5 2023 (327)

ENTREPRENEURSHIP, ECONOMY and LAW

A monthly scientific-practical law journal has been issued since January 1, 1996

ACADEMICIAN F.H. BURCHAK SCIENTIFIC RESEARCH INSTITUTE OF PRIVATE LAW AND ENTREPRENEURSHIP OF NALS OF UKRAINE

HELVETICA PUBLISHING HOUSE

COMMERCIAL LAW AND PROCESS

Serhii Myroslavskyi
Understanding and signs of a standard agreement in the field of economic activity.....5

Svitlychnyi Oleh
Criteria for classifying activities as licensed.....11

Oleksandr Tuban
Development of relations in the field of cryptocurrency circulation and the formation of relevant legislation in Ukraine.....18

LABOR LAW

Oleksandr Husarov
Research status of regulatory issues of atypical forms of employment in Ukraine.....25

LAND LAW

Volodymyr Paliichuk
The practice of the European Court of Human Rights regarding the criteria for the lawfulness of interference with land ownership.....30

ADMINISTRATIVE LAW AND PROCESS

Oleksandr Demenko
Problems of formulating basic concepts in tax administration by the State Tax Service of Ukraine.....36

Olha Kovalchuk
Digitalization of law enforcement agencies in the digital transformation of the judiciary.....42

Dmytro Kuzmenko
National legislation and practice of international civil-military administrations in Croatia.....53

Oleksii Kucher
The issue of harmonisation and differentiation of labour and administrative law in the regulatory framework for liability for violation of labour legislation.....58

Ruslan Oliinyk
Modern national system of administrative and legal framework for the detention of prisoners of war in Ukraine.....63

Serhii Petrov
Principles of administrative legal personality of the Main Service Centre of the Ministry of Internal Affairs.....71

Monument to
the Magdeburg Rights
in Kyiv is on the cover

Iryna Skakun
Particularities of forming principles of combating domestic violence in National Police activities..... **78**

Vladyslav Teremetskyi, Olha Kovalchuk
Smart technologies in justice: perspectives for Ukraine..... **86**

Oleksandr Shaparenko
Type of and grounds for legal liability of a judicial assistant..... **96**

INTERNATIONAL LAW

Andrii Kolesnikov
Cybersecurity as a necessary condition for the functioning of the justice administration system..... **101**

CRIMINAL LAW

Valerii Sysoliatin
Problematic aspects of the initial stage of investigation of criminal offences related to using Internet banking..... **108**

Yaroslav Fedorchuk
All-social measures to prevent criminal offences committed in the defence industry of Ukraine..... **114**

Co-founders:
Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine
Garantia Ltd., Gestors Attorneys' Association

ISSN 2663-5313 (print)
ISSN 2663-5321 (online)

Based on the Order of the Ministry of Science and Education of Ukraine № 409 (annex 1) dated 17.03.2020, the journal is included in the list of professional publications of the "B" category (081 "Law", 293 "International Law")

The journal is indexed in the international scientometric databases Index Copernicus International (the Republic of Poland)

The articles are checked for plagiarism using the software StrikePlagiarism.com developed by the Polish company Plagiat.pl.

Certificate of the state registration of the print media: KV 15779-4251 ПР dated 02.11.2009

The journal is recommended for printing and distributing over the Internet by the Academic Council of Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine (Minutes No. 15 dated 29.11.2023)

Official web-site: pgp-journal.kiev.ua

Passed for printing 30.11.2023. Format 70×108 1/16. Offset paper.
Offset printing. Conventional printed sheet 9,75. Published sheets 14,16.
Print run – 255 copies. Order No. 1024/693
Publisher: Publishing House "Helvetica"
6/1 Inglezi St., Odesa, 65101
Certificate of publishing business entity ДК № 7623 dated 22.06.2022

Certificate of the state registration of the print media
Series KB No. 15779-4251 ПР dated 02.11.2009
Postal address of the editorial office: 7-B Nazarivska St., office 4, Kyiv, 01032
Tel./fax (044) 513-33-16.

5 2023 (327)

ПІДПРИЄМНИЦТВО, ГОСПОДАРСТВО І ПРАВО

Щомісячний науково-практичний юридичний журнал видається з 1 січня 1996 р.

НАУКОВО-ДОСЛІДНИЙ ІНСТИТУТ ПРИВАТНОГО ПРАВА І ПІДПРИЄМНИЦТВА
ІМ. АКАДЕМІКА Ф. Г. БУРЧАКА НАПрН УКРАЇНИ

ГЕЛЬВЕТИКА
ВИДАВНИЧИЙ ДІМ

ГОСПОДАРСЬКЕ ПРАВО І ПРОЦЕС

Сергій Мирославський
Розуміння та ознаки стандартного договору у сфері господарювання……5

Олег Світличний
Критерії віднесення видів діяльності до ліцензованих……11

Олександр Тубань
Розвиток відносин у сфері обігу криптовалют та формування відповідного законодавства в Україні……18

ТРУДОВЕ ПРАВО

Олександр Гусаров
Стан дослідження проблеми правового регулювання нетипових форм зайнятості населення в Україні……25

ЗЕМЕЛЬНЕ ПРАВО

Володимир Палійчук
Практика Європейського суду з прав людини щодо критеріїв правомірності втручання в право власності на землю……30

АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС

Олександр Деменко
Проблеми формулювання основних понять у сфері адміністрування податків Державною податковою службою України……36

Ольга Ковальчук
Діджиталізація правоохоронних органів у цифровій трансформації судочинства……42

Дмитро Кузьменко
Національне законодавство та практика використання міжнародних військово-цивільних адміністрацій на території Хорватії……53

Олексій Кучер
Проблема узгодження та розмежування норм трудового й адміністративного права в правовому регулюванні притягнення до відповідальності за порушення законодавства про працю……58

Руслан Олійник
Сучасна національна система адміністративно-правового забезпечення тримання військовополонених в Україні……63

На першій *сторінці обкладинки* – пам'ятник Магдебурзькому праву в м. Києві

Сергій Петров
Засади адміністративної правосуб'єктності Головного сервісного центру МВС **71**

Ірина Скакун
Особливості формування принципів протидії домашньому насильству в діяльності Національної поліції **78**

Владислав Теремецький, Ольга Ковальчук
Смарт-технології в судочинстві: перспективи для України **86**

Олександр Шапаренко
Види та підстави юридичної відповідальності помічника судді **96**

ІНФОРМАЦІЙНЕ ПРАВО

Андрій Колесніков
Кібербезпека як необхідна умова функціонування системи здійснення правосуддя **101**

КРИМІНАЛЬНЕ ПРАВО

Валерій Сисолятін
Проблемні аспекти початкового етапу розслідування кримінальних правопорушень, пов'язаних із використанням інтернет-банкінгу **108**

Ярослав Федорчук
Загальносоціальні заходи запобігання кримінальним правопорушенням, що вчиняються в оборонно-промисловому комплексі України **114**

Співзасновники:
Науково-дослідний інститут приватного права і підприємництва ім. академіка Ф. Г. Бурчака Національної академії правових наук України, ТОВ «Гарантія», Адвокатське об'єднання «Gestors»
ISSN 2663-5313 (print)
ISSN 2663-5321 (online)
На підставі Наказу Міністерства освіти та науки України № 409 від 17.03.2020 р. (Додаток 1) журнал внесений до переліку фахових видань категорії "Б" у галузі юридичних наук (081 "Право", 293 "Міжнародне право")
Журнал включено до міжнародної наукометричної бази Index Copernicus International (Республіка Польща)

Статті у виданні перевірені на наявність плагіату за допомогою програмного забезпечення StrikePlagiarism.com від польської компанії Plagiat.pl

Свідоцтво про державну реєстрацію друкованого засобу масової інформації серія КВ № 15779-4251ПР від 02.11.2009 р.
Журнал рекомендовано до друку та поширення через мережу Internet вченою радою Науково-дослідного інституту приватного права і підприємництва ім. академіка Ф. Г. Бурчака НАПрН України (Протокол № 15 від 29.11.2023 року)
Офіційний сайт: pgp-journal.kiev.ua

Підписано до друку 30.11.2023. Формат 70x108 1/16. Папір офсетний.
Друк офсетний. Ум. друк. арк. 9,75. Обл.-вид. арк. 14,16.
Тираж – 255. Замовлення № 1024/693
Видавець: Видавничий дім «Гельветика»,
65101, м. Одеса, вул. Інглезі, 6/1
Свідоцтво суб'єкта видавничої справи ДК № 7623 від 22.06.2022 р.

Свідоцтво про державну реєстрацію друкованого засобу масової інформації серія КВ № 15779-4251 ПР від 02.11.2009 р.
Поштова адреса редакції: 01032, м. Київ, вул. Назарівська, 7-Б, оф. 4.
Тел./факс (044) 513-33-16.

UDC 346.3
DOI https://doi.org/10.32849/2663-5313/2023.5.01

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Myroslavskyi, Serhii (2023). Understanding and signs of a standard agreement in the field of economic activity. *Entrepreneurship, Economy and Law, 5*, 5–10, doi https://doi.org/10.32849/2663-5313/2023.5.01

UNDERSTANDING AND SIGNS OF A STANDARD AGREEMENT IN THE FIELD OF ECONOMIC ACTIVITY

Abstract. ***Purpose.*** The purpose of the article is to analyze the concept and components of a standard agreement in the field of economic activity with a proposal to clarify the understanding of a standard agreement, to determine the directions of development of the theoretical provisions of a standard agreement and their practical application. ***Research methods.*** The purpose of the article can be achieved through the use of methods that are usually applied when conducting scientific research in legal sciences. In particular, the following methods and their groups were applied: general scientific dialectical method, comparative-legal, systemic-structural, analytical-synthetic, epistemological, formal-legal method, and others. ***Results.*** The article compares the standard agreement in the field of economic activity with the agreement following the criteria for determining their content, named in the fourth part of Article 179 of the Economic Code of Ukraine – agreements based on the free will of the parties, exemplary agreements, typical agreements, accession agreements. The concept of "standard" in the sense of the Law of Ukraine "On Standardization" made it possible to identify and characterize certain features of the standard agreement, and the analysis of the standard agreement provisions on opening and maintaining a bitcoin wallet and the currently defunct Standard Agreement for the insurance of areas of winter cereals with state support against agricultural risks for the overwintering period (insurance product 2) made it possible to justify the conclusions and proposals. ***Conclusions.*** It is proposed to develop standard agreement for most cases of the beginning of economic relations between two or more participants with the definition of all possible essential conditions. It is recognized that standard agreements, according to the criterion for determining the content of the agreement, can most often be standard and accession agreements, and can be symbiotic derivatives of the named agreement. The proposed theoretical provisions of the standard agreement will have a doctrinal status for a certain time, and after approval of some of them by acts of the CMU or other central executive bodies, they will receive a legitimate status. The form of a standard agreement based on the criterion of performance periods can be applied to general (framework) and, less often, current agreement. It is proposed to spread standard agreement by industries and spheres of the economy with the predominant conclusion of such agreements using the Internet and other digital technologies.

Key words: agreement, standard agreement, typical agreement, accession agreement, standardization, Cabinet of Ministers of Ukraine, general (framework) agreement, essential terms of the agreement, branches of economy, central body of executive power, legislation, legitimation.

1. Introduction

The rights and obligations of participants in economic relations arise from the law, an act of the economic management body, and an economic agreement. The content of the agreement (its essential conditions) can be determined based on: – the free will of the parties; – an exemplary agreement; – a typical agreement; – an accession agreement, as indicated in the fourth part of Article 179 of the Economic Code of Ukraine (Economic code of Ukraine, 2003). In other words, in most cases, agreement relations in the field of economic activity are established between counterparties on the basis of an agreement concluded as a result of face-to-face or absentee negotiations, classic exchange of draft agreements and their coordination, etc. In certain cases, the state, represented by certain bodies, determines mandatory or recommended essential conditions for certain types of economic agreements. This can be done with a recommendation to simplify and unify agreement relations between the participants, or with the purpose of promoting the conditions

needed by the state through economic agreements. Amidst the development of the economy digitalization, a significant number of economic and other agreements, in particular agreements in the field of economic and commercial activity, are concluded via the Internet or through the mediation of vending machines. More complex agreements still require a certain attention of the parties' representatives and the agreement of at least some conditions by the participants' representatives. Despite all the possibilities of choosing the method of agreement conclusion, judicial and extrajudicial disputes between counterparties in economic agreements in Ukraine, just like in most other countries of the world, do not decrease. It is obvious that there is a need to develop certain standard conditions for certain agreements with normative or simply bilateral confirmation of them in order to simplify the procedure for concluding them, save time for this and, most importantly, prevent non-fulfillment, improper fulfillment of agreement obligations by the parties, and in the event of this is saving time in settling the dispute between them.

It cannot be said that the problems of concluding, changing, terminating economic, administrative, civil law agreements, settling disputes between their participants, as well as the typology of economic agreements are poorly researched. Many Ukrainian scientists and practitioners conducted the relevant research. We can name such scientists as: Belianevych (Belianevych, 2004), Cherkashyn and Milash (Cherkashyn and Milash, 2016), Derevianko (Derevianko, 2010), Kossak (Kossak, 2002), Kytsyk (Kytsyk, 2014), Lekhkar (Lekhkar, 2007), Milash (Milash, 2011), Rieznikova (Rieznikova, 2013), Yavorska (Yavorska, 2009), Zavalna (Zavalna, 2009), and others. However, not all types of agreements in terms of the conclusion method, the method of reaching an agreement between the counterparties, and the agreement of essential conditions are widely represented in the scientific and informational space of Ukraine. To a large extent, what has been said is typical of standard agreements in the field of economic activity. And therefore, the above points to the relevance of the study of the problems outlined in the article title.

Purpose. The above allows us to determine the article purpose as an analysis of the concept and components of a standard agreement in the field of economic activity with a proposal to clarify the understanding of a standard agreement, to determine the directions of development of the theoretical provisions of a standard agreement and their practical application.

Research methods. The purpose of the article can be achieved through the use of methods that are usually used when conducting scientific research in legal sciences. In particular, the following methods and their groups were applied: general scientific dialectical method, comparative-legal, systemic-structural, analytical-synthetic, epistemological, formal-legal method and others.

2. Theoretical aspects of standard agreements

As it is shown in the article's introduction, there is no reference to a standard agreement in the fourth part of Article 179 of the Civil Code of Ukraine. Obviously, its definition, purpose and features can be deduced through comparison with other types of agreements, systematized according to various criteria, as well as from one's own concept of a standard, from the functional application of such an agreement, etc.

The peculiarity of the present study is that the agreements named in Article 179 of the Civil Code of Ukraine are legal, i.e., those that are regulated by law, and the standard agreement, after deriving its concept, will initially have a doctrinal character. That is, at the first stages, it will mainly have a theoretical application, and will acquire a practical one over time. It should be noted that in the period from October 30, 2012 to November 20, 2021, the Standard agreement for the insurance of areas of winter grain agricultural crops with state support against agricultural risks for the overwintering period, approved by the Order of the National Commission that carries out state regulation in the sphere of financial services markets and the Order of the Ministry of Agrarian Policy and Food of Ukraine (Standard insurance agreement for the area of winter grain agricultural crops with state support against agricultural risks for the overwintering period (insurance product 2), 2012). However, it lasted for a relatively short time, and secondly, this agreement can be considered both typical and not just standard.

Back in Soviet times, a standard was understood as a sample, model, accepted as a source for comparison with other similar objects. And the standard as a regulatory and technical document established a set of norms, rules, requirements for the object of standardization and was approved by a competent body (Popovych, 2018, p. 54). Nowadays, paragraph 20 of the first part of Article 1 "Definition of terms" of the Law of Ukraine "On Standardization" contains a definition of the term of a standard as: "a normative document based on consensus, adopted by a recognized body, which establishes for general and repeated use rules, guidelines or characteristics regarding activity or its results, and aimed at achieving the optimal degree of orderliness in a certain

area" (On Standardization, 2014). Based on this definition, the standard generally provides for the establishment of certain rules for general and repeated use and is aimed at achieving the optimal degree of orderliness in a certain area. Usually, the requirements of the standard apply to goods, works, and services; less often – to processes (in particular, various production, technological, etc.). However, like processes, agreements can also be standard, that is, agreed, balanced, generalized, of the same type, to a certain extent ideal in their kind.

Depending on the adoption subject of the standard and the scope of the mentioned norm, the European standard is separately highlighted – in paragraph 1; international standard – in paragraph 10; national standard – in paragraph 13; regional standard – in paragraph 19 (On Standardization, 2014).

The category "standard" may well be applied to an economic or any other sectoral or inter-sectoral agreement. The characteristic of general and repeated use is inherent in exemplary, typical agreements and accession agreements. A standard agreement by analogy with a standard must be accepted by a recognized body. This means that it has a significant similarity with the normatively defined typical agreement, which is approved by the Cabinet of Ministers of Ukraine (hereinafter referred to as the CBU) or another state body or body of state power and has an established content, from which the parties cannot deviate, but can specify it. If the standard agreement allows the same, then it will lose its identity and turn into a regulated typical agreement. Therefore, it is possible to express a preliminary opinion that a standard agreement should not allow its participants to specify its content. However, in this case, this agreement will be similar to the accession agreement, which is offered by one of the parties to an indefinite circle of potential counterparties without the possibility of changing its content. Only the accession agreement is not approved by the state body, but by the party that proposes it. That is, here we can talk about a certain "individual" standard, which, unlike the above-mentioned European, international, national and regional standards, is not legitimized by legislation, and it is obvious that it cannot and should not be legitimized. However, the standard agreement, as we see it and offer it for use, can be approved not by the CMU or another state body, but by the economic entity itself, which is the initiator of agreement relations. In this case, it bears even greater resemblance to an accession agreement. Therefore, either defining a standard agreement using the term "standard" is not entirely correct, or a standard agreement is similar or, in certain cases, can simultaneously be considered another agreement according to the criterion of determining the content of the agreement upon conclusion. On the other hand, one does not contradict the other.

