society to combat abuses in public administration is public control, the legal ground for which is primarily the provisions of Articles 5, 38 and 147 of the Constitution of Ukraine. Unlike other types of control, public control does not have state powers, so the decisions of public organisations based on the results of inspections are mostly of a recommendatory nature (Kolpakov and Kuzmenko, 2003).

The content of control activities includes financial, banking and tax control, control of the implementation of management decisions, etc. (Averianov, 1999). These types of state control have the same purpose and object of control, but they have different tasks, forms and methods of control, as well as consequences of its implementation (Kyrychenko, 2009).

Tax control plays a special role in the system of state control. The legal definition of this concept is set out in Article 61 of the Tax Code of Ukraine, according to which tax control is a system of measures taken by the controlling authorities to control the accuracy of accruals, completeness and timeliness of payment of taxes and duties, as well as compliance with legislation on cash circulation, settlement and cash transactions, patenting, licensing and other legislation, control of compliance with which is vested in the regulatory authorities.

The organisation and implementation of tax control of the calculation and payment of taxes is an important function of the state that ensures the normal functioning of the financial system, since market conditions do not eliminate the need for systematic control of financial and economic activities of enterprises, organisations, institutions of all forms of ownership, and for taking measures to prevent and eliminate deficiencies (Vasylyk and Pavliuk, 2004).

Tax control is an integral part of financial control, a specific type that expresses its content and differs from other types of financial control in its scope, control function bearers, i.e. controlling entities, objects and subject of control (Savchenko, 2012). It can also be described as

a special form of implementation of the control function of finance, which is expressed in a set of measures to verify the actions of obligated entities in fulfilling their obligations related to the payment of taxes and fees. Furthermore, tax control is one of the main areas of tax administration and at the same time the most problematic, since it is in the process of tax audits that the taxpayer and tax authorities interact most closely, and ensuring procedural guarantees of taxpayer rights is of particular importance (Demenko, 2013).

It should be noted that control of the calculation and payment of taxes is one of the main elements of the tax administration system (Proskura, 2014). Therefore, it is inappropriate to place control procedures outside the scope of administration (Article 40 of the Tax Code of Ukraine distinguishes tax administration from control of compliance with tax and other legislation), the structure of Section II of the Tax Code of Ukraine indicates that all issues related to tax administration include control, since the latter is performed by keeping records of taxpayers, information and analytical support of controlling authorities, inspections and reconciliations. The relevant chapters are included in Section II of the Tax Code of Ukraine. In addition, the National Action Plan for improving tax administration refers to the improvement of control and audit work as a part of administration. In this regard, it is inappropriate to place control procedures outside the scope of administration.

Tax control as an element of tax system management is objectively necessary, as it is aimed at maintaining the normal functioning of the state's fiscal system by identifying deviations (violations of tax legislation), correcting them (debt collection) and preventing negative phenomena in the future (in particular, through the system of sanctions). High efficiency of tax control is one of the key conditions for maintaining high efficiency of the entire tax administration system (Proskura, 2014).

Therefore, the legal nature of the institution of tax control is complex, has various manifestations, and can be considered from different perspectives.

The purpose of tax control is to ensure the legality and efficiency of the process of collecting taxes and fees, which should result in the understanding by taxpayers and other participants in tax relations of the need to fulfil their tax obligations in good faith. In countries with established tax traditions, taxpayers' confidence that tax evasion is likely to be detected leads to voluntary compliance with the obligations imposed by tax legislation, which results in strict compliance with tax discipline and the formation of a tax culture in society.

The main purpose of tax control is to ensure strict compliance with the provisions of tax legislation by the obligated parties to tax relations. The level of revenues of budgets and state special-purpose funds directly depends on the degree of efficiency of the controlling activities of tax authorities. Tax control is a guarantee of meeting public property interests and an important factor of socio-economic stability of the state and its financial security (Tsymbaliuk, Anistratenko, 2008).

The essence of tax control is reflected in its tasks, the main of which are:

1) Check the correctness of accrual, completeness and timeliness of payment of taxes and fees;

2) Ensure compliance with the legislation on regulation of cash circulation, settlement and cash transactions, patenting, licensing and other legislation, control of compliance with which is vested in the regulatory authorities;

3) Prevent violations of tax legislation, identify perpetrators and bring them to justice (Demenko, 2013).

3. Particularities of tax control

The particularity of tax control, in comparison with other types of financial control, is the scope of its application – the relations arising from the collection of taxes and fees, i.e. the formation of public funds. After all, while the basis of the controlling function of finance is the movement of financial resources in centralised and decentralised form, the implementation of the controlling function of finance in relation to taxation is the control of the flow of funds into public monetary funds (Kucheriavenko, 2013).

Characteristic features of tax control that reveal its content are as follows:

1) It is a type of state control exercised by specially authorised entities vested by the state with competence in the field of collection of taxes and fees;

2) It is performed in relation to a special object – centralised and decentralised monetary funds (Azarova, 2010);

3) Imperative nature – tax control expresses the relationship of power and subordination;

4) It is related not only to money, but also to material assets that are involved in this process indirectly, in particular, as an object of determining monetary obligations or as a means of securing monetary obligations when certain property is sold and monetary obligations are repaid with the proceeds (Kucheriavenko, 2013);

5) Clear purposefulness due to the targeted nature of cash funds in the context of public regulation, etc.

A clear definition of its elements, such as controlling entities and entities being controlled, objects and subject matter of tax control, and stages of tax control, is essential for the effectiveness of tax control.

Tax control is performed by the controlling authorities, which are defined in Article 41 of the Tax Code of Ukraine as the State Tax Service of Ukraine. However, the legislator in para. 61.2 of Article 61 of the Tax Code of Ukraine specifies that tax control is performed by the bodies referred to in Article 41 of the Tax Code of Ukraine within the scope of their powers.

A controlling authority influences the behaviour of an entity being controlled in order to ensure that it properly fulfils its tax obligations, prevents tax violations, eliminates identified violations, etc. The effectiveness and efficiency of tax control depends on a clear definition and legislative consolidation of its object and subject matter.

The object of tax control is an act, i.e. actions or omissions of a taxpayer, fee payer, tax agent or representative of a taxpayer regarding the calculation, payment of taxes and fees, other mandatory payments, provision of information for registration, as well as the performance of other duties provided for by the Tax Code of Ukraine, which are assessed in terms of their legality, reliability, timeliness, completeness, and correctness.

When describing the object of tax control, it is important to note that it should be distinguished from the subject, which is a carrier of information about the actions, inactions, entities being controlled, i.e. a certain material object to be studied in the course of control activities of the controlling authorities. Accordingly, certain documents are subject to tax control, including accounting reports, declarations, estimates, payment documents, etc.

The need for regulatory mechanism, structuring, and proper allocation of funds and capabilities required for more efficient performance of tax control tasks leads to its division into certain stages. Common to all stages are the goals and objectives, as the tax control process is aimed at ensuring legality in taxation. However, each stage is characterised by time limits, a range of control and procedural actions, and intermediate tasks, which are a condition for the emergence and existence of the next stage if the necessary control actions are performed at the previous stage.

The stages of tax control are: 1) preparatory; 2) implementation of control measures and preparation of tax control materials; 3) decision-making based on the results of control actions; 4) implementation of the decision (Demenko, 2013).

At the preparatory stage, actions are taken that will further facilitate the proper conduct of control measures, and their planning and organisation are carried out. This stage implies actions such as determining the controlling entities, the object of control, the timing of controlling actions, their goals and objectives. Actions taken at this stage are of great practical importance, as the effectiveness of control activities depends on the proper organisation and development of a plan for conducting control activities.

At the stage of implementation of control measures, through direct examination of the entity being controlled, the actual circumstances of the case are established, i.e. control measures are taken, appropriate control methods are applied, and the results of control measures are documented (certificates or reports are drawn up).

Pursuant to the Tax Code of Ukraine, Article 86, clause 86.1, the results of tax audits (except for desk audits) are drawn up in the form of an act or certificate signed by officials of the state tax service and taxpayers or their legal representatives (if any). If violations are found during the audit, an act is drawn up. If there are no such violations, a certificate is issued.

If the taxpayer or his/her legal representatives disagree with the conclusions of the audit or the facts and data set out in the audit report (certificate), they have the right to submit their objections to the state tax authority at the main place of registration of such taxpayer within five business days from the date of receipt of the report (certificate). Such objections are considered by the state tax authority within five business days following the day of their receipt.

The taxpayer (his/her authorised person and/or representative) has the right to participate in the consideration of objections, as indicated by such taxpayer in the objections. Moreover, the participation of the head of the relevant state tax authority (or his/her authorised representative) in the consideration of the taxpayer's objections to the audit report is mandatory.

The third stage of the tax control process begins when the controlling authority makes a decision based on the results of the control and submits the relevant documentation. The decision on the determination of monetary liabilities is made by the head of the state tax authority (or his/her deputy), taking into account the results of consideration of the taxpayer's objections (if any). The taxpayer or his/her legal representative may be present when such decision is made.

Control of the implementation of the decision is the fourth stage of the tax control process, as control actions involve the implementation of the results obtained, which is impossible without organising control of its implementation. The decision should be implemented in a full and timely manner.

Tax control is performed by means of methods that can be defined as a set of actions of the relevant controlling authorities regulated by the tax legislation to perform tax control tasks. In accordance with Article 62 of the Tax Code of Ukraine, the methods of tax control are as follows:

1) Keeping records of taxpayers;

2) Information and analytical support for the activities of the State Tax Service;

3) Inspections and reconciliations in accordance with the requirements of the Tax Code of Ukraine, as well as inspections of compliance with the legislation, control of compliance with which is vested in the controlling authorities, in accordance with the procedure established by the laws of Ukraine regulating the relevant area of legal relations.

Each of the methods relates to a separate area of control activities and covers actions of controlling authorities, taxpayers, and other persons in fulfilling their taxation duties that are homogeneous in content.

In law enforcement practice, there are cases when, in the course of tax audits, the controlling authority determines (additionally charges) the amount of VAT and/or corporate income tax liability. The ground for determining the tax liability is that, in the opinion of the controlling authority, the taxpayer has entered into transactions with counterparties that do not carry out business activities (the so-called "platforms" or "tax holes"). In this regard, the supervisory authority believes that no business transactions were performed under these agreements, and therefore the taxpayer unreasonably formed a tax credit and gross expenses (Iasiunetskyi, 2014).

This position of the controlling authorities is reflected in the audit report, which results in tax assessment notices. Such actions of the controlling authority are systematic. In addition, a significant number of these tax assessment notices are recognised as unlawful in court. However, the number of court decisions in favour of taxpayers does not affect the inspectors of the territorial bodies of the State Tax Service of Ukraine and they continue to charge additional tax liabilities on the above grounds.

In this case, the problem arises due to the biased subjective opinion of the inspector of the supervisory authority. The conclusion about the non-commodity nature of business transactions is based on formal grounds, such as deficiencies in the preparation of shipping documents, lack of material and technical basis for such transactions by the taxpayer or its counterparty, and lack of appropriate personnel. The counterparty's fault, such as absence at the place of registration, illegal activities of officials, etc., may also be the ground for determining the tax liability.

Unfortunately, the tax authorities do not take any actions aimed at invalidating disputed transactions (fictitious or sham) in court. A situation arises when transactions are recognised as non-commodity transactions, while the agreements under which these transactions were performed are valid. Moreover, the supervisory authority ignores the presumption of legality of a transaction established by Article 204 of the Civil Code of Ukraine, that is, a transaction is legitimate unless its invalidity is expressly established by law or unless it is declared invalid by a court.

It is not uncommon for regulatory authorities to conduct an inspection in the absence of appropriate legal grounds or when the order to conduct an inspection is clearly unlawful. In this case, a court appeal against such an order does not stop the audit. This creates a situation in which a taxpayer is deprived of effective protection against arbitrariness of the tax authorities.

In this regard, it is proposed to supplement the Tax Code of Ukraine with a provision according to which the effect of the order of the fiscal service on conducting an audit is suspended from the moment the taxpayer files a claim to the court to revoke the order on conducting an audit.

In turn, the Code of Administrative Procedure of Ukraine (hereinafter – the CAP of Ukraine) should establish shorter time limits for consideration of such disputes. The timeframe for consideration of cases related to the electoral process (two days from the date of filing a lawsuit) can be taken as an example.

The state-power characteristic of control in the field of taxation stems from the particularities of tax relations and is based on the fact that taxes perform a fiscal function, as well as on the assumption that a certain part of their payers may not want to pay taxes. The use of public authorities' powers of tax control becomes especially relevant in the conditions of imperfect tax legislation and insufficiently developed organisation of the work of controlling bodies (Karminska-Belobrova, 2010).

The process of reforming Ukraine's tax system is not yet complete, and it is the tax control system that is most actively affected. Some aspects of tax control organisation related to its legal support, improvement of the system

of interaction between tax authorities and taxpayers, ensuring effective feedback between them, improvement of mechanisms and methods of tax control, certain procedures and rules of tax audits and the corresponding further implementation of their results remain unresolved and quite relevant (Terematskyi, 2012).

The efficiency and effectiveness of tax control will be facilitated by a perfect legal regulation of the tax control procedure, powers of the state authorities exercising it, and objects of control, free from gaps and conflicts, primarily related to the conceptual and categorical apparatus. For example, by leaving to the discretion of tax administration entities the uncertainty of "legislation, control of compliance with which is entrusted to the controlling authorities" and "the relevant field of legal relations", the legislator has created gaps in the legal support for the controlling authorities' activities that may lead to violations of the law (Holovach, 2011).

Furthermore, the legislative definition of the concept of "tax control" needs to be improved, which should be defined not as a system of measures taken by controlling authorities, but as the activities of controlling authorities aimed at ensuring compliance with tax legislation by taxpayers, tax agents and other entities that ensure the implementation of tax liability, detection and prevention of tax offences, as well as perpetrators' legal liability.

4. Conclusions

Therefore, we can conclude that tax control in Ukraine develops in difficult conditions, primarily due to the instability of tax legislation, problems in the organisation of work of tax authorities, negative attitude of taxpayers to the tax system, etc. This has a certain impact on the organisation and effectiveness of tax control. Tax control activities should be performed in accordance with the principle of tax saving, in particular, the costs of control activities should not exceed the revenues from these activities. Therefore, it is important to reduce the state's costs on tax collection by improving the methods and techniques of the controlling authorities. Moreover, the initial costs of the state to create the material basis for tax control, which are usually high, should be recouped as soon as possible by reducing the costs of the ongoing maintenance of tax authorities.

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РОЛЬ ДЕРЖАВНОЇ ПОДАТКОВОЇ СЛУЖБИ УКРАЇНИ У ЗДІЙСНЕННІ КОНТРОЛЮ ЗА ДОТРИМАННЯМ ВИМОГ ПОДАТКОВОГО ТА ІНШОГО ЗАКОНОДАВСТВА

Анотація. ***Мета.*** Метою статті є визначення ролі Державної податкової служби України у здійсненні контролю за дотриманням вимог податкового й іншого законодавства. ***Результати.*** Актуальність статті полягає в тому, що успішне проведення податкової реформи в Україні пов'язане з потребою в реформуванні адміністрування податків як одного з основних елементів ефективного функціонування податкової системи й економіки держави загалом. Насамперед йдеться про забезпечення повноти, своєчасності та добровільності сплати податків і зборів, необхідність мінімізації адміністративних витрат на утримання органів Державної податкової служби України, а також створення належних умов для платників податків щодо виконання ними податкових зобов'язань. Існуюча в Україні недосконала система адміністрування податків призводить до непродуктивного навантаження на суб'єктів господарювання та значних витрат часу й ресурсів для складання ними податкової звітності, що зумовлює розширення масштабів ухилення від сплати податків, розбалансованість дій уповноважених державних органів, збільшення податкових правопорушень тощо. Указане підтверджується Угодою про асоціацію між Україною та Європейським Союзом, за якою сторони зобов'язалися співробітничати заради вдосконалення управління у сфері оподаткування з метою подальшого розвитку фінансово-економічних відносин, торгівлі, інвестицій і добросовісної конкуренції. ***Висновки.*** Зроблено висновок, що становлення податкового контролю в Україні проходить у складних умовах, зумовлених насамперед нестабільністю податкового законодавства, проблемами в організації роботи податкових органів, негативним ставленням платників податків до податкової системи тощо. Це накладає певний відбиток на організацію та дієвість податкового контролю. Заходи щодо податкового контролю повинні здійснюватися відповідно до принципу економії оподаткування, зокрема витрати на проведення контрольних заходів не повинні перевищувати доходи від цієї діяльності. Тому важливо зменшувати витрати держави на стягування податків через удосконалення методів і прийомів роботи контролюючих органів. При цьому первинні витрати держави на створення матеріальної бази податкового контролю, котрі здебільшого є високими, повинні в якомога короткий час окупилися завдяки зниженню витрат на поточне утримання податкових органів.

Ключові слова: контролюючий орган, безтоварність, господарські операції, платник податків, персонал.

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THE EXPERIENCE OF ADMINISTRATIVE REGULATORY FRAMEWORK FOR ACTIVITIES OF PUBLIC ADMINISTRATION BODIES OF CIVIL-MILITARY NATURE IN ISRAEL

Abstract. ***Purpose.*** The purpose of the article is to analyse the experience of the administrative regulatory framework for the activities of public administration bodies of a civil-military nature in Israel. ***Results.*** Israel's policy and similar measures to introduce Civil Administration, but under the full control of the Military Command, have led to the desired consequences for Israel. Despite the fact that the new Civil Administration was proclaimed as an autonomous body, as if taking away the management of civilian affairs from the military, the Israelis de facto increased the influence of their military on the management of Palestinian society. In Israel, the first experience of using military administrations was in the 1940s. In his monograph on power and politics in Israel, Benjamin Neuberger, a professor at the Open University of Israel, describes the military administration. He argues that the main purpose of establishing such institutions is the administrative management by citizens living in the respective territories (which were occupied). In addition to domestic law, international law should be applied here. However, according to the professor, the Israeli military administration, established in 1948, did not meet these characteristics. This was due to the fact that the Arab population that fell under the jurisdiction of the military administration lived in territories that were actually part of the state of Israel. In general, this type of administration operated in accordance with the provisions of the Defence (Emergency) Regulations of 1945. ***Conclusions.*** It is concluded that although the situation in Israel is still quite turbulent and many problems in relations with the Palestinians have not been resolved, the administrative experience of Israelis should be studied and applied, since, unlike us, they have been implementing military and civil-military administrations for decades. Moreover, Israel's approaches to dividing the problem territory into three areas with different levels of autonomy and powers of the Israeli executive authority deserves to be studied.

Key words: civilian control, military-police control, national administration, territory.

1. Introduction

If we consider the international experience of functioning of civil-military administrations, we should focus on the system of the administrative regulatory framework for the administrations of Israel, which had to create military administrations almost from the very beginning of its statehood. In 2017, O. Sikorskyi's article "Civil-military administrations as a way to ensure safety and normalise the population's life in the area of anti-terrorist operation" was published. Describing the already innovative Ukrainian legal framework for the existence of civil-military administrations, he argues that: "The Israelis were among the first to use a similar administrative system" (Sikorskyi, 2017, p. 160). That is why it is appropriate to analyse the Israeli experience in the application of civil-military administrations.

2. Administrative and territorial structure of military administrations in Israel

In Israel, the first experience of using military administrations was in the 1940s. In his monograph on power and politics in Israel, Benjamin Neuberger, a professor at the Open University of Israel, describes the military administration. He argues that the main purpose of establishing such institutions is the administrative management by citizens living in the respective territories (which were occupied). In addition to domestic law, international law should be applied here. However, according to the professor, the Israeli military administration, established in 1948, did not meet these characteristics. This was due to the fact that the Arab population that fell under the jurisdiction of the military administration lived in territories that were

actually part of the state of Israel. In general, this type of administration operated in accordance with the provisions of the Defence (Emergency) Regulations of 1945. The main task of this administration was to control the movement of the Arab population across the country (for this purpose, they needed special permits) (Neuberger, 1998, p. 444).

Initially, during 1948–1949, the main duties of the administration, in addition to monitoring the movement of Arabs, were: to strengthen the control of the Israeli authorities over the territories where Arabs constituted the majority of the population (Galilee, the "small triangle", the Northern Negev, which constituted the border areas); in the event of armed aggression by neighbouring states, to prevent attempts by the local Arab population to contribute to it (an extremely important function in the Ukrainian context); to prevent the creation of Arab nationalist organisations ideological postulates thereof include anti-Israeli rhetoric; to swiftly implement punishment for criminals who have committed crimes against the state (Neuberger, 1998, p. 15).

Benjamin Neuberger quotes a statement by one of the military governors of the administration regarding his own tasks. He noted that his functions were not directly related to defence, as the latter was the responsibility of the field gendarmerie and the Jewish settlements along the border. The governor had to introduce control over the Arab population of the district: "... We know that some of them are loyal to us; but we also know that the rest are not loyal. Hence checks, surveillance, control are required" (Neuberger, 1998, p. 15).

The military administration was divided into districts (Northern, Central and Southern). The district was headed by a military governor with a wide range of powers. According to the Defence Regulations, he was given the right to impose house arrest or administrative detention, deportation, to order the demolition of a house or to confiscate property on any resident of the territory entrusted to him, to close down a newspaper, to liquidate a non-governmental organisation or prohibit its establishment, to restrict freedom of movement, to declare a certain zone a closed area, to impose curfews, to impose restrictions on employment, etc. (Neuberger, 1998, p. 16).

Some political figures opposed the existence of the military administration, as it contradicted the principles of a democratic state, and the granting of special permits to the Arab population was an instrument of pressure on disloyal elements (Neuberger, 1998, p. 444). Subsequently, the administration was liquidated in 1966.

Moreover, the introduction of the 1945 Defence Regulations was justified by the need to ensure Israel's national security. It restricted not only the departure abroad of representatives of national minorities from border areas where they constituted the majority of the population, but also the Jewish population (Vorobiev and Chaiko, 2006, p. 23). In addition, this act allowed the executive to carry out administrative arrests, restrict freedom of movement, issue decrees on compulsory attendance at workplaces, impose curfews, etc. (Vorobiev and Chaiko, 2006, p. 74).

However, already in 1967, Israel experienced historic and significant events that largely guided the state's further development. Under an arms embargo on Israel, at a time when the Soviet Union was actively supplying arms to Arab states, this state found itself in a situation where it was forced to confront almost all of its Arab neighbours virtually alone. The Israelis were once again faced with the possibility of losing their own statehood. However, thanks to the effective actions of the Israeli military, the situation turned out to be quite unexpected from the point of view of Arab countries. As a result of the Six-Day War, the armies of Egypt, Jordan, and Syria were defeated, and Israel took control of a large area from the Golan Plateau to Sharm el-Sheikh and from the Suez Canal to the Jordan River. Therefore, the State of Israel faced the problem of establishing its own administration in the territories of the Sinai Peninsula, East Jerusalem, the Golan Heights, the Gaza Strip, and the West Bank.

In the newly captured territories of the West Bank and Gaza Strip, after the cessation of active hostilities, the authority was concentrated in the hands of the Israeli military administration with "interspersed" elements of local self-government (Gorodilov and Kulikov, 2018, p. 434). Local governments retained control over only religious matters, healthcare, civil matters and some other general local governance issues. The jurisdiction of the Israeli military courts was limited to cases related to national security.

In 1981, these territories underwent significant changes in terms of administrative structure. As a result of Military Order regarding the Establishment of the Civil Administration (No. 947), a new type of administration was introduced, subordinated to the Coordinator of Government Activities in the Territories (COGAT). The Civil Administration had the character of a temporary state administrative authority and operated from 1981 to 1994, when it was replaced in a number of territories by the Palestinian Authority. As of today, the Coordination Centre for Government

Activities in the Territories (COGAT) implements the government's civilian policy within the territories of Judea and Samaria and towards the Gaza Strip.

The Administration governed civilian affairs, provided a range of administrative services, and was in charge of public order. In addition, the administration dealt with the movement of people through the designated territories. It was also responsible for the demarcation between these areas and other territories of Israel (Sikorskyi, 2017, p. 161).

In addition, the Civil Administration of Judea and Samaria, as a civilian-military body responsible for the implementation of Israel's civilian policy in some Palestinian territories, is still in place today. Although it is considered a civilian authority, it operates under the authority of the military Administration of Judea and Samaria. The administration includes not only civilians, but also officers and soldiers of the Israeli armed forces to ensure effective policy coordination. In modern conditions, this Civil Administration is responsible for a wide range of issues ranging from infrastructure and transport to water supply for the population and agricultural entities, electricity in the region, healthcare, and the economy.

The Administration consists of 22 government offices located in the northern and southern regions, as well as 8 Coordination and Liaison Centres located throughout the Judea and Samaria Area. They work to maintain constant communication and interaction between local Palestinians, representatives of Israeli settlements, international organisations, the Palestinian Authority and relevant security agencies (The Civil Administration of Judea and Samaria, 2019).

It should be noted that at that time, according to Military Order No. 947 regarding the Establishment of the Civil Administration, the Civil Administration was managed by the Head of the Civil Administration, appointed by the local Military Commander. In order to enact the Head's powers, the third article of the order established a list of his powers (Israel Military Order No. 947 regarding the Establishment of a Civil Administration, 1981). This order was intended to fulfil a number of tasks. First, to legally regulate the existing separation of civilian and military functions and powers from the existing Military Command by establishing a formally civilian new administration that would have the scope of competence only within the limits established by law (Kuttāb and Shehadeh, 1982, p. 8).

Second, to establish the preconditions for raising the general status of a large volume of military orders and other acts produced by the local military leadership from the status of temporary security acts to the level of permanent acts that would have a completely different status in the region (Kuttāb and Shehadeh, 1982, p. 8).

According to the order, the Civil Administration was entirely determined and established by the Military Command. The head of the Civil Administration acted on behalf of the Military Command of the region. Accordingly, the scope of powers was increased or decreased at the will of the command. The established relationship between the Civil Administration and the Military Command was in line with the Israeli government's interpretation of the Camp David Accords of the time, which, in the government's view, provided for the withdrawal, but not the complete abolition, of military power in the region. Despite the establishment of a supposedly Civil Administration, the Military Command remained at the top of the administrative hierarchy in the region (Kuttāb and Shehadeh, 1982, p. 9).

According to Order No. 947, the Civil Administration and its head were granted a significant amount of authority to regulate and control the economic life of the region (to monitor imports, exports, pricing, finance and banking, setting taxes and customs duties); control over the supply of electricity, water, telephone and postal services to the entrusted territory; facilitate the incorporation of certain areas into the Israeli tourism system, roads and other routes, insurance, etc.; and the appointment of officials).

Following scholar E. Titko, the Civil Administration was supposed to signal the beginning of a gradual process of transition of the territory to an autonomous system. However, it appeared as the then Israeli Defence Minister A. Sharon's policy of "iron fist". E. Titko suggests that A. Sharon, although he took office only three months before the creation of the Civil Administration, had a clear vision of the new administration as a tool to strengthen the administrative influence of the Israeli authorities in the region (E. Titko herself comments: "... strangely enough, this scheme was represented by the separation of the civil administration from the military one") (Titko, 2017, p. 182).

3. The impact of Israeli policy on the activities of civil-military administrations

Israel's policy and similar measures to introduce Civil Administration, but under the full control of the Military Command, have led to the desired consequences for Israel. Despite the fact that the new Civil Administration was proclaimed as an autonomous body, as if taking away the management of civilian affairs

from the military, the Israelis de facto increased the influence of their military on the management of Palestinian society (Titko, 2017, p. 182).

As mentioned above, the Civil Administration in this form lasted until 1994. After 1994, a new stage in the construction of administrative governance in the region began, marked by the Oslo Accords (the "Declaration of Principles on Interim Self-Government Arrangements"), i.e. bilateral negotiations, which were secret, between the Israeli authorities and the Palestine Liberation Organisation. The negotiations resulted in the creation of the Palestinian Authority (which received a part of the West Bank), as well as an increase in autonomous rights to local self-government of the Judea and Samaria (the Palestinian Council was created there). It should be noted that it is on this territory that the Civil Administration continues to operate under the aforementioned COGAT. This administration regulates the issue of the Palestinian population in the Area C. One of the consequences of the Oslo Accords was the division of the region into three areas A, B, C, which depended on the level of autonomy and influence of Israel and its government institutions (Israel has implemented the principle of "divide and rule" through this division, as discussed below) (Titko, 2017, p. 182).

Therefore, the entire West Bank is divided into three areas. Area A was transferred under full civilian and military police control of the Palestinian Authority, which included most of the settlements inhabited by Arabs. In Area B, joint military control by the Palestinian Authority and Israel was envisaged, with civilian affairs under full Palestinian control. Area C was supposed to be completely dominated by Israeli civilian and military authorities. As of 1995, the distribution of the proportion of the area's territory to the entire region and the number of Palestinians living there was not in favour of the Palestinians. In 1995, Area A accounted for only 3% of the West Bank, and 26% of all Palestinians lived there (thus, only a small piece of territory was under the full control of the Palestinian Authority). Area B comprised 24% of the land and 70% of the population. In contrast, Area C, which was under Israeli control, had 73% of the total area and only 4% of the Palestinian population (9, p. 35–36).

Through a series of agreements, the situation changed somewhat by 2000, with Area A accounting for 18%, Area B for 22% and Area C for 64%. Meanwhile, the areas in which the Palestinians had full control were like an archipelago, while the areas controlled by Israel were strategic corridors that interrupted the territorial contiguity of the West Bank. By the way, according to the Israeli professor and academician N. Gordon, a fundamental change in the 1990s in the models of administrative governance in the designated territories led to a radically new approach of the Israeli authorities to the Palestinian population: "... the transfer of authority over civil institutions to the PA reflects the beginning of a transformation from the principle of colonisation to the principle of separation, where the latter does not mean the termination of control but rather its alteration from a system based on managing the lives of the occupied inhabitants to a system which is no longer interested in the lives of the Palestinian residents" (Gordon, 2008, p. 37). It is significant that after that, Israel no longer kept "records" of the conditions under which the Palestinians lived, and that the Israeli Bureau of Statistics stopped monitoring any development concerning the Palestinian population in the occupied territories.

V. Shevchenko's dissertation focuses on the current state of management of Areas B and C by the Israeli military leadership. The Central Military District has in subordination the Territorial Command Centre of the Israeli Armed Forces, which is responsible for building the line of territorial defence of the state in the West Bank. It is in the hands of this territorial Command Centre that the administrative powers over Areas B and C are concentrated. V. Shevchenko describes the hierarchy of management: "The district commander also performs the function of the Commander of the Israeli Defence Forces in the Judea and Samaria Area", the supreme body of the Israeli Military Administration in the West Bank..." (Shevchenko, 2015, p. 155).

A person with the rank of major general has the right to hold the position of district commander, and accordingly, such a person is subordinate to the head of the district headquarters. In general, despite the existence of certain Civil Administrations (titled as such, they were essentially civil-military), in reality, all administrative power in the areas is exercised by the Military Command, i.e. representatives of the Israeli army (Shevchenko, 2015, p. 156).

4. Conclusions

Although the situation in Israel is still quite turbulent and many problems in relations with the Palestinians have not been resolved, the administrative experience of Israelis should be studied and applied, since, unlike us, they have been implementing military and civil-military administrations for decades. Moreover, Israel's approaches to dividing the problem territory into three areas with different levels of autonomy and powers of the Israeli executive authority deserves to be studied.

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ДОСВІД АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ДІЯЛЬНОСТІ ОРГАНІВ ПУБЛІЧНОЇ АДМІНІСТРАЦІЇ ВІЙСЬКОВО-ЦИВІЛЬНОГО ХАРАКТЕРУ В ІЗРАЇЛІ

Анотація. ***Мета.*** Метою статті є аналіз досвіду адміністративно-правового регулювання діяльності органів публічної адміністрації військово-цивільного характеру в Ізраїлі. ***Результати.*** Політика Ізраїлю та подібні заходи із запровадження цивільної адміністрації, однак під повним контролем військового командування, призвели до бажаних для Ізраїлю наслідків. Незважаючи на той факт, що нова цивільна адміністрація проголошувалась як автономний орган, немов відбираючи у військових управління справами цивільними, де-факто ізраїльтяни посилили вплив власних військових на управління справами палестинського суспільства. Перший досвід застосування військових адміністрацій в Ізраїлі був використаний ще в 1940-х роках. Професор Відкритого університету Ізраїлю Беніамін Нойбергер у своїй монографії про владу та політику в Ізраїлі наводить характеристику військової адміністрації. Він вказує, що здебільшого метою створення подібних інстанцій постає здійснення адміністративного управління проживаючими на відповідних територіях (що були окуповані) відання громадянами. А крім внутрішнього законодавства тут повинно використовуватися міжнародне право. Однак, як зауважує професор, створена в 1948 році військова адміністрація Ізраїлю не відповідала подібним характеристикам. Причиною цього став той факт, що арабське населення, яке підпадало під юрисдикцію військової адміністрації, проживало на територіях, які були, власне, частиною держави Ізраїль. Загалом цей тип адміністрації діяв відповідно до норм Уложення про оборону (надзвичайні обставини) 1945 року. ***Висновки.*** Зроблено висновок, що хоча й на сьогодні в Ізраїлі зберігається досить неспокійна ситуація, а багато проблем у відносинах із палестинцями не вирішено, усе ж управлінський адміністративний досвід ізраїльтян потрібно досліджувати й використовувати, оскільки, на відміну від нас, вони мають досвід впровадження військових, військово-цивільних адміністрацій, який нараховує багато десятиліть. Водночас заслуговують

на вивчення підходи Ізраїлю щодо розділення проблемної території на три зони з різним рівнем автономії та повноважень виконавчої влади Ізраїлю.

Ключові слова: цивільний контроль, військово-поліцейський контроль, національна адміністрація, територія.

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ADMINISTRATIVE AND LEGAL STATUS OF ENTITIES EXERCISING STATE SUPERVISION OVER COMPLIANCE WITH LEGISLATIVE AND OTHER LABOUR REGULATIONS

Abstract. ***Purpose***. The purpose of the article is to describe the administrative and legal status of entities exercising state supervision over compliance with legislative and other labour regulations. ***Results*****.** Relying on the analysis of scientific views of scholars and current legislation, the article identifies the range of key actors exercising supervision over compliance with labour legislation. The author describes the administrative and legal status of these entities. The most characteristic features and specifics of the administrative and legal status of the entities under study authorised to supervise compliance with labour legislation are identified. It is emphasised that the State Labour Service is a key entity for supervision and control over compliance with labour legislation. It is found that the Cabinet of Ministers of Ukraine exercises its controlling powers in the process of: implementing programmes of economic, social and cultural development of Ukraine in general and its individual regions; implementing financial, price, monetary, credit and tax policies; creating nationwide and other funds; eliminating the consequences of natural disasters and catastrophes; making policies on education, science, youth and sports, culture, nature protection, environmental safety, and nature management; taking the necessary measures to ensure the security and defence capability of Ukraine; ensuring Ukraine's foreign economic activities and customs affairs; managing the work of ministries, public services, agencies, inspectorates and other state executive bodies. ***Conclusions*****.** It is concluded that each of the entities exercising supervision and control over compliance with labour legislation has its own special administrative and legal status, the specificity of which is due to: first, the competence limiting their control and supervision activities; second, powers (since each actor has a specific set of subjective rights and legal obligations inherent only to it); third, a special entity subject to supervision and control activities, which in turn determines the set of tools and means used by supervisory institutions.

Key words: administrative and legal status, entities, state supervision, legislative regulations, bylaws.

1. Introduction

One of the most important activities of the entities exercising state supervision over compliance with labour legislation is to examine the state of compliance with the provisions of legislative and other regulations on labour. This approach requires that the relevant state institutions have a special administrative and legal status. These actors can be most appropriately grouped into: 1) supreme state authorities that exercise general supervision and control over compliance with the legislation in force, including in the field of labour (the Verkhovna Rada of Ukraine, the President and the Cabinet of Ministers); 2) specialised entities, among which the State Labour Service plays a key role. The legal status of the above-mentioned institutions will be the focus of this research.

Certain problematic aspects of the activities of entities of supervision and control over compliance with labour legislation have been considered in the scientific works by: S.I. Dvornyk, V.I. Zahumennyk, I.Yu. Kailo, A.V. Melnyk, Yu.O. Poliakova, Ye.M. Popovych, V.V. Protsenko, M.M. Sirant, H.V. Terela, V.M. Shapoval, and many others. However, despite a considerable number of scientific achievements, the scientific literature lacks comprehensive research on the administrative and legal status of entities exercising state supervision over compliance with labour laws and regulations.

Thus, the purpose of the article is to describe the administrative and legal status of entities exercising state supervision over compliance with legislative and other labour regulations.

2. The Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine as entities exercising state supervision over compliance with legislative and other labour regulations

First of all, we will focus on the Verkhovna Rada of Ukraine (Parliament). The main powers of the Verkhovna Rada of Ukraine, according to Article 85 of the Basic Law, are as follows: adoption of laws; approval of the State Budget of Ukraine and amendments thereto, control over the implementation of the State Budget of Ukraine, and decision-making on the report on its implementation; determination of the principles of domestic and foreign policy, implementation of the strategic course of the state for Ukraine's full membership in the European Union and the North Atlantic Treaty Organisation; etc. (Constitution of Ukraine, 1996). Therefore, it is quite fair to say that one of the key powers of the VRU is to exercise parliamentary control.

V.M. Shapoval believes that parliamentary control is the activity of the parliament, its bodies and officials, as well as other state bodies and officials functionally joint with the parliament for the relevant purpose in exercising control over the executive branch, primarily the government, which implies checking the implementation of laws, decisions, etc. M.M. Utiashev and A.A. Kornilaieva argue that parliamentary control is a set of various means of constant monitoring and verification of the system's activities, as well as of stopping violations detected as a result of such verification and preventing possible inconsistencies, carried out by the supreme legislative authority (Utiashev and Kornilaieva, 2001).

The Ukrainian Parliament Commissioner for Human Rights exercises parliamentary control over the observance of constitutional rights and freedoms of man and the citizen. The Ukrainian Parliament Commissioner for Human Rights is a party to many constitutional and legal relations regarding the protection of human rights and freedoms. The legal status is regulated by the Law "On the Ukrainian Parliament Commissioner for Human Rights". According to Article 3 of this Law, the purpose of the parliamentary control exercised by the Commissioner is: protection of human and civil rights and freedoms proclaimed by the Constitution of Ukraine, laws of Ukraine and international treaties of Ukraine; observance and respect for human and civil rights and freedoms by the entities referred to in Article 2 of this Law; prevention of violations of human and civil rights and freedoms or facilitating their restoration; further harmonisation of Ukrainian legislation on human and civil rights and freedoms with the Constitution of Ukraine and international standards in this field; improvement and further development of international cooperation in the field of protection of human and civil rights and freedoms; prevention of any form of discrimination in the exercise of human rights and freedoms; promotion of legal awareness of the population and protection of confidential information about a person (Law of Ukraine On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, 1997).

With regard to the administrative and legal status of the Verkhovna Rada of Ukraine as an entity exercising supervision and control over compliance with labour legislation, it should be noted that its particularities are due to: first, the fact that parliamentary control is mostly generalised and aimed at checking the state of compliance with the current legislation by the supreme state authorities, including those that implement public policy on labour; second, the list of powers vested in the VRU is inherent exclusively in this legislative body; thirdly, the parliament's control and supervision activities only indirectly affect key parties to labour relations.

The next actor of supervision and control over compliance with labour legislation is the President of Ukraine. According to the Constitution of Ukraine, the President of Ukraine is the guarantor of state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, human and civil rights and freedoms, and the existence of these fundamental responsibilities determines his special place in the state mechanism (Constitution of Ukraine, 1996; Poliakova, 2013). Moreover, Yu.O. Poliakova argues that the wide range of powers of the President, defined by Article 106 of the Constitution, enables to assert that the institution of presidential power in the current constitutional context is a factor in ensuring proper and effective governance of the state, which can be exercised exclusively by the head of state, since, according to the constitutional provisions, the President of Ukraine cannot transfer his powers to other persons or bodies. This means that the President of Ukraine exercises his powers independently in the political field, but, at the same time, in terms of organisation, in order to exercise his powers, the head of state relies on advisory, consultative and other subsidiary bodies and services, the composition and structure of which he determines independently, within the limits of funds provided for in the State Budget

of Ukraine that are directed to the activities of these structures (Constitution of Ukraine, Article 106, clause 28) (Constitution of Ukraine, 1996; Poliakova, 2013).

As the head of state, the President has a wide range of powers in the legislative, executive and judicial fields, including control. The scientific literature review reveals that presidential control is exercised in two main forms: a) direct presidential control; b) presidential control through special structures (Tsependa, 2019). The President of Ukraine exercises control over the activities of the executive branch of government directly, but mainly through his Office. It exercises control over the preparation of issues related to the resignation of the Government, dismissal of individual ministers, heads of central executive bodies, military commanders appointed by it, diplomatic representatives in foreign countries, heads of local state administrations and other officials. The Presidential Office is responsible for ensuring the President's control over the activities of the executive branch (Svyda, 1998). In the field of legislative power, V.M. Tsependa emphasises that the controlling powers of the President of the state are manifested in the following: control over the constitutionality of acts of the Verkhovna Rada of Ukraine; control over the constitutionality of acts of representative authorities of the public actors; participation of the President in the legislative activities of the Verkhovna Rada. According to the Constitution, the President has the right of legislative initiative, enabling him to raise the issue of adopting new laws and amending existing ones, including the Constitution of Ukraine. Presidential control over the executive branch is exercised both directly and through the relevant structures. Direct control is exercised over the selection of personnel and the appointment and dismissal of ministers, heads of state committees, heads of local state administrations, appointment and dismissal of representatives in foreign countries, senior leadership of the Armed Forces of Ukraine, etc. (Tsependa, 2019).

Next, the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) should be considered as an actor of state supervision and control over compliance with legislative and other labour regulations; it is the supreme executive body that exercises executive power directly and through ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea and local state administrations, and directs, coordinates and controls the activities of these bodies. The Cabinet of Ministers of Ukraine is responsible to the President of Ukraine and the Verkhovna Rada of Ukraine and is under the control and accountability of the Verkhovna Rada of Ukraine within the limits provided for by the Constitution of Ukraine (Law of Ukraine on the Cabinet of Ministers of Ukraine, 2014). The principal objectives of the Cabinet of Ministers of Ukraine are: 1) to ensure state sovereignty and economic independence of Ukraine, implement the domestic and foreign policy of the state, implement the Constitution and laws of Ukraine, acts of the President of Ukraine; 2) to take measures with a view to ensure human and civil rights and freedoms, creating conditions favourable for the free and comprehensive development of the personality; 3) to ensure the implementation of budgetary, financial, pricing, investment, including depreciation, tax, structural and sectoral policies; policies on labour and employment, social protection, healthcare, education, science and culture, nature protection, environmental safety and nature management; 4) to develop and execute nationwide programmes of economic, scientific and technical, social, cultural development, environmental protection, as well as develop, approve and implement other state target programmes; 5) to ensure the development and state support of the scientific, technical and innovation potential of the state; 6) to ensure equal conditions for the development of all forms of ownership; manage state-owned objects in accordance with the law; etc. (Law of Ukraine on the Cabinet of Ministers of Ukraine, 2014).

With regard to the issues being studied, it should be noted that the Cabinet of Ministers of Ukraine has a fairly wide range of control and supervisory powers. For example, it develops and ensures the implementation of public policy on labour protection and submits for approval by the Verkhovna Rada of Ukraine a nationwide programme to improve occupational safety, health and the working environment; directs and coordinates the activities of ministries and other central executive authorities to create safe and healthy working conditions and supervise labour protection; establishes unified state statistical reporting on labour protection. The Cabinet of Ministers of Ukraine exercises control over the activities of ministries, state committees and agencies, and over their compliance with the law. It promotes the full use of their powers by these bodies, hears their reports and information on the fulfilment of their tasks and the development of their respective sectors (Law of Ukraine on the Cabinet of Ministers of Ukraine, 2014; Melnyk, 2019). The Cabinet of Ministers of Ukraine (Article 113 of the Constitution) exercises its controlling powers in the process of: implementing financial, price, monetary, credit and tax

policies; creating nationwide and other funds; eliminating the consequences of natural disasters and catastrophes; making policies on education, science, youth and sports, culture, nature protection, environmental safety, and nature management; taking the necessary measures to ensure the security and defence capability of Ukraine; ensuring Ukraine's foreign economic activities and customs affairs; managing the work of ministries, public services, agencies, inspectorates and other state executive bodies (Zahumennyk, 2015).