The term "standard agreement" should be a broad integration category. Therefore, this category may be defined on the basis of the term "standard", and in certain cases may go beyond this term. Here the priority should be "standard" in the semantic sense as a sample, example, etalon, etc. That is, the standard agreement should act as a standard or sample of a certain economic agreement, which can be filled out and signed and which does not need to be changed or supplemented in any way. On the other hand, a standard agreement may overlap with other economic agreements, as well as civil law or administrative agreements, the specifics of which are defined in legislation, theoretical sources, formed by practice based on various criteria.

3. Applied aspects of standard agreements

As it is shown above, the content of a standard agreement can be approved by the CMU or another central executive body. In this, it will be similar to a typical agreement. Approval of standard agreement content by its potential participant makes it similar to most other agreements. The impossibility of other participants to make changes or additions, to provide a proposal to specify its conditions, makes it identical to the accession agreement.

Depending on the periods of performance, economic agreements can be general and current. We believe that both of them can be developed and proposed as general agreements. Milash gives examples of general (framework) agreements. In particular, the nature of such an agreement is an agreement to open a credit line. It defines the basic principles of lending and imposes direct detailing of the specific conditions for granting individual loans on current credit agreements (Milash, 2011, p. 136). Such an agreement can be standard, developed, for example, by the National Bank of Ukraine, the National Commission for Securities and the Stock Market, the commercial bank itself or a financial and credit institution.

The framework (general), also according to Milash, is the transport forwarding agreement, which defines the mode and general volumes of future transports, the general rules for their implementation during the entire period of parties' cooperation. The same obligations regarding transportation arise under current agreements, where the freight forwarder undertakes for a fee and at the expense of the client to perform or organize the performance of the services specified in the agreement related to the trans-

portation of cargo (Milash, 2011, p. 136). Such a general standard agreement can be developed by the Ministry of Development of Communities, Territories and Infrastructure of Ukraine, its structural subdivisions responsible for regulating and coordinating activities related to transportation by various modes of transport, and offered to potential participants for its conclusion. However, a standard transport forwarding agreement can also be developed and proposed by the forwarder.

The above fully refers to the distribution agreement, which determines the terms and conditions of cooperation between the manufacturer (supplier) and the distributor, establishes the list of goods that the distributor will sell, and the sales territory (Milash, 2011, p. 136).

The conclusion of a framework (general) agreement actually simplifies the further cooperation of business partners through the typification of general essential conditions of future economic agreements. This means that the terms of the framework agreement extend their effect to current agreements, the conclusion of which is planned on its basis during the cooperation of the parties (Milash, 2011, p. 139), and therefore the terms of the standard general agreement will be extended to current agreements, which may also to be determined most likely by one of the parties to the agreement rather than by a state executive body within current standard agreements.

We consider it expedient to develop standard agreements in most sectors of the economy, digitize and offer them to potential participants of these agreements. Analogues have already been proposed by foreign owners of electronic resources, on which an undefined circle of individuals and companies can open a bitcoin wallet. Thus, the owners of an electronic resource, as a rule, from a certain offshore zone of the world openly indicate their address and other details and offer a potential owner of a bitcoin wallet a standard agreement for opening and maintaining his electronic account (wallet). This standard agreement is an accession agreement, usually drawn up on several pages in English. Among other things, the terms of the agreement provide that the owner of the bitcoin wallet agrees that the company providing services for the placement of the wallet is not responsible for the loss of the password by the wallet owner, the conclusion of any agreements and the conduct of any operations, information protection, damage to the computer by third parties wallet owner's computer programs and equipment, etc. The agreement offered by the company-owner of the Internet resource contains all its essential terms, which are clearly and unambiguously prescribed, and even provides for the right of the company-provider of bitcoin account opening services to unilaterally change the terms of the agreement (Derevianko, 2017, p. 35–36). And even under such conditions, individuals and companies, including from Ukraine, open bitcoin wallets on the Internet platforms of foreign companies, concluding the proposed standard agreements, which are also accession agreements, the terms of which are approved and proposed by the owner company of (tenant, manager, etc.) internet platforms. It is clear that the standard agreements that will be developed in Ukraine, the effect of which will be limited to the territory of Ukraine, the participants of which will be economic entities and citizens of Ukraine, must have clear and unambiguous conditions without the possibility of their change.

Due to the lack of a legitimized standard agreement in Ukraine today, we think it is logical to analyze the conditions of the currently invalid standard agreement. This standard agreement is typical, since the parties cannot change the terms, but can only specify them. Thus, the parties must first enter their details in the text of the agreement. The heading "Agreement Subject" actually provides for the description of the agreement subject and the definition of one more mandatory condition – the agreement price: it provides for the possibility of entering data on the agricultural crop, the geographical place of crop cultivation, the insurance value, the insurance amount per unit of area, the agreement place, the insurance amount, the insurance rate in percentage, the amount of the insurance payment, the date of drawing up the Inspection Act and the term or payment term. Some other elements of the subject and the price of the agreement are already defined in it. The section "Insured events" does not provide for the possibility of making changes or additions by the parties. In the section "Conditions for insurance payment", the parties can only contribute the amount of the loss in the event of the death of the insured crop area, calculated as the product of the insured crop area (ha) and the weighted average costs, and is determined in hryvnias per hectare. It is the received number that is entered by the parties. In the "Rights and obligations of the parties" section, the parties can fill in the "Other rights" and "Other obligations" headings, since the main rights and obligations of the insurer and the insured under the agreement cannot be determined and adjusted. The analyzed standard agreement does not provide for changes or additions to the headings "Liability of the Parties for non-fulfillment or improper fulfillment of the terms of the Agreement", "Other terms", "Procedure for changing the terms and termination of the Agreement". In the heading "Term of validity of the Agreement" it is possible to

determine the beginning date of the agreement validity, and the end date is defined as April 20 of a certain year. At the agreement end, the parties had to enter details and certify the agreement with signatures (Standard insurance agreement for the area of winter grain agricultural crops with state support against agricultural risks for the overwintering period (insurance product 2), 2012). The above, in particular the analysis of the content of individual general agreements, allows to argue the conclusions of the conducted research.

4. Conclusions

Similarly, to the two standard agreements given, standard agreements can be developed for most cases of the beginning of economic relations between two or more participants. Such agreements will contain all the material terms specified in the legislation for all agreements and agreements of a certain type. According to the criteria for determining the agreement content, they can most often be typical agreements (in the case of development, approval and proposal by the CMU or other executive power body), and accession agreements (in the case of their development, approval and proposal by one of the agreement participants); and can be symbiotic derivatives of the mentioned agreements, when approved by the CMU or another state body and do not allow the participants to change the terms and even specify them, or when approved and proposed by a business entity and allow to specify its terms. The proposed theoretical provisions of the standard agreement will have a doctrinal status for a certain time, and after approval of some of them by acts of the CMU or other central executive bodies, they will receive a legitimate status.

The form of a standard agreement based on the criterion of performance periods can be applied to general (framework) and, less often, current agreements. It is proposed to extend the form of a standard agreement to a large number of such spheres and branches of the economy, with the predominant conclusion of such agreements using the Internet and other digital technologies. Prospects for the practical application and spread of standard agreements for relations in various sectors of the economy of Ukraine outline directions for further research in the field of the studied relations.

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РОЗУМІННЯ ТА ОЗНАКИ СТАНДАРТНОГО ДОГОВОРУ У СФЕРІ ГОСПОДАРЮВАННЯ

Анотація. ***Мета.*** Метою статті є аналіз поняття і складників стандартного договору у сфері господарювання із пропозицією уточнення розуміння стандартного договору, визначення напрямів розвитку теоретичних положень стандартного договору і їх практичного застосування. ***Методи дослідження.*** Для досягнення мети статті було використано методи, що зазвичай застосовуються в проведенні наукових розвідок із правових наук, зокрема: загальнонауковий діалектичний метод, порівняльно-правовий, системно-структурний, аналітико-синтетичний, гносеологічний, формально-юридичний метод та інші. ***Результати.*** У статті порівняно стандартний договір у сфері господарювання з договорами за критерієм визначення їх змісту, названими в частині четвертій статті 179 Господарського кодексу України договорами на основі вільного волевиявлення сторін, примірними договорами, типовими договорами, договорами приєднання. Поняття «стандарт» у розумінні Закону України «Про стандартизацію» дозволило виявити і схарактеризувати окремі ознаки стандартного договору. Аналіз положень стандартного договору про відкриття і обслуговування гаманця біткойнів та нині не чинного Стандартного договору страхування площ посівів озимих зернових сільськогосподарських культур з державною підтримкою від сільськогосподарських ризиків на період перезимівлі дозволило обґрунтувати висновки і пропозиції. ***Висновки.*** Запропоновано розроблення стандартних договорів на більшість випадків початку господарських відносин між двома або більшою кількістю учасників з визначенням усіх можливих істотних умов. Визнано, що стандартні договори за критерієм визначення змісту договору найчастіше можуть бути типовими договорами та договорами приєднання, а можуть бути симбіотичними похідними від названих договорів. Запропоновані теоретичні положення стандартного договору певний час матимуть доктринальний статус, а після затвердження окремих із них актами КМУ чи інших центральних органів виконавчої влади отримають легітимний статус. Форма стандартного договору за критерієм періодів виконання може поширюватися на генеральні (рамкові) і, рідше, поточні договори. Запропоновано поширити стандартні договори за галузями та сферами економіки з переважним укладенням таких договорів за допомогою мережі Інтернет та інших цифрових технологій.

Ключові слова: договір, стандартний договір, типовий договір, договір приєднання, стандартизація, Кабінет Міністрів України, генеральний (рамковий) договір, істотні умови договору, галузі економіки, центральний орган виконавчої влади, законодавство, легітимація.

The article was submitted 16.10.2023
The article was revised 07.01.2023
The article was accepted 27.11.2023

UDC 346.5+339.166
DOI https://doi.org/10.32849/2663-5313/2023.5.02

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CRITERIA FOR CLASSIFYING ACTIVITIES AS LICENSED

Abstract. ***Purpose.*** The above allows for formulating the paper's purpose by defining criteria for classifying a certain type of economic activity as licensed, proposing legitimating such criteria, and extending the licensing procedure to new types of economic activity. ***Research methods.*** The paper was prepared using a complex of methods of scientific knowledge. The comparative legal, analytical synthetic, systemic-structural, formal-legal, and other methods were used to achieve the purpose of the paper and determine the criteria for classifying a certain type of economic activity as licensed. ***Results.*** The article clarifies that the legislator recognized the threat of violation of the rights, legitimate interests of citizens, human life or health, the environment and/or state security as a licensing criterion, and only in case of insufficiency of other means of state regulation. In addition, it was proposed that the high level of profitability of this type of activity be recognized as a criterion for classifying types of economic activity as licensed. Several licensed types of economic activity have been analyzed: production and trade in ethyl alcohol, alcohol distillates, bioethanol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes; activities in the field of media; activities in the electric power industry, in the natural gas market, centralized water supply and centralized drainage, thermal energy production, transportation of thermal energy through main and local (distribution) heating networks, supply of thermal energy; professional activities in capital markets and organized commodity markets; activities in the gambling market; activities in the field of education; transportation of passengers, dangerous goods and hazardous waste by inland waterway, sea, road, rail and air transport, international transport of passengers and goods by road. ***Conclusions.*** The work resulted in a proposal to add a criterion of high profitability to the criteria for assigning types of economic activity to licensed ones in comparison with its average level by types of economic activity and legitimize it in subparagraph 4 of Article 3 "Principles of state policy in the field of licensing" of the Law of Ukraine "On Licensing of Economic Activities". The quantitative determination of this criterion should be decided by a specially authorized licensing body, which can be specified in Article 4 of the Law of Ukraine "On Licensing of Types of Economic Activity". It is proposed to add provisions on licensing of activities related to the mining of virtual assets to Article 7 "A list of types of economic activities subject to licensing" of the Law of Ukraine "On Licensing of Economic Activities" after the introduction of certain amendments to the Tax Code of Ukraine and the entry into force of the Law of Ukraine "On Virtual Assets". This type of activity entirely falls under the criteria for classifying types of economic activity as licensed ones identified and described in the paper.

Key words: business activity, licensing, business entity, state interests, criterion, profitability, virtual assets, taxation, cryptocurrency, licensing grounds, legitimation, special law, specially authorized licensing body.

1. Introduction

Various researchers have repeatedly pointed out the priority of treating licensing as a means of regulating the state's influence on the activities of business entities. It is clear that such an impact should not be carried out on the activities of all business entities and should be aimed at achieving certain significant and necessary results for the state. The state itself determines which types of economic activities are subject to licensing. As a result, business entities intending to carry out certain licensed types of economic activities are subject to inspections by licensing authorities for compliance with the license conditions.

Previously, the licensing legislation did not establish or name criteria or priorities for classifying a particular type of economic activity as licensed. Currently, Article 1 of the Law of Ukraine "On Licensing of Economic Activities" defines the concept of "licensing" as a means of state regulation of economic activities aimed

at ensuring the safety and protection of economic and social interests of the state, society, rights and legitimate interests, life and health of people, environmental safety and environmental protection (On Licensing of Economic Activities, 2015). This means that the law explicitly specifies licensing tasks to ensure the safety and protection of economic and social interests of the state, society, rights and legitimate interests, life and health of people, environmental safety and environmental protection (On Licensing of Economic Activities, 2015). Thus, now the Law "On Licensing" shows what Ukrainian scientists and practitioners have repeatedly pointed out – the main criteria for assigning a particular type of economic activity to a licensed one are a high degree of social, economic, and environmental significance or a high degree of danger to human life, health, animals, plants, and the environment. The high profitability of a certain type of economic activity is not mentioned here.

Many Ukrainian researchers have studied relations related to the licensing of economic activities in various sectors and spheres of the economy. In particular, they are as follows: Apanasenko (Apanasenko, 2017), Averianova (Averianova, 2017), Derevianko (Derevianko, 2011), Herasymenko and Halasiuk (Herasymenko and Halasiuk, 2011), Khudoshyna (Khudoshyna, 2016), Klymenko (Klymenko, 2017), Maiboroda (Maiboroda, 2014), Malichenko (Malichenko, 2010), Shpomer (Shpomer, 2006; Shpomer, 2011), Soloshkina (Soloshkina, 2016), Yara (Yara, 2020), Yevdokimenko (Yevdokimenko, 2020) and others. However, the mentioned and other scientists did not pay attention to the criteria for classifying certain types of economic activity as licensed.

The above allows for formulating the paper's purpose by defining criteria for classifying a certain type of economic activity as licensed, proposing legitimating such criteria, and extending the licensing procedure to new types of economic activity.

The paper was prepared using a complex of methods of scientific knowledge. The comparative legal, analytical synthetic, systemic-structural, formal-legal, and other methods were used to achieve the purpose of the paper and determine the criteria for classifying a certain type of economic activity as licensed.

2. Regulatory definition of licensing grounds

Confirmation of statements in the introduction is found in subparagraph 4 of Article 3 "Principles of state policy in the field of licensing" of the Law of Ukraine "On Licensing of Economic Activities". One of the main principles was the principle of "priority of protecting human rights, legitimate interests, life and health, the natural environment, protecting limited resources of the state and ensuring state security, which provides for:

licensing applies only to such type of economic activity, the implementation of which poses a threat to violation of the rights, legitimate interests of citizens, human life or health, the environment and/or the security of the state, and only in case of insufficiency of other means of state regulation" (on Licensing of Economic Activities, 2015).

For example, the types of economic activities related to the production and trade of ethyl alcohol, distillates, bioethanol, alcoholic beverages, tobacco products, and liquids used in electronic cigarettes are licensed (on Licensing of Economic Activities, 2015). Conclusions and medical experiments proved the harmfulness of using these substances for the human body. The state, for various reasons, including financial ones, does not want or cannot prohibit the production and trade of alcoholic beverages and tobacco products containing a large amount of harmful substances. To reduce the amount of consumption of such products by the population, the state licenses these types of economic activities, automatically increasing the price of harmful products sold. In addition, the state simply earns a lot of money on bad habits of citizens. On the other hand, excessive consumption of the products mentioned above, as well as their simultaneous use with certain groups of other products, as well as a violation of production technology, can lead to deaths due to a single or repeated use by any person or a person of a certain age, state of health, mental state, etc. To prevent such cases, licensing authorities monitor the compliance of the production and trade process with regulatory licensing requirements. The importance for the state of economic activities related to the production and trade of ethyl alcohol, alcoholic distillates, bioethanol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes, and fuel, storage of fuel, is specified in accordance with the Law of Ukraine "On State Regulation of the Production and Circulation of Ethyl Alcohol, Alcoholic Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes, and Fuel" as of December 19, 1995 (On the State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohols, Alcoholic Beverages and Tobacco Products, 1995).

3. Licensing based on specific laws of Ukraine

Several other types of economic activity mentioned in Article 2 of the Law of Ukraine "On Licensing of Economic Activities" are

licensed based on separate special laws. For example, media activities are regulated by the Law of Ukraine "On Media" as of December 13, 2022 (On Media, 2022). We have previously stressed the importance of media activities, their impact on the life of the state and society, and, therefore, the great social significance of media activities that caused their licensing (Svitlychnyi, 2023). The state should ensure access to the media sphere only for those business entities that will provide objective information and not disseminate information that promotes various harmful ideologies and narratives. Activities in the field of electric power, in the natural gas market, centralized water supply and centralized drainage, production of thermal energy, transportation of thermal energy by main and local (distribution) heating networks, supply of thermal energy, and other activities licensed by the National Commission for State Regulation in the Field of Energy and Utilities, in accordance with special legislation (On Licensing of Economic Activities, 2015). It will be superfluous to say something about the significance of these types of economic activities for the economy and the life of the state, especially during the legal regime of martial law and a possible threat to the environment. The above fully concerns activities in the field of nuclear energy use, which are carried out under the Law of Ukraine "On Permit Activity in the Field of Nuclear Energy Utilization" (On Permit Activity in the Field of Nuclear Energy Utilization, 2000) as the threats to environmental safety posed by nuclear energy are known all over the world on the example of Ukraine. The role of nuclear energy in providing electricity to Ukraine's economy and social sphere should not be underestimated. Professional activities in the capital markets and organized commodity markets, licensed by the National Securities and Stock Market Commission (per the Law on Licensing of Economic Activities, 2015), are highlighted separately. Economic activity in the capital markets and organized commodity markets is highly profitable (it is known that banks and financial institutions that carry out various speculative operations with shares and other securities on the stock markets often receive significantly higher revenues from the income of banks and financial institutions that carry out classical banking operations), and is also of great importance for the state. Participation of the state directly or through intermediaries in the capital markets ensures the stability of its financial system, insurance against risks, adversities of financial crises, fluctuations in stock markets, etc. Along the way, it should be noted that the licensing of banking activities, financial services, and cash transactions is carried out by the National Bank of Ukraine under the Law of Ukraine "On the National Bank of Ukraine" as of May 20, 1999 (On the National Bank of Ukraine, 1999) and the Law of Ukraine "On Banks and Banking" as of December 7, 2000 (On Banks and Banking, 2000). The most profitable type of economic activity is activity in the gambling market, which is regulated following the Law of Ukraine "On State Regulation of Activities Related to the Organization and Conduct of Gambling" (On State Regulation of Activities Related to the Organization and Conduct of Gambling, 2020). Profits from such activities are taxed at the highest rate. Such activities can pose a public danger due to their negative impact on psychologically weak people. In the field of medicine, the possibility of recognizing "gambling addiction" as a mental illness is being discussed today.

4. Licensing based on the provisions of the Law of Ukraine "On Licensing of Economic Activities"

A general list of types of economic activities subject to licensing under the rules of special laws of Ukraine or the Law of Ukraine "On Licensing of Economic Activities" is given in Article 7 of the relevant law (On Licensing of Economic Activities, 2015). We will not quote all the points of this article. We pay attention only to certain points. Paragraph 6 of part one of this article states that educational activities are licensed considering the specifics defined by special laws in the field of education (On Licensing of Economic Activities, 2015). The field of education is crucial for the state. Thus, providing poor-quality educational services can lead to severe consequences in any sector of the economy and public life. Researchers of relations in the field of education point out that large universities with a developed material base, scientific achievements of professors, and practical achievements and success of graduates are able to provide high-quality educational services, carry out progressive research, and develop world science and education. A licensing procedure, in addition to state registration, was introduced to distinguish high-quality universities, academies, and institutes from those educational institutions that only have such names (Derevianko, 2011, p. 168). Paragraph 24 of the first part of Article 7 of the Law of Ukraine "On Licensing of Economic Activities" provides for mandatory licensing of transportation of passengers, dangerous goods, and hazardous waste by inland water, sea, road, rail and air transport, international transportation of passengers and cargo by road (On Licensing of Economic Activities, 2015). Types of economic activities related to the transportation of goods and passengers by

various modes of transport are usually profitable with a higher level of profitability than in most other sectors of the economy. At the same time, the vehicles themselves are sources of increased danger. For example, the safest option is air transport, which is less likely to cause accidents involving other types of transport. However, in most cases, neither passengers nor crew members survive such accidents. Ukrainian scientists define licensing of economic activities for the provision of services for the transportation of passengers and cargo by air as an integral part of state control in the field of air transport. They consider "formation and strengthening of management functions of the air transport complex in the areas of safety, licensing and certification, development of regional programs and proposals for state programs for the development of the industry, monitoring their implementation" to be an important tool for implementing state policy in the field of air transport (Polishchuk and Kononenko, 2023, p. 34; Krykhtina, 2022, p. 57).

Other licensed types of economic activity also have no less profitability, social significance, threat to the environment, or danger to the life or health of humans, animals, etc. Therefore, they are included in the list of licensed types of economic activity given in part one of Article 7 of the Law of Ukraine "On Licensing of Economic Activities". It should be added that the list of licensed types of economic activity is not static. Some types of economic activity may be permanently or temporarily banned; accordingly, there is no need to license them. Other types of economic activity arise or are legitimized. Therefore, there is a need for state regulation through certain methods of state regulatory influence on the activities of business entities, among which licensing is not the least. Thus, by analogy with the existing licensed types of economic activity, it is proposed to legitimize new types of economic activity and extend the licensing procedure to them. The Law of Ukraine "On Virtual Assets" as of February 17, 2022 has been adopted, which was even published in the Bulletin of the Verkhovna Rada of Ukraine. Still, it has not entered into force (on Virtual Assets, 2022). It should legitimize relations related to the turnover of cryptocurrencies after it enters into force. In this case, operations on mining of cryptocurrency on a professional basis will meet all five characteristics of the economic essence as a business entity – organizational unity, property isolation, legitimacy of existence as a business entity (after the entry into force of the Law of Ukraine On Virtual Assets), the presence of economic rights and obligations, responsibility for the results of management (Derevianko, 2018, p. 170-172). After legitimizing relations in the cryptocurrency market, researchers propose the introduction of licensing the activities of cryptocurrency miners, taxation of income from it, regulatory definition of liability measures for violators, and ensuring full-fledged state regulation and stimulation of such activities (Derevianko, 2018, p. 173). We support such a proposal and agree that it is caused by high profitability and significant public danger. The second reason is related to physical factors – significant use of electricity and, accordingly, fire danger; and financial factors – a threat to the classic national currency of the state – the hryvnia. Earlier, Ukrainian researchers pointed out the high profitability of mining (on average, the payback period of equipment (the cheapest and with low capacity is estimated at an average of 10 thousand dollars) is from 6 to 12 months), great public danger (in particular, a high risk of fires. It is also not fully known how people, animals, and the environment are affected by the crowding of various electromagnetic and computer equipment). Another issue is the availability of special knowledge and skills of miners (without proper control, they can harm computer networks and other Internet users). This type of activity must be licensed and specified in Article 7 of the Law of Ukraine "On Licensing of Economic Activities" (Derevianko and Turkot, 2018, p. 56). We should propose to apply licensing for the mining of cryptocurrency based on the Law of Ukraine "On Financial Services and Financial Companies" dated December 14, 2021 and determine under paragraph 47 of Article 1 of this Law of Ukraine that the regulator is the National Bank of Ukraine or the National Securities and Stock Market Commission according to the distribution of powers determined by this Law (On Financial Services and Financial Companies, 2021).

5. Conclusions

Thus, it can be concluded that the legislator in subparagraph 4 of Article 3 "Principles of state policy in the field of licensing" of the Law of Ukraine "On Licensing of Economic Activities" defined most of the criteria for assigning certain types of economic activity to licensed ones. The criterion of high profitability identified and characterized in the article compared to its average level by type of economic activity is not specified by the Law of Ukraine "On Licensing Economic Activities". The legislator encrypted this criterion as "ensuring security and protecting the economic and social interests of the state and society" when defining the concept of licensing. However, it would be correct to add the phrase "which has a high level of profitability and/or" to the partially cited

subparagraph 4 of Article 3 "Principles of state policy in the field of licensing" of the Law of Ukraine "On Licensing of Economic Activities" after the words "licensing applies only to this type of economic activity", and the quantitative determination of this criterion should be decided by the specially authorized body for licensing, which can be indicated in the relevant Article 4 of the Law of Ukraine "On Licensing of Economic Activities".

We consider it important to add provisions on licensing of activities related to the mining of virtual assets to Article 7 "A list of types of economic activities subject to licensing" of the Law of Ukraine "On Licensing of Economic Activities" after the introduction of certain amendments to the Tax Code of Ukraine and the entry into force of the Law of Ukraine "On Virtual Assets". This type of activity entirely falls under the criteria for classifying types of economic activity as licensed ones identified and described in the paper.

Future scientific research should be aimed at finding mechanisms to promote the introduction (legitimization) of new types of economic activities and introducing their licensing and taxation of income from them.

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КРИТЕРІЇ ВІДНЕСЕННЯ ВИДІВ ДІЯЛЬНОСТІ ДО ЛІЦЕНЗОВАНИХ

Анотація. ***Мета.*** Метою статті є визначення критеріїв віднесення певного виду господарської діяльності до ліцензованих, дослідження легітимації таких критеріїв та поширення процедури ліцензування на нові види господарської діяльності. ***Методи дослідження.*** Під час підготовки статті було використано комплекс методів наукового пізнання: порівняльно-правового, аналітико-синтетичного, системно-структурного, формально-юридичного та інших методів, завдяки яким було досягнуто мету статті, визначено критерії віднесення певного виду господарської діяльності до ліцензованих. ***Результати.*** У статті з'ясовано, що законодавець через критерії ліцензування визнав загрозу здійснення певного виду господарської діяльності порушенню прав, законних інтересів громадян, життю чи здоров'ю людини, навколишньому природному середовищу та/або безпеці держави, і лише в разі недостатності інших засобів державного регулювання. Крім того, критерієм віднесення видів господарської діяльності до ліцензованих було запропоновано визнати високий рівень рентабельності цього виду діяльності. Було проаналізовано декілька ліцензованих видів господарської діяльності – виробництво і торгівля спиртом етиловим, спиртовими

дистилятами, біоетанолом, алкогольними напоями, тютюновими виробами, рідинами, що використовуються в електронних сигаретах; діяльність у сфері медіа; діяльність у сфері електроенергетики, на ринку природного газу, централізоване водопостачання та централізоване водовідведення, виробництво теплової енергії, транспортування теплової енергії магістральними і місцевими (розподільними) тепловими мережами, постачання теплової енергії; професійну діяльність на ринках капіталу та організованих товарних ринках; діяльність на ринку азартних ігор; діяльність у сфері освіти; перевезення пасажирів, небезпечних вантажів та небезпечних відходів внутрішнім водним, морським, автомобільним, залізничним та повітряним транспортом, міжнародні перевезення пасажирів та вантажів автомобільним транспортом. ***Висновки.*** Підсумком роботи стала пропозиція до ліцензованих критеріїв віднесення видів господарської діяльності додати критерій високої рентабельності в порівнянні із середнім її рівнем за видами господарської діяльності й легітимізувати його в підпункті 4 статті 3 «Принципи державної політики у сфері ліцензування» Закону України «Про ліцензування видів господарської діяльності», а кількісне визначення цього критерію має вирішувати Спеціально уповноважений орган з питань ліцензування, про що можна вказати у відповідній статті 4 Закону України «Про ліцензування видів господарської діяльності». Запропоновано після внесення певних доповнень до Податкового кодексу України і набрання чинності Законом України «Про віртуальні активи» додати до статті 7 «Перелік видів господарської діяльності, що підлягають ліцензуванню» Закону України «Про ліцензування видів господарської діяльності» положень про ліцензування діяльності з видобутку, вирахування («майнінгу») віртуальних активів. Цей вид діяльності повністю підпадає під виявлені та схарактеризовані в статті критерії віднесення видів господарської діяльності до ліцензованих.

Ключові слова: господарська діяльність, ліцензування, суб'єкт господарювання, інтереси держави, критерій, рентабельність, віртуальні активи, оподаткування, криптовалюта, підстави ліцензування, легітимація, спеціальний закон, Спеціально уповноважений орган з питань ліцензування.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 346.62(477)
DOI https://doi.org/10.32849/2663-5313/2023.5.03

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Tuban, Oleksandr (2023). Development of relations in the field of cryptocurrency circulation and the formation of relevant legislation in Ukraine. *Entrepreneurship, Economy and Law, 5*, 18–24, doi https://doi.org/10.32849/2663-5313/2023.5.03

DEVELOPMENT OF RELATIONS IN THE FIELD OF CRYPTOCURRENCY CIRCULATION AND THE FORMATION OF RELEVANT LEGISLATION IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyze the regulatory and practical provisions, considerations and conclusions of researchers regarding the circulation of cryptocurrency in Ukraine and to provide proposals for improving the regulatory support of these processes. ***Research methods***. The study of relations with cryptocurrency was carried out using well-known research methods: analysis and synthesis, grouping method, system-functional method, comparative legal method, scientific abstraction, and others, with the help of which the legal relations with cryptocurrency were examined, conclusions and proposals were made. ***Results***. The article shows that the legal framework has not yet created a regulatory framework for regulating relations with cryptocurrencies, and therefore, the NBU and other financial institutions have a controversial and dubious attitude towards innovations in monetary circulation. The laws to be adopted in Ukraine will be aimed at legalizing and regulating relations with cryptocurrencies and will have a positive impact on the state budget. Cryptocurrencies have become a significant asset for individuals, legal entities and government agencies in the current economic environment. The use of cryptocurrencies in financial circulation shows a steady upward trend and user confidence. **Conclusions**. The attention is drawn to the fact that in the information society, the role of legal regulation of processes involving the use of digital technologies is rapidly increasing. Such regulation should be effective from various angles and meet modern challenges and threats. Discussion approaches to understanding the essence of cryptocurrency and the problems of legal regulation of its circulation are presented in the article. The stages of formation of legal regulation of cryptocurrency circulation in Ukraine are examined. The legislation developed and adopted in Ukraine is analyzed. Different legal approaches to understanding the essence of cryptocurrency are proposed. The article specifies the existing problems of legal regulation of cryptocurrency circulation in Ukrainian legislation and compares them with the practice of other countries. It is emphasized that the search for the most effective legal regulation of relations with cryptocurrency is associated with the creation of an optimal legal framework, as well as with the development of cryptocurrency business and decentralization of cryptocurrency circulation. The article characterizes the formation of the international legal regime for cryptocurrency, assesses the risks, and recommends the creation of a unified international legal framework regulating relations in the cryptosphere. It also separately identifies the directions of development of the virtual asset market in Ukraine and highlights the legislative initiatives of some foreign countries to create national digital currencies. The article clarifies the threats and risks of using virtual assets, in particular cryptocurrencies, outlines global trends in their development, and suggests ways to improve the legislative support for the circulation of virtual assets in Ukraine.

Key words: cryptocurrency, virtual assets, bitcoin, electronic money, legal regulation, economic activity, Civil Code of Ukraine, Commercial Code of Ukraine, Tax Code of Ukraine, cryptocurrency "mining".

1. Introduction

Today, the legal regime of virtual assets in Ukraine still remains uncertain, as even the Law of Ukraine "On Virtual Assets", which is intended to regulate legal relations arising from the turnover of virtual assets in Ukraine, has not yet entered into force and is subject to constant criticism (On virtual assets, 2022).

Today, Ukrainians are the most active cryptocurrency users in the world. Various Ukrainian companies offer relevant services and sell goods in cryptocurrency, and individuals buy and sell property for cryptocurrency units. There are many cryptocurrency exchanges, online services, and crypto ATMs in Ukraine (Coin Market Cap website). The proliferation of cryptocurrency transactions in the market has raised many regulatory issues. As a result, national legislators have begun to want to regulate relations in this area. It is believed that the issue of taxation of profits and income derived from transactions with virtual assets is particularly relevant and requires legislative regulation. Therefore, it is necessary to resolve a number of issues and eliminate gaps in the circulation of virtual assets. Without addressing these issues, a huge portion of the income generated from these transactions would remain outside the scope of taxation. Researchers have already proposed to legitimize cryptocurrency mining operations, recognize mining as a type of economic activity and introduce taxation of income from it (Derevianko, 2018, p. 169).

The development of effective regulatory approaches to the execution, accounting, declaration and taxation of cryptocurrency transactions is a topical issue. It is also important to determine the legal status of this financial instrument. These issues are the subject of this study.

Literature review. The emergence and development of cryptocurrencies have been studied by various scholars in their works. Scientists associate cryptocurrency as an evolutionary process in the financial environment, but some consider cryptocurrency in economic circulation as an offense. In the course of their research, domestic scientists raise the issue of cryptocurrency accounting, while others actualize the issue of transactions with it and the receipt of income and expenses incurred, but they all offer their own approaches to controlling transactions with such assets. For example, Skrypnyk defined the legal status of cryptocurrencies as objects of civil rights and objects of civil legal relations (Skrypnyk, 2018), Kovalchuk identified financial and legal shortcomings in the regulation of the cryptocurrency market (Kovalchuk, 2021), Ivakhno and Romanchuk outlined the problems of regulating cryptocurrency circulation in Ukraine (Ivakhno and Romanchuk, 2023), Usatenko and Makurin identified and analyzed the legal regulation of income from cryptocurrency transactions, determined the legal status of modern banknotes in Ukraine and abroad (Usatenko and Makurin, 2020). Ilchenko studied the use and circulation of cryptocurrencies (Ilchenko, 2022). Hudima and other authors have accounted for cryptocurrencies, transactions with them, income received and expenses incurred, and proposed measures to control asset transactions (Hudima et al., 2020). Derevianko pointed out various risks in cryptocurrency transactions – technical risk, legal risk, economic and legal risk, technological risk, and others (Derevianko, 2017, p. 38), and also determined that cryptocurrency mining operations have significant similarities with economic activity (in particular, four of the five characteristics of a business entity are fully inherent in "miners") (Derevianko, 2018, p. 166). However, there is still no effective legislation on cryptocurrency in Ukraine, and the cryptocurrency sphere has been operating for several years. This indicates the need for a separate study.

Purpose. The purpose of the article is to analyze the regulatory and practical provisions, considerations and conclusions of scholars regarding the circulation of cryptocurrency in Ukraine and to provide proposals for improving the regulatory support of these processes.