Therefore, the Verkhovna Rada, the President of Ukraine and the Cabinet of Ministers of Ukraine (as well as its subordinate ministries) exercise general control over compliance with labour legislation. Their activities are mainly aimed at examination of the work of subordinate agencies functions thereof are to ensure the regime of law and order in the labour sector. The content of control and supervision activities is largely determined by the competence of these entities, and consequently by the scope of their administrative influence on the bodies subordinated to them directly or indirectly. In addition, it should be noted that an important element of the administrative and legal status of these entities is the availability of rule-making powers, which consist in the possibility of developing and adopting a regulatory framework for the implementation of control and supervision activities in the field of labour. This, a priori, is important from the perspective of conducting high-quality and effective supervision and control by specialised entities, among which, a special place belongs to the State Labour Service of Ukraine (hereinafter – the DRSU).

3. The State Labour Service as an actor of state supervision over compliance with legislative and other labour regulations

The State Labour Service was established in 2014 by merging the State Labour Inspectorate and the State Service of Mining Supervision and Industrial Safety. In addition, it was entrusted with the functions of implementing public policy on occupational health and the functions of conducting dosimetry monitoring of workplaces and radiation doses of employees (Resolution of the Cabinet of Ministers of Ukraine on optimisation of central executive bodies, 2014). The State Labour Service of Ukraine exercises its powers directly and through the establishment of structural units in accordance with the established procedure: departments, divisions and divisions of the central office of the Service, territorial offices and state enterprises and institutions that belong to the sphere of management of the DRSU (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on the State Service of Ukraine on labour issues, 2015).

The main tasks of the DRSU are to: 1) implement public policy on industrial safety, labour protection, occupational health, handling of explosive materials for industrial purposes, and state mining supervision, as well as supervising and controlling compliance with legislation on labour, employment, and compulsory state social insurance in terms of appointment, accrual and payment of benefits, compensation, provision of social services and other types of financial support in order to ensure that the rights and guarantees of insured persons are respected; 2) implement comprehensive management of labour protection and industrial safety at the state level; 3) regulate at the state level and control labour protection and industrial safety in the field of activities related to high-risk facilities; 4) organise and implement state supervision (control) in the field of natural gas market functioning in terms of maintaining proper technical condition of systems, units and natural gas metering devices at natural gas production facilities and ensuring safe and reliable operation of the Unified Gas Transmission System facilities (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on the State Service of Ukraine on labour issues, 2015).

Therefore, the State Labour Service performs a number of important tasks in terms of ensuring compliance with the current labour legislation. With regard to the direct supervision and control over compliance with labour legislation, the DRSU is responsible for: 1) controlling the performance of functions of state management of labour protection by ministries and other central executive authorities; 2) developing a nationwide programme for improving safety, occupational health and the working environment and monitoring its implementation, participating in the development and implementation of other state and sectoral programmes; 3) exercising state control over compliance with labour legislation by legal entities, including their structural and separate subdivisions that are not legal entities, and individuals using hired labour; 4) exercising state supervision over the observance of labour and employment legislation by central executive authorities; 5) controlling the proper employers' use of lists for privileged pension provision, preparing proposals for improving such lists; 6) controlling the quality of certification of workplaces in terms of working conditions; 7) controlling compliance with the requirements of the advertising legislation regarding advertising of vacancies (recruitment) (Resolution of the Cabinet of Ministers

of Ukraine on approval of the Regulation on the State Service of Ukraine on labour issues, 2015); etc.

Thus, the State Labour Service is the key entity for supervision and control over compliance with labour legislation. This public authority has exclusive competence and special powers in this field, which in turn distinguishes their administrative and legal status from other authorised institutions. In this context, a certain overload of this agency, which sometimes prevents it from properly fulfilling its tasks in the field under study.

4. Conclusions

To sum up, it should be noted that each of the entities exercising supervision and control over compliance with labour legislation has its own special administrative and legal status, the specificity of which is due to: first, the competence limiting their control and supervision activities; second, powers (since each actor has a specific set of subjective rights and legal obligations inherent only to it); third, a special entity subject to supervision and control activities, which in turn determines the set of tools and means used by supervisory institutions.

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АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС СУБ'ЄКТІВ, ЯКІ ЗДІЙСНЮЮТЬ ДЕРЖАВНИЙ НАГЛЯД ЗА ДОДЕРЖАННЯМ ЗАКОНОДАВЧИХ ТА ІНШИХ НОРМАТИВНИХ АКТІВ ПРО ПРАЦЮ

Анотація. ***Мета.*** Мета статті – охарактеризувати адміністративно-правовий статус суб'єктів, які здійснюють державний нагляд за додержанням законодавчих та інших нормативних актів про

працю. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених і норм чинного законодавства, автор виокремлює коло ключових суб'єктів, які здійснюють нагляд за дотримання законодавства про працю. Надано характеристику адміністративно-правовому статусу вказаних суб'єктів. Виокремлено найбільш характерні особливості та специфіку адміністративно-правового статусу досліджуваних у статті суб'єктів, які уповноважені здійснювати нагляд за додержанням законодавства про працю. Наголошено, що Державна служба з питань праці є ключовим суб'єктом здійснення нагляду й контролю за дотриманням законодавства про працю. З'ясовано, що Кабінет Міністрів України реалізує свої контрольні повноваження в процесі: реалізації програм економічного, соціального, культурного розвитку України загалом і окремих її регіонів; втілення в життя фінансової, цінової, грошової, кредитної, податкової політики; створення загальнодержавних та інших фондів; ліквідації наслідків стихійних лих і катастроф; проведення політики в галузі освіти, науки, молоді та спорту, культури, охорони природи, екологічної безпеки, природокористування; вжиття відповідних заходів щодо забезпечення безпеки й обороноздатності України; забезпечення зовнішньоекономічної діяльності України і митної справи; керівництва роботою міністерств, державних служб, агентств, інспекцій та інших органів державної виконавчої влади. ***Висновки.*** Зроблено висновок, що кожен із суб'єктів здійснення нагляду й контролю за додержанням законодавства про працю володіє своїм особливим адміністративно-правовим статусом, специфіка якого обумовлена: по-перше, компетенцією, якою обмежується їх контрольно-наглядова діяльність; по-друге, повноваженнями (адже кожен суб'єкт володіє специфічним, властивим тільки для нього набором суб'єктивних прав та юридичних обов'язків); по-третє, особливим суб'єктом, на якого спрямовується діяльність із нагляду й контролю, що, зі свого боку, обумовлює набір інструментів і засобів, які використовують контролюючі інституції.

Ключові слова: адміністративно-правовий статус, суб'єкти, державний нагляд, законодавчі акти, підзаконні акти.

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VOLUNTARY AMALGAMATED TERRITORIAL COMMUNITY AS A COMPONENT OF THE INSTITUTION OF DELEGATION OF POWERS IN ADMINISTRATIVE LAW OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to clarify the position of a voluntary amalgamated territorial community as a component of the institution of delegation of powers in administrative law of Ukraine based on a systematic analysis of administrative law theory and practical activities of legal entities. ***Results.*** The article defines the institution of delegation of powers as an important element of the system of public administration and public management, which has a significant impact on the efficiency of management, the level of decentralisation of power and the quality of public services, and which in its essence consists in the transfer of powers from one entity to another with the enshrinement of appropriate rights, obligations, conditions and guarantees, in order to implement certain functions. It is established that a voluntary amalgamated territorial community in Ukraine is a crucial component of the institution of delegation of powers in administrative law, which is based on the principles of local self-government enshrined in the Constitution of Ukraine and other regulations. A voluntary amalgamated territorial community is a democratic form of organisation of citizens that interacts with the state in implementing local self-government. Its position implies that the community is free to unite for joint decision-making and effective management of local issues. It is found that pursuant to the Constitution and laws of Ukraine, a voluntary amalgamated territorial community receives delegated powers to independently resolve issues relating to its territory, which includes regulation and management of a significant part of public affairs in the interests of the local population. The uniqueness of a voluntary amalgamated territorial community is that this organisation is formed on the initiative of citizens and can determine its priorities and objectives. ***Conclusions.*** The delegation of powers involves the active participation of citizens and their elected representatives, which ensures that decision-making is democratic. It is emphasised that the activities of a voluntary amalgamated territorial community are important for ensuring effective governance at the local level and meeting the interests and needs of the community. By ensuring a high level of self-governance and citizen participation, a voluntary amalgamated territorial community becomes a key link in the system of delegation of powers, contributing to the development and prosperity of local communities within the framework of the law and constitutional provisions.

Key words: administrative centre, administrative procedures, administrative and legal status, administrative and legal relations, budget, state support, voluntary amalgamated territorial community, local authorities, powers, procedure.

1. Introduction

The issue of delegated powers is of paramount importance for all state and legal reforms, as it directly affects the process and scope of exercising citizens' rights and freedoms, since the status of exercising human rights and freedoms directly depends on the efficiency of the system of state authorities and the system of local self-government bodies (Bublyk, 2005).

One of the most complex entities of delegation of powers in the administrative law of Ukraine is a voluntary amalgamated territorial community. However, practical issues arising in the activities of territorial communities necessitate general research on understanding the essence and principles of delegation of powers.

The general and specific administrative and legal principles of organisation and func-

tioning of a voluntary amalgamated territorial community have been the subject of research by the following scholars: B. Andrushkiv, K. Anisimov, A. Berlach, Ya. Bilous, E. Borodin, O. Holynska, I. Dziuba, V. Dreshpak, O. Yevdokimov, N. Kyrych, Y. Kovalchuk, V. Kravchenko, I. Krykavska, M. Latynin, V. Malookyi, A. Matvienko, N. Mishyna, V. Nebeliuk, S. Polarush, and others.

However, the current problems of optimising the use of resources and providing quality services at the local level in Ukraine underline the relevance of research in the field of amalgamated territorial communities.

The purpose of the article is to specify the position of a voluntary amalgamated territorial community as a component of the institution of delegation of powers in administrative law of Ukraine based on a systematic analysis of administrative law theory and practical activities of legal entities.

2. Specific features of ensuring the delegation of powers

Delegation (from Latin *delegare* – to entrust, transfer) was understood as the assignment of a part of powers from the holder of primary rights – the delegator – to the person who accepts these powers – the delegate. Delegation in public law at that time was not of a consensual nature, it required the mandatory adoption of a special law (imperium lex curiata de iurisdictio) confirming the act of delegation. The delegator had the right to control the exercise of the delegated powers by the delegate. The holder of the delegated powers could not delegate them further in accordance with the delegatus non potest delegare rule (Bartoshyk, 1989; Tulyk, 2016).

According to H. Bublyk, delegation of powers is the process of transferring the delegating entity's own powers to the delegated entity, which is based on the free will of both parties to the delegation, is carried out for the most effective exercise of these powers, is accompanied by the transfer of appropriate financial and/or material resources and is formalised by concluding an administrative agreement or a relevant legal act (Bublyk, 2005). The legal nature of delegated powers defines the mandatory features of delegated powers, including: a) delegation of powers shall be based on the free will of both parties to the delegation; b) delegation of powers shall be accompanied by an administrative agreement; c) delegation of powers shall be necessarily accompanied by transfer of financial and/or material resources to ensure proper exercise of delegated powers by the delegated entity; d) re-delegation (sub-delegation) of powers is not allowed, as it contradicts the goals and intentions of the delegating body; e) the delegated entity shall be legally responsible for proper exercise of delegated powers (Bublyk, 2005).

A. Novak establishes that delegation of powers can be defined as one of the ways of transferring power from the national and/or regional and/or local level of public administration to the level of local self-government, and therefore can be considered a way of decentralisation of power (Novak, 2017).

V. Davydova has improved the theoretical and methodological approach to cognition of both the process of ensuring delegation and "delegation" itself as a special form of interaction of actors in administrative relations, the specific feature of which is the understanding that the organisational and legal aspect is only one element of the system of scientific and practical support for the process of delegation of powers, which significantly expands the possibilities for further scientific cognition of the delegation processes by means of interdisciplinary analysis, modelling and application of cross-scientific methods of cognition (Davydova, 2021).

O. Tereshchuk considers delegation of powers to be an administrative and legal institution, the content of which is the process (legal relations) of transferring public administrative powers of the delegating entity to another participant (public administration body, individual or legal entities of private/public law) for a specified period with mandatory resource provision (financial/property), relevant control and supervisory restrictions and responsibility, which is exercised in the form of an agreement or act. The scientist also identifies the main characteristics of delegation of powers which constitute the content of this concept: 1) Delegation of powers is an institution of administrative law; 2) Initiation of delegation of powers requires justification of its expediency; 3) The imperative or discretionary nature of delegation is established in a legislative provision; 4) The general purpose of using the institution of delegation of powers is to ensure effective, high-quality public interest / public administration; the purpose is justified and detailed in a specific case of delegation; 5) The content of delegation is the process of transferring powers; 6) This process involves entities with a legal status characterised by certain features: for example, the competence of the delegating entity and compliance with the regulatory requirements of the potential entity with delegated powers (executor of delegated powers); 7) The subject of delegation is the powers of public administration; 8) Delegation is usually for a fixed term, but there is still an indefinite delegation; 9) Additional guarantees (financial/property support) and restric-

tions (control/responsibility) are transferred along with the delegated powers (Tereshchuk, 2016).

Therefore, the institution of delegation of powers is an important element of the system of public administration and public management, which has a significant impact on the efficiency of management, the level of decentralisation of power and the quality of public services, and which in its essence consists in the transfer of powers from one entity to another, with the establishment of appropriate rights, obligations, conditions and guarantees, in order to implement certain functions.

Good delegation always has two sides. The first is knowing what to delegate and to whom. The other side of delegation is the form or method of assignment. Delegation of powers is preceded by considerable preparatory work to be performed by the delegating body. It involves determining why, to whom, how to delegate powers, what benefits are to be derived from it (Tulyk, 2016).

Thus, a logical question arises as to how a voluntary amalgamated territorial community is a component of the institution of delegation of powers? In our opinion, the content of such a component can be traced back to the essence of the right to local self-government.

3. Regulatory and legal framework for the delegation of powers

The European Charter of Local Self-Government defines local self-government as the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute (European Charter of Local Self-Government, 1985).

According to the Constitution of Ukraine, local self-government is the right of a territorial community – residents of a village or a voluntary association of residents of several villages, towns and cities – to independently resolve issues of local importance within the limits of the Constitution and laws of Ukraine. The particularities of local self-government in the cities of Kyiv and Sevastopol are determined by separate laws of Ukraine. Local self-governing shall be exercised by a territorial community in compliance with a procedure established by law, both directly and through local self-government bodies: village, settlement and city councils, and their executive bodies (Constitution of Ukraine, 1996).

Pursuant to the Law of Ukraine "On Local Self-Government in Ukraine", local self-government in Ukraine is the right guaranteed by the State and the real ability of a territorial community – residents of a village or a voluntary association of residents of several villages, towns, or cities – to independently or under the responsibility of local self-government bodies and officials to resolve issues of local importance within the framework of the Constitution and laws of Ukraine. Local self-government is exercised by territorial communities of villages, towns and cities both directly and through village, town and city councils and their executive bodies, as well as through district and regional councils representing the common interests of territorial communities of villages, towns and cities. Citizens of Ukraine exercise their right to participate in local self-government by virtue of their membership in the respective territorial communities. Any restrictions on the right of citizens of Ukraine to participate in local self-government based on their race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, length of residence in the respective territory, language or other characteristics are prohibited (Law of Ukraine On Local Self-Government in Ukraine, 1997).

Therefore, the Constitution of Ukraine, international instruments and relevant laws of Ukraine provide for the delegation of powers to exercise the right to local self-government to voluntarily amalgamated territorial communities.

Accordingly, a voluntary amalgamated territorial community is a component of the institution of delegation of powers to implement the general right to local self-government. Such powers are delegated to a voluntary amalgamated community by the citizens of Ukraine, as holders of the right to local self-government, and by the state, which provides the voluntary amalgamated community with appropriate legal instruments and guarantees its activities.

Generally binding state powers that should be delegated to all territorial communities of the respective level should be fixed for an unlimited period. Although the legislation does not clearly define mandatory delegated powers, they have always been present in the competence of local governments. The necessity and appropriateness of this follows from the nature of social relations in the implementation of particularly important national tasks. Nowadays, some state powers are vested in local self-government bodies as mandatory (Tulyk, 2016).

4. Conclusions

In general, a voluntary amalgamated territorial community in Ukraine is an important component of the institution of delegation of powers in administrative law, which is based on the principles of local self-government enshrined in the Constitution of Ukraine and other regulations. A voluntary amalgamated territorial community is a democratic form of organisation of citizens that interacts with the State in implementing local self-government. Its position implies that the community is free to unite for joint decision-making and effective management of local issues.

Following the Constitution and laws of Ukraine, a voluntary amalgamated territorial community receives delegated powers to independently resolve issues relating to its territory, which includes regulation and management of a significant part of public affairs in the interests of the local population. The uniqueness of a voluntary amalgamated territorial community is that this organisation is formed on the initiative of citizens and can determine its priorities and objectives. The delegation of powers involves the active participation of citizens and their elected representatives, which ensures that decision-making is democratic.

It is emphasised that the activities of a voluntary amalgamated territorial community are important for ensuring effective governance at the local level and meeting the interests and needs of the community. By ensuring a high level of self-governance and citizen participation, a voluntary amalgamated territorial community becomes a key link in the system of delegation of powers, contributing to the development and prosperity of local communities within the framework of the law and constitutional provisions.

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ДОБРОВІЛЬНА ОБ'ЄДНАНА ТЕРИТОРІАЛЬНА ГРОМАДА ЯК СКЛАДОВА ІНСТИТУТУ ДЕЛЕГУВАННЯ ПОВНОВАЖЕНЬ В АДМІНІСТРАТИВНОМУ ПРАВІ УКРАЇНИ

Анотація. ***Мета.*** Мета статті полягає в тому, щоб на основі системного аналізу теорії адміністративного права та практичної діяльності суб'єктів права розкрити становище добровільної об'єднаної територіальної громади як складової інституту делегування повноважень в адміні-

стративному праві України. ***Результати.*** У статті визначено інститут делегування повноважень як важливий елемент системи державного управління та публічного адміністрування, який має значний вплив на ефективність управління, рівень децентралізації влади і якість надання публічних послуг, що за своїм змістом полягає в передачі повноважень від одного суб'єкта до іншого зі встановленням відповідних прав, обов'язків, умов і гарантій для реалізації певних функцій. Встановлено, що добровільна об'єднана територіальна громада в Україні є важливою складовою інституту делегування повноважень в адміністративному праві, що базується на принципах місцевого самоврядування, закріплених в Конституції України й інших нормативних актах. Добровільна об'єднана територіальна громада являє собою демократичну форму організації громадян, яка взаємодіє з державою в реалізації місцевого самоврядування. Її становище полягає в тому, що громада вільно об'єднується для спільного прийняття рішень та ефективного управління питаннями місцевого значення. Розкрито, що згідно з Конституцією та законами України добровільна об'єднана територіальна громада отримує делеговані повноваження для самостійного вирішення питань, які стосуються її території, що передбачає регулювання й управління суттєвою частиною публічних справ в інтересах місцевого населення. Унікальність добровільної об'єднаної територіальної громади полягає в тому, що ця організація формується за ініціативою громадян і має можливість визначати свої пріоритети та завдання. ***Висновки.*** Делегування повноважень відбувається через активну участь громадян та їх виборчих представників, що забезпечує демократичний характер прийняття рішень. Підкреслено, що діяльність добровільної об'єднаної територіальної громади є важливою для забезпечення ефективного управління на місцевому рівні та відповідності інтересам і потребам громади. Забезпечуючи високий рівень самоврядування й участі громадян, добровільна об'єднана територіальна громада стає ключовою ланкою в системі делегування повноважень, сприяючи розвитку та процвітанню місцевих громад у межах закону та конституційних норм.

Ключові слова: адміністративний центр, адміністративні процедури, адміністративно-правовий статус, адміністративно-правові відносини, бюджет, державна підтримка, добровільна об'єднана територіальна громада, місцева влада, повноваження, порядок.

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PARTICULARITIES OF INTERACTION OF THE NATIONAL POLICE WITH OTHER STATE BODIES AND NON-GOVERNMENTAL ORGANISATIONS IN COMBATING DOMESTIC VIOLENCE

Abstract. ***Purpose.*** The purpose of the article is to determine the particularities of interaction of the National Police with other state bodies and non-governmental organisations in combating domestic violence. ***Results.*** The relevance of the article is due to the fact that the National Police alone cannot properly ensure effective counteraction and prevention of a large-scale phenomenon such as domestic violence, since this phenomenon covers almost all sectors of public life. Meanwhile, the duty of the State is to ensure both the prevention of domestic violence, as well as stop and minimisation of harmful effects on social relations under its protection. Currently Ukraine has a fairly extensive system of governmental and non-governmental structures that specialise in the prevention of domestic violence, educational activities aimed at raising public awareness of domestic violence, stopping domestic violence, ensuring the elimination of harmful effects caused by these manifestations, etc. ***Conclusions.*** It is found that the principle of systematic and comprehensive interaction of the National Police units with the actors involved in combating domestic violence is ensured by: 1) a single goal and direction of activity; 2) a combination of experience in the field of combating domestic violence and modern methods of interaction between different actors in the field of combating domestic violence; 3) understanding the competence and tasks of each individual actor involved in the interaction; 4) coherence of actions during the interaction; 5) constant supervision and control in the process of interaction. It is proposed to classify the forms of interaction as follows: 1) depending on the entity with which the National Police bodies interact: interaction with institutions, enterprises, organisations of the public form of ownership and public authorities; interaction with institutions, enterprises, organisations of the municipal form of ownership and local self-government bodies; interaction with public organisations and the public; 2) depending on the statutory duty to interact: bodies with which there is a statutory duty to interact; bodies with which there is no statutory duty to interact.

Key words: social services, victim, person, juvenile, disabled person.

1. Introduction

The National Police cannot properly ensure effective counteraction and prevention of a large-scale phenomenon such as domestic violence on its own since this phenomenon covers almost all sectors of public life. Meanwhile, the duty of the State is to ensure both the prevention of domestic violence, as well as stop and minimisation of harmful effects on social relations under its protection.

Currently Ukraine has a fairly extensive system of governmental and non-governmental structures that specialise in the prevention of domestic violence, educational activities aimed at raising public awareness of domestic violence, stopping domestic violence, ensuring the elimination of harmful effects caused by these manifestations, etc.

The purpose of the article is to identify the particularities of interaction of the National Police with other state authorities and non-governmental organisations in combating domestic violence.

2. The phenomenon of domestic violence

The European Commission, in its Eurobarometer project, found that the public believes that the police should be one of the main agencies in combating domestic violence – 90% of respondents support this position (Kelli, 2011, p. 43).

In view of a very high latency characteristic of domestic violence compared to other types

of offences as well as a large part of social relations covered, effective cooperation between the police and other state bodies and non-governmental organisations is very important to overcome this phenomenon.

Therefore, within the scope of the issue raised, it is necessary to analyse the interpretation of the content of a concept "interaction".

Interaction means "to act mutually", "to work together", "to cooperate"; interaction is based on the law and regulations. Interaction is the activities of operational units, joint or coordinated in place and time within certain limits between themselves and with other units and services, carried out in accordance with their competence and aimed at detecting and suppressing crimes, neutralising the causes and conditions that contribute to their commission (Moiseiev, Tatsii, Shemshuchenko, 2010, p. 82).

To achieve the goal of interaction, public authorities use the following main types of communication: 1) direct communication; 2) communication by means of communication; 3) indirect communication through the media (Malyk, 2015, p. 295).

However, it should be noted that interaction, as a set of actions and measures, should have a specifically defined goal for which these joint actions are taken.

Given the specifics of the phenomenon of domestic violence, it should be noted that the ultimate goal of interaction between the National Police and other state bodies and non-governmental organisations to prevent and combat domestic violence is to minimise the damage caused by domestic violence and reduce the degree of latency of this negative phenomenon.

Thus, we propose to understand the concept of "interaction of the National Police with other state bodies and non-governmental organisations in combating domestic violence" as a certain process aimed at ensuring cooperation, detecting, stopping the facts of domestic violence, bringing perpetrators to legal liability, identifying, studying and eliminating the preconditions that contribute to offences, as well as educating the population in the spirit of intolerance to domestic violence and discriminatory acts.

Moreover, the features of interaction between the National Police and other state bodies and non-governmental organisations in combating domestic violence should be considered as follows: 1) these activities are joint and aimed at preventing and combating domestic violence; 2) coordination of actions that ensure an effective and rapid response to manifestations of domestic violence and the distribution of functions for prophylaxis and preventive measures aimed at detecting domestic violence; 3) the focus of the interacting actors on ensuring the achievement of the result, that is, effective counteraction and prevention of domestic violence.

Actors that interact with each other in the field of combating domestic violence include: 1) specially authorised bodies in the field of preventing and combating domestic violence (for example, the central executive body responsible for formulating public policy on preventing and combating domestic violence); 2) other bodies and institutions responsible for implementing measures to prevent and combat domestic violence (e.g., children's services); 3) general and specialised support services for victims (e.g. centres of social services for families, children and youth); 4) citizens of Ukraine, foreigners and stateless persons who are legally in Ukraine (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Procedure for the interaction of entities implementing measures in the field of prevention and counteraction of domestic violence and gender-based violence, 2018).

According to the Procedure for interaction of entities implementing measures in the field of prevention and counteraction of domestic violence and gender-based violence, approved by CMU Resolution No. 658 of 22 August 2018, the activities of the entities are aimed at preventing and combating violence and are based, in particular, on the effective interaction of the actors with public associations, international organisations, mass media, and other interested legal entities and physical persons.

Furthermore, the provisions of the Procedure clearly distinguish between the concept of "interaction" and the list of bodies that carry it out in combating domestic violence and the "coordination" of such interaction between bodies carried out by central executive authorities.

It should be noted that public associations, foreign non-governmental organisations, international organisations, other interested legal entities and physical persons may participate in activities in the field of prevention and combating domestic and gender-based violence on their own initiative and/or be involved in them by entities in accordance with Article 17 of the Law of Ukraine "On Preventing and Combating Domestic Violence", as well as to take other measures envisaged by Article 14 of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Procedure for the interaction of entities implementing

measures in the field of prevention and counteraction of domestic violence and gender-based violence, 2018).

In addition, the Procedure for interaction of entities implementing measures in the field of prevention and counteraction of domestic violence and gender-based violence, approved by CMU Resolution No. 658 of 22 August 2018, establishes an algorithm for interaction between these actors in combating domestic violence, but does not focus on the types of forms of such interaction and does not provide for the guiding principles on which this interaction should be based.

A study of the current state of cooperation between the National Police and non-governmental and governmental structures in combating domestic violence enables to identify the general principles of such cooperation. The same interpretation of the content of these principles allows the parties to these social relations to increase the level of understanding and effectiveness of this interaction.

The principles of cooperation between the National Police and other actors in combating domestic violence can be classified into two groups according to their level of detail: general and special. The former implies a number of constitutional principles that establish the general provisions of the interaction. The general principles are as follows: the rule of law, humanism, openness, the need to ensure respect for the rights, freedoms and legitimate interests of physical persons, etc. At the same time, the content of special principles of interaction is related to certain specific areas of activity of actors in combating domestic violence. Therefore, this group of principles should include: the principle of planning and systematicity, continuity, voluntariness, individuality and collectivity, scientificity, confidentiality, expediency, self-government, territoriality, efficiency, etc. (Skakun, 2019, p. 62).

It should be noted that these principles are manifested only in the course of mutual action, i.e., only in the case of their comprehensive and systematic application. In the course of cooperation, these principles complement each other and determine the areas and nature of the National Police's activities with other actors in combating domestic violence. As a rule, these principles of interaction are enshrined in the legal regulations that define the activities of actors in combating domestic violence.

For example, the rule of law is the main constitutional principle on which the entire legal system of Ukraine is built. Article 6 of the Constitution stipulates that the legislative, executive and judicial authorities shall exercise their powers within the limits established by this Constitution and in accordance with the laws of Ukraine (Tkachenko, 2013, p. 67).

According to this principle, authorised persons of the National Police units are subject to act exclusively within the powers granted by the applicable legal regulations when carrying out interaction measures.

Therefore, the National Police interact with other actors in combating domestic violence exclusively in accordance with the procedure clearly defined in the legal regulations. If the issue of interaction is not regulated by the provisions of the current legal regulations, the actors of interaction should take such actions provided they are appropriate and necessary based on the circumstances of a particular situation (Zavalnyi, 2018, p. 117).

The principle of humanism is the recognition of human rights, freedoms and legitimate interests as the highest value. According to this principle, the interacting actors can analyse the problems of each specific body, in particular in combating domestic violence, and to identify ways to address them. The application of the principle of humanism in the interaction of state authorities, local self-government bodies and other non-governmental institutions enables to develop an effective system of service provision to physical persons and to promote the protection of their rights, freedoms and legitimate interests.

The next important principle is the principle of human rights and freedoms, which means that the actors of interaction must respect the rights and freedoms of both each other and other actors directly or indirectly involved in such interaction. Citizens of Ukraine have the right to create public associations of their choice (including law enforcement associations) without obtaining special prior permission from state authorities and local self-government bodies, as well as to join such associations subject to the requirements of their charters. Everyone is protected from arbitrariness in the exercise of the right to association: no person may be forced to join or remain in any association (Zavalnyi, 2018, p. 116).

With regard to the observance of the principle of humanism and human rights in the interaction of the National Police with other state bodies and non-governmental organisations in combating domestic violence, it should be noted that the effect of these principles is inextricably linked to ensuring the restoration of the violated rights of victims of domestic violence and the inadmissibility of violating the rights of perpetrators. It should be considered that victims of domestic violence have a set of violated rights and freedoms in various sectors of public life and seek their restoration,

while the interaction of these actors in combating domestic violence is intended to help the victim restore them (Pohrebniak, 2008, p. 116).

Moreover, in the course of this interaction, it should be remembered that although the offender may have violated the rights of others by his or her unlawful actions, excessive deprivation of such person's rights is unacceptable.

The principle of transparency is understood as the openness of the process of interaction and cooperation, but such openness is possible only within certain limits set by the current legislation of Ukraine. Restrictions on the principle of publicity of interaction on combating domestic violence are permissible if such restrictions are necessary to ensure the observance of the rights and freedoms of a person, in particular, a victim of domestic violence (Polianychko, 2013, p. 56).

Therefore, ensuring the principle of publicity of interaction between the National Police units and other structures in combating domestic violence is preventive, as it promotes the activities of the National Police in this field, creates a negative stereotype of domestic violence in society, as well as the inevitability of punishment for such violence.

Instead, the principles of cooperation related to the second group are of a special nature, enabling the National Police, together with other state bodies and non-governmental organisations in the field of combating domestic violence, to achieve rationality in cooperation with each other on individual components of the cooperation process.

For example, the principle of planning and systematicity in the field of combating domestic violence ensures that actors in combating domestic violence interact according to a pre-agreed plan and scheme. This ensures the optimal distribution of available forces and means in order to take clear, diverse measures to address the legal relations that have developed during the interaction.

The principle of efficiency and flexibility of interaction ensures promptness and speed of response to changes in social relations in order to take effective measures to achieve specific goals in the most efficient way.

Following the principle of scientific validity, a system of regular research into the joint activities of the National Police bodies and units with other actors in combating domestic violence can be created. The activities of these bodies are analysed and monitored on a regulatory basis by the most qualified specialists to identify the problems of interaction between law enforcement bodies and the public in combating offences, identify shortcomings and opportunities to improve the effectiveness of joint actions, introduce new forms of interaction, improve existing and develop new regulations in this field.

It should also be noted that the principle of systematic and comprehensive interaction of the National Police units with the actors involved in combating domestic violence is ensured by: 1) a single goal and direction of activity; 2) a combination of experience in the field of combating domestic violence and modern methods of interaction between different actors in the field of combating domestic violence; 3) understanding the competence and tasks of each individual actor involved in the interaction; 4) coherence of actions during the interaction; 5) constant supervision and control in the process of interaction.

The principle of voluntary interaction is considered as a common desire of the actors of interaction, including in the field of combating domestic violence, to cooperate and achieve a certain goal through joint activities.

Furthermore, the principle of interdependence should be considered as a special principle of interaction. For example, the content of this principle is understood as the fact that the interaction between the actors, including in the field of combating domestic violence, is conditioned by the common interest and interest of the bodies conducting such interaction. On the other hand, actions taken by one party to an interaction that are contrary to the interests of another party automatically make the interaction ineffective.

In addition to the principles mentioned above, the literature review also reveals another principle, the principle of cooperation. This principle should be considered as the process of joint actions by actors accompanied by constant mutual assistance and friendly attitude.

Finally, the variety of forms of cooperation between the National Police and other state bodies and non-governmental organisations in combating domestic violence should be underlined.

3. Forms of interaction of the National Police in combating domestic violence

According to V. Kikinchuk, the forms of interaction of the National Police with other state bodies (including other states) in the field of public security and order are as follows: international cooperation within the powers provided for by law, participation in the development of projects and conclusion of international agreements of Ukraine on ensuring public security and order, as well as to ensure their implementation; information cooperation with other state authorities of Ukraine, law enforcement agencies of foreign countries and international organisations; requests within their competence

to law enforcement agencies (law enforcement bodies) of other states or international police organisations in accordance with the law, international treaties of Ukraine, constituent acts and rules of international police organisations of which Ukraine is a member; requests within their competence to law enforcement agencies (law enforcement bodies) of other states or international police organisations in accordance with the law, international treaties of Ukraine, constituent acts and rules of international police organisations of which Ukraine is a member; protection of state and own interests in public authorities and local self-government bodies; interaction with public authorities on social protection and pension provision for police officers, National Police employees and their families; etc. (Kikinchuk, 2017, p. 83).

In S.M. Kaliuzhnyi's opinion, police cooperation with other actors of society can be reduced to two general forms, such as consultation and direct cooperation. The consultative process helps the police set short- and long-term objectives to address crime problems and to focus on those offences that are of greatest concern to the public. Direct cooperation between the police and citizens means that they establish a relationship in which they work together to solve the problems of crime and other offences in the place of residence of citizens, thereby ensuring the solution of law enforcement and human rights issues (Kaliuzhnyi, 2001, p. 32).

It should be noted that the National Police interact with other state bodies and non-governmental organisations on the prevention of domestic violence mainly in a consultative form.

In addition, we consider it necessary to describe the forms of cooperation between the National Police and other state bodies and non-governmental organisations and to provide our own classification of the forms of such cooperation.

For example, the forms of interaction between the National Police and those actors in combating domestic violence with whom it most often interacts directly are as follows:

1) Healthcare institutions. For example, the National Police and healthcare institutions cooperate bilaterally in combating domestic violence, as healthcare institutions are called upon to eliminate the socially dangerous consequences of domestic violence in case of harm to the physical or psychological health of the victim. Moreover, healthcare institutions shall inform the National Police if they become aware that damage to a person's health has occurred as a result of domestic violence;

2) Social services. When taking measures to combat domestic violence, the National Police explains to victims that they can seek psychological, legal and other support from the relevant social services. The National Police also inform social services about individual cases of domestic violence, if the victims are minors or disabled, so that they can take measures within their competence. In its place, social services are required to report facts of domestic violence that they become aware of in the course of exercising their powers;

3) Local self-government bodies. The National Police shall notify local authorities of cases of domestic violence within the relevant administrative-territorial unit and the actions taken by them to counteract the manifestations of such phenomenon;

4) NGOs and the public. The National Police units may involve NGOs and members of the public in the process of preventing domestic violence. Moreover, police officers shall report on the status of domestic violence as a socially dangerous phenomenon to the public.

Furthermore, for a comprehensive study of this issue, we propose to consider the areas of interaction between the National Police and other actors in combating domestic violence.

We can state that the diversity of functional tasks in the field of combating domestic violence assigned to the National Police and other governmental and non-governmental organisations, as well as the constant qualitative transformations of domestic violence as a phenomenon, leads to a fairly extensive list of areas of cooperation.

In our opinion, it will be of the greatest practical importance to distinguish the following areas of interaction between the National Police and other governmental and non-governmental organisations by the functional focus of such interaction:

1. The law-making direction of cooperation is the joint activity of the National Police and other state and non-governmental structures to develop and enact legal provisions in the field of combating domestic violence.

2. Direct interaction of the National Police with other actors of combating domestic violence in the course of direct termination of domestic violence, elimination of its negative consequences, assistance to victims and prevention of this phenomenon.

3. Scientific cooperation and exchange of experience between structural units of the National Police and other organisations.

4. Training and educational cooperation, which is used in the implementation of effective interaction of competent actors in combating domestic violence.

5. Logistical and informational support of the parties in the field of combating domestic violence.

5. Conclusions

Relying on the analysis of the forms of interaction between the National Police and other state bodies and non-governmental organisations to prevent domestic violence, we propose to classify the forms of interaction as follows: 1) depending on the entity with which the National Police bodies interact: interaction with institutions, enterprises, organisations of the public form of ownership and public authorities; interaction with institutions, enterprises, organisations of the municipal form of ownership and local self-government bodies; interaction with public organisations and the public; 2) depending on the statutory duty to interact: bodies with which there is a statutory duty to interact; bodies with which there is no statutory duty to interact.

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ОСОБЛИВОСТІ ВЗАЄМОДІЇ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ З ІНШИМВ ДЕРЖАВНИМИ ОРГАНАМИ ТА НЕУРЯДОВИМИ ОРГАНІЗАЦІЯМИ ЩОДО ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ

Анотація. ***Мета.*** Метою статті є визначення особливостей взаємодії Національної поліції з іншими державними органами та неурядовими організаціями щодо протидії домашньому насильству. ***Результати.*** Актуальність статті полягає в тому, що Національна поліція самостійно не в змозі належним чином забезпечити ефективну протидію та запобігання такому масштабному за своїми розмірами явищу, як домашнє насильство, адже вказаний феномен охоплює практично всі сфери суспільного життя. Разом із тим держава повинна забезпечити як профілактику проявів домашнього насильства, так і їх припинення та мінімізацію шкідливого впливу на суспільні відносини, що перебувають під її охороною. В Україні на цей час сформовано досить розгалужену систему державних і недержавних структур, які спеціалізуються на проведенні профілактики домашнього насильства, освітніх заходів, спрямованих на підвищення загального рівня обізнаності суспільства про прояви домашнього насильства, припинення проявів домашнього насильства, забезпечення усунення шкідливих наслідків, завданих вказаними проявами тощо. ***Висновки.*** З'ясовано, що принцип системності й комплексності у взаємодії підрозділів Національної поліції із суб'єктами щодо протидії домашньому насильству забезпечується: 1) єдиною метою і напрямом діяльності; 2) поєднанням досвіду у сфері протидії проявам домашнього насильства та сучасних методів здійснення взаємодії між різними суб'єктами у сфері протидії проявам домашнього насильства; 3) розумінням компетенції та завдань кожного окремого суб'єкта – учасника взаємодії; 4) узгодженістю дій під час провадження взаємодії; 5) здійсненням постійного нагляду та контролю у процесі взаємодії. Запропоновано класифікувати такі форми взаємодії: 1) залежно від суб'єкта, з яким взаємодіють органи Національної поліції: взаємодія з установами, підприємствами, організаціями державної форми власності й органами державної влади; взаємодія з установами, підприємствами, організаціями комунальної форми власності й органами місцевого самоврядування; взаємодія з громадськими організаціями та громадськістю; 2) залежно від нормативного закріплення обов'язку взаємодії: органи, з якими наявний нормативно закріплений обов'язок взаємодіяти; органи, з якими відсутній нормативно закріплений обов'язок взаємодіяти.

Ключові слова: соціальні служби, потерпілий, особа, неповнолітній, інвалід.

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CONCEPT AND ESSENCE OF PATRONAGE SERVICE

Abstract. ***Purpose.*** The purpose of the article is to provide a theoretical and legal description of the concept and essence of patronage service. ***Results.*** The article studies the concept and essence of patronage service as a complex state phenomenon which dates back to the mid-18th century and is based on a set of regulations providing for its clear and well-coordinated functioning. It is revealed that the development of the regulatory framework for the activities of the institution of patronage service in Ukraine tends to form rather slow the relevant regulatory framework which could become the basis for the effective functioning of the legal phenomenon under study. Many important aspects of patronage services remain shattered in the legislation. The author determines that the general legal notion that a patronage service in the general sense is an institutional entity which functions to ensure the activities of a specific public authority. A number of researchers also consider this service to be one that can function outside the civil service, but in our opinion, based on the essence of this administrative and legal entity, it is exclusively a civil service. ***Conclusions.*** It is proved that the essence of the patronage service is that its main purpose is to ensure the functioning of a certain administrative entity, and the relevant employees distribute among themselves the functions and powers aimed at ensuring the functioning of the same unit without performing its functions directly. Using the example of the judiciary and the institution of a judicial assistant, which is defined as a type of support for court activities which is inextricably linked to justice, the author argues that the patronage service (relevant units) is authorised to ensure the activities of the main actor of administrative and legal relations. Further research of the institute of patronage service is the need for a structural and legal analysis of the relevant entity with the use of both international experience and the practice of their domestic functioning.

Key words: patronage, service, support, interaction, activity, concept, essence.

1. Introduction

In the context of Russia's armed aggression against Ukraine, it is important to study potentially problematic legal phenomena, the improvement of which will primarily contribute to strengthening the institution of human and civil rights and freedoms. It should be noted that through the prism of scientific achievements, the study of issues such as organisational support for the functioning of the judiciary in general, the role and place of the judiciary and, most importantly, the content and essence of the institution of patronage service in particular, in our opinion, have not received sufficient scientific attention, and the ongoing armed aggression and systemic deterioration of the functioning of mechanisms for the protection of human and civil rights and freedoms necessitate to focus on relevant aspects.

The issues of functioning of the patronage service have been repeatedly studied in the works by many reputable administrative scientists, while we will use in the article, with proper references, the works by: A. Babakin, O. Kostyliev, D.V. Pryimachenko and D.D. Pryimachenko and others, however, given the circumstances in which the system of administrative and legal support for the functioning of the patronage service is threatened by the large-scale Russian invasion, the issues related to the concept and content of the patronage service have become relevant again.

The purpose of the article is to provide a theoretical and legal description of the concept and essence of patronage service. This requires solving research tasks, such as: 1) Outline approaches to understanding the concept of patronage service; 2) Substantiate the essence of the patronage service; 3) Draw scientifically based conclusions on optimising the conceptual, categorical and substantive apparatus of the patronage service.

The object of the article is social relations in the field of patronage service functioning.

The subject matter of the study is the concept and essence of patronage service.

2. Main conceptual categories of the institution of patronage service in Ukraine

The definition of the main conceptual categories and elements primarily affects the functioning of the relevant mechanism in the general legal sense and allows to consider all possible inaccuracies and destructive factors in the perspective of its long-term functioning.

N.M. Darmohrai notes that the Law of Ukraine "On Civil Service" of 10 December 2015 uses the term "patronage service" but does not define the concept. The text of this Law lists positions attributed to the patronage service, regulates the procedure for admission, service and termination, but at the same time, much attention is paid to the relative independence of the patron in resolving relevant issues of the patronage service without observing detailed criteria for admission, career advancement, etc. The Law "On Civil Service" (2015) also defines who should be classified as patronage employees (advisers, assistants, spokespersons, etc.) (Darmohrai, 2019). Accordingly, it should be noted and partially agreed with the author that the conceptual and categorical apparatus of the relevant study appears in the regulatory and legal circle of modern Ukrainian society in a general context and is not characterised by the presence of clear terminology.