Research methods. The study of relations with cryptocurrency was conducted using well-known research methods: analysis and synthesis, grouping method, system-functional method, comparative legal method, scientific abstraction, and others, which were used to review legal relations with cryptocurrency, make conclusions and suggestions.

2. Defining the essence of cryptocurrency and attempts to regulate relations with it

Global changes in worldwide financial processes point to the possibility of introducing a single world currency. Cryptocurrencies may become such a currency, as they meet many of the criteria of money. Electronic money has the legal regime of a legally defined issuer, a fixed supply, and is subject to regulation and supervision. Cryptocurrency, as defined by the European Central Bank, is a decentralized digital measure of value that can be expressed digitally and function as a means of exchange, store of value or unit of account based on mathematical calculations and resulting from them, and has cryptographic accounting protection (Kobylnik, Bezpalko, Shapoval, 2023, p. 365). The concepts of cryptocurrency (virtual currency) and electronic money differ significantly and have different meanings.

With the rapid development of the digital economy, cryptocurrency can be considered one of its products. The emergence of which is due to the development of blockchain technology and is caused by the state's monetary system, imperfect legal framework, problems of investor protection, inflation, strict currency restrictions on the purchase of foreign currency, and excessive state control (Kovalchuk, 2021, p. 32).

Regulation of the cryptocurrency market at all stages will lead to significant budget revenues. This will allow for additional funding for education, medicine, sports, and other socially important areas of life.

For the cryptocurrency market to function efficiently and fully, a regulatory environment needs to be created. It will provide an opportunity to regulate various important aspects of its activities: the legal status of digital assets, the possibility of making payments in cryptocurrencies, taxation, and the operation of exchange platforms. The general practice of regulating the cryptocurrency market defines the following approaches: economically oriented; risk minimization approach; surveillance approach; restrictive approach (Kovalchuk, 2021, p. 33). After the implementation of the above methods, we can expect real and long-term use of cryptocurrencies.

The cryptocurrency market in Ukraine can be considered as a separate sphere of social relations, but the state has not yet established its direct regulatory powers. It is also necessary to define separate rights and obligations, areas of responsibility of legal entities and individuals engaged in this activity (Usatenko and Makurin, 2020, p. 195). To summarize, it is necessary to specifically define the causes and consequences and the area of responsibility for all those involved in cryptocurrency transactions.

Today, an agreement between two legal entities to ship goods and pay for them with cryptocurrency is impossible because it has no legal force, this issue is not regulated by law, and bitcoin is not recognized as a means of payment. Therefore, it is necessary to make appropriate clarifications in Ukrainian legislation (Makurin, 2019, p. 204). It is necessary to analyze the legal regulation of cryptocurrency transactions and assign responsibility to the relevant institutions.

On February 17, 2022, the Law of Ukraine "On Virtual Assets" was adopted, which assumes the responsibility of regulating the crypto industry. Unfortunately, this Law has not entered into force, as it is expected to take effect only after the tax regulation of all processes (On virtual assets, 2022). The NAPC (National Agency on Corruption Prevention) has provided clarifications on how to declare intangible assets. The courts, in turn, use this explanation when making decisions and refer to the principle of analogy of law, since there is no relevant law. The decisions establish that the circulation of cryptocurrencies in Ukraine is legal and not prohibited, as this determines the general state approach to regulating the circulation of cryptocurrencies. The NBU has imposed restrictions on international money transfers and limited cryptocurrency transactions. When the law actually comes into effect, cryptocurrencies will acquire the status of "permissive assets". This means that it will not be used as legal tender in Ukraine, it will not be allowed to be exchanged and it will not be possible to pay for goods or services with it.

Currently, the use of virtual assets is becoming more widespread and is having an impact on the modern economy. Cryptocurrencies are becoming increasingly popular in Ukraine (Spilnyk and Yaroshchuk, 2020, p. 83). Therefore, the state seeks to regulate legal relations related to the circulation of cryptocurrencies and join the countries that seek to legislate and derive electronic assets from the shadows.

To summarize, the currently inoperative Law "On Virtual Assets" is intended to legalize the virtual asset market in our country and is appropriate to the legal reality of Ukraine. Prior to its adoption, there was a need to resolve the issue of whether cryptocurrencies are legal tender in Ukraine. It is worth noting here that according to Part 4 of Article 7 of the Law "On Virtual Assets", virtual assets are not a means of payment in Ukraine and cannot be exchanged for property/goods, works/services (On virtual assets, 2022). The hryvnia is the monetary unit of Ukraine and is the only legal tender that is accepted at face value throughout Ukraine. In order to make a payment using a virtual asset, it must be converted into hryvnia. At the same time, virtual currencies do not fully comply with the design that embodies a combination of all the functions of money. Virtual currencies are able to provide the function of a medium of exchange to a limited extent, as they have a low level of acceptance among users. Another disadvantage of cryptocurrencies is their high volatility. The value of cryptocurrencies is not stable, so it can change instantly, which makes investing in the currency more risky.

3. Multiplicity of relations with cryptocurrencies and prospects for their development in Ukraine and the world

Currently, Ukraine faces a major problem in regulating legal relations with cryptocurrencies. The main reason for this is the lack of relevant legislation that could be applied to them. The circulation of cryptocurrencies should not contradict the main legislative and regulatory acts, such as: The Constitution of Ukraine, the Civil Code of Ukraine, the Commercial Code of Ukraine, the Tax Code of Ukraine, the Law of Ukraine "On Information", as well as regulations of the NBU and other laws of Ukraine. According to many experts, the most effective regulatory model is to integrate cryptocurrencies into the current legislation of Ukraine by adopting a separate law and amending a number of regulations.

Participation of self-regulatory organizations of the cryptocurrency market in state regulation to secure their legal status and participate in co-regulation may also be an effective option for regulating relations with regard to cryptocurrencies and controlling their use. In addition, an important role can be played by acts of a recommendatory nature for participants in the cryptocurrency market (especially ordinary consumers as their most vulnerable category), adopted by the authorized bodies with the participation of these self-regulatory organizations, which should help protect the interests of such persons in difficult relationships (Vinnyk, Popovych, Derevianko, 2022, p. 189). To enable the regulation of cryptocurrency circulation and the recognition of its legal status, it is necessary to develop a common position among government agencies. The NBU should find a common language with the Ministry of Finance of Ukraine, the State Fiscal Service of Ukraine, the State Financial Monitoring Service, the National Securities and Stock Market Commission, and the National Commission for the State Regulation of Financial Services Markets (Mandryk and Moroz, 2019, p. 69). Once a common strategy has been determined, the first step is to determine the legal status of cryptocurrency. Cryptocurrencies are different from traditional assets, so it is not possible to unambiguously classify them as a particular object of civil rights. Cryptocurrencies have a complex digital nature, and this does not allow them to be unambiguously recognized as either money, currency, means of payment of another country, currency value, electronic money, securities or a monetary surrogate.

Today, there are thousands of types of cryptocurrencies (more than 5000 according to major websites). But there are 10 leading cryptocurrencies that account for almost 90% of the total market capitalization. At the same time, Bitcoin alone accounts for 59% of the total market capitalization of these leading currencies (Bagshaw, 2019). And the vast majority of cryptocurrencies are not fully used, are not in demand, and are considered irrelevant (Nakamoto, p. 1). There is no stable cryptocurrency, so the list of leading cryptocurrencies is changing. The reason is that the relevance of one or another type is influenced by many different factors, so it is important to control the volatility of cryptocurrencies in general. While the average daily volatility of fiat money usually does not exceed 3–4%, cryptocurrencies are subject to exchange rate fluctuations within 20%, sometimes they reach up to 50%, and in some cases, the exchange rate deviation exceeds 100% during the day (Coin Market Cap website). Ukraine has a stable position in the global crypto community and is one of the leading countries in the development of the crypto economy. One of the current projects implemented is based on blockchain technology. The non-governmental organization "Bitcoin Foundation Ukraine" is a powerful cryptocurrency community that believes that Ukraine is among the top 10 countries in the world in terms of the number of bitcoin holders.

4. Possibility of regulating relations with cryptocurrency using foreign experience

It goes without saying that cryptocurrencies have great potential provided by cryptography. Therefore, in order to develop and realize this potential, it is necessary to increase the level of trust, effectively scale the business and establish interaction with regulatory authorities (Ilchenko, 2022, p. 195). That is, to create a friendly environment between the interacting authorities. Appropriate legislative regulation of the circulation and definition of the legal status of cryptocurrencies is needed. Currently, there are no relevant clear recommendations from methodological bodies in the legal, accounting, and taxation spheres, so these issues cannot be resolved immediately. First, it is necessary to analyze foreign experience and implement it in our country. Legal uncertainty is the main problem. It is an opportunity for abuse and a brake on the country's development. Today, participants in cryptocurrency transactions are unfortunately unprotected in the legal sense. After all, the civil and administrative law system lacks a proper working legal framework for considering such cases in court. At the same time, the state does not receive possible additional budget revenues, there are difficulties with taxation and accounting of transactions, tax evasion and abuse by unscrupulous regulatory authorities. These are the main examples of what happens in the absence of a working legal framework. Therefore, domestic lawmakers, regulators, and scientists need to more actively analyze the experience of other countries, study the scientific work of Western colleagues, and conduct their own research and apply it in practice.

An analysis of the international practice of legal regulation of cryptocurrency circulation provides sufficient evidence to state that such regulation is relevant and necessary for modern states. After all, the unregulated nature of such processes does not hinder the cryptocurrency business, but leaves the state without additional budget revenues and a promising platform for investment and slows down the development of the economy in the state. Therefore, we believe that the state needs to implement the following aspects in order to effectively regulate this issue:

– to analyze and identify mechanisms to minimize the risks associated with cryptocurrency transactions, in particular, to bring the regulation of these transactions in line with the legislation on combating money laundering and terrorism financing;

– to establish and determine whether cryptocurrency corresponds to any of the categories that have already been enshrined in national legislation;

– to decide specifically whether to define cryptocurrency as a legal tender or to give it only certain functions;

– develop a clear mechanism for taxation of cryptocurrency transactions with amendments to national tax legislation, taking into account the effective practice of European countries;

– establish and resolve the issue of licensing the cryptocurrency business, namely the activities of cryptocurrency exchanges and companies (Diadyk, 2020, p. 268). After the successful implementation of all these aspects, a mechanism for legislative regulation of cryptocurrencies will be formed. It is necessary to form a general state approach to the cryptocurrency market, which will provide a great opportunity for crypto exchanges to operate and conduct relevant transactions unrestrictedly and officially.

At present, the National Bank of Ukraine has imposed restrictions and is awaiting the entry into force of a law to regulate the cryptocurrency industry. But the state continues to interact with the crypto industry and European crypto exchanges (Ivakhno and Romanchuk, 2023). This makes it possible not to lose its own experience and successfully conduct cryptocurrency transactions after the legal framework is improved.

5. Conclusions

The use of virtual assets is becoming more and more widespread in the world, which cannot have a positive impact on the modern economy. In our country, virtual assets have also begun to spread rapidly. This fact has set new challenges for the Ukrainian legislator and the scientific community. The entry into force of the Law of Ukraine No. 2074-IX "On Virtual Assets" will allow us to effectively develop and regulate the virtual asset market in Ukraine. However, this regulatory act will only come into force from the date of entry into force of the Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation of Transactions with Virtual Assets". It can be assumed that the text of the Law "On Virtual Assets" is no longer entirely relevant to the market, as it was developed more than two years ago and during this time our country has undergone changes on the path to European integration. Also, the modern virtual asset market is developing dynamically and actively, but, unfortunately, the full legalization of the virtual currency market has not taken place, which is a negative factor. As a result, the processes of taxation of income from transactions with virtual assets remain virtually unregulated. In our opinion, the legislative regulation of the virtual assets market and the processes of taxation of income from transactions with such assets should be reviewed again to enable the Law of Ukraine "On Virtual Assets" to enter into force. It should be understood that the regulation of virtual assets is a complex and lengthy process that requires careful study and development of the relevant legal framework. An important task is to develop and implement regulatory mechanisms for the existence of virtual assets. These assets become an additional source of income for users and affect the financial stability and economic development of the state as a whole. The Ukrainian legislation should prioritize the taxation of virtual assets and actively continue to adapt the legal norms in this area.

The creation of a common global legal space regulating relations with cryptocurrencies will not only protect society from challenges and threats in this area, but will also open up new opportunities for the development of the digital economy. Despite numerous attempts in Ukraine to define the legal regulation of cryptocurrency circulation, this issue has not been fully resolved. We believe that Ukraine should be guided by the principles of cryptocurrency regulation established by The Financial Action Task Force (FATF) with adaptation to national legislation.

Thus, the analysis of the formation and development of legal regulation of cryptocurrency circulation leads to the conclusion that although many countries already have their own legal regulation of cryptocurrency, there is no single legal space for regulating digital currency in the world, as only the EU develops separate rules in the crypto sphere. We consider the development of a unified international legal regime and the introduction of general rules into national legislation to be a promising solution. Future research should be aimed at developing relevant provisions, including taking into account the provisions of foreign legislation.

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РОЗВИТОК ВІДНОСИН У СФЕРІ ОБІГУ КРИПТОВАЛЮТ ТА ФОРМУВАННЯ ВІДПОВІДНОГО ЗАКОНОДАВСТВА В УКРАЇНІ

Анотація. ***Мета.*** Метою статті є аналіз нормативних і практичних положень, міркувань і висновків науковців у частині обігу криптовалюти в Україні і надання пропозицій до напрямів удоскона-

лення нормативного забезпечення цих процесів. ***Методи дослідження.*** Дослідження відносин із криптовалютою було проведено за допомогою застосування відомих методів дослідження: аналізу та синтезу, методу групування, системно-функціонального методу, порівняльно-правового методу, наукової абстракції та інших, за допомогою яких було проведено розгляд правовідносин із криптовалютою, зроблено висновки і пропозиції. ***Результати.*** У статті показано, що в правовому полі ще не створено нормативно-правової бази для регулювання відносин із криптовалютою, а тому в НБУ та інших фінансових установах переважає суперечливе та сумнівне ставлення до новацій грошового обігу. Закони, що прийматимуться в Україні, будуть направлені на легалізацію та регулювання відносин із криптовалютою та матимуть позитивний вплив на показники держбюджету. Криптовалюта в сучасних умовах економічного розвитку набула значення вагомого активу фізичних, юридичних осіб та державних органів. Використання криптовалют у фінансовому обігу показує сталу тенденцію до зростання та довіру користувачів. **Висновки.** Звернуто увагу, що в інформаційному суспільстві стрімко зростає роль правового регулювання процесів із застосування цифрових технологій. Таке регулювання має бути ефективним з різних боків та відповідати сучасним викликам і загрозам. Наведено дискусійні підходи для розуміння сутності криптовалюти та проблем правового регулювання її обігу. Розглянуто етапи становлення правового регулювання обігу криптовалюти в Україні. Проаналізовано законодавство, яке було розроблено та прийнято в Україні. Запропоновано різні правові підходи до розуміння сутності криптовалюти. Конкретизовано наявні проблеми правового регулювання обігу криптовалюти в законодавстві України та порівняно їх із практикою інших країн. Звернено увагу, що пошук найефективнішого правового регулювання відносин із криптовалютою пов'язаний як зі створенням оптимального правового поля, так і з розвитком криптовалютного бізнесу і децентралізацією обігу криптовалюти. У статті охарактеризовано формування міжнародно-правового режиму криптовалюти, надано оцінку ризикам, рекомендовано створення єдиного міжнародно-правового поля, що регулює відносини у криптосфері. Окремо визначено напрями розбудови ринку віртуальних активів в Україні та висвітлено законодавчі ініціативи деяких зарубіжних держав щодо створення національних цифрових валют. Уточнено загрози та ризики використання віртуальних активів, зокрема криптовалют, окреслено загальносвітові тенденції їх розвитку, запропоновано напрями вдосконалення законодавчого забезпечення обігу віртуальних активів в України.

Ключові слова: криптовалюта, віртуальні активи, біткойн, електронні гроші, правове регулювання, господарська діяльність, Цивільний кодекс України, Господарський кодекс України, Податковий кодекс України, «майнінг» криптовалюти, криптосфера.

The article was submitted 17.10.2023
The article was revised 07.11.2023
The article was accepted 28.11.2023

UDC 349.2
DOI https://doi.org/10.32849/2663-5313/2023.5.04

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Husarov, Oleksandr (2023). Research status of regulatory issues of atypical forms of employment in Ukraine. *Entrepreneurship, Economy and Law, 5*, 25–29, doi https://doi.org/10.32849/2663-5313/2023.5.04

RESEARCH STATUS OF REGULATORY ISSUES OF ATYPICAL FORMS OF EMPLOYMENT IN UKRAINE

Abstract. ***Purpose***. The purpose of the article is to study the regulatory issues of atypical forms of employment in Ukraine. ***Results.*** The article analyses the scientific perspectives of scholars who have studied the issue of atypical forms of employment in their works. It is stated that the study of the problem of regulatory framework for atypical forms of employment in Ukraine is rather fragmentary, which cannot be regarded sufficient for its consideration as a complex socio-economic phenomenon. Social processes that influence the spread of atypical forms of employment cover most developed countries, and in Ukraine they are evolving somewhat slower than in the EU due to certain differences in socio-economic advancement. Moreover, the regulatory framework for atypical forms of employment in Ukraine does not keep pace with the modern needs of society in this field. In addition, the emergence and development of atypical forms of employment reveal a significant number of problems and shortcomings, the causes, consequences and ways to overcome thereof have become the subject of research by domestic scientists. ***Conclusions.*** It is concluded that, given the significant growth in the popularity of atypical forms of employment, scholars paid considerable attention to the theoretical aspects of the development of this institution, in particular, its impact on the advancement of the labour market has been actively studied, moreover, many researchers, when considering the regulatory framework for atypical forms of employment, focus only on certain types of employment, such as: remote work, home-based work, etc. It has been determined that in most studies, the authors underline the positive and negative consequences of the spread of atypical forms of employment in Ukraine. Moreover, the significant interest of employers in using atypical employment is emphasised. Special attention is also paid to the issue of economic benefits from the use of labour of such employees. When determining ways to harmonise the interests of employees and employers, scholars focus on strengthening the role of labour law in regulating atypical forms of employment both by the current Labour Code and the future Labour Code.

Key words: research, regulatory framework, atypical employment, legislation.

1. Introduction

Social processes that influence the spread of atypical forms of employment cover most developed countries, and in Ukraine they are developing somewhat slower than in the EU, due to certain differences in socio-economic development. Moreover, the regulatory framework for atypical forms of employment in Ukraine does not keep pace with the modern needs of society in this field. In addition, the emergence and development of atypical forms of employment reveal a significant number of problems and shortcomings, the causes, consequences and ways to overcome thereof have become the subject of research by domestic scientists.

Some problematic issues related to the regulatory framework for atypical forms of employment are considered in the scientific works by: S.V. Vyshnovetska, O.F. Melnychuk, M.O. Melnychuk, O.E. Kostiuchenko, I.M. Pavlichenko, O.S. Prylypko, O.H. Sereda, S.O. Silchenko, V.O. Shvets and many others. However, despite a large number of scientific achievements, there are still many problems that need to be addressed in the field of regulatory framework for atypical forms of employment in Ukraine.

As a result, the purpose of the article is to assess the research status of the regulatory issues of atypical forms of employment in Ukraine.

2. Specifics of atypical forms of employment

The scientific work by O.S. Prylypko is one of the first to study atypical forms of employment in the context of the nature and content of non-standard employment contracts. In her dissertation on the legal nature and content of non-standard employment contracts, the author analyses the issue of determining the flexibility of the regulatory framework for

labour relations, which plays an important role in the development of modern labour law. The researcher determines that increased flexibility contributes to the emergence of new atypical labour relations, new atypical forms of employment and new non-standard types of employment contracts. Flexibility is considered as an effective element of labour market regulation in the context of strengthening the protection of employees' rights. The author defines the concept of "non-standard employment", according to which the latter is revealed as an employee's activity which differs in its regulatory mechanism, working hours of the person, his/her workplace and deviations from the standard rules contained in labour law. O.S. Prylypko emphasises that the main distinguishing feature of employees working under a borrowed labour contract from ordinary employees is that under an employment contract for borrowed labour, an employee enters into an employment contract with an employment agency and undertakes to perform his/her labour function in favour of another person or organisation (user organisation), which shall be specified in the employment contract (Prylypko, 2014). The researcher underlines the reason for atypical forms of employment, namely the flexibility of the labour market due to various factors, and analyses certain types of atypical forms of employment, in particular borrowed labour.

The issues of specificity of labour contracts in non-standard forms of employment are addressed in the dissertation of B.A. Rymar. The author argues that further regulatory framework for fixed-term employment contracts should establish additional cases of their possible application and specifying the rights and obligations of the parties to such contracts. The dissertation analyses the foreign experience of application of teleworker (e-worker) employment contracts and the prospects for using this type of home-based work in national legal practice. When considering a borrowed labour agreement, the author emphasises that it is the basis for a complex tripartite legal relationship between a leasing agency, an employee and a user enterprise, which is regulated by labour, civil, administrative and social security law. The researcher examines the legal nature of the leasing (borrowed) labour agreement and notes that the agreement between the leasing agency and the user enterprise has a civil law nature, although it imposes certain labour obligations on the user enterprise. The author emphasises the need to abolish the state monopoly on employment services and legalise private paid employment agencies, abandon excessive restriction of certain labour law institutions, legitimise more new types of employment contracts, including atypical, and give the parties greater freedom to conclude, amend and terminate collective and individual contracts and agreements (Rymar, 2009). The author focuses on the inclusion of atypical forms of employment contracts which correspond to the forms of employment into the spectrum regulated by the labour law.

A considerable number of works study certain forms of atypical employment and issues of their regulatory framework. For example, O. Kostiuchenko pays attention to out-staffing as a form that should be used for highly skilled jobs and creative, intellectual labour, which has such socio-economic properties that affect the reduction of transaction costs of employment: a) reduced risks in labour organisation, working time costs and reduced labour productivity by transferring them to the contractor; b) reduced financial burden on the employer's payroll; c) avoidance of time and money costs of obtaining licences (permits) to carry out the relevant work; d) avoiding the costs of employing foreign specialists in Ukraine, which facilitates the mobility of business entities, including foreign experts and other highly qualified specialists; e) exemption of the business entity (entrepreneur-customer) from the need to provide a workplace for a specialist in accordance with regulatory requirements, and thus, reduction of labour protection costs (Kostiuchenko, 2012). A similar problem is addressed in the work by I.V. Lahutina, who examines the risks of standard forms of employment such as outsourcing and out-staffing. The author notes that out-staffing differs from outsourcing in the attitude of the service customer to the staff performing the work. In out-staffing, the staff is directly subordinated to the recipient, and the contractor's task is to select employees who meet the specified characteristics and enter into an employment relationship with them (Lahutina, 2014).

3. Problems of the regulatory framework for atypical forms of employment

The literature review underlines the problems of regulatory framework for the remote form of employment. O.H. Sereda, emphasising the need to improve the regulatory framework for remote employment, describes a remote worker as a person who performs work without entering into a long-term contract with an employer, hired only to perform a certain list of works (freelance worker). A modern remote worker is virtually any specialist who works outside the company's permanent staff and without a long-term employment contract (Sereda, 2014). S.O. Silchenko and D.A. Sierbina emphasise the need for a clear distinction between remote and home-based work.

Unlike the work of home-based workers related to the production of goods or the provision of household services, remote work is possible almost wherever intellectual labour or communication between people is used. Furthermore, of course, such work is impossible without the use of information and communication technologies and appropriate equipment (Silchenko, Sierbina, 2021).

In their works, these researchers examine the essence of the forms of atypical employment chosen by them for the study (primarily in the context of socio-economic significance), the problems arising in connection with their implementation, and note the need to improve the regulatory framework for problematic issues. Plenty of scientific publications consider the consequences of the spread of atypical forms of employment.

For example, I.M. Novak studies both positive and negative features of atypical forms of employment as social innovations in the labour market, such as: engaged (borrowed) labour, flexible employment and transformation of labour relations, in the sense of replacing labour relations with civil ones. The author considers the following as positive results of the introduction of innovative forms of employment for employees: an increase in the level of virtual labour mobility, which removes restrictions related to the place of physical location and allows for greater access to labour markets and the scope of labour efforts; the ability to combine work with study and other useful activities (volunteer work, childcare, solving family problems, etc.) through flexible forms of employment. Nevertheless, the researcher emphasises that workers employed on the terms of non-standard employment face problems such as the lack of a permanent job and an increased risk of unemployment; deterioration in employment conditions, remuneration and safety in the workplace, non-compliance with and/or loss of labour rights and guarantees; loss of pension and other social benefits, guarantees and compensation of an industry-specific nature; lack of the right to receive insurance compensation in the system of compulsory state social insurance (unemployment benefits, temporary disability payments and payments in connection with an industrial accident) (Novak, 2016).

According to S.H. Rudakova, N.S. Danilevych and L.V. Shchetinina, along with the positive aspects of flexible forms of employment and working hours, there are a significant number of negative aspects, such as: difficulties in organising labour when developing shift schedules; part-time workers are usually less adapted in production teams than those working on a traditional schedule; the use of compressed working hours often leads to increased fatigue; the need for enterprises to use appropriate means of recording the time worked (Rudakova, Danylevych, Shchetinina, 2013).

O.Yu. Hulevych, defining remote work as work at a distance performed with the help of information and communication technologies, argues that it has both positive and negative consequences. According to O.Yu. Hulevych, positive attributes include: free choice of working hours; a calm working environment; the ability to solve family problems, including childcare; reducing the likelihood of conflicts with colleagues and/or management; lack of direct control over the employee's activities; and reduced costs and time spent commuting. Negative consequences are: "self-exploitation" (lack of compensation for night work); delayed work in case of illness or forced work despite being ill, as well as problematic replacement in case of illness; limited ability to use the right to parental leave in case of illness of children; loss of connections with work colleagues; inability to participate in the daily life of the company; lack of guarantees of proper working conditions; limited possibility of inspection of the workplace by safety specialists, as well as the possibility of damage to equipment or software, unauthorised access to information; interference with personal life (Hulevych, 2010). It seems that a significant number of the listed disadvantages are evaluative and depend on the specific living conditions of the employee.

With regard to freelancing as an atypical form of employment, L.F. Lieskova identifies the following advantages for employers: the ability to pay only for the work performed, not for the hours spent at the workplace; the ability to attract higher-class specialists from different regions; the ability to save on expensive office space; no need to provide social guarantees, pay for holidays and sick leave; the ability to minimise paperwork and reporting; the ability to refuse to continue cooperation with a freelancer at any time, which is easier than dismissing a full-time employee and requires certain grounds and more complex legal procedures. The author identifies the following as problems (disadvantages) in freelance work: not always guaranteed payment for the work performed; instability of income; lack of a social package; the need to keep accounting and pay taxes on one's own; not always suitable offers; additional workplace costs; possible problems with satisfying consumer credit orders; illusory opportunities for quality career growth. Meanwhile, the researcher calls the inability to control the process of work performance the only problem (disadvantage) in the employer's activities (Lieskova, 2017).

T.V. Shlapko and E.A. Polianska, considering the problems of the regulatory framework for atypical forms of employment in view of the rapid spread of atypical forms of employment, rightly emphasise the need to adapt legislation to modern conditions, allowing for international experience and specificities of work and labour relations, to provide a clear definition of remote employment, to define the form of the contract for such employment, its content, working hours and rest periods, and the mechanism for regulating and controlling such labour relations (Shlapko, Polianska, 2018).

4. Conclusions

Therefore, this research enables to conclude: first, given the significant growth in the popularity of atypical forms of employment, scholars have scientists focused considerable attention on the theoretical aspects of the development of this institution, in particular, its impact on the development of the labour market has been actively studied; second, a significant number of researchers, when considering the regulatory framework for atypical forms of employment, focus only on certain types of employment, such as: remote work, home-based work, etc.; third, in most studies, the authors underline the positive and negative consequences of the spread of atypical forms of employment in Ukraine. Moreover, the significant interest of employers in using atypical employment is emphasised. Special attention is also paid to the issue of economic benefits from the use of labour of such employees; fourth, when determining ways to harmonise the interests of employees and employers, scholars focus on strengthening the role of labour law in regulating atypical forms of employment both by the current Labour Code and the future Labour Code.

Thus, it should be noted that the study of the problem of regulatory framework for atypical forms of employment in Ukraine is rather fragmentary, which cannot be considered sufficient for its consideration as a complex socio-economic phenomenon.

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СТАН ДОСЛІДЖЕННЯ ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ НАСЕЛЕННЯ В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає в дослідженні проблеми правового регулювання нетипових форм зайнятості населення в Україні. ***Результати.*** У статті здійснено аналіз наукових поглядів учених, які у своїх працях досліджували проблему нетипових форм зайнятості. Констатовано, що дослідження проблеми правового регулювання нетипових форм зайнятості населення в Україні є доволі фрагментарним, що не може вважатися достатнім для його розгляду як комплексного соціально-економічного явища. Суспільні процеси, що впливають на поширення нетипових форм зайнятості, охоплюють більшість розвинутих держав світу, причому в Україні вони набувають розвитку дещо повільніше в порівнянні з країнами ЄС, що зумовлено певною відмінністю соціально-економічного розвитку. Разом із цим правове регулювання нетипових форм зайнятості в Україні суттєво відстає від сучасних потреб суспільства в цій сфері. Окрім того, виникнення та розвиток нетипових форм зайнятості виявило значну кількість проблем і недоліків, причини наслідки та шляхи подолання яких стали об'єктом дослідження наукових розробок вітчизняних учених. ***Висновки.*** Зроблено висновок, що з огляду на значний ріст популярності нетипових форм зайнятості науковці досить багато уваги приділили теоретичним аспектам розвитку даного інституту, зокрема активно вивчали його вплив на розвиток ринку праці, а також значна кількість дослідників у розгляді правового регулювання нетипових форм зайнятості акцентують увагу лише на окремих її видах, зокрема дистанційній роботі, надомній праці тощо. Визначено, що в переважній більшості досліджень автори звертають увагу на позитивні та негативні наслідки поширення в України нетипових форм зайнятості. Акцентовано саме на значній зацікавленості роботодавців у використанні нетипової зайнятості. Висвітлено також питання економічних переваг від використання праці таких працівників, крім того, визначаючи шляхи гармонізації інтересів працівників і роботодавців, науковці звертають увагу на посилення ролі норм трудового права у регулюванні питань нетипових форм зайнятості як чинним Кодексом законів про працю України, так і майбутнім Трудовим кодексом.

Ключові слова: дослідження, правове регулювання, нетипова зайнятість, правове регулювання, законодавство.

The article was submitted 17.10.2023
The article was revised 07.11.2023
The article was accepted 28.11.2023

UDC 349.41
DOI https://doi.org/10.32849/2663-5313/2023.5.05

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Paliichuk, Volodymyr (2023). The practice of the European Court of Human Rights regarding the criteria for the lawfulness of interference with land ownership. *Entrepreneurship, Economy and Law, 5*, 30–35, doi https://doi.org/10.32849/2663-5313/2023.5.05

THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING THE CRITERIA FOR THE LAWFULNESS OF INTERFERENCE WITH LAND OWNERSHIP

Abstract. ***Purpose.*** The study aims to analyze and systematize the criteria used by the European Court of Human Rights to assess the lawfulness of interference with a human right to peaceful enjoyment of their land. ***Research methods.*** The study was conducted using general scientific and specialized methods of scientific inquiry. ***Results.*** The main doctrinal and judicial approaches to the criteria for the lawfulness of interference with land ownership rights have been analyzed. The components of all three criteria, namely, lawfulness, pursuit of a legitimate aim, and proportionality, were examined. Requirements for the quality of the law, predictability, and accessibility were explored. The legal positions of the European Court of Human Rights on the aforementioned issues were arranged, involving the definition of the category of public interests, which national authorities tailor to the specific needs of a particular society. Considering the broad discretion of national authorities in determining the content of public interests, the main components assessed by the Court when evaluating the satisfaction of the "proportionality" criterion were also indicated, including the provision of adequate compensation and the maintenance of a fair balance between potentially broad public interests and the interests of an individual, who cannot bear an excessive burden. The procedural factors which the European Court of Human Rights regards when deciding on violation of the proportionality criterion were analyzed. ***Conclusions.*** The criteria for lawfulness constitute an effective mechanism for protecting land ownership rights in Ukraine. The criteria developed by the European Court of Human Rights guarantee a wide range of rights and mechanisms for their protection, which need to be further studied and implemented in practice. Ukrainian courts and public administration should undertake systematic efforts to implement and adhere to the aforementioned criteria and standards when resolving land disputes or regulating land legal relations in order to minimize potential complaints against Ukraine to the European Court of Human Rights and raise the standards of land rights protection in Ukraine.

Key words: practice of European Court of Human Rights, criteria of lawfulness, deprivation of land, public interests, proportionality, source of land law.

1. Introduction

An individual's right to own property is fundamental, and its proper regulation and protection are critical for the development of both the individual and society and the state as a whole. Ukrainian legislation provides for a set of criteria for the legitimacy of interference with the right to own land.

However, given that under Art. 17 of the Law of Ukraine "On Execution of Judgments and Application of Practice of the European Court of Human Rights", the practice of the European Court of Human Rights (hereinafter referred to as the "ECtHR", the "Court") and the European Commission of Human Rights is a source of law in Ukraine, a detailed study of the legal positions of the Court on the criteria for the lawfulness of interference with land ownership is crucial (The Law of Ukraine "On Execution of Judgments and Application of Practice of the European Court of Human Rights"). Courts and public administration are obliged to follow these legal positions when resolving land disputes or regulating land legal relations. The topic's relevance is also acute due to the lack of proper systematization of knowl-

edge and analysis of specific legal decisions of the ECtHR.

A scientific study of the ECtHR practice as a source of land law of Ukraine as a whole or criteria for the lawfulness of interference with land ownership was carried out by such scientists as Antoniuk O.I., Blazhivska N., Kovalenko T.O., Miroshnichenko A.M., Sannikov D.V., Falkovskyi A.O., and Yurchyshyn V.D.

The purpose of the article is to study the main criteria used by the Court, examine specific judgments, and formulate practical advice on the application of the relevant legal positions in resolving court disputes.

2. The ECtHR criteria for the lawfulness of interference with property rights

In order to properly determine the criteria for the lawfulness of interference with the individual's right of land ownership used by the ECtHR, it is necessary, first of all, to refer to the primary source followed by the Court in resolving disputes, namely, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention", "ECHR"). According to Art. 1 of Protocol No. 1 to the Convention, a person may be deprived of his possessions except:

– in the public interest;

– subject to the conditions provided for by law and by the general principles of international law.

The same Article of Protocol No. 1 to the Convention also stipulates that a State may enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties (Convention for the Protection of Human Rights and Fundamental Freedoms). From the above, it can be concluded that the Convention distinguishes two criteria for the lawfulness of interference with the right to peaceful possession of one's property: legality and the implementation of such interference in the public interests.