The analysis of the formation and development of the regulatory framework for the activities of patronage service in Ukraine reveals the tendence to form rather slow the relevant regulatory framework which could become the basis for the effective functioning of the legal phenomenon under study. Many important aspects of patronage services remain shattered in the legislation. This situation can be explained by the lack of scientifically based research on this topic, the imperfection of current legislation, due to the superficial extension of the status of civil servants to patronage workers, lobbying for the interests of certain social groups and other stakeholders, etc. (Pryimachenko, 2021). Therefore, in our opinion, the content and essence of the phenomenon of patronage service is significantly blurred in the general legal sense, which has a doctrinal negative impact on its law application and, accordingly, on the legal status of the employees.

According to N.M. Darmohrai, the legislative definition of the patronage service is characterised as a type of public service aimed at professional support of the needs of an authorised actor, which independently recruits, establishes detailed requirements for employees, conditions of admission, career, rewards, termination of service and liability of employees in accordance with bylaws and staffing table, using the mandatory general conditions established in the legislation for all types of patronage services (restrictions, specifics of rewards, career development, etc.). The patronage service may consist of an assistant, advisor, head of the press service or other positions provided for in the staffing table. The number of employees and their structure are approved by the heads of the service (Darmohrai, 2019). Accordingly, such a broad context characterises the concept, content and essence of the patronage service as an institution of public administration, defines and directs its main structural elements appropriately, administrative and managerial relations, which has a positive impact on the mechanism, but does not allow it to be fully established at the regulatory and legal level.

According to D.V. Pryimachenko and D.D. Pryimachenko, the system of public administration and organisation of the state apparatus inherited by Ukraine from the Soviet era do not meet the requirements of the times and new realities. This discrepancy necessitates rethinking the role of the state in public life through the implementation of comprehensive political, legal, organisational, social and economic reform (Pryimachenko, 2021). This, in particular, correlates with approaches to the content and legislative definition of the concept of patronage service, which is not sufficiently regulated in all areas of the civil service, either in the system of executive bodies or in the context of ensuring the functioning of the judiciary.

3. Regulatory and legal support for the powers of the patronage service in Ukraine

I.V. Dashutin argues that Ukrainian legislation interprets the relations regarding the performance of labour functions by patronage employees as labour relations. Moreover, in recent years, draft laws have been submitted to the national parliament that revise the principles of organisation of these legal relations, not always allowing for their obvious labour law nature, as well as the criteria for classifying certain relations as labour ones. Therefore, in further processes of improving the regulatory and legal support for the activities of patronage servicers, it should be considered that their duties are performed within the framework of labour relations. These relations are characterised by the general features of the relevant sectoral relations, as well as special features that have arisen as a result of the transformation of the general features of these relations under the influence of the particularities of acquisition (termination) and implementation of the legal status of a patronage employee. Typically these relations provide for: the employee's subordination to the employer (in this sense, the patronage servant is a hired worker); realisation on a compensatory basis and compliance with the standards of decent work (allowing for

the particularities of professional public service), preventing the reduction of the level of social security of the patronage employee; the personal performance of the labour function by the patronage employee; the responsible exercise of rights and fulfilment of obligations by the employee and the employer (in terms of positive and negative legal liability) (Dashutin, 2023). Accordingly, it should be noted that, to a certain extent, the activities of the patronage service contain elements of labour relations, since they serve as the basis for establishing a legal relationship between a particular person and a public authority, enabling the imposition of duties on this person and the performance of state functions.

According to O. Kostyliev, employees of the patronage service are civil servants, that is, the main legal regulation that defines the legal framework for their activities is the Law of Ukraine "On Civil Service", although it differs in the nature of the tasks performed, restrictions related to being in the staff, and the procedure for admission and termination of civil service, they differ from civil servants, and their positions, being public positions, have their own specifics compared to the positions of civil servants, who, in the course of their service in a state body, mostly perform managerial functions, fulfilling direct tasks of the state in their places (Kostyliev, 2015). Therefore, it should be noted that the content and essence of the concept of "patronage service" is defined by scholars and legislation as a structural unit of a public authority that includes a number of employees and is entrusted with the performance of state functions, mainly related to ensuring the functioning of a particular body.

Ya.I. Okar-Balazh argues that the administrative and legal status, as a special legal status, characterises a person through his or her rights, duties and liability as an actor of administrative law and ensures participation in public relations arising in connection with ensuring the rights and freedoms of individuals by public authorities, in the interaction of public authorities with civil society institutions, as well as indirectly in relations of public administration of state and municipal property, sometimes in relations that take place in the internal organisational activities of public authorities (Okar-Balazh, 2015). Accordingly, the administrative and legal status of the patronage service should be characterised as a set of specific legal foundations that determine the role, place, list of functions, powers and rights of the unit that ensures the implementation of auxiliary functions related to the activities of the service (institution, establishment, specific civil service position) under which it is established.

According to A.Yu. Babakin, the legal basis of the patronage service in general and the specifics of the labour activities of such employees require a balanced approach on the part of the legislator to regulate it, which, in our opinion, could be most successfully implemented by adopting a separate legal regulation on this issue (by analogy with the principles of other types of public service). It could enshrine the definition of the patronage service, outline the list of its positions, set requirements for applicants for the position, conditions of admission, limitations and particularities of patronage service. It would be possible to highlight the guarantees of the activities of patronage officers and the exercise of their powers, their social and material support, etc. (Babkina, 2022). Accordingly, this position defines the content and essence of the importance of outlining the main areas of characterising the concept of patronage service, which is inextricably linked to its statutory definition, further legislative construction and general principles of the relevant legal status of this structural entity.

4. Conclusions

The article studies the concept and essence of patronage service as a complex state phenomenon which dates back to the mid-18th century and is based on a set of regulations providing for its clear and well-coordinated functioning.

The author argues that the general legal notion that a patronage service in the general sense is an institutional entity which functions to ensure the activities of a specific public authority. A number of researchers also consider the respective service to be one that can function outside the civil service, but in our opinion, based on the essence of this administrative and legal entity, it is exclusively a civil service.

It is proved that the essence of the patronage service is that its main purpose is to ensure the functioning of a certain administrative entity, and the relevant employees distribute among themselves the functions and powers aimed at ensuring the functioning of the same unit without performing its functions directly. Using the example of the judiciary and the institution of a judicial assistant, which is defined as a type of support for court activities which is inextricably linked to justice, the author argues that the patronage service (relevant units) is authorised to ensure the activities of the main actor of administrative and legal relations.

Further research of the institute of patronage service is the need for a structural and legal analysis of the relevant entity with the use of both international experience and the practice of their domestic functioning.

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ПОНЯТТЯ ТА СУТНІСТЬ ПАТРОНАТНОЇ СЛУЖБИ

Анотація. ***Мета.*** Метою статті є теоретико-правова характеристика поняття та сутності патронатної служби. ***Результати.*** У статті досліджено поняття та сутність патронатної служби як комплексного державницького явища, котре бере свій початок із середини 18-го сторіччя та базується на комплексі нормативно-правових актів, які передбачають чітке та злагоджене його функціонування. З'ясовано, що розвиток нормативно-правового забезпечення діяльності інституту патронатної служби в Україні демонструє тенденцію до досить повільного формування відповідної нормативної бази, яка могла б стати підґрунтям ефективного функціонування досліджуваного правового явища. Фрагментарно окресленими в законодавстві залишаються багато важливих аспектів патронатної служби. Визначено загальноправове уявлення, відповідно до якого патронатною службою в загальному розумінні є інституційне утворення, що функціонує для забезпечення діяльності певного органу державної влади. Низкою дослідників відповідна служба також розглядається як така, що може функціонувати поза межами державної служби, проте, на нашу думку, з огляду на сутність цього адміністративно-правового утворення воно є суто державно-службовим. ***Висновки.*** Доведено, що сутність патронатної служби полягає в тому, що її основною метою є забезпечення функціонування певного адміністративного утворення, а відповідні працівники розподіляють між собою функції та повноваження, що спрямовані на забезпечення функціонування цього ж підрозділу, не виконуючи при цьому його функцій безпосередньо. На прикладі органів судової влади, інституту помічника судді, котрий визначається як вид забезпечення діяльності суду, що нерозривно пов'язана з правосуддям, аргументується позиція про те, що патронатна служба (відповідні підрозділи) має повноваження забезпечувати діяльність основного суб'єкта адміністративно-правових відносин. Перспектива подальшого дослідження інституту патронатної служби полягає в необхідності структурно-правового аналізу відповідного утворення із застосуванням як міжнародного досвіду, так і практики їх внутрішньодержавного функціонування.

Ключові слова: патронатна, служба, забезпечення, взаємодія, діяльність, поняття, сутність.

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THE FACIAL PROCESSING OF THE TICKET HOLDERAT THE SKI RESORT IN AUSTRIA

Abstract. ***Purpose.*** The presented article explores the case analysis of the 2020 Austrian Data Protection Authority investigation regarding the use of facial recognition technology at the ski resort for entrance management. ***Research methods.*** The article applies the case study approach and assesses of how the resort service is aligned with the special data technology in accordance with the General Data Protection Regulation (GDPR) of articles 6 (1, f) and 9 (1). ***Results.*** By relying on the research results and discussion, the authors have been confirmed that data protection standards of the European Union must be met in the scenario of any limitation of the fundamental right to privacy. The law-abiding practice for the lift-ticket holders' entrance control shall be legally demanded, admire the core of the rights, conform to the recognized interest objectives, and be necessary and proportional. ***Conclusions.*** The examination highlights the value of privacy in the design of face processing systems, attributing this matter to the contextual and culturally contingent nature of privacy, as well as the challenge of habilitating privacy goals into practical visions. Accordingly, the use of facial recognition technology at the Ski Resort is deemed justifiable, as it aligns with service level management and concedes with the lawfulness bars outlined in GDPR Article 6 (1, f) without exceeding the bounds of Article 9 (1). Consequently, the authors conclude that facial recognition technology can be used to verify the validity of lift ticket holders as long as this practice does not employ special techniques that direct a unique identification.

Key words: Austrian Data Protection Authority, customer identification, photo data collection, consent, right to privacy, personal data protection.

1. Introduction to facial recognition

In the Member States countries of the European Union facial data processing must follow General Data Protection Regulation (GDPR) criteria and standards to protect personal data. Facial identification compares a person's facial image with templates of other people stored in a database, on the other hand, authentication and verification similarity analogizes two templates of the same person. Thus, authentication and verification are different from identification.

Again, *facial identification* or designation is a technique of reaching an individual's facial shot with templates of different people reserved in a database to confine the identicalness of the individual in that shot. This method is exploited to pinpoint individuals in varied contexts, largely for security and law enforcement conditions. Facial algorithms could tag diverse segments of the face, likewise, the length between the eyes, the figure of the nose, and the silhouettes of the face, to liken the facial shot with the other database templates. At the same time, an algorithm is a method, an ordered set of operations, or a recipe and not a means to store biometric data (EDPS and Agensia Espanola Proteccion Datos, 2020, p. 1). It means facial identification could be done without the process of working with a biometric data of a person concerned as long as this function does not go beyond identification that led to unique (biometric) data workflow with further labelling of a person's distinctive traits. *Facial authentication* is a function of substantiating that a person is who he contends to be

by approximating his facial template of the shot with an already comprehended template kept in a database to inspect if his face matches a pre-existing record. This function is usually employed in household technology for security and access control systems, for example, unlocking a smartphone via facial credit or accessing home facility via facial validation. At the same time, according to the GDPR Recital 18, this Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. However, this Regulation applies to controllers or processors which provide the means for processing personal data for such personal or household activities. *Facial verification* is a function of analogizing two templates of the same person to decide if they are a match. It is used to affirm the already known identity for a broad system by capturing a 'live image'. For example, it is practiced logging into bank accounts or inscribing into social media profiles.

Consequently, while facial identification is demarcating the identity of a person by comparing their facial shot with templates of other people reserved in a database, facial authentication, and verification apply two templates of the exact individual to decide if they are identical.

2. A face-check system for costumers at the ski resort in Austria

According to the GDPR Article 51 (1) each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union ('supervisory authority'). Thus, the research refers to the case analysis of the Austrian Data Protection Authority (Datenschutzbehörde/ADPA) investigation that started on 07 January 2020, decided on 23 November 2020, and published on 11 April 2022 about the entrance management solution at the Ski Resort through the shot of costumers' facial data. The Ski Resort operator used a face-check system requiring customers to take their photos and further store for an automatic open-door system according to the tickets possession respectively. Therefore, the problem question is how the execution of service level agreement (SLA) aligns with the data technology to the needs of its customers according to the GDPR Articles 6 (1, f), 9 (1).

The research has shown, based on the GDPR Article 77(1) without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation. Notably, on 07 January 2020 the ADPA under the GDPR Article 57 (1) started an investigation based on Robert A***'s privacy complaint (complainant) against N*** Lift GmbH (respondent) represented by the lawyers Dr. Rudolph L*** & Dr. Sebastian L***. The respondent, Ski Resort, is the sole operator of the lift system on the Z***berg that checked the validity of the lift ticket for access management by taking a visitor's photo and a comparison measurement of this photo with a previously stored reference to the photo which runs while customer purchased a lift ticket. The consent to take photos linked to the use of the lift ticket. In the event of disagreement, the lift system cannot be used. The complainant indicates an opt-in procedure analogously linked to the e-mail addresses of the applicant respectively and breaks privacy. The complainant used this lift from 27 December 2019 to 29 December 2019 and sent various photos, screenshots, and e-mail correspondence as enclosures.

On 06 March 2020, the respondent confirms a reference photo of the lift ticket holder for access control management on the scene equipped with a camera when first stepping through the entry, specifically on the Turnstile at the valley station of the Z***bergbahn I and the valley station of the *** gondola. This access control has a permissible form because it is only practiced at the particular entry points of the Z***bergbahn I. Valley station. As evident respondent, there are two access areas: one northwest, and one east. The reference photo is only used when a person passes through the northwest access system, where, among other things, appropriate stickers and information signs additionally announce such measures. Besides, the company informed the public about that measure in the check area by notice and this warning was posted on the public service homepage. Also, it was pointed out that the capture, storage, and processing of photo data are exclusively for management-alike control purposes to avoid improper use of the ticket card. These data, as a rule, are based on the validity period of a ski pass and would expire at the end of each year when data is deleted.

It is believed that such a measure suits every ski guest to traverse free to one of the two areas. Besides, at the mountain station, ten other lifts

are available as an alternative, with neither one reference of control photo to be taken. Indeed, there is the possibility to purchase hourly tickets for which no reference photo is taken meaning that the lift system use is not critically tied to the respective data consent. Notably, a control photo taken at the entrance is deleted within 30 minutes after passing through the turnstile. Technically, the photo files are encrypted with further access through the log into the system with a password. Hence, the data control is not automated, and based solely on the personal information management system (PIMS).

3. The law-abiding practice for the lift-ticket holders' entrance control

The use of facial recognition technology for access management vision is becoming more prevalent, and it is essential to ensure that it is used lawfully. Observing the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union (CFREU) evolved the leading relation for evaluating compliance with fundamental rights. The Court of Justice of the European Union (CJEU) has affirmed that an investigation of the facts of a requirement of secondary EU law must be undertaken solely in light of the fundamental rights guaranteed by the Charter, likewise, in the case C-199/11, Otis and Others, paragraph 47, case C-398/13 P, Inuit Tapiriit Kanatami and Others v Commission, paragraph 46, and case C-601/15 PPU, J.N. v Staatssecretaris van Veiligheid en Justitie, paragraph 46. Furthermore, the CFREU Article 8 (2) as well as EU data protection law, provide for the right of access, correction, and deletion of one's own data that are stored (FRA, Opinions on Biometrics).

The case highlights the issues of data protection and privacy concerns when it comes to the use of facial recognition technology. There is a lack of awareness and understanding of how to exercise the right of access, correction, or deletion of inaccurate data that are stored (FRA, Opinions on Biometrics). The cumbersome nature of the processes, administrative hurdles, language barriers, and lack of specialized lawyers also explain why few persons try to exercise these rights (FRA, Opinions on Biometrics). It raises questions about the level of consent required for the use of the facial technology in question and the transparency of data collection and processing. Societies must, therefore, be able to control cheaters (free riders) and prevent excessive status-seeking (Burk, 2021).

To be lawful, any limitation on the exercise of the fundamental rights protected by the CFREU must comply with the following criteria, laid down in Article 52(1) (EDPS, 2017, p. 4):

– it must be provided for by law,
– it must respect the essence of the rights,
– it must genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others,
– it must be necessary, and
– it must be proportional.

The complainant's objection is justified because he was not given a free choice to use the territorial addenda of the respondent without consenting to data processing. These findings have demonstrated the assertion of the complainant to obtain his consent at the first place otherwise ticket use would be limited. Hence, the consent to data processing did not occur voluntarily because the use of the facilities conjoined to consent. On the other side, according to the GDPR Recital 40, in order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract. *Twofold consent to the processing of non-contractual personal data with the conclusion of a contract is generally not voluntary unless there are special circumstances that articulate its voluntariness. Since the respondent in this case expressly does not rely on the consent of those affected for the data processing in question, these considerations can be disregarded.* Thus, the service with data collection for further photo comparison to a reference photo is to verify the validity of the lift ticket possession and to prevent improper use of the lift ticket is the legitimate interests *provided for by* GDPR Article 6 (1, f) which is enough to evaluate the processing to be lawful because para 1 of the mentioned article refer to the lawfulness assessment when 'only if and to the extent that at least one of the following applies' such as stipulation 'f' used in the case in question. Besides, consent should not, as a rule, be the legal ground used for facial recognition performed by public authorities given the imbalance of powers between the data subjects and these authorities (CE, 2021, p. 9). For the same reason, consent should not, as a rule, be the legal ground used for facial recognition performed by private entities authorized to carry out tasks similar to those of public authorities (CE, 2021, p. 9). At the same time, it must respect the essence of the rights as well as the legitimate interest shall not be 'overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data' as per GDPR Article 6 (1, f).

In the authors' view, the respondent shows respect and not overridden facial technology practice, since as stated, the data concerns amount of photo shot only, it is obtainable through a password, deleted to the extent of the processing, provide customers with PIMS and therefore, meet the technical and organizational requirements of the GDPR Article 25 para 2 about obligation 'to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility'.

Furthermore, in the view of the authors, the photo processing measure through access control with image comparison *protects those who are authorized*. It means that the respondent processing is based on their principal legitimate interests under GDPR Art. 6 (1, f) and ought to be estimated. This point of view took into account the legitimate interests of the complainant and whether they align with the respondent's and third parties' interests respectively to the use of personal (image) data of ski lift card users. Significantly, the complainant has a legitimate interest in keeping his data, specifically his photograph. Hence, private entities shall not deploy facial recognition technologies in uncontrolled environments such as shopping centers, especially to identify persons of interest, for marketing purposes, or private security purposes (CE, 2021, p. 12). On the other hand, the respondent has a legitimate interest in ensuring that their contractual partners behave according to the SLA (Hosseinifard et al., 2022) as well as the tariff conditions are overseen by service level management (Looy, 2013) to deter the unauthorized transfer of the ski pass. This is particularly consequential since a day or multi-day credentials are correspondingly more cost-effective than hourly tickets. *Hence, the system implemented by the respondent is reasonable because its guarantee the admission management and execute contractual intention*.

'Necessity' is also a data quality principle and a recurrent condition in almost all the requirements on the lawfulness of the processing of personal data stemming from EU data protection secondary law (EDPS, 2017, p. 5). For example, Article 6 (1, c) and 7 of Directive 95/46, Article 4 (1, c) and 5 of Regulation 45/2001, Article 5 (1, c) and 6(1) of Regulation 2016/679 as well as recital (49), which emphasizes the strict necessity test regarding the processing of personal data to guarantee network and information security of the systems of the controller, and Article 8(1) of Directive 2016/680. Thus, it is *proposed for a view to the extent of whether the facial processing technique employed at the Ski Resort is prohibited for practice in means of GDPR Article 9 (1)*. The research has shown, facial recognition is the automatic processing of digital images containing individuals' faces for identification or verification of those individuals by using face templates (CE, 2021, p. 5). The use of facial recognition technologies in the private sector can only take place in controlled environments for verification, authentication, or categorization purposes (CE, 2021, p. 11). The context of the processing of images is relevant to the determination of the sensitive nature of the data, as not all processing of images involves the processing of sensitive data (CE, 2021, p. 5). Images shall only be covered by the definition of biometric data when they are processed through a specific technical means that permits the unique identification or authentication of an individual (CE, 2021, p. 5.). The condition is also seen from the Paragraph 59 of the Explanatory Report to Convention 108+. *Thus, a simple digital photo at the Ski Resort stored for visual comparison purposes and displayed on a screen not being subjected to special technical processes does not meet the definition of the processing of special data categories according to GDPR Art. 9 (1)*. Consequently, the case of a Ski Resort operator in Austria employing facial recognition technology through photo characterization for lift ticket access control demonstrates compliance with the GDPR in means that the company has not used technology to uniquely identify, otherwise this practice would be prohibited. *Instead, company-operated photo data match that demonstrates avoidance of specific technical recognition and that is not banned under GDPR Article 9 (1)*.

Embracing a preventive approach and also marking Articles 5 and 6 of Convention 108+, the study tenses up to the proportionality assessment based on the risk posed from the policy, design, performance, and function of the digital facial recognition system at the Ski Resort. A 'risk' is a scenario describing an event and its consequences, estimated in terms of severity and likelihood (A29, 2017, p. 6). 'Risk management', on the other hand, can be defined as the coordinated activities to direct and control an organization with regard to risk (A29, 2017, p. 6). In practice, this means that controllers must continuously assess the risks created by their processing activities in order to identify when a type of processing is 'likely to result in a high risk to the rights and freedoms of natural persons' as per the GDPR Article 35(1) (A29, 2017, p. 6). The GDPR Article 35(3) models of when a processing is 'likely to result in high risks': '(a) a systematic and extensive evaluation of personal aspects relating to natural persons which are founded on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural per-

son; (b) processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offenses referred to in Article 1013; or (c) a systematic monitoring of a publicly accessible area on a large scale'. In the view of the authors, none of mentioned applies to the case study meaning the minimum interference with claimed right to privacy. *In such cases, the controller should justify and document the reasons for not carrying out a data protection impact assessment (DPIA) and include/record the views of the data protection officer* (A29, 2017, p. 12). At the same time, it depends on the technology used and the circumstances, perception, and culture of each user, and can negatively affect the user's perception: Feeling of invasion of privacy, failures in biometric systems that prevent access to services, non-biometric alternatives lacking completely or not being suited to provide the same service, as well as the need to perform enrolment processes in each entity (ibid., p. 4). Since this information is 'built-in', the user cannot prevent the collection of additional information (EDPS and Agensia Espanola Proteccion Datos, 2020, p. 2) such as email address in the case. The establishment of a 'one-stop-shop procedure' for receiving requests to access, correct, and delete data could simplify procedures (FRA, Opinions on Biometrics).

4. Conclusions

According to THE FRA research, very few lawyers are specialized in seeking to enforce the right of access, correction, and deletion of data stored in IT systems, making it even more difficult for the persons concerned to exercise their rights (FRA, Opinions on Biometrics). Under the study, privacy is important when designing facial processing systems. Reasons for this include the contextual and often culturally dependent concept of privacy and the difficulty of translating privacy objectives into actionable requirements (EDPS, 2018, p. 12). The ENISA (European Union Agency for Network and Information Security) has administered a breakdown of the state of the art of how to engineer privacy by design (ENISA, 2014). While some privacy engineering methodologies mainly focus on the requirements phase or the measures to implement, privacy engineering must consider the whole life cycle of a service or a product, from initial planning to service/product disposal (EDPS, 2018, p. 15). *Adequate governance and management structures and procedures in the organization are then needed to enable the overall approach* (EDPS, 2018, p. 15). Therefore, *the service at the Ski Resort aligning to the facial processing technology is justified due to service level management as the basis for the lawfulness of the processing under the GDPR Article 6 (1, f) and that is not gone beyond Article 9 (1)*. Consequently, the complainant's objections are unsupported.

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ОБРОБКА ОБЛИЧЧЯ КОРИСТУВАЧА ВХІДНОГО КВИТКА НА ГІРСЬКОЛИЖНОМУ КУРОРТІ АВСТРІЇ

Анотація. ***Мета.*** Представлена стаття досліджує справу 2020 р. за фактом розслідування Австрійським органом із захисту даних щодо використання технології обробки даних обличчя на гірськолижному курорті. ***Методи дослідження***. У статті застосовано підхід прикладного дослідження з вивчення практики країни – члена Європейського Союзу щодо розгляду справи про захист персональних даних особи. Так, надано оцінку про те, як в Австрії застосовуються статті 6 (1, f) та 9 (1) Загального регулювання захисту даних (GDPR). ***Результати.*** Завдяки проведеному аналізу автори підтвердили, що європейські стандарти про захист даних мають бути дотримані у разі будь-якого обмеження права на приватність, зокрема під час обробки персональних даних. Зокрема, практика вхідного контролю користувачів ліфт-квитків має вимагатися законом, поважати основні права, відповідати визнаним інтересам, бути необхідною та пропорційною. ***Висновки.*** Дослідження переконалося у цінності приватності під час дизайну систем обробки обличчя шляхом співставлення з контекстуальним та культурно зумовленим характером розуміння приватності, а також виклику адаптації цілей обмеження приватності до практичних бачень. Відповідно, використання технології обробки обличчя на гірськолижному курорті вважається виправданим, оскільки воно узгоджується з управлінськими умовами обслуговування клієнтів та враховує вимоги, викладені у статті 6 (1, f) GDPR, а також водночас практика застосування досліджуваних технологій на гірськолижному курорті Австрії не стосувалася межі статті 9 (1) GDPR. Отже, автори роблять висновок, що справа про обробку обличчя на гірськолижному курорті Австрії показала, що технологію з розпізнавання обличчя дозволено використовувати для перевірки особистості користувача/власника квитка, наприклад під час сходження на підйомник, однак за умови якщо така практика не використовує спеціальних технологічних методів, що спрямовані на досягнення мети унікально ідентифікувати таку особу.

Ключові слова: Австрійський орган із захисту даних, ідентифікація людини, збір фотоданих, згода, фундаментальне право на приватність, захист персональних даних.

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PROVISIONAL SEIZURE OF PROPERTY AND PROPERTY ATTACHMENT

Abstract. ***Purpose.*** The purpose of the article is to identify the issues which arise in the course of provisional seizure and subsequent attachment of this property and to suggest ways to solve them. ***Results.*** The article reveals that in the system of state coercive measures, a special place is given to criminal procedural coercive measures, which, among other things, include provisional seizure of property and property attachment. In practice, the only legal remedy for the prosecution (in cases without suspects) to deprive of the ability to use property (possibly acquired from crime or for other purposes) is its provisional seizure and subsequent attachment. The author identifies a number of problems arising in the application of these measures during the pre-trial investigation of criminal proceedings, including those related to legislative vagueness of the grounds and procedure for provisional seizure of property and property attachment. Due to the probable factors of destruction or damage to property owned by a bona fide purchaser, the legislator has provided for the right of the investigator or prosecutor to decide on attachment (with a corresponding petition before the investigating judge), therefore, in such situations, the investigator or prosecutor shall assess the type of property, the likelihood of its damage and destruction, as well as its acquisition by crime. ***Conclusions.*** It is concluded that in the context of the legislative statement regarding property considered to be provisionally seized, it is important to understand the following: seizure of property can be without a relevant ruling of the investigating judge; items which are seized from circulation by law, as well as included in the list for which the court has expressly granted permission to search for them, does not include provisionally seized property. Allowing for the issues of practical activities, the following mechanisms are proposed: provisional seizure of property in case the owner refuses to voluntarily hand it over; recording of the return of provisionally seized property; extension of the time limit for filing a petition for attachment of provisionally seized property in case of need for expert examination or identification of the property.

Key words: criminal procedure, ensuring criminal proceedings, coercive measures, provisional seizure of property, property attachment.

1. Introduction

In the system of state coercive measures, a special place is given to criminal procedural coercive measures, which are defined as actions and decisions of competent authorities (officials) provided for by criminal procedure law that restrict the rights of other participants in the process against their will (Smirnov, Kalinovskyi, 2012, p. 288), and, on the one hand, is an important element of the mechanism for supporting the tasks of criminal proceedings, and, on the other hand, a factor of the most tangible intrusion into individual rights and freedoms (Myroshnychenko, 2013, p. 310). In this regard, the procedure for applying provisional seizure and property attachment plays is of importance. The provisional seizure of property and property attachment as measures to ensure criminal proceedings during pre-trial investigation today requires considerable attention from both practitioners and academics. This is due to a number of problems arising in the application of these measures during the pre-trial investigation of criminal pro-

ceedings, including those related to legislative vagueness of the grounds and procedure for provisional seizure of property and property attachment.

A number of scholars have considered the problematic issues arising in the course of provisional seizure and property attachment. A.V. Kholostenko, relying on the analysis of the provisions of the CPC on the application of provisional seizure of property and property attachment, underlines the following aspects: the legislator entitles the investigator and prosecutor to deprive the suspect of the opportunity to own, use and dispose of certain property, i.e., the right to ownership of property in general, during the provisional seizure of property. In addition, the investigating judge may, by his/her ruling, deprive the suspect or accused only of the possibility to alienate certain property or to dispose of and use such property in any way (Kholostenko, 2013, p. 120). O. Shylo, substantiating his position on the provisional seizure of property during a search, argues that if the investigating judge's decision to conduct a search specifies the items to be seized, the fact of their seizure shall be reflected in the search records, but if during the search other items are also seized that were not specified in the investigating judge's decision, they acquire the status of provisionally seized property and are described in detail in the search records or separately in the inspection records (Shylo, 2013, p. 23).

The purpose of the article is to identify the issues which arise in the course of provisional seizure and subsequent attachment of this property and to suggest ways to solve them.

2. Particularities of the legislative framework for provisional seizure of property

Provisional seizure of property as a measure to ensure criminal proceedings means that a suspect or persons in possession of property directly related to a criminal offence are actually deprived of the ability to own, use and dispose of certain property until the issue of property attachment or its return is resolved (Hroshevyi, Tatsii, Tumaniants, 2013, p. 434). Provisionally seized property is property that is seized: from an apprehended person; during an inspection or search – until it is returned or the issue of apprehension is resolved. According to part 7 of Article 237 of the CPC of Ukraine, items and documents which are not listed as items in relation to which the ruling has expressly granted permission to search or inspection and are not subject to be seized from circulation by law shall be deemed provisionally seized property (Conclusion on the draft of the Criminal Procedure Code of Ukraine, prepared by the Directorate for Justice and Protection of Human Dignity, General Directorate I "Human Rights and the Rule of Law", 2011). (Conclusion on the draft of the Criminal Procedure Code of Ukraine, prepared by the Directorate for Justice and Protection of Human Dignity, General Directorate I "Human Rights and the Rule of Law", 2011). Moreover, provisionally seized items are: during apprehension – all items, documents, money, etc.; during a search – items and documents that are not included in the list, in relation to which permission to search is expressly granted in the search warrant, and items that are not seized from circulation by law; during inspection – things and documents that are not items seized from circulation by law (Myroshnychenko, 2013, p. 311). With regard to court rulings, N.S. Morhun argues that in practice courts often come to the conclusion that only seized items and documents included in the list for which the court expressly granted permission to search for them, as well as attached property in accordance with the rules of Article 98 of the CPC, can be recognised as material evidence. Furthermore, the current CPC of Ukraine does not provide for the recognition of provisionally seized property as material evidence without attachment by the court in accordance with the rules of Part 5 of Article 171 of the CPC of Ukraine (Morhun, 2014, p. 322). It should be noted that the conditional nature of the list of property specified in the warrant for a search of a person's home or other property – in particular, in practice, investigating judges often limit themselves to an approximate ("open") list of procedurally important items and documents, which are indicated by the investigator or prosecutor in the motion for permission to conduct a search, added with the wording "and other things and documents that are relevant to the pretrial investigation (for criminal proceedings) (Nersesian, 2015, p. 55), which, in our opinion, is erroneous. Provisional seizure of property is also applied when a person is apprehended in accordance with the procedure provided for in Articles 207 and 208 of the CPC of Ukraine. If a person is apprehended by an unauthorised official, the latter shall hand over the provisionally seized property to the investigator, prosecutor or other authorised official simultaneously with the delivery of the detainee to them (Bandurka, Blazhivskyi, Burdol, Farynnyk, 2012, pp. 434–437).

There are a number of problematic issues in the mechanism of provisional seizure of property that need to be addressed (regulated by law):

– In fact, provisionally seized property remains so for 2–3 days, after which it is either attached by means of an appropriate motion

to the investigating judge or returned to the person from whom the property was seized. According to the CPC, a motion to apprehend provisionally seized property shall be filed with the court within 48 hours after the seizure of the property, otherwise the property shall be immediately returned to the person from whom it was seized. Therefore, in the CPC of Ukraine, the legislator deliberately limited the procedure for filing a motion with the investigating judge with a request to apprehend provisionally seized property Thus, given the current level of workload on pre-trial investigation bodies, the term "within 48 hours" complicates the process of investigating criminal offences, impedes the completeness of its investigation, and does not allow for timely preparation of a reasoned motion and its approval by the procedural prosecutor. The proposals of the draft law can be used to solve this problem (Draft Law of Ukraine On amendments to certain legislative acts of Ukraine on improving the procedure for pre-trial investigation, 2014), in particular: part 1 of Article 171 should be amended to read as follows: "An investigator, with the consent of the head of the pre-trial investigation body, as well as a civil plaintiff, for the purpose of securing a civil claim, may file a motion for the property attachment with the investigating judge or court." In addition, it is advisable to amend part 5 of Article 171 of the CPC as follows: "The investigator's motion for the attachment of provisionally seized property shall be filed no later than three days after the seizure of the property, otherwise the property shall be immediately returned to the person from whom it has been seized. In some cases related to expert examination or the need to establish the involvement of property in the commission of a crime, the time limit for filing a motion for apprehension may be extended up to ten days based on a relevant application to the investigating judge and arguments for extending these terms. Such a motion for an extension of time may be filed by the investigator, with the consent of the prosecutor, or the prosecutor no later than three days after the seizure of the property." The above amendments will help to ensure that the truth is established in the case, the rights of the victim are respected and, if necessary, that the damages are compensated;

– The absence of legislative provisions on the need for expert examination of provisionally seized property creates a problem, since, for example, it is impossible to establish its value, identity, authenticity of documents, etc. This necessitates that the CPC of Ukraine should set out the grounds and timeframes for the investigator and prosecutor to establish the origin of the seized property;

– The CPC does not provide for the procedure for persons who provisionally seize property in case of refusal to voluntarily hand it over, since in this case the official who provisionally seizes property is deprived of the possibility to seize property without applying appropriate measures. In such cases, the officials carrying out its seizure, in our opinion, should act by analogy with the requirements of the CPC, Article 143, part 3, para. 2, in particular, with regard to the application of these measures. In other words, in case of failure to comply with the lawful demands of authorised persons, they have the right to use physical force to overcome opposition to their demands. In this regard, we propose to amend Article 168 by adding the following part: "In case of refusal of a person to voluntarily hand over things, documents and money that are subject to provisional seizure, physical measures may be applied to him/her, which allow for the appropriate seizure. The use of physical force shall be preceded by a warning of the intention to use it. If it is impossible to avoid the use of physical force, it should not exceed the measure necessary to seize property and shall be reduced to a minimum impact on the person. It is prohibited to use measures that may harm a person's health, as well as to force a person to stay in conditions that impede the free delivery of property. Exceeding the authority to use physical coercive measures entails liability established by law".

The next "step" after the provisional seizure is the property attachment, which is the deprivation, according to a ruling of an investigating judge or court, of the right to alienate, dispose of and/or use property in respect of which there are grounds or reasonable suspicion to believe that it is evidence of a crime, subject to special confiscation from a suspect, accused, convicted person, third parties, confiscation from a legal entity, to secure a civil claim, recovery of unlawful benefit from a legal entity, possible confiscation of property (until cancelled in accordance with the procedure established by the Criminal Procedure Code of Ukraine (2012)). According to the Criminal Procedure Code of Ukraine, the purpose of property attachment is to prevent the possibility of its concealment, damage, deterioration, disappearance, loss, destruction, use, transformation, movement, transfer, alienation (Criminal Procedure Code of Ukraine, 2012). Attached property can be property owned, used or disposed of by a suspect, accused, convicted person, third parties, or a legal entity that may be subject to criminal law measures by a court decision, ruling of court or investigating judge (allowing for the provisions of Article 41 of the Constitution

of Ukraine (1996), the attachment and subsequent confiscation of property is applied exclusively on the basis of a court decision, taking into account the relevant grounds).

3. Powers of procedural persons during property attachment

Due to the probable factors of destruction or damage to property owned by a bona fide purchaser, the legislator has provided for the right of the investigator or prosecutor to decide on attachment (with a corresponding petition before the investigating judge), therefore, in such situations, the investigator or prosecutor shall assess the type of property, the likelihood of its damage and destruction, as well as its acquisition by crime. Property can be attached only on the basis of a ruling by an investigating judge, except in urgent cases, in particular, solely for the purpose of preserving material evidence or ensuring possible confiscation or special confiscation of property in criminal proceedings regarding a grave or especially grave crime, a preliminary attachment of property or funds on the accounts of individuals or legal entities in financial institutions may be imposed by the decision of the NABU Director (or his/her deputy), approved by the prosecutor. Such measures are applied for a period of up to 48 hours, and immediately after making such a decision, but not later than within 24 hours, the prosecutor shall apply to the investigating judge with a motion for property attachment (Criminal Procedure Code of Ukraine, 2012).

Furthermore, the amendments to the CPC include (Law of Ukraine On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the implementation of the recommendations contained in the sixth report of the European Commission on the status of Ukraine's implementation of the Action Plan regarding the liberalization of the visa regime for Ukraine by the European Union, regarding the improvement of the property seizure procedure and the institution of special confiscation, 2016), stipulates that property may not be attached if it is owned by a bona fide purchaser, except for property attachment to ensure the preservation of material evidence. However, the amendments do not specify what documents a person shall provide to confirm the bona fide acquisition of the right to property and who has the right to assess the authenticity of such acquisition, an investigator, prosecutor or investigating judge. It should be noted that during the commission of some crimes, property (things, objects) is resold through several shell companies, which "artificially" creates a bona fide purchaser, whose verification requires a number of procedural steps to establish the truth in the case (Herasymov, 2013, pp. 188–189).

In practice, the only legal remedy for the prosecution (in cases without suspects) to deprive of the ability to use property (possibly acquired from crime or for other purposes) is its provisional seizure and subsequent attachment. However, practice shows that sometimes investigators or prosecutors do not comply with the requirements of the procedure for filing a relevant motion with the court, namely:

– Failure to comply with deadlines ("no later than 48 hours after the seizure of property");

– When applying to the court, the investigator shall provide documents confirming the ownership of the property subject to attachment. On the one hand, such a provision of the CPC of Ukraine makes such appeals impossible, because it is unknown how and where the investigator should establish or identify such title documents (Seizure of property: appeal of actions and inaction of the investigation, 2020). (Seizure of property: appeal of actions and inaction of the investigation, 2020).

Pursuant to the CPC, Article 171, part 2, para. 3, a motion for property attachment shall indicate documents confirming the ownership of the property subject to attachment or specific facts and evidence of the possession, use or disposal of such property by the suspect, accused, convicted person or third party. The documents confirming the ownership of the property, the ownership that is subject to state registration and that has actually been registered, or copies of such documents, shall be specified in the motion and shall be attached to it (for example, an information certificate from the State Register of Real Property Rights, etc.).

In order to eliminate this situation, we propose to amend part 10 of Article 170 of the CPC by adding paragraph three as follows: "The documents confirming the bona fide acquisition of the right to property are: a contract of sale of property certified in accordance with the established procedure, other documents on the financial transaction." These changes also serve to address the problem of "hidden" bona fide acquisition of property rights.

Moreover, when considering the relevant motions, investigating judges should consider that the following documents cannot be specified in the motion and attached to it in relation to property thereof ownership cannot be confirmed by documents (e.g., for property withdrawn from circulation, movable property that is not subject to state registration and for which documents are missing, etc.), as well as for property that is subject to state registration but has

not been registered in violation of the law. In this case, the impossibility of documentary evidence shall be substantiated in the motion and indicated in the court ruling (Letter of the Higher Specialized Court of Ukraine On some issues 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).

4. Conclusions

Therefore, in the context of the legislative statement regarding property considered to be provisionally seized, it is important to understand the following: seizure of property can be without a relevant ruling of the investigating judge; items which are seized from circulation by law, as well as included in the list for which the court has expressly granted permission to search for them, does not include provisionally seized property. Allowing for the issues of practical activities, the following mechanisms are proposed: provisional seizure of property in case the owner refuses to voluntarily hand it over; recording of the return of provisionally seized property; extension of the time limit for filing a petition for attachment of provisionally seized property in case of need for expert examination or identification of the property.

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ТИМЧАСОВЕ ВИЛУЧЕННЯ МАЙНА ТА НАКЛАДЕННЯ АРЕШТУ НА МАЙНО

Анотація. ***Мета.*** Мета статті – визначити проблеми, які виникають у процесі тимчасового вилучення та подальшого арешту цього майна й запропонувати шляхи їх вирішення. ***Результати.*** У статті зазначено, що в системі заходів державного примусу особливе місце відведено заходам кримінального процесуального примусу, до яких серед інших належить тимчасове вилучення майна та накладення арешту на майно. Практично для сторони обвинувачення (у справах без підозрюваних) єдиним законним засобом провадження щодо позбавлення можливості використовувати майно (яке, можливо, набуте злочинним шляхом або з іншою метою) є його тимчасове вилучення та подальший арешт. Визначено ряд проблем, що виникають у разі застосування вказаних заходів під час досудового розслідування кримінальних проваджень, у тому числі пов'язаних із законодавчою нечіткістю підстав і порядку тимчасового вилучення майна й арешту майна. Законодавець у силу ймовірних факторів знищення або пошкодження майна, яке перебуває у власності добросовісного набувача, передбачив право слідчого чи прокурора приймати рішення про накладення арешту (з відповідним клопотанням перед слідчим суддею), тому в таких ситуаціях слідчий або прокурор повинні оцінювати вид майна, імовірність його пошкодження та знищення, а також набуття злочинним шляхом. ***Висновки.*** Зроблено висновок, що в контексті законодавчого твердження щодо майна, яке вважається тимчасово вилученим, важливу роль відіграє розуміння таких позицій: вилучення майна здійснюється без відповідної ухвали слідчого судді; до предметів, які вилучені законом з обігу, а також які входять до переліку, щодо якого судом прямо надано дозвіл на їх відшукання, тимчасово вилучене майно не належить. З урахуванням проблем практичної діяльності запропоновано передбачити механізми: здійснення тимчасового вилучення майна в разі відмови володільця добровільно видати його; фіксації повернення тимчасово вилученого майна; продовження строку

для подання клопотання про накладення арешту на тимчасово вилучене майно в разі потреби в проведенні експертного дослідження або встановленні належності майна.

Ключові слова: кримінальний процес, забезпечення кримінального провадження, заходи примусу, тимчасове вилучення майна, накладення арешту на майно.