At the same time, the European Court of Human Rights, in the process of interpreting the Convention when resolving disputes, sometimes goes beyond the original provisions of the Convention and creates additional rules that the contracting states are actually obliged to comply with. Sabodash R. B. drew such a conclusion noting: "the content of the Court's judgments indicates that although its interpretation of the Convention does not establish new norms of the Convention, new conduct rules for the States Parties are often created" (Sabodash, 2013, p. 141). The alike was mentioned by the scientist Ivanytskyi A. "the Court's practice defines and explains the provisions of the Convention and its protocols in practice" (Ivanytskyi, 2020, p. 26).

A similar situation arose during the interpretation of the criteria for the legitimacy of interference with the right to peaceful possession of property since the Court, in its judgments, specified these criteria and expanded their content. Thus, there are usually three criteria for the legitimacy of an interference:

– complies with the principle of lawfulness;

– pursues a legitimate aim;

– meets the criterion of proportionality.

Scientists Kaletnik H. M. and Opolska N. M. also came to a similar "three-stage test" in their work (Kaletnik, Opolska, 2021). At the same time, it should be noted that in many cases before the ECtHR, it was sufficient for the Court to identify a violation of the criterion of lawfulness or to establish that the interference did not pursue a legitimate goal in order to recognize such interference as a violation of the right guaranteed by the Convention (Guide on Article 1 of Protocol No. 1 – Protection of property, p. 20). Therefore, the Court does not necessarily analyze the criterion of proportionality, as, for example, happened in the case of Simonyan v. Armenia (Case of Simonyan v. Armenia, 2016).

3. Interference under the law (the principle of lawfulness)

Although the rule of law is one of the fundamental principles of the legal system and a democratic state, the ECtHR has repeatedly emphasized in its practice that interference with the peaceful possession of a person's land should be legal.

However, when resolving disputes, the Court was not limited to just mention of the principle. Thus, for example, following the judgment as of June 2, 2014, in the case of East/West Alliance Limited v. Ukraine, the Court interpreted the principle of lawfulness within the meaning of the Convention. According to the Court's position, only interference that is carried out in "compliance with the relevant provisions of domestic law and compatibility with the rule of law, which includes freedom from arbitrariness", can be lawful (Case of East/West Alliance Limited v. Ukraine, 2014).

The Court reached a similar conclusion in the judgment as of October 25, 2012, in the case of Vistiņš and Perepjolkins v. Latvia., which concerned the expropriation of land: the Court noted that the existence in national law of a legal basis for interference with property rights is not yet a guarantee that such interference does not violate the provisions of the Convention. It stressed that the law should be of high quality, namely "it should be compatible with the rule of law and should provide guarantees against arbitrariness." Moreover, in the same case,

the ECtHR established that such a law should not always apply exclusively to any subject of legal relations. Some laws related to interference with the right of peaceful possession may provide for special conditions for one or more persons (Case of Vistiņš and Perepjolkins v. Latvia, 2012).

In other cases, the Court also held that the legal rules interference is based on must be "reasonably accessible, precise, and foreseeable in their application". In particular, the Court reached that conclusion in the case of Guiso-Gallisay v. Italy (Case of Guiso-Gallisay v. Italy, 2009).

On top of that, the "foreseeability" of legislation can be attained even if a person needs legal aid to comply with certain rules and procedures or predict the consequences of his actions. In the judgment as of February 14, 2017, in the case of Lekic v. Slovenia, the ECtHR stated that the law can be recognized as foreseeable even if legal assistance is required for the analysis. Legal aid can be crucial for persons involved in some professional or commercial activity since "they carefully assess the risks that such activity entails" (Case of Lekic v. Slovenia, 2017). In fact, this provision complicates the situation for farmers or other persons who use their land plots for commercial rather than personal purposes, as the threshold for compliance with the foreseeability of legislation when interfering with a person's right to land is lower.

The case of Nesic v. Montenegro is an example an example of legislation that the ECtHR may consider unforeseeable. In a judgment as of 9 September 2020, the Court found that the State had deprived the applicant of ownership of several of his land plots in the coastal zone. The lawful owner lost the right to such plots due to the entry into force of laws under which the concerned land had become state property. However, no formal expropriation was carried out, and no compensation was established for the owner. The legislation did not enshrine the obligation of formal expropriation of the land plot and hence jeopardized the applicant's opportunity to obtain compensation. Accordingly, the Court concluded that such a state of legislation violates the principle of foreseeability of law and thus a violation of Art. 1 of Protocol No. to the Convention (Case of Nesic v. Montenegro, 2020).

It is worth paying meticulous attention to the Court's position that judicial practice must also comply with the law in order to establish that the principle of lawfulness is observed when interfering with the right to peaceful enjoyment of one's property. Divergences in the case-law may create legal uncertainty which is incompatible with the requirements the rule of law (Guide on Article 1 of Protocol No. 1 – Protection of property, p. 25).

A component of the lawfulness principle in the ECtHR practice is the availability of legal remedies for legal protection against arbitrary interference by public authorities or other entities with the right to peaceful enjoyment of land. Thus, in the judgment as of February 14, 2017, in the case of Lekic v. Slovenia, the Court pointed out that although the absence of judicial control during interference with a person's right does not automatically constitute a violation of such a right, any interference with the right to use property must entail procedural guarantees that allow the person to express his position before the authorities for the efficient protection of his right. To this end, the Court shall examine existing judicial and administrative procedures in national law to ensure that the principle of lawfulness is not infringed (Case of Lekic v. Slovenia, 2017).

Such legal principles as lawfulness are basic and fundamental; they are probably impossible to specify without using abstract categories. Although the components of the lawfulness criterion are often quite abstract, they are actionable and consideration since they provide extra space for the protection of individual land rights.

4. Interference in pursuit of a legitimate aim

As noted above, the second criterion of the Convention, as well as the Court, in assessing the lawfulness of interference with an individual's right to peaceful enjoyment of his land is a legitimate goal.

Protocol No. 1 to the Convention outlines that a person may be deprived of his possession only in the public interest, which is a rather abstract category, that was further specified in the ECtHR practice. The Law of Ukraine "On Alienation of Private Land Plots and Other Real Estate Objects Located on Them for Public Needs or on the Grounds of Public Necessity" involves a mechanism for deprivation of possessions for public needs/public necessity in some cases. The ECtHR, in its practice, actually recognized a set of situations as a legitimate goal for interfering with the property rights of a person, as follows:

– elimination of social injustice in the housing sector;

– nationalization of specific industries;

– adoption of land and city development plans;

– securing land in connection with the implementation of the local development plan;

– prevention of tax evasion;

– protection of morals;

– confiscation of monies acquired unlawfully;

– transition from a socialist to a free-market economy;

– protection of the environment; etc. (Guide on Article 1 of Protocol No. 1 – Protection of property, pp. 28–30).

At the same time, it is worth highlighting that the list is not exhaustive. In its practice, the Court holds the opinion that international judges are not able to properly analyze public needs in each country that is a member of the Council of Europe, and therefore leaves a significant space for the discretion of national state bodies since they understand the specifics of their state and public needs that allow interference with the property right of a person. On top of that, even such a wide discretion should be justified and somehow limited.

In the judgment as of 13 December 2016, in the case of Béláné Nagy v. Hungary, the Court indicated that the category of "public interest" is broad. The ECtHR stressed: "it considers it natural that the margin of appreciation available to the legislature for the implementation of social and economic policy should be broad and it will respect the legislature's decision as to what is in the "public interest", unless that decision is manifestly unreasonable" (Case of Belane nagy v. Hungary, 2016).

Moreover, in some cases, even the transfer of land from the property of one person to the property of another private person can be regarded as committed in accordance with the public interest. Thus, in the decision as of February 21, 1986, in the case of James and Others v. the United Kingdom, the ECtHR noted that the expression "in the public interest" does not always mean that the property should be transferred to the use of the general public or that the community as a whole or even a significant part of it should directly benefit from interference with the property rights of another person. Interference with the right to peaceful enjoyment of property in order to implement social justice policy in society can be correctly described as "public interest" (Case of James and Others v. the United Kingdom, 1986).

Summing up, it must be admitted that the Court rarely recognizes the public interest that justifies interference with the property right as unreasonable. Although this may carry some risks because states can abuse their discretion in determining the public interest, in this case, there are some safeguards against the arbitrariness of the public administration, namely, the presence of other criteria for the lawfulness of interference with property rights and the reaction of a democratic society interested in legislation's correspondence to its values and desires. Moreover, the ECtHR always reserves the right to recognize certain public interests as unjustified if the above occurs.

5. Interference given the criterion of proportionality

One of the limitations of the category of "public necessity" and the last important element of the right to peaceful enjoyment of one's land or other property is also the requirement of proportionality of interference with the relevant right. If interference with the property right occurs via means that are unduly burdensome and inconsistent with the purpose, it may be considered unlawful.

In the case of East/West Alliance Limited v. Ukraine, the ECtHR stressed that interference should strike a fair balance between the interests of society and the individual applicant and a balance could not be achieved if "...a disproportionate and excessive burden was imposed on the person concerned. In other words, there must be a reasonable proportion between the means employed and the end sought" (Case of East/West Alliance Limited v. Ukraine, 2014).

When hearing the case, the Court not only establishes the existence of public interests but also examines the extent to which these public interests correlate with individual's private interests. An essential element of proportionality under interference is proper compensation to the owner for it. In the case of Svitlana Ilchenko v. Ukraine, the ECtHR stated that "the conditions for granting compensation under the relevant legislation are crucial for assessing whether the contested measure maintains the necessary fair balance, and, in particular, whether it imposes a disproportionate burden on the applicant". In this case, the Court examined the lawfulness of the demolition of the applicant's garage on the land she had used for 20 years in order to build the territory. The ECtHR also drew attention to the fact that the interference with the applicant's rights was carried to develop housing, that is, for private commercial gain. Although the issue of public interest in the process of housing building was also considered, namely, the renewal and increase in the housing stock for the population, the interference proportionality was still violated due to the lack of adequate compensation that would correspond to the market value of the alienated property. As a result of the case's consideration, the Court, taking into account the above factors, concluded that the applicant's rights guaranteed by Protocol No. 1 to the Convention were violated (Case of Svitlana Ilchenko v. Ukraine, 2019).

At the same time, the Court recognizes that in some exceptional situations, interference with property rights may be regarded proportionate

even in the absence of compensation. In the judgment as of December 9, 1994, in the case "The Holy Monasteries v. Greece", it holds that full compensation is not guaranteed since the public interest may require less compensation than the market value of the property (Case of The Holy Monasteries v. Greece, 1994).

The availability of compensation is not the only factor the Court regards when examining the issue of fair balance. There are an unlimited number of other factors that are taken into account when making a final decision. It refers to the so-called procedural factors, namely, the availability to the applicant of procedures that would allow challenging the interference. In cases where the applicants do not have the possibility of effectively challenging the measure, the Court has found that an excessive burden was borne by them (Hentrich v France, 1994).

It is also important that the ECtHR has examined the components of this procedure, noting that the procedures should include an assessment of the consequences of the expropriation, determination of the rights to be compensated and how, cost, etc. It is also regarded whether legislation has provided for other ways to solve the problem, except for interference with the individual's property rights (Guide on Article 1 of Protocol No. 1 – Protection of property, pp. 32-33).

6. Conclusions

Summing up all the above, it is worth emphasizing that the ECtHR practice is a source of land law in Ukraine, and therefore the legal positions of the Court should be further analyzed, and the acquired knowledge should be systematized for practical application. The ECtHR practice regarding the protection of land ownership is multifaceted and specified.

The main criteria for the legitimacy of interference with the right to peaceful possession of one's property are lawfulness, the implementation of such interference for the public interest, as well as compliance with the criterion of proportionality. The components of the lawfulness criterion are described in detail in the ECtHR practice and should be taken into account by the legislator and judges when deciding on interference with an individual's rights to property. Legislative norms should be sufficiently accessible, precise, and foreseeable in their application. Although the category of "public interest" is interpreted by the Court broadly and given the significant discretion of the national authorities, the ECtHR uses the principle of proportionality as a safeguard, which considers the presence in the national legislation of other, less stringent, measures of interference, compensation for interference with the individual's property right to land, as well as other factors that may indicate a violation of the rights provided for by the Convention.

The ECtHR practice and the Convention are effective tools for protecting rights. Thus, further systematic work on translating more judgments into Ukrainian, systemizing legal positions, and applying the Court's criteria during legislative work is crucial.

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ПРАКТИКА ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ ЩОДО КРИТЕРІЇВ ПРАВОМІРНОСТІ ВТРУЧАННЯ В ПРАВО ВЛАСНОСТІ НА ЗЕМЛЮ

Анотація. ***Мета.*** Метою статті є дослідження, аналіз та систематизація критеріїв, які Європейський суд з прав людини використовує задля оцінювання правомірності втручання в право особи на мирне володіння своєю землею. ***Методи дослідження.*** Роботу виконано з використанням загальнонаукових та спеціальних методів наукового пізнання. ***Результати.*** Проаналізовано основні доктринальні та Судові підходи щодо критеріїв правомірності втручання в право власності на землю, досліджено складники всіх трьох критеріїв, а саме законності, переслідування легітимної мети та пропорційності. Досліджено вимоги щодо якості закону, передбачуваності та доступності. Систематизовано правові позиції Європейського суду з прав людини з вищезазначеного питання, а також щодо визначення категорії суспільних інтересів, яку національні державні органи наповнюють своїм змістом залежно від потреб конкретного суспільства. Зважаючи на широку дискрецію національних органів щодо визначення змісту суспільних інтересів, також установлено основні складники, які перевіряються Європейським судом з прав людини під час оцінювання задоволення критерію пропорційності, а саме наявність належної компенсації, дотримання справедливого балансу між потенційно вкрай широкою категорією суспільних інтересів та інтересами приватної особи, на яку не можна покласти надмірний тягар. Також досліджено процедурні фактори, які беруться до уваги Європейським судом з прав людини під час прийняття рішення щодо порушення критерію пропорційності. ***Висновки.*** Критерії правомірності є цілком дієвим механізмом захисту права власності на землю в Україні. Розроблені Європейський судом з прав людини критерії гарантують широкий обсяг прав та механізми їх захисту, які й надалі потрібно вивчати, систематизувати та впроваджувати на практиці. Українські суди та публічна адміністрація повинні здійснювати системну роботу із впровадження та дотримання вищезазначених критеріїв та стандартів під час вирішення земельних спорів або регулювання земельних правовідносин з метою мінімізації потенційних скарг проти України до Європейського суду з прав людини, а також підвищення стандартів захисту прав на землю в Україні.

Ключові слова: Практика Європейського суду з прав людини, критерії правомірності, позбавлення землі, публічні інтереси, пропорційність, джерело земельного права.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 351.713 (477) (043.3)
DOI https://doi.org/10.32849/2663-5313/2023.5.06

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Demenko, Oleksandr (2023). Problems of formulating basic concepts in tax administration by the State Tax Service of Ukraine. *Entrepreneurship, Economy and Law, 5*, 36–41, doi https://doi.org/10.32849/2663-5313/2023.5.06

PROBLEMS OF FORMULATING BASIC CONCEPTS IN TAX ADMINISTRATION BY THE STATE TAX SERVICE OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to solve the problem of formulating the basic concepts in tax administration by the State Tax Service of Ukraine. ***Results.*** The relevance of the article is due to the fact that one of the central ways to build Ukraine as a democratic, legal and social state with a developed civil society is to improve the administrative system of the State, the level of development of which determines the state of protection of rights, freedoms and legitimate interests of individuals and legal entities. Ukraine's public administration system remains ineffective in general, due to the combination of new institutions formed during the period of independence and those inherited from the Soviet era. Ukraine's governance system is characterised by internal contradictions, incompleteness and disconnection from people, which has resulted in the existing public administration becoming a hindrance to socio-economic and political reforms and requires constructive qualitative changes. Reforms in the field of public administration require perfect legal support, an important part of which belongs to administrative law, which is a fundamental branch of Ukrainian public law, organically linked to the executive branch and represents the legal basis and instrument for its exercise. ***Conclusions.*** Tax procedures are a legally regulated and established conduct that combines, first of all, regulatory framework and, in cases not regulated by legal provisions, organisational framework. Moreover, the taxation process, which is manifested in the implementation of tax procedures, the performance of legally significant actions based on the requirements of tax procedural rules, is a regulated sequence of actions to implement tax procedures. It is concluded that the process of tax administration is implemented through the functioning of a special mechanism, which in practice involves the implementation of certain procedures regulated by law. Tax administration procedures are based on the implementation of tax legislation. Furthermore, it should be emphasised that the activities of tax administration entities require continuous improvement by defining clear procedures and building a clear mechanism of the tax process, which should not be influenced by the planned tax collection targets, as this will help to ensure the legitimacy and create a simple and effective tax system.

Key words: process, procedure, order, legal phenomenon, content, activity.

1. Introduction

One of the central ways to build Ukraine as a democratic, legal and social state with a developed civil society is to improve the administrative system of the State, the level of development of which determines the state of protection of rights, freedoms and legitimate interests of individuals and legal entities.

Ukraine's public administration system remains ineffective as a whole due to the combination of new institutions established during the independence period and those inherited from the Soviet era. Ukraine's governance system is characterised by internal contradictions, incompleteness and disconnection from people, which has resulted in the existing public administration becoming a hindrance to socio-economic and political reforms and requires constructive qualitative changes (Demenko, 2014).

2. Definition of the concept of "procedure" in tax administration

The need to develop a new administrative ideology aimed at renewing the administrative culture, increasing personal responsibility with a focus on serving citizens and developing the readiness of management personnel to make decisions in the context of growing freedom of action is emphasised in "The Concept of administrative reform in Ukraine" (The concept of administrative reform in Ukraine, 1998),

which defines the main guidelines for the comprehensive restructuring of Ukraine's existing system of public administration in all sectors of public life, including the collection of taxes and fees. It is important that "The Concept of administrative reform in Ukraine" focuses on both changes in the material basis of management and improvement of the procedural aspects of management activities.

Reforms in the field of public administration require perfect legal support, an important part of which belongs to administrative law, which is a fundamental branch of Ukrainian public law, organically linked to the executive branch and represents the legal basis and instrument for its exercise (Teremetskyi, 2012).

The regulatory framework for tax administration procedures is governed by the provisions of Section II of the Tax Code of Ukraine, which detail the actions of taxpayers and controlling authorities in the collection of taxes and fees. This includes tax reporting, determination of the amount of tax and/or monetary liabilities of a taxpayer, tax control, repayment of tax debt of taxpayers, liability for violation of tax legislation, and appealing against decisions of controlling authorities (Azarov, 2010). Therefore, the viewpoint of M. P. Kucheriavenko that the provisions of Section II of the Tax Code of Ukraine do not regulate the administration of taxes and fees, but actually regulate tax procedures, is consistent with the approach to understanding the tax administration system from the perspective of the controlling entity (Kotenko, 2013).

For the purpose of further studying the issue of tax administration procedures, let us first clarify the essence of administrative procedure as a legal category.

According to N.V. Halitsyna, in the general sense, a procedure is a certain set of actions or operations that implement a process or phase, stage that expresses the content of the relevant technology (Halitsyna, 2010). A procedure acquires legal (juridical) status only when it enters the coverage of regulatory framework. Being regulated by law, it becomes a order (sequence) of legally significant actions in a particular sector of public life (Teremetskyi, 2012).

Following P.S. Tikhii, legal procedure is a regulatory framework for legal activities related to the exercise of rights and duties by participants in social relations, as well as the resolution of legal cases (Tikhii, 2006, p. 23). According to V.V. Medvedchuk and O.D. Sviatotskyi, legal procedure as a sequence and coherence of actions of authorised actors established by law and aimed at obtaining certain personal or social values by a person, as well as the content, scope, forms, ways, methods and terms of such actions (Sviatotskyi, Medvedchuk, 1997, p. 77). I.V. Panova states that a legal procedure is a manner provided by law for performing legal actions aimed at achieving a legal result (Panova, 1998, p. 28).

R.S. Alimov argues that legal procedure is a system of legal relations formed in a certain sequence and aimed at achieving a legal result, which may be expressed in the formation of legal provisions or termination of certain legal relations (the main ones for the procedure), prevention of offences (Alimov, 2002, p. 19). The scholar proceeds from the fact that the procedure is certain legal relations, but it is, first of all, a form that mediates the process of implementation of certain legal relations. Therefore, the definition of the concept of "legal procedure" given by the scholar does not correspond to its essence. A legal procedure is not legal relations, but a system of norms, requirements and rules according to which certain legal relations should be carried out and due to which they acquire an orderly and purposeful appearance (Teremetskyi, 2012).

The procedure is a tool that should assist the parties to the relevant legal relations in fulfilling their tasks and goals by establishing an effective procedure for the exercise of their rights, duties and powers in a particular sector of public life (Teremetskyi, 2012).

The procedural peculiarities of the implementation of certain legal relations are determined by the provisions of the branch of law that regulates them. The relations arising in the field of tax and fee administration have a clearly expressed public law administrative character, and administrative and legal procedure plays a special role, since it is administrative law that regulates legal relations in public administration (Kolpakov, Kuzmenko, 2003, p. 34).

Unfortunately, the legislator does not provide a legal definition of the categories of "procedure", "administrative procedure", or "tax administration procedure". This issue should be clarified by the Administrative Procedure Code of Ukraine, the need for which has been long overdue, but no further steps have been taken, except for the development of one draft, which was withdrawn from the Verkhovna Rada of Ukraine on 12 December 2012. The provisions of the draft Code of Administrative Procedure of Ukraine enshrined the concept of administrative procedure as a procedure for administrative proceedings defined by law. Administrative proceedings have been understood as a set of procedural actions and procedural decisions taken by an administrative body to consider and resolve an administrative case, which ends with the adoption of an administrative act and its performance (Draft Administrative Procedure Code of Ukraine, 2008).

According to V.P. Tymoshchuk, administrative procedure is the procedure established by law for consideration and resolution of individual administrative cases by administrative bodies (Tymoshchuk, 2003, p. 24). P.S. Tikhii proposes to consider administrative procedures as a regulatory framework for the activities of executive authorities, which ensures the procedure for making administrative decisions by officials, including consideration and resolution of specific administrative cases (Tikhii, 2005, p. 74).

Thus, administrative procedures can act as legal guarantees of achieving legitimacy of the activities of the STS of Ukraine, which ensure making public policy on taxation.

It is important to note that the legal literature reveals no consensus on the correlation between legal categories of "procedure" and "process", and often the former is considered only in the context of the latter. For example, B.M. Lazariev argues that the concept of process is broader than the concept of procedure, which is a procedural form that determines the stages of legal process, their goals, sequence, specific actions at each stage, the grounds for committing and interconnection of these actions, as well as the methods of their registration and recording (Bachilo, Vasiliev, Vorobiev, Davitnidze, 1988, p. 5).

In D.M. Bakhrakh's opinion, legal process is a type of procedure, and the procedure of state power activities becomes its most perfect form – legal process, when it is regulated by general rules and legal provisions. The existence of individual procedural provisions and even a number of them does not transform an official procedure into a legal process. This requires the regulatory framework for power activities by a system of procedural rules (Bakhrakh, 2002, p. 219).

I.P. Holosnichenko studies the procedure within the administrative process, which, as the scholar notes, is the procedure regulated by administrative procedural rules for the exercise of executive power by participants in administrative legal relation and resolution of individual administrative cases by the relevant bodies and their officials, as well as disputes arising between executive authorities and other participants in administrative and legal relations. This process, according to the scientist, has two areas of state activities: administrative-procedural and administrative-jurisdictional (Holosnichenko, 2005, pp. 48–49).

Yu. I. Melnikova argues that the concepts of "process" and "procedure" determine the arrangement of applying substantive law, and "process" is equivalent to "procedure", which is practically a similar legal phenomenon. Therefore, it is not an isolated understanding of the process and procedure that is important, but the content that is put into these concepts. It is the arrangement of applying substantive law that is the circumstance that links the concepts of "legal process" and "legal procedure". As a result, any procedure for performing actions relevant to law should be recognised as a legal process primarily on the grounds that it is a legal form of mediation of social relations for the implementation of material rights and relations (Melnikov, 1979, p. 14).

Therefore, each of the above scientific perspectives deserves attention and has its advantages and disadvantages. However, it is worth supporting the scholars who consider the categories of "legal process" and "legal procedure" as independent legal phenomena that are closely related. According to V.A. Tarasov, the difference between the concepts of "process" and "procedure" is both terminology and the form in which a particular case should be resolved. According to the scientist, a procedure is a form to regulate the activities of relevant bodies, which, for certain reasons, may take the form of a process (Tarasova, 1973, p. 112). However, S. S. Alekseiev argues that not every procedure, regulated by law, for performing legal actions can be called a legal process that has historically developed in legislation, practice and science. Moreover, the scholar notes that the unification of legal procedures for the activities of all state bodies under the rubric of "process" exsanguinates and dilutes this rich and meaningful concept (Alekseev, 1971, p. 122).

3. Particularities of distinguishing between the concepts of "tax procedure" and "tax process"

According to M.P. Kucheriavenko, tax procedure and tax process are autonomous mechanisms, since tax procedures fix the arrangement of implementing the provisions of substantive tax law in the behaviour of participants in tax relations and are directly related, mediated by substantive tax and legal norms, and the tax process is real activities of implementing the order of behaviour enshrined in the provisions of tax procedures (Kucheriavenko, 2011, p. 29). Tax procedures are a legally regulated and established conduct that combines, first of all, regulatory framework and, in cases not regulated by legal provisions, organisational framework. Moreover, the taxation process, which is manifested in the implementation of tax procedures, the performance of legally significant actions based on the requirements of tax procedural rules, is a regulated sequence of actions to implement tax procedures (Kucheriavenko, 2011, p. 29).

The main features of tax procedural law, according to V.V. Chernetchenko, are: 1) derivative nature from substantive tax and legal provisions; 2) regulatory procedural mechanisms of active behaviour of actors in the course of implementation of tax liability, as opposed to procedural mechanisms arising in disputed legal relations; 3) relative autonomy in the system of tax law provisions; 4) implementation of substantive tax law provisions; 5) regulation of substantive procedure in tax legal relations by tax procedural law (Chernetchenko, 2012, p. 138).

As for the correlation of procedures and process inherent in tax law with administrative procedures and process, there is no consensus in science either. Some scholars (e.g., F.H. Bankhaeva) consider the tax process as a part of the financial process (Bankhaeva, 2001, p. 16), other researchers (e.g., H.V. Petrov) – as public administration in all its diversity and a set of actions carried out by tax authorities (their officials) to implement their tasks and functions (Petrova, 1999, p. 11).

We advocate the perspective of V.I. Teremetskyi that tax and administrative legal procedures are independent legal phenomena that should be neither identified nor distinguished from each other. Moreover, the scientist notes that the tax process and procedures are fully implemented within the administrative process and procedures, respectively (Teremetskyi, 2012). It is also worth noting the perspective of M.P. Kucheriavenko, who believes that there are procedures that do not express exclusively tax nature and those that are inherent only in tax law. The former include law-making, regulatory and security procedures, and the latter include accounting tax procedures, procedures for payment of taxes and fees, tax reporting procedures, tax control procedures and tax administrative approval procedures (Kucheriavenko, 2011, p. 29).

Therefore, given the fact that tax procedures are imperative and are implemented by the executive authorities, it can be concluded that these procedures are managerial and, therefore, are administrative and legal. However, the economic nature of the relations mediated exclusively by tax procedures does not allow them to be fully considered as administrative.

Procedural issues of tax administration are regulated by the Tax Code of Ukraine. The analysis of the provisions of this codified act enables to group all procedures that mediate the realisation (practical implementation) of its provisions into non-jurisdictional and jurisdictional (security) procedures (Teremetskyi, 2012).

Non-jurisdictional procedures are related to ensuring lawful behaviour by the participants in tax legal relations and are essentially managerial and administrative in nature, as they mediate the management of social relations that exist within the requirements of administrative, tax, financial and other branches of law. For example, such procedures include those that determine the procedure for submitting information about taxpayers to the tax authorities, the procedure and deadlines for submitting tax reports, and the arrangement of tax audits, objects of taxation and objects related to taxation to ensure their accounting, calculation and collection of taxes and fees, accounting for the results of joint activities in Ukraine without establishing a legal entity, the procedure for tax audits, etc.

Jurisdictional (security) procedures are implemented in the event of a violation or threat of violation of tax legislation. For example, according to the Tax Code of Ukraine, Article 86, clause 86.7, if the taxpayer or its 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 within five business days from the date of receipt of the report (certificate). Such objections shall be considered by the state tax authority within five business days following the day of their receipt (the day of completion of the audit conducted due to the need to clarify the circumstances that were not investigated during the audit and specified in the comments), and a response shall be sent to the taxpayer for sending (delivery) of tax notices-decisions. The taxpayer (its authorised person and/or representative) has the right to participate in the consideration of objections, as such taxpayer shall indicate in the objections.

Establishment of clear procedures for the implementation of tax legislation will ensure the effective functioning of tax authorities, create comfortable conditions for their interaction with taxpayers, and ensure transparency in the process of preparation and adoption of managerial decisions, etc. (Teremetskyi, 2012).

4. Conclusions

Thus, the process of tax administration is implemented through the functioning of a special mechanism, which in practice involves the implementation of certain procedures regulated by law. Tax administration procedures are based on the implementation of tax legislation. Furthermore, it should be emphasised that the activities of tax administration entities require continuous improvement by defining clear procedures and building a clear mechanism of the tax process, which should not be influenced by the planned tax collection targets, as this will help to ensure the legitimacy and create a simple and effective tax system.

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ПРОБЛЕМИ ФОРМУЛЮВАННЯ ОСНОВНИХ ПОНЯТЬ У СФЕРІ АДМІНІСТРУВАННЯ ПОДАТКІВ ДЕРЖАВНОЮ ПОДАТКОВОЮ СЛУЖБОЮ УКРАЇНИ

Abstract. ***Purpose.*** Метою статті є вирішення проблеми формулювання основних понять у сфері адміністрування податків Державною податковою службою України. ***Results.*** Актуальність статті полягає в тому, що одним із центральних шляхів у напрямі розбудови України як демократичної, правової та соціальної держави з розвиненим громадянським суспільством є вдосконалення управлінської системи держави, рівень розвитку якої зумовлює стан забезпеченості прав, свобод і законних інтересів фізичних та юридичних осіб. Система державного управління України загалом залишається неефективною, причиною чого є поєднання нових інститутів, що сформувалися в період її незалежності, з інститутами, що дісталися у спадок від радянської доби. Характерними рисами управлінської системи України є внутрішня суперечливість, незавершеність і відірваність від людей, в результаті чого наявне натепер державне управління стало гальмом у проведенні соціально-економічних, політичних реформ і потребує конструктивних якісних перетворень. Для проведення реформ у сфері державного управління необхідне досконале правове забезпечення, важливе місце в якому належить адміністративному праву, котре є фундаментальною галуззю українського публічного права, що органічно пов'язана з виконавчою владою і являє собою правові засади та інструмент її здійснення. ***Conclusions.*** Податкові процедури – нормативно врегульований та установлений порядок поведінки, що поєднує насамперед нормативне регулювання, а у випадках не врегульованих правовими нормами – організаційне. Водночас податковий процес, який проявляється в реалізації податкових процедур, виконанні юридично значущих дій, що ґрунтуються на вимогах податково-процедурних норм, – це врегульована послідовність дій зі здійснення податкових процедур. Зроблено висновок, що процес податкового адміністрування реалізується внаслідок функціонування особливого механізму, що на практиці передбачає виконання певних регламентованих нормами права процедур. Процедури адміністрування податків ґрунтуються на виконанні норм податкового законодавства. Також можемо наголосити на необхідності постійного вдосконалення діяльності суб'єктів адміністрування податків шляхом визначення чітких процедур та побудови зрозумілого механізму податкового процесу, який не повинен бути підданий впливу планових показників збору податків, оскільки це сприятиме забезпеченню законності і створенню простої та ефективної податкової системи.

Ключові слова: податковий процес, процедура адміністрування податків, адміністративний порядок, правове явище, діяльність податкових органів.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 342.95
DOI https://doi.org/10.32849/2663-5313/2023.5.07

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Kovalchuk, Olha (2023). Digitalization of law enforcement agencies in the digital transformation of the judiciary. *Entrepreneurship, Economy and Law, 5*, 42–52, doi https://doi.org/10.32849/2663-5313/2023.5.07

DIGITALIZATION OF LAW ENFORCEMENT AGENCIES IN THE DIGITAL TRANSFORMATION OF THE JUDICIARY

Abstract. ***Purpose.*** The research aims to study the features of digitalization of law enforcement agencies as a component of the digital transformation of the judiciary and to develop an innovative information model (IM) for creating reliable information support (IS) for law enforcement agencies. The main objectives are to analyze the specifics of the digitalization of law enforcement activities and the application of innovations to create reliable IS, as well as to formulate recommendations for ensuring an appropriate level of digitalization of law enforcement agencies in the context of the digital transformation of the judiciary. ***Research methods.*** The study used a comprehensive interdisciplinary approach that integrated various scientific methods. Comparative analysis was used to review literature sources and existing developments on the digital transformation of law enforcement. Systems analysis allowed for a thorough study of the specifics of creating information systems for law enforcement agencies. Methods of data classification and structuring were used to analyze various types of information that support the activities of law enforcement officers during operational-investigative measures, investigative actions, crime analysis, and investigations. Modeling was used to develop an innovative IM for law enforcement agencies based on the synthesis of author's models proposed in previous studies. The synthesis method contributed to combining and integrating these solutions based on ML and big data technologies into a single innovative IM as part of the information system (IS) of law enforcement agencies. ***Results.*** To ensure an appropriate level of digitalization of law enforcement agencies in the context of the digital transformation of the judiciary, the following aspects need considering: I. ensure the digitalization of law enforcement activities and continuous improvement of IS; II. establish the development of new methods and non-stationary approaches to analyzing crime problems based on analytical methods and innovative technologies; III. develop reliable IS for law enforcement agencies for the proper administration of justice that will ensure effective interaction between courts and law enforcement agencies at various stages of the judicial process; IV. create applied IMs based on data analytics and advanced technologies such as ML, big data, and AI to formulate effective strategies for law enforcement agencies; V. improve existing cybersecurity IS to guarantee confidentiality and integrity of information, and protect against data leaks; VI. use big data technologies and predictive analytics to identify patterns and predict crime based on vast arrays of diverse information; VII. use innovative investigation tools and methods based on data analytics to overcome resource constraints of law enforcement agencies; VIII. develop innovative ISs for organizing, analyzing, storing, and presenting data; IX. improve the legal framework for the use of IT to support the information activities of law enforcement agencies by EU standards. ***Conclusions.*** The digital transformation of law enforcement agencies aims to ensure a rapid response to crime, quality of investigations, and transparency on the path to the e-judiciary. The main challenges for the formation of IS are data integration problems from various sources and the lack of innovative IMs for advanced data analytics. The implementation of advanced data processing technologies such as ML, AI, and big data analytics can help law enforcement agencies overcome resource constraints, uncover hidden connections between data, and accelerate crime detection. The proposed innovative comprehensive approach to the formation of IS can serve as a basis for increasing the efficiency of law enforcement agencies within the overall digitalization of the judiciary.

Key words: digital transformation, judiciary, law enforcement agencies, legal norms, information technologies, information system, information support, cybersecurity, court.