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INSTRUMENTS OF OPERATIVE-SEARCH ACTIVITIES AS MEANS OF COGNITION IN CRIMINAL PROCEEDINGS

Abstract. ***Purpose.*** The purpose of the article is to identify direct and indirect means of cognition of the investigator in criminal proceedings, as well as to determine the place of instruments of operative-search activities among them. ***Results.*** The article underlines that the solution of the tasks of criminal procedure is directly dependent on the means of cognitive activities of the investigator. Means of criminal procedural cognition are used exclusively for detection, investigation and prevention of crimes and establishment of the truth in criminal proceedings. Means of operational and search activities are aimed only at detecting and recording signs (traces) of crimes, so their cognition is important for the results of the pre-trial investigation but can be considered a cognitive activity of the investigator only indirectly. ***Conclusions.*** Means of cognition of the investigator in criminal proceedings are investigative (search) actions, certain covert investigative (search) actions, certain measures to ensure criminal proceedings, by which the investigator performs cognitive activities regarding the circumstances of a criminal offence in a particular criminal proceeding, and then this is considered to be "direct cognition". Operative-search actions and search measures cannot be means of direct cognition of the investigator in criminal proceedings, since they are carried out by special actors (operational units) before the criminal proceedings are initiated. Partially (in case of necessity to search for a person, establish the location of property, funds, etc.), when this competence of operational units is exercised on behalf of the investigator (including through covert investigative (search) actions), the investigator has the opportunity to use the information obtained in the process of cognition – in this case, it is considered to be "indirect cognition". The results of operative-search activities carried out with the use of legal means of the investigator's cognitive activities may be used as evidence in criminal proceedings, provided that operative-search activities are carried out in accordance with the rules set out in the CPC of Ukraine and the Law of Ukraine "On Operative-Search Activities".

Key words: criminal proceedings, operative-search activities, cognition, means, instruments.

1. Introduction

In view of the procedural provisions of the CPC of Ukraine, investigative (search) actions, covert investigative (search) actions and other procedural actions are considered to be means of obtaining evidence by an investigator. In the theory of criminal proceedings, some scholars also distinguish other means that formally belong to the theory of OSA and unreasonably consider them to be search means of cognition of the investigator. For example, O.V. Kovalova argues that the search activities of the investigator begin with the study of phenomena that are external manifestations of the offence through the establishment of specific material objects – carriers, sources of information, their recording and procedural introduction into the process of proving. The author believes that the search activities of the investigator (as a means of cognition of the investigator) is ensured by the use of criminal procedure and operative-search activities, and in support of her opinion, she notes that the current CPC of Ukraine repeatedly mentions a form of cognitive activities such as search actions that, according to Article 281 of the CPC of Ukraine, the search for a suspect is conducted if his/her whereabouts are unknown (Kovalova, 2012). However, neither the CPC of Ukraine nor by-laws provide the list of search instruments for investigators. Moreover, these regulations, the theory of OSA and criminal procedure do

not even use the term "search actions" (the term covert investigative (search) actions or operative-search actions, search measures are used). Wanted list is a separate institution of operative-search activities and it does not coincide with the concept of "search activity" (although both are traditionally attributed to the competence of operational units). Wanted list is normalised by closed regulations, which do not provide for any other entities to directly search for a suspect than operational units (the investigator only gives them instructions in accordance with Article 281 of the CPC of Ukraine). It is possible to consider the investigator's activities so that he/she identifies persons, subjects, documents, but in this case such activities should be considered as search activities. Therefore, the investigator's search activities are nonsense, and even more so, the search cannot be a means of cognition of the investigator. Similarly, it is impossible to equate the means of operative-search activities with the means of cognition in criminal proceedings. This situation has arisen as a result of the interpretation of certain processes and law enforcement instruments by different legal institutions (criminal procedure and operative-search activities), the theory of each of which uses "own" terminology, which is reflected in regulations. This necessitates determining the instruments of OSA in the cognitive activities of the investigator in criminal proceedings.

Scholars who considered different variants of cognitive activities mostly distinguished between procedural actions, forensic means as instruments of cognitive activity and means of operative-search activities. Only since the interpenetration of the theories of criminal procedure and operative-search activities in the form of regulating covert investigative (search) actions, other assumptions have emerged. For example, I.V. Hora and V.A. Kolesnyk argue that cognition of the actual circumstances of a case begins even before it is initiated and often within operative-search activities. However, proving as an element of cognition cannot objectively arise before the implementation of procedures, since it requires procedural mediation and, accordingly, the assessment of the results of operational cognition can be an impetus for the development of criminal procedural cognition (Hora, Kolesnyk, 2012). M.A. Pohoretskyi argues that the specificity of cognition in OSA is that, unlike cognition in criminal proceedings, which is only retrospective in nature (since the activities of the inquiry body and investigator, prosecutor and court are always based on cognition of facts that took place in the past), an operational officer as an actor of cognition can be an eyewitness to a crime when it is directly documented and can learn its circumstances both indirectly, including retrospectively, and directly at the time of its preparation and execution (Pohoretskyi, 2007). D.B. Serhieieva and O.S. Starenkyi emphasise that investigative (search) actions are distinguished from other procedural actions precisely by their inherent cognitive nature, search and detective focus, the essence thereof is the attempt of a procedural person to identify (find, search for) and properly record in the relevant procedural sources the factual data relevant to criminal proceedings (Serhieieva, Starenkyi, 2017). O.V. Kovalova believes that by their nature and cognitive capabilities, investigative (search) actions are aimed at finding objects of interest to the investigator, contribute to the establishment of the truth in the case and can be attributed to organisational measures of a detective nature (Kovalova, 2012). O.S. Tarasenko, A.V. Shevchyshen, Y.O. Yermakov, D.M. Mirkovets, Y.O. Diakin conclude that operative-search activities may be carried out both before and simultaneously with the pre-trial investigation; operative-search actions may be initiated before the pre-trial investigation and completed during its conduct; operative-search actions do not end with the commencement of criminal proceedings, but continue further in a different status; operative-search actions are aimed not only at recording the facts of criminal offences being prepared or recording the criminal actions of persons preparing to commit them, but also solves a number of tasks during the pre-trial investigation; the list of operative-search actions includes those that have no analogues with CISA and therefore operative-search measures do not duplicate CISA, but perform the task of ensuring the possibility of fulfilling the investigator's order to conduct CISA (Tarasenko, Shevchishen, Yermakov, Mirkovets, Diakin, 2021).

It can be stated that a number of perspectives are controversial and contradictory and these issues are constantly being intensified and remain relevant.

The purpose of the article is to identify direct and indirect means of cognition of the investigator in criminal proceedings, as well as to determine the place of instruments of operative-search activities among them.

2. Particularities of the process of cognition in criminal proceedings

The commencement of criminal proceedings transfers the process of cognition to the procedural level and commences proving. However, this does not deprive the process of cognition of its multilevel nature. Operative-search activities also contribute to such cognition and may

have a certain impact on both procedural cognition and the process of proving. Cognition of the circumstances of a criminal offence within the scope of operative-search (search) actions enables to obtain information promptly that is necessary for the investigator or prosecutor to make procedural decisions on the implementation of certain investigative (search) actions and the choice of tactical methods for their conduct. Operative-search actions can collect information that characterises the suspect's identity, lifestyle, intentions to hide from criminal prosecution, connections, etc. Furthermore, it is a way to learn about the circumstances of the crime and may be relevant for making a number of procedural decisions, in particular, on the choice or change of a preventive measure. On behalf of the investigator, employees of operational units may conduct investigative (search) actions, covert investigative (search) actions and operative-search actions aimed at finding fugitives from pre-trial investigation bodies and court, searching for (locating) stolen property, money and valuables, property obtained by criminal means, as well as property that may be seized. All of these actions are also carried out for the purpose of cognition in the case, and some of them are aimed at proving it. This gives grounds to assert that operative-search activities and the cognition carried out in the course of their conduct can be considered an important element of criminal procedural cognition in criminal proceedings (Hora, Kolesnyk, 2012).

Employees of operative units may receive information about a criminal offence committed or being prepared as a result of operative-search actions both within the scope of search activities before the pre-trial investigation is commenced and within the scope of present criminal proceedings when fulfilling the investigator's order to conduct CISA (during their preparation and conduct). In this regard, operational units are entitled by the Law of Ukraine "On Operative-search activities" and departmental regulations of the MIA to conduct operative-search actions within the scope of the OSA (Tatarov, 2012).

Operative-search cognition (search activities) is characterised by specific features that distinguish it from cognition in general and from other types of cognition in particular, since it is carried out by actors defined by the legislation on OSA, by means, methods and techniques specified in this legislation, it has its own object and scope (Pohoretskyi 2007, p. 173). Due to its specificity, search activities are of importance in cognition of the circumstances of a criminal offence, since cognition in the course of search activities precedes and ensures criminal procedural cognition that takes place within the scope of a pre-trial investigation.

3. Implementation of the mechanism of cognition by the investigator directly

During the investigative (search), covert investigative (search) action, tactical (cognitive) techniques as means of achieving its goal are combined into a corresponding system that forms the stages of the investigator's performance and essentially forms the tactics of the investigative action. In view of this system, from a forensic perspective, an investigative action should be considered as a form of implementation of special methods used by an investigator in his/her practical activities to learn the actual circumstances of a crime and establish the truth in criminal proceedings. In investigative (search) actions, as in the activities of the investigation body regulated by the criminal procedure law, cognitive techniques and operations are put into practice, facilitating collection and transmission of the necessary information to the addressees of proving (Vatral, 2017, p. 51). From this perspective, investigative actions are characterised by: the source (carrier) of information (object of knowledge), the type of information that this method is to obtain; the essence of techniques and their systems (tactical combinations) for collecting, examining, verifying and evaluating evidence; the place, time and sequence of application of these techniques and combinations (i.e. procedure or methodology), etc. (Stratonov, 2010, p. 141).

Therefore, the cognitive essence of investigative (search) actions is direct observation, measurement, description and comparison of the object's features, which result in solving the general task of finding, recording and examining material carriers of evidence. Here, the relationship of the investigator with material objects (things) is one-sided and is carried out in the form of deliberate sensory (organoleptic), direct or indirect cognition (influence) by technical means (Stratonov, 2010, p. 148). That is, it can be argued that the investigator's cognition can be either independent or as a result of obtaining information as a result of the direct use of technical means.

4. Implementation of the mechanism of cognition by the investigator indirectly

The situation is somewhat different when the investigator implements the mechanism of cognition not personally, but indirectly, which may occur when he/she gives instructions to other entities to carry out certain procedural actions. Moreover, this indirectness can be incorporated a priori into the procedure of delegation of powers.

In fact, covert investigative (search) actions are another type of investigator's means of cognition. CISA are practically a prototype of operative-search actions, which previously, without being available to the public, were aimed at meeting the social need for security (which is reflected in the rights and legitimate interests violated (or possibly violated) as a result of a criminal offence). Moreover, the subject matter of regulatory framework for operative-search activities did not fully cover the social need for freedom, as rights and legitimate interests may also be violated in the course of operative-search activities. This imbalance allowed for arbitrariness on the part of operational units' employees during any covert actions (Loskutov, 2016, pp. 129–130), as by carrying out "secret" operative-search actions on rather abstract grounds, in relation to an indefinite number of persons, without periodic judicial control, operational units' employees were able to restrict the rights and legitimate interests of citizens (Loskutov, 2016, p. 130). The institution of CISA has partially resolved this issue, as well as ensured the possibility of using data obtained practically during the course of the OSA in criminal proceedings (Loboiko, 2012, p. 156).

However, the institution of CISA in criminal proceedings alone cannot ensure absolute effectiveness in the fight against crime. The use of CISA as a means of criminal procedural proving requires constant improvement of the effectiveness of their organisation and tactics, as well as procedural guarantees of the legality of their conduct (Serhieieva, 2017, p. 57).

In practice, several blocks of CISA can be distinguished in terms of their possible usage by the investigator in the process of cognition:

– CISA, which the investigator can conduct independently without instructing operational units and independently perceive the information received (direct cognition) (for example, when collecting information from telecommunication networks);

– CISA, which the investigator can conduct by instructing operational units, but according to the mechanism of conducting, can independently perceive the information received (direct cognition) (for example, audio, video control of a person, place);

– CISA that an investigator can conduct by instructing operational units, but cannot independently perceive the information received (indirect cognition), as the information is received by operational units and then, through their subjective perception, provide to the investigator (e.g., surveillance of a person, city, thing; covert inspection of publicly inaccessible places, housing or other property of a person).

The departmental regulations (of the MIA and the SSU) do not consider the possibility of conducting CISA independently by the investigator, while the investigator is considered only as an "initiator", that is, the gaps in the law were filled by the developers of departmental regulations of the MIA and the SSU, who referred to the actors of cognition only as operational officers, depriving the investigator of the opportunity to personally implement the possibilities of cognition, the basis of which is laid down in the CPC of Ukraine.

In addition, there are a number of CISA (e.g., establishing the location of a radio electronic device), procedural actions, various types of measures to ensure criminal proceedings (in particular, temporary access to things and documents), provisional seizure of property, property attachment are those aimed at collecting and preserving evidence (Shylo, 2013, p. 357), which essentially means that they are cognitive means of the investigator), which do not have direct cognitive content. The list of means that may be used in the course of conducting CISA also includes pre-identified (marked) and fake (imitation) means. According to Article 273 of the CPC of Ukraine, such means may be used exclusively for solving the tasks of criminal proceedings by the decision of the head of the pre-trial investigation body, the prosecutor. For this purpose, it is allowed to produce and use specially made things and documents, and to create specially formed enterprises, institutions, and organisations (Vatral, 2017, p. 53). These instruments cannot be recognised as means of cognition of the investigator, because by using them, the investigator does not directly learn anything in the criminal proceedings, but they are used to ensure the conduct of CISA (and the actual effective cognition of the crime event in this way) by operational units.

The ability of the investigator to use information obtained through confidential cooperation (Article 275 of the CPC of Ukraine) is sceptically perceived as a means of cognition in criminal proceedings, since this means was provided to the investigator by law without specifying, who is an actor of confidential cooperation, who directly receives information relevant to criminal proceedings, how it is documented, etc. (Pohoretskyi, Serhieieva, 2014, pp. 188–196), while all work with confidants is the responsibility of operational units. Therefore, their use as a means of cognition in criminal proceedings is also indirect.

The solution of the tasks of criminal procedure is directly dependent on the means of cognitive activities of the investigator. Means of criminal procedural cognition are used exclusively for detection, investigation and prevention of crimes and establishment of the truth in criminal proceedings. Means of operational and search activities are aimed only at detecting and recording signs (traces) of crimes, so their cognition is important for the results of the pre-trial investigation but can

be considered a cognitive activity of the investigator only indirectly.

5. Conclusions

Means of cognition of the investigator in criminal proceedings are investigative (search) actions, certain covert investigative (search) actions, certain measures to ensure criminal proceedings, by which the investigator performs cognitive activities regarding the circumstances of a criminal offence in a particular criminal proceeding, and then this is considered to be "direct cognition". Operative-search actions and search measures cannot be means of direct cognition of the investigator in criminal proceedings, since they are carried out by special actors (operational units) before the criminal proceedings are initiated. Partially (in case of necessity to search for a person, establish the location of property, funds, etc.), when this competence of operational units is exercised on behalf of the investigator (including through CISA), the investigator has the opportunity to use the information obtained in the process of cognition – in this case, it is considered to be "indirect cognition". The results of operative-search activities carried out with the use of legal means of the investigator's cognitive activities may be used as evidence in criminal proceedings, provided that operative-search activities are carried out in accordance with the rules set out in the CPC of Ukraine and the Law of Ukraine "On Operative-Search Activities".

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ІНСТРУМЕНТИ ОПЕРАТИВНО-РОЗШУКОВОЇ ДІЯЛЬНОСТІ ЯК ЗАСОБИ ПІЗНАННЯ В КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

Анотація. ***Мета.*** Мета статті – виокремити безпосередні й опосередковані засоби пізнання слідчого в кримінальному провадженні, а також визначити серед них місце інструментів оперативно-розшукової діяльності. ***Результати.*** У статі зазначено, що вирішення завдань кримінального процесу перебуває в прямій залежності від засобів пізнавальної діяльності слідчого. Засоби кримінально-процесуального пізнання використовуються винятково для розкриття, розслідування й попередження злочинів і встановлення істини в кримінальному судочинстві. Засоби оперативно-розшукової, пошукової діяльності мають на меті тільки виявлення та фіксацію ознак (слідів) злочинів, тому їх пізнання має значення для результатів досудового розслідування, але може вважатися пізнавальною діяльністю слідчого тільки опосередковано. ***Висновки.*** Засобами пізнання слідчого в кримінальному провадженні є слідчі (розшукові) дії, окремі негласні слідчі (розшукові) дії, окремі заходи забезпечення кримінального провадження, шляхом проведення яких слідчий виконує пізнавальну діяльність стосовно обставин вчиненого кримінального правопорушення під час конкретного кримінального провадження, і тоді це позиціонується як «безпосереднє пізнання». Що стосується оперативно-розшукових, пошукових заходів, то вони не можуть виступати засобами безпосереднього пізнання слідчого в кримінальному провадженні, оскільки здійснюються спеціальними суб'єктами (оперативним підрозділами) до початку кримінального провадження. Частково (у разі потреби в проведенні розшуку особи, встановленні місцезнаходження майна, коштів тощо), у випадку, коли ця компетенція оперативних підрозділів реалізується за дорученням слідчого (у тому числі шляхом проведення негласних слідчих (розшукових) дій), слідчий має можливість використати отриману інформацію у процесі пізнання – у такому випадку це позиціонується як «опосередковане пізнання». Результати оперативно-розшукової діяльності, здійсненої з використанням правових засобів пізнавальної діяльності слідчого, можуть бути використані в кримінальному провадженні як докази за умови здійснення оперативно-розшукової діяльності за правилами, визначеними в КПК України та Законі України «Про оперативно-розшукову діяльність».

Ключові слова: кримінальне провадження, оперативно-розшукова діяльність, пізнання, засоби, інструментарій.

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POSITIVE FOREIGN EXPERIENCE OF THE PROSECUTOR'S OFFICE AND WAYS TO ADOPT IT FOR UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyse the foreign experience of the prosecutor's office and determine the areas for its implementation in Ukraine. ***Results.*** It is determined that there are many achievements in the US legal system which could be used as a basis for borrowing the positive foreign experience, such as: 1) development of prosecutorial self-government through the creation of prosecutors' associations of the same level in Ukraine; 2) prosecutors' ability to provide legal advice to other state bodies in Ukraine; 3) possibility to relate the concept of "moral and business qualities" in Ukrainian legislation to such "recommendations" from legal practitioners, which would be a condition for the selection of candidates for the positions of prosecutors; 4) so-called "solicitors" or "legal advisers" provided for among court consultants; 5) prosecutors' ability to formally practice law, except in cases of representation in certain categories of cases, including criminal cases. ***Conclusions***. It is concluded that borrowing positive foreign experience of the prosecutor's office is a quite appropriate way to improve the legislation on the prosecutor's office of Ukraine. It should be borne in mind that when drafting new legislation, the domestic legislator often refers to the legislation of foreign countries to study foreign experience and reproduce it in national legislation. Moreover, it is important to note that the Basic Law established Ukraine's course towards European integration, and as a result, since the proclamation of this course, new legal regulations have been undergoing the process of adaptation to European standards. In other words, borrowing positive foreign experience of the prosecutor's office is not something new for the national legislator, but rather represents a trend that is consistently implemented in the activities of the legislator. Moreover, the study reveals that the prosecutor's office in each of the countries being analysed has its own specificities, which could be adopted by the Ukrainian legislator, including changing approaches to the position of the Prosecutor General, ensuring the election of prosecutors and giving prosecutors additional functions and powers, expanding the functions of the Prosecutor General's Office of Ukraine, including giving it the right to legislative initiative, etc. All these, in our opinion, could solve the problems and shortcomings of the current legal regulation of prosecutorial activities in Ukraine being analysed above in this paper.

Key words: Prosecutor General, position, experience, legal regulation, electoral legislation of Ukraine.

1. Introduction

In the context of improving the work of the prosecutor's office, it is of particular interest to study the experience of organisation and activities of prosecutor's offices and other bodies performing similar functions in the EU member states and other countries, where the organisation of prosecutor's offices is a model for countries that develop like Ukraine. Improvement of certain processes and phenomena in society is impossible without comparing the legal principles of interaction between different legal systems and the results of their development. The experience of foreign countries is always perceived as a certain model for borrowing, since the historical specificities of the formation and development of a particular state contributed to its transition to a qualitatively different level of the regulatory framework. It should be noted that the level of democracy is measured not by the most progressive provisions embodied in legislation, but by the most realistic law enforcement, which guarantees the protection of human and civil rights in case of appeal to the court.

The literature review reveals that frequently domestic researchers see further improvement of prosecutorial activities in Ukraine in bor-

rowing foreign experience of the prosecution service, because, according to the experience of recent decades, a large number of novelties of the legislation on the prosecutor's office have been introduced with due regard to the models of the prosecutor's office functioning in foreign countries. That is why the issue of positive foreign experience of the prosecutor's office and ways to adopt it for Ukraine is relevant for our study.

The scientific and theoretical basis of the foreign experience of prosecutorial activities requires an updated substantive analysis, allowing for the adoption of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) and the update of criminal procedure legislation. Moreover, the creation of an appropriate legal framework for interaction between prosecutors and other public authorities in the context of using foreign experience will have a significant impact on Ukraine's compliance with its international obligations in terms of reforming the prosecution service.

2. US Attorney's Office

Describing the Anglo-Saxon system of prosecution, it should be noted that in the United States, the prosecutorial functions are performed by the Attorney General's Office. The U.S. Attorney General is appointed by the President of the United States "by and with the advice and consent of" the Senate, the upper house of the U.S. Congress, as provided for in Article 2 of the U.S. Constitution (Maklakov, 1997) (the same procedure is embodied in the Ukrainian Law "On the Prosecutor's Office"). According to L.R. Hrytsaienko, the Attorney General's Office performs both its own prosecutorial functions and the functions of the Ministry of Internal Affairs, counterintelligence, criminal investigation and prison department. The US Attorney General is directly subordinated to the Federal Bureau of Investigation. The Attorney General is also responsible for representing the interests of the US government in the US Supreme Court and other courts, including abroad (Hrytsaienko, 2013). The US attorney service is not characterised by strict centralisation and subordination. Local attorneys general are not subordinate to the State Attorney General, and the latter is also not subordinate to the US Attorney General (elected by the local population for a term of 4 years). However, the federal attorneys' service is centralised. The attorneys that are part of the federal service are subordinate to the US Attorney General but have autonomy in making and implementing many decisions (Khmelevskyi, 2013). Therefore, we can state that the federal level of the US attorney service is characterised by clear subordination, while the regional level is characterised by coordination. We believe that this is a feature of the US federal system and, since Ukraine is a unitary state, such proposal would not be appropriate.

At the level of relations between States, the activities of the attorneys' service are coordinated by the National Association of District Attorneys (NADA) in order to achieve the maximum level of cooperation (the development of prosecutorial self-government was not typical for Ukraine for a long time). The National Association of Attorneys General (NAAG) brings together state attorneys general and the US Attorney General. They hold annual conferences, organise committee meetings on various aspects of law enforcement, publish bulletins, a journal, a kind of methodological guidelines "National Prosecution Standards", etc. (Sukhonos, 2011). We believe that the development of prosecutorial self-government should be reflected in the Ukrainian legal system. The relevant provisions are already part of the national legislation, in particular, Section VIII of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) regulates the issue of prosecutorial self-government. The highest body of prosecutorial self-government is the All-Ukrainian Conference of Prosecutors, which is empowered to appoint members of the Council of Prosecutors of Ukraine (the body that conducts disciplinary proceedings against prosecutors); approve the Code of Professional Ethics and Conduct of Prosecutors and the Regulation on the Council of Prosecutors of Ukraine; adopt the Regulations on the Procedure of the Council of Prosecutors of Ukraine; address public authorities and their officials with proposals on solving issues of the prosecution service; consider other issues of prosecutorial self-government. However, similar to the American one, it would be worthwhile to establish a Ukrainian National Association of Prosecutors as an analogue of the National Association of Attorneys General. It should be borne in mind that the regular all-Ukrainian conference of prosecutors is convened by the Council of Prosecutors of Ukraine once every two years, while the National Association of Attorneys General is a permanent self-governing body. The association conferences are convened once a year, but the rest of the time the associations carry out activities aimed at protecting the rights and interests of prosecutors. In its turn, the all-Ukrainian conference of prosecutors is convened quite rarely, or only when necessary. That is why, in our opinion, it would be advisable to cre-

ate a National Association of Prosecutors in Ukraine as a permanent supreme body of prosecutorial self-government, which would have much broader powers than the All-Ukrainian Conference of Prosecutors.

To this end, we propose the following amendments to the current legislation:

A. Amend Article 67 of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) and to formulate its content as follows:

"Article 67. National Association of Prosecutors.

1. The highest body of prosecutorial self-government is the National Association of Prosecutors.

The National Association of Prosecutors is a permanent body of prosecutorial self-government.

2. The National Association of Prosecutors:

1) holds all-Ukrainian conferences of prosecutors;

2) organises meetings of the committees of the National Association of Prosecutors;

3) performs other functions in accordance with the current legislation";

B. Supplement Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 with Article 67-1 and duplicate in its content the provisions of the current Article 67 of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014);

C. Adopt a special provision to regulate the activities of the National Association of Prosecutors.

Therefore, there is a high level of cooperation in the US prosecutor's office and a significant amount of authority is vested in the prosecutor's office. However, it should be noted that the general list of attorneys' functions includes the following: 1) criminal prosecution of persons who have committed criminal offences; 2) legal advice to the government of the country, individual states, and other executive authorities; 3) representation in court of the interests of the federal government and state administrations in various fields; 4) enforcement of laws; 5) participation in legislative and judicial rule-making; 6) coordination of criminal prosecution bodies; 7) participation in the formation of the judiciary (Khmelevskyi, 2013). For comparison, in Ukraine, the powers of prosecutors include maintaining public prosecution in court; representing the interests of a citizen or the state in court; and supervising compliance with the law by bodies conducting operational and investigative activities, inquiries, and pre-trial investigations; supervision over the observance of laws in the execution of court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens (Law of Ukraine On the Prosecutor's Office, 2014). Having analysed such a wide range of powers, we believe that in Ukraine prosecutors should be empowered to provide legal advice to other state bodies. We believe that such a practice would improve the interaction of the prosecutor's office with other state authorities and local self-government bodies.

When acting as a legal adviser to the federal government, the governor or the administration of local executive authorities, the attorney advises them on a wide range of law application issues and on the legal aspects of political decisions. Formalised as an official document, the opinion of the attorney general, although recommendatory in nature (and in this sense has much in common with the submission of a prosecutor in Ukraine), is usually implemented by the relevant administrative services. Performing the function of representing the interests of the relevant executive authorities, the President and the Government, the attorneys prepare, file and maintain lawsuits in court on a wide range of civil legal relations (Hrytsaienko, Sereda, Yakymchuk, 2010). In order to implement this practice in Ukrainian legislation, we believe that the following amendments to the current legislation of Ukraine would be appropriate:

1) Supplement Section IV of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 [298] with another article as follows:

"Article 27: Provision of Legal Advice to Other State Bodies.

1. The prosecutor shall provide legal advice to other state bodies on law application or other legal matters.

2. The legal advice of the prosecutor shall be provided in response to a written request executed and submitted in accordance with the procedure established by law.

3. The response to a written request is provided in the form of an official document and is advisory in nature";

2) Bring the content of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) in line with these amendments;

3) Adopt standard forms for a written request to the prosecutor on law application issues and for the prosecutor's response to a written request."

U.S. prosecutors investigate crimes under federal law (treason, espionage, terrorism, crimes related to crossing U.S. and state borders, federal property, bank robbery – Congress has recognised this crime as a federal offence). District prosecutors are responsible for cases under state law, i.e. the bulk of crimes (approximately 90% of cases) (Hrytsaienko, Sereda, Yakymchuk, 2010). Interestingly, attorneys are allowed to engage in private practice of law to the extent that it does not contradict their powers and except for representation in criminal cases. Moreover, unusual for the Ukrainian legal understanding are the requirements for a candidate for the position of prosecutor. The review of the US Constitution (Maklakov, 1997) reveals that it is mandatory to be a member of an association of lawyers (notaries, attorneys, prosecutors, judges), which immediately guarantees language skills and legal education. In the United States, a residency requirement and a good reputation in the community are set for applicants to the bar, which is confirmed by letters of recommendation. It seems that the concept of "moral and business qualities", which appears in Ukrainian law, could also be related to such "recommendations" from legal practitioners. In addition, the salary of prosecutors in Ukraine does not allow them to actually engage in this type of activity only, and it would be logical to allow them to practice representation in courts in some cases as lawyers, provided there is no conflict of interest with their main occupation.

In addition, it should be noted that the Attorney General's function of representing the executive branch in courts is delegated to the Solicitor General of the United States – the third official (after two deputies). The Solicitor General is appointed by the President on the recommendation of the Attorney General and approved by the Senate (William Burnham, Introduction to the Law and Legal System of the United States, 4th ed., 2006). The Solicitor General is also entitled to intervene in proceedings before any federal court of appeal, including the Supreme Court, on his own initiative and at the direction of the Supreme Court itself (literally, as a "friend of the court" – a specialist, legal adviser). Without being a party, a solicitor as a "friend of the court" receives permission from the court to enter into the proceedings and present his or her opinions. Due to the growing volume and complexity of the state's functions, the number of cases in which the Solicitor General's Office acts as a party or a legal expert in court is constantly growing (William Burnham, Introduction to the Law and Legal System of the United States, 4th ed., 2006). Obviously, as a specialist, a solicitor provides great assistance to the court by providing information that is crucial to the case.

The human rights function implies the attorneys' office prosecution of perpetrators of crimes. In addition, the attorneys are empowered to open criminal proceedings, investigate crimes, conduct inspections, prosecute, and support the prosecution in court.

Therefore, we can state that the US attorney service functions as a comprehensive public authority that performs representative, controlling, investigative, supervisory, advisory, and procedural functions. Attorneys are respected persons in the US civil society, and consequently they are subject to particularly important requirements.

Therefore, the above analysis enables to state that there are many achievements in the US legal system which could be used as a basis for borrowing the positive foreign experience such as:

1) Development of prosecutorial self-government through the creation of prosecutors' associations of the same level in Ukraine;

2) Prosecutors' ability to provide legal advice to other state bodies in Ukraine;

3) Possibility to relate the concept of "moral and business qualities" in Ukrainian legislation to such "recommendations" from legal practitioners, which would be a condition for the selection of candidates for the positions of prosecutors;

4) So-called "solicitors" or "legal advisers" provided for among court consultants;

5) Prosecutor' ability to formally practice law, except in cases of representation in certain categories of cases, including criminal cases.

With regard to prosecutorial activities in the UK, it should be noted that traditionally, prosecution in England has been carried out by the Crown Prosecution Service since 1985, the main function thereof has been to support prosecution at all levels, as well as in some cases to initiate criminal proceedings and participate in their investigation (Crown Prosecution Service: Effective use of Magistrates' Court Hearings, 2006). In other words, the analogue of the UK prosecutor's office performs exclusively the function of supporting public prosecution. In this context, as we have established above, Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) provides prosecutors of Ukraine with a much wider range of powers.

In England and Wales, other law enforcement (governmental) agencies also have the power to prosecute. Furthermore, they carry out police and prosecution functions simultaneously, which is considered one of the paradoxes

of the modern English justice system, which requires the separation of these functions (Staple, 2019). However, due to the dominance of the Crown Prosecution Service, this does not matter in principle.

Similar to the Attorney General, who is the highest official for all English (and British) attorneys, English criminal prosecutors (employees of the Crown Prosecution Service) are part of the advocate (juridical) social class, which effectively unites all lawyers. Therefore, it is quite acceptable and widespread in England and Wales to have private barristers instructed by the Crown Prosecution Service but not employed by it to support the public prosecution in the higher courts (Wyngaert, 1993). Since the system of "barrister-solicitor" is not peculiar to Ukraine as such, it would be worth initiating the option of consultation days for lawyers with prosecutors. Such interaction would improve both the conditions for ensuring human and civil rights in court and the conditions for supporting public prosecution. Moreover, it should be considered that such consultations should not be one-sided but should be reciprocal. In our opinion, in order to implement such a practice in Ukrainian legislation, it would be advisable to introduce the following amendments to the current legislation of Ukraine:

1) In view of the previously proposed amendments to the legislation, to supplement Section IV of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 with an article as follows:

"Article 28. Provision of Legal Advice to Advocates.

1. The prosecutor shall provide legal advice to advocates on law application on the days determined by his/her working schedule.

2. The legal advice of the prosecutor shall be provided in response to a written request drawn up and submitted by the advocate in accordance with the procedure established by law.

3. The response to the written request shall be provided by the prosecutor personally within the time limits specified in his/her work schedule. In addition, the advocate's consulting may be reciprocal;

2) Bring the content of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) in line with these amendments;

3) Adopt standard forms for a written request from a lawyer to a prosecutor for legal advice."

Another significant component of the UK prosecution service is the Attorney General of the United Kingdom, which has a special legal status. On the one hand, he/she has a status equal to that of a member of parliament (without the right to join the Cabinet of Ministers), i.e. he/she is a political figure. On the other hand, he/she is a lawyer (barrister) who heads the community of advocates (barristers and solicitors). That is why his/her "prosecutorial" powers include representation of exclusively government interests in criminal and civil courts (i.e. he cannot be a lawyer in private practice, unlike US attorneys) (Crown Prosecution Service: Effective use of magistrates court hearings, 2006). Relying on an analysis of the provisions of the Queen's Acts, in criminal cases, the Attorney General represents the interests of the state in the form of supporting the prosecution in court on behalf of Her Majesty's Government in cases of particular importance to society (for example, in cases of especially dangerous state offences). In civil cases, it takes the form of appearing in court as a plaintiff (due to the special significance of the case for society) or a defendant (in the case of claims against the government). In addition, the Attorney General has the right to refuse (apply for) criminal prosecution or to file a lawsuit in court (Wyngaert, 1993). Therefore, we believe that this legal state of affairs in development of prosecutorial relations served as a basis for distinguishing the peculiarity, "duality" of the prosecution system in the UK. It should be considered that there are no district attorneys in the UK. There are only the Attorneys General for England, Wales and Northern Ireland.

Therefore, we can state that the experience of establishing and defining prosecutorial activities in the UK suggests the following ways of borrowing foreign experience for Ukraine:

1) Requirements for the position of the Prosecutor General should be enforced in terms of participation of the respective candidate in the prosecutorial self-government bodies;

2) It would be worthwhile to initiate the possibility of mutual consultation days for lawyers with prosecutors.

3. Prosecutor's offices in post-Soviet states

The study of foreign experience of the regulatory framework for the prosecutor's office in post-Soviet states enables to identify certain specific features of such framework. For example, these countries are in fact close to Ukraine in terms of their traditions, social composition of society, understanding of the problems of the transition period we are currently experiencing, which makes it possible to compare individual state institutions (prosecution systems), analyse the shortcomings and advantages of their development, and introduce

the best in the process of building our statehood (Hrytsaienko, 2013). It should be noted that the Constitution of Ukraine (1996) defines the prosecutor's office as an independent branch of government. The same position is reflected in the constitutions of Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The Constitution of Georgia in its Article 91 explicitly refers to the prosecutor's office as an "institution of the judiciary" (Okunkov, Oksamyitnyiy, Buloshnikov, 2001).

L.R. Hrytsaienko argues that only the functions of commencing criminal prosecution and supporting public prosecution in court are universal for the prosecutor's offices of Azerbaijan, Turkmenistan, Kazakhstan, Georgia, Moldova, Armenia, Tajikistan, Kyrgyzstan and Uzbekistan (Hrytsaienko, 2013). We consider the experience of Georgia, Kyrgyzstan, Moldova, and Turkmenistan in vesting the prosecutor with the function of investigating criminal offences independently and with the participation of pre-trial investigation bodies to be positive. It is also interesting that the legislation of Azerbaijan, Armenia and Georgia allocates the function of procedural guidance to the preliminary investigation.

Interestingly, prosecutorial supervision over the legality of court decisions (in the broad sense) usually involves the possibility of appealing against them to a higher court. This function is a direct extension of the procedural powers of the prosecutor in all types of legal proceedings and is therefore enshrined in the constitutions and laws of many states, including Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan. However, it is not mentioned in the Law of Ukraine "On the Prosecutor's Office" (2014).

We believe that the experience of post-Soviet states in enshrining the prosecutor's protest, which is not currently envisaged in Ukraine, is positive. It would also be advisable in Ukraine, as provided for in the constitutions of most CIS states, to provide the Prosecutor General's Office with the right of legislative initiative. To do this, it is necessary to amend the current legislation of Ukraine:

1) Article 93 of the Constitution of Ukraine should be amended to read as follows:

"Article 93. The right of legislative initiative in the Verkhovna Rada of Ukraine shall be vested in the President of Ukraine, people's deputies of Ukraine, the Cabinet of Ministers of Ukraine and the Prosecutor General.

Draft laws identified by the President of Ukraine as urgent are considered by the Verkhovna Rada of Ukraine out of turn."

2) Part 1 of Article 9 of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) should be amended as follows:

"1. The Prosecutor General:

[...] 93) submits draft laws to the Verkhovna Rada of Ukraine in accordance with the requirements of the Rules of Procedure of the Verkhovna Rada of Ukraine [...]."

3) Part 1 of Article 89 of Law of Ukraine No. 1861-VI On the Rules of Procedure of the Verkhovna Rada of Ukraine of 10 February 2010 (Law of Ukraine On the Rules of Procedure of the Verkhovna Rada of Ukraine, 2010) should be amended as follows:

"1. The right of legislative initiative in the Verkhovna Rada of Ukraine shall be vested in the President of Ukraine, the People's Deputies of Ukraine, the Cabinet of Ministers of Ukraine and the Prosecutor General [...].

The review of foreign legislative acts of post-Soviet states in terms of defining the functions of the prosecutor's office reveals that it performs the following functions: support of public prosecution, supervisory powers in places of detention and over operational and investigative activities, support of prosecution in court, general supervision over the observance of laws. With regard to the latter, it should be noted that post-Soviet countries are gradually removing this power of the prosecutor from national legislation. At present, the supervisory function of the prosecutor's office in relation to the preliminary investigation has indeed become true to its name, and the prosecutor has lost not supervisory but controlling powers.

Therefore, due to the fact that Ukraine has acquired the status of a European state, it can be argued that, compared to others, our country has made several steps forward, including the democratisation of the criminal process and optimisation of the functions of the prosecutor's office. Considering the above, we can identify the following ways for Ukraine to borrow positive foreign experience of post-Soviet states:

1) Vest the prosecutor with the function of investigating criminal offences independently and with the participation of pre-trial investigation bodies;

2) Expand supervisory powers in terms of control over the legality of court decisions;

3) Grant the Prosecutor General's Office the right of legislative initiative.

It should be noted that above we pointed out that the election of the Prosecutor General in Ukraine could solve many of the existing problems. In particular, the Prosecutor General will be free from political influence from the President of Ukraine, and his or her tenure will not depend on the decisions of the Verk-

hovna Rada of Ukraine. In order to implement this experience in Ukraine, it is necessary, first of all, to adopt the Law of Ukraine "On Election of the Prosecutor General". The electoral legislation of Ukraine can be used as a basis for such a legal regulation.

Interestingly, the Chinese prosecutor's office has been quite active in the fight against corruption. For example, in 2013, China conducted an active campaign to combat corruption and bureaucracy, led by the new leadership of the country and the Communist Party. In the first 11 months of 2014, Chinese prosecutors investigated nearly 37,000 officials suspected of corruption. Chinese prosecutors suggest that these officials were involved in 2,7236 cases of bribery, of which more than 80% were deemed serious. In 12,824 cases of bribery, the amounts involved were more than 5,510 million yuan ($910,600,000) (Website of the Multimedia Platform of Ukraine "Ukrinform", 2020).

Therefore, we can state that the People's Republic of China, despite the dominance of the communist system, has a positive experience of the prosecutor's office, which Ukraine lacks. In particular, in terms of fighting and combating corruption, the Chinese prosecutor's office has achieved considerable success. Ukraine is now striving for this format.

Therefore, the following ways of borrowing the positive experience of the People's Republic of China in the regulatory framework for the prosecution service can be identified:

1) Election of prosecutors;

2) Legal incentives for active anti-corruption activities;

3) The ability to control the legality of court decisions.

4. Conclusions

Therefore, in the course of the study, we found that borrowing positive foreign experience of the prosecutor's office is a quite appropriate way to improve the legislation on the prosecutor's office of Ukraine. It should be borne in mind that when drafting new legislation, the domestic legislator often refers to the legislation of foreign countries to study foreign experience and reproduce it in national legislation. Moreover, it is important to note that the Basic Law established Ukraine's course towards European integration, and as a result, since the proclamation of this course, new legal regulations have been undergoing the process of adaptation to European standards. In other words, borrowing positive foreign experience of the prosecutor's office is not something new for the national legislator, but rather represents a trend that is consistently implemented in the activities of the legislator. In other words, borrowing positive foreign experience of the prosecutor's office is not something new for the national legislator, but rather represents a trend that is consistently implemented in the activities of the legislator.

Moreover, the study reveals that the prosecutor's office in each of the countries being analysed has its own specificities, which could be adopted by the Ukrainian legislator, including changing approaches to the position of the Prosecutor General, ensuring the election of prosecutors and giving prosecutors additional functions and powers, expanding the functions of the Prosecutor General's Office of Ukraine, including giving it the right to legislative initiative, etc. All these, in our opinion, could solve the problems and shortcomings of the current legal regulation of prosecutorial activities in Ukraine being analysed above in this paper.

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ПОЗИТИВНИЙ ЗАРУБІЖНИЙ ДОСВІД ДІЯЛЬНОСТІ ПРОКУРАТУРИ ТА ШЛЯХИ ЙОГО ЗАПОЗИЧЕННЯ ДЛЯ УКРАЇНИ

Анотація. ***Мета.*** Мета статті полягає в аналізі зарубіжного досвіду діяльності прокуратури та визначенні напрямів його запровадження в Україні. ***Результати.*** Визначено, що у правовій системі США існує дуже багато здобутків для запозичення такого позитивного зарубіжного досвіду: 1) розвиток прокурорського самоврядування через створення в Україні асоціацій прокурорів одного рівня; 2) в Україні потрібно було б наділити прокурорів повноваженням надавати юридичні консультації іншим державним органам; 3) поняття «морально-ділові якості», яке фігурує а українському законодавстві, також могло б прив'язуватися до таких «рекомендацій» від кола юристів-практиків, які були б умовою добору кандидатів на посади прокурорів; 4) передбачити серед консультантів судів так званих соліситорів, або радників з правових питань; 5) слід передбачити можливість прокурорських працівників формально займатися й адвокатською практикою, крім випадків представництва в окремих категоріях справ, зокрема кримінальних. ***Висновки.*** Зроблено висновок, що запозичення позитивного зарубіжного досвіду діяльності прокуратури є цілком доцільним шляхом для вдосконалення законодавства про прокуратуру України. Варто враховувати те, що вітчизняний законодавець під час розробки нового законодавства досить часто звертається до законодавства іноземних держав для дослідження зарубіжного досвіду і його відтворення в актах національного законодавства. Також важливо зазначити те, що Основним Законом було встановлено курс України до євроінтеграції, і, як наслідок, з моменту проголошення цього курсу нові акти законодавства проходять процеси адаптації до європейських стандартів. Тобто запозичення позитивного зарубіжного досвіду діяльності прокуратури не є чимось новим для вітчизняного законодавця, а радше являє собою тенденцію, яка стабільно знаходить свою реалізацію в діяльності законодавця. Також дослідження засвідчило, що діяльність прокуратури в кожній проаналізованій нами країні має свої особливості, які було б доцільно запозичити вітчизняному законодавцю, а саме змінити підходи до посади Генерального прокурора, забезпечити виборність посад прокурорів і наділити прокурорів додатковими функціями та повноваженнями, розширити функції Генеральної прокуратури України, зокрема наділити її правом законодавчої ініціативи тощо. Усе наведене, на нашу думку, могло би вирішити проаналізовані нами раніше в цій роботі проблеми та недоліки чинного правового регулювання прокурорської діяльності в Україні.

Ключові слова: Генеральний прокурор, посада, досвід, нормативно-правовий акт, виборче законодавство України.

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