1. Introduction

In today's digital society, the need for digitalization of the judicial system is becoming an increasingly urgent necessity. Information technologies have turned into an integral part of daily life for citizens and businesses. People expect the same level of digitalization from government agencies, including the judicial system. The digitalization of judicial processes allows for significantly accelerating the movement of cases and minimizing bureaucratic burdens on judges and participants through the automation of document flow and electronic data exchange. Electronic services improve the accessibility and convenience of justice (Teremetskyi et al, 2023). Digitalization ensures the efficiency and effectiveness of judicial proceedings. In modern cases, it is often necessary to process terabytes of digital evidence – electronic documents, multimedia, and geolocation data. The use of big data technologies – ML and AI – helps to structure and analyze such arrays. Online broadcasts of court hearings, publication of court decisions in electronic registers, and automated case distribution systems among judges contribute to openness and minimize corruption risks. Digitalization can ensure transparency and accountability of justice. Modern crime has also quickly adapted to new realities and now carries out its criminal intentions in the digital space. The growth of cybercrime requires the judicial system to possess the latest digital forensics tools and the ability to work with electronic evidence (Djenna et al., 2023). The digitalization of judicial proceedings is an integral part of building a modern judicial system capable of meeting the challenges of the digital age and ensuring effective protection of citizens' rights and freedoms. Law enforcement agencies are one of the important components of the judicial system and are in urgent need of digital transformation. Ukraine is at the initial stage of this process (Teremetskyi et al., 2023). Therefore, it is relevant to conduct comprehensive multifaceted research on the relevant issue. Such research is multidisciplinary and touches not only the legal sphere but also information technologies – ML and AI.

Research on the digital transformation of law enforcement agencies in the context of the digitalization of the judicial system is rare. Academic circles paid poor attention to developing new methodologies aimed at forming reliable IS for the process concerned. Some scholars have examined the issues of smart policing. The term means intelligent policing activities based on the use of innovative technologies. P. Sarzaeim et al. studied the advantages and limitations of using ML methods in law enforcement agencies (Sarzaeim et al., 2023). Researchers S. Maliphol and C. Hamilton analyzed the potential of smart technologies to improve policing and ensure ethical norms (Maliphol & Hamilton, 2022). M.-S. Baek et al. developed a method for predicting crime type and risk level based on ML technology and tested its effectiveness (Baek et al., 2021). F. Yang found that predictive police analytics largely depends on data collection and integration technologies in both the physical environment and the digital world (Yang, 2019). S. Egbert argued that predictive policing has the potential to improve the processing of police-related data (Egbert, 2019). Researchers X. Zhang et al. concluded that crime prediction is of great importance for formulating policing strategies and crime prevention and control. Machine learning is the primary method for prediction (Zhang et al., 2020). Existing research on the digitalization of law enforcement activities is partial and concerns only certain aspects. In addition, the criminal environment is dynamic, IT is rapidly evolving, and the legislation of different countries has significant differences. Therefore, such research is a complex and multidisciplinary task that requires a multidisciplinary approach. It involves rethinking traditional methods and adopting new policing practices. A key strategy for their digital transformation is the rapid and effective exchange of information (Nicolau, 2023). Thus, it is relevant to develop new IMs for the formation of productive information support for law enforcement agencies.

The study applies a comprehensive approach that combines various methods. The comparison method was used to review the literature and analyze existing research on the digitalization of law enforcement agencies. The system analysis method was involved to study the specifics of creating IS for law enforcement agencies. Methods of data classification and structuring were used to analyze the types of information that support the activities of law enforcement agencies in carrying out operational-investigative and investigative actions, crime analysis, and investigations. The modeling method was applied to develop an innovative IM for providing law enforcement agencies based on a synthesis of the author's models proposed in previous studies. The synthesis method was used to combine and integrate these solutions based on ML and big data into a single innovative IM as part of the IS of law enforcement agencies. The purpose of the present work is to investigate the features of the digitalization of law enforcement agencies as a component of the digital transformation of the judiciary and to develop an innovative IM for the formation of reliable IS for law enforcement agencies.

2. Law Enforcement Agencies in the Judicial System: The Need for Digital Transformation

The judicial system is a complex mechanism that brings together various state institutions and legal procedures for the administration of justice. It consists of courts of different levels and specializations that directly consider cases and render decisions. An important component is law enforcement agencies responsible for investigating offenses, collecting evidence, and supporting prosecution in court, as well as ensuring the execution of rendered sentences. Equally important are the probation system aimed at resocializing offenders, the advocacy for protecting the rights of citizens, expert institutions for providing professional opinions, the system of free legal aid, and the enforcement service for the compulsory enforcement of court decisions.

Only the coordinated interaction of all these elements within the framework of procedures regulated by legislation can guarantee the complete, impartial, and effective administration of justice, the protection of human rights, and the rule of law. Proper legal regulation and quality information support for the activities of all branches of the judicial system are the keys to fair and timely consideration of cases.

Law enforcement agencies play a crucial role in the judicial system. They are entrusted with the functions of pre-trial investigation of crimes: collecting evidence, establishing circumstances, and identifying suspects for further court proceedings. Effective interaction between courts and law enforcement at different stages is a necessary condition for the proper administration of justice, the protection of the legal rights of citizens, and the establishment of the rule of law in the country.

In the field of correctional services and criminology, a new approach has emerged – the criminology of conviction. It examines the problems of crime and correctional institutions differently from the traditional views of researchers, politicians, and officials. This direction arose due to scholars' concern with the existing understanding of crime and its control. The criminology of conviction analyzes issues regarding the definition of the crime problem; proposed solutions; the destructive consequences of these solutions for those labeled as criminals, imprisoned, alienated from loved ones, and not integrated into society; high incarceration rates, overcrowded prisons without meaningful rehabilitation programs; structural obstacles to successful reintegration, leading to recidivism (Yu et al., 2020).

The search for effective strategies for law enforcement agencies that will reduce the number of prisoners and the cost of keeping them, while ensuring the safety of citizens and society, is becoming increasingly important (Berezka et al., 2022). This requires the development of reliable information and analytical support. In a developed smart society, any systemic changes are impossible without prior risk assessment and forecasting of future system states. The most effective means for this are mathematical, statistical methods, and information technologies.

The digitalization of legal proceedings is becoming an urgent necessity in the modern conditions of increasing volumes of information that need to be processed for making judicial decisions. With the development of society and the increasing complexity of legal relations, the number of court cases and the burden on courts is growing. Paper document flow is becoming increasingly cumbersome and inefficient. In the era of digital technologies, the number of electronic evidence has significantly increased. These are huge arrays of evidentiary information – audio/video recordings, electronic documents, geolocation data, etc. Analyzing them manually is becoming extremely labor-intensive. To make balanced decisions, judges need to study a vast number of regulations and court practices in various instances. Electronic databases significantly simplify this process (Teremetskyi et al., 2023). There is also a need for prompt access to precedents and legislation. Today, there is an increased need for analytical tools. Modern technologies of ML and natural language processing can help identify relevant precedents, structure the evidence base, and identify risks to accelerate case processing. Electronic services, online broadcasts of court hearings, and publication of court decisions increase the openness of the judicial system to citizens. The digitalization of legal proceedings allows coping with growing information flows, ensures the efficiency, objectivity, and quality of police investigations and the reasonableness of judicial decisions, as well as increases public trust in justice.

In the context of the overall digital transformation of the judiciary, the digitalization of law enforcement activities is critically necessary (Gkougkoudis et al., 2022). With the increasing volume of digital evidence (electronic documents, multimedia files, metadata, etc.), ensuring the proper quality of pre-trial investigation is impossible without the application of advanced technologies for data collection, storage, and analysis. The digitalization of law enforcement agencies can accelerate the formation of indictments and the transfer of materials to the court. Electronic document flow and integrated information systems of law enforcement

agencies and courts can significantly reduce the time for the exchange of procedural documents. The growth of cybercrime requires law enforcement to have new digital forensics tools, the ability to record electronic traces, and search for and identify cybercriminals. The use of big data technologies and ML allows for identifying trends, and predicting crime based on vast arrays of diverse information (Ho et al., 2020). The digitalization of processes ensures the prompt exchange of evidence with courts and accelerates the transfer of relevant digital evidence to court instances in a secure mode. Electronic registers provide the ability to track the progress of cases online, and the publication of reports increases openness and public trust. The use of big data technologies and predictive analytics enables the identification of patterns and prediction of crime based on vast arrays of diverse information (Kovalchuk et al., 2022). Law enforcement agencies are increasingly using operational investigation databases, covert surveillance tools, and evidence collection tools to counter-terrorism, cybercrime, and more. Video surveillance systems and facial and fingerprint recognition simplify the identification of offenders and enhance public safety. Cryptography and digital signature tools are used to ensure cybersecurity for the confidentiality and integrity of information and protection against data leaks. The digital transformation of law enforcement agencies is an integral part of the digitalization of the judiciary, aimed at ensuring a rapid response to crime, the quality of investigations, and transparency on the path to e-judiciary.

3. The Information Component of Organizational and Legal Support for the Digitalization of Law Enforcement Agencies

An integral part of the organizational and legal support for the digitalization of legal proceedings is the information support of law enforcement agencies, which plays a key role in improving the efficiency and transparency of justice. The development of technologies is transforming society, creating more opportunities for offenders and complicating the work of the police. Crime is increasingly using the information space. Even if a crime is not committed online, its participants (both criminals and victims) leave various electronic traces in the digital space: recordings of telephone conversations, online correspondence, browsing history, media information, geolocation data, etc. The task of law enforcement agencies is to identify criminal schemes based on the electronic traces of the offender and provide operational intelligence information. Effective processing of crime data requires the use of high-quality IS by law enforcement agencies. The concept of "information support" has many different definitions. In law enforcement, this concept refers to the processes of collecting and processing tactical and operational information to support the management process in law enforcement agencies and shaping the consciousness of citizens and society as a whole. It is used to conduct operational and tactical activities and analyze crimes and investigations (Hollywood & Winkelman, 2018).

Table 1 presents the types of information used by law enforcement for IS in the performance of tactical tasks.

Table 2 presents the types of information used by law enforcement for information support in the performance of operational tasks.

Table 3 shows the types of information used by law enforcement for information support in the analysis of crimes and investigations.

Information about crime comes from two main sources: responses from victims to surveys about crimes committed against them, and administrative data from law enforcement agencies regarding reported crimes. Responses from victim surveys contain information about crimes that were reported to the police, as well as crimes that were not reported. Crime data from law enforcement agencies reflects information about crimes that were reported and recorded by the police.

Individual persons, groups of persons, and organizations involved in criminal and illegal activities are becoming increasingly sophisticated. Offenders are using the power of new technologies as quickly as they are invented. However, technological progress can also improve the investigative methods of law enforcement agencies. In particular, it has become possible today to conduct blood group analysis at the crime scene, the results of which can be used for rapid identification of both the victim and the perpetrator, facilitating their search.

These advantages create new challenges. The digital world stores extremely large volumes of information. For example, in just one year during a single FBI investigation, six Petabytes of data were collected (Santos et al. 2019). Law enforcement agencies must process data from various new and unfamiliar sources and improve the use of already accumulated data. Without effective information analysis, law enforcement agencies will struggle to counter the offenders they accuse of committing crimes.

Establishing information support is not an easy task for law enforcement agencies, as their resources are mostly intended for performing the core functions of law enforcement agencies in ensuring public safety. Most law enforcement officers do not have training in

Table 1

Types of information required for the performance of tactical tasks by law enforcement agencies

Activity	Type of information	The function provided by the information
Collection of evidence	Records of testimony. Electronic evidence. Photo/video. Biometric data.	Information support
Formation of inquiries about previous offenses	Information about police calls. Accompanying information: data on persons, locations, and items used.	
Response to a crime report	The initial response to the challenge. Reporting a crime. Report according to the standard template. Information for distribution (reports, alerts).	
Responding to phone calls	Call information. Accompanying information: data on persons and places of crime.	Patrol
Study of the situation	Current crimes and suspicious activity. Locations where other police patrols work. Places with the highest risk of committing crimes. Information from alerts and police reports. Places that require increased attention Information for the public.	
Consolidation of information and formation of reports	Field interviews/reconnaissance reports. Information for distribution (reports, alerts). Reports/documents.	
Definition of key points	Crime scene investigation materials. Responses to crime reports.	Investigation
Object ID identification	ID information from the state register Biometric data.	
Evaluation of the object	Threat identification information. Information to determine actions (arrest/warrant).	

Table 2

Types of information required for the performance of operational tasks by law enforcement agencies

Activity	Type of information	The function provided by the information
Communications with the public	Alerts and criminal records. Crime maps / basic crime information. Information on crime prevention and police contacts. Citizens' requests for help. Recommendations for citizens.	Information support
Management of the police unit	Information about current crimes. Information about the current activity of the unit. Information about cases conducted by the unit	Operational management
Detailing the specifics of the case	General information on the case. Investigation data.	
HR	Information about activities and staff development. Information about management decisions made.	Development of opportunities
Education and training	Data on online training. Link to the repository of educational resources.	
Coordination of regional responses	Offense databases. Information about regional crimes.	
Communication with society	Notification of offenses, and instructions for citizens.	

Table 3

Types of information required for the analysis of crimes and investigations by law enforcement agencies

Activity	Type of information	The function provided by the information
Assessment of places with a high risk of committing crimes	Information about addresses with the highest number of offenses. Predictive information based on current crime data. Predictive information based on historical crime data. Predictive information based on geospatial crime data.	Assessment of persons and places with a high risk of committing crimes
Assessment of persons with a high risk of committing crimes	Information about persons at high risk of general violence. Information about persons with a high risk of committing crimes. Information about persons at high risk of gang violence. Information about persons at high risk of domestic violence. Information from social media related to threats of violence.	
Collection and evaluation of evidence in the case	Video/photo from the crime scene. Photos of known suspects. Data on biological materials from the crime scene. Information about the weapon used to commit the crime. Information from the stolen property database. Information about suspects, victims, and other participants in the crime. Information on stolen items).	Provision of prosecution evidence
Analysis for the identification of criminals	GPS data for tracking offenders. Photo information for recognizing people Vehicle database. Information about connections with similar previous crimes. Information about suspects and other participants in the crime. Crime information obtained from social media.	

data processing and digital technologies, which are typically required for performing advanced analytics (Bennett, 2018). The judiciary needs access to data-driven information, but resource constraints may limit their ability to effectively search for relevant information for investigations, even with huge amounts of data available.

Innovative investigative tools and methods can help law enforcement agencies overcome resource constraints and analyze large volumes of digital data as part of criminal proceedings. AI, open-source data management tools, predictive analytics solutions, and social media capabilities can help uncover previously unobvious connections between information and identify key dependencies. New data sources can provide access to large information repositories, and new technologies can create new opportunities for data utilization. These capabilities can reduce manual work for analysts and lower costs by 70 percent (Mitchell, 2018). Using these tools and approaches can help investigators reduce time spent searching and analyzing data and increase time spent tracking criminals and ensure community safety.

In establishing law enforcement information support, the main problem is not the data itself, but rather the approach to data collection, storage, and analytics. There are often critical data sources (missing, too difficult to access, or too complex to analyze), resulting in blind spots in investigations. The first step in addressing the data overload problem is often to create an even larger data pool (data that carries the same information). Law enforcement agencies have enormous amounts of data but cannot use it effectively due to computation and integration issues. Outdated and insufficient computing power and platforms hinder advanced analysis. Siloed data prevents quality access to integrated data that could aid investigations (Trendall, 2019).

Analysts can sort and manage an integrated data set, combining data sources to simplify understanding of available information. Important data sources include internal data stored by law enforcement agencies, commercial data sources, and open sources such as social media activity, property records, criminal histories, professional licenses, medical databases, and countless other sources.

A goal or problem-oriented approach to establishing information support can provide a selection of useful information from a large

data pool to create a comprehensive view of persons, places, and objects relevant to a specific criminal case. Such a comprehensive view can reveal significant gaps in the analysis, for example, about known associate relationships or email correspondence. Awareness of these gaps can aid in further collection and monitoring of needed information in the criminal case.

4. Implementation of Information Technologies in Law Enforcement Activities

Technology is not just new, interesting tools that improve existing processes. It can open up entirely new ways of conducting investigations. Today, many analysts spend a lot of time searching for the necessary data, potentially leaving only a short period for analyzing and aggregating it. In the future, investigators will be able to rely on new data processing tools to quickly find the necessary information. This will allow them to spend more of their time on data analysis. 80 percent of law enforcement officers' time is spent on tasks directly related to crimes, the rest on administrative tasks (Santos, 2019).

By using the latest data processing tools, law enforcement agencies can assess available data sources by performing an audit that includes storage, management, access, and use of information. Data analysts conduct exploratory analysis to understand the quality and completeness of the data. If there is no continuous access to critically important data, including communications, instructions, and business data with geolocation, a compilation of publicly available sources and social media data from nearby locations is conducted. Unit managers then coordinate a plan for obtaining, processing, and storing data in the cloud, providing instant access to the latest computing systems and eliminating data redundancy. By using effective data processing tools and methods, investigators can focus on the criminal network and achieve investigation goals faster.

Setting up systems for analytical data processing begins with understanding the spectrum of available data sources – from internal data sources to social media activity data. Next, data sharing between different sources needs to be organized. This requires developing a system that accessibly organizes, formats, and stores data. For example, having the ability to format records so that names, dates, and locations are easy to search for. This enables law enforcement officers to span dozens of data sources for automatic compilation of criminal histories, profiles, and criminal activities.

Data from different sources can be structured into a single result query. Input data includes unstructured information such as scanned documents; semi-structured data such as websites and social media; and structured data including property records, professional skills, and convictions. The result is a single, multidimensional profile of the person suspected of committing a crime (Santos, 2019).

However, investigators typically don't need just one person's profile. They need to understand various forms of connections – personal relationships or even social media communication. By using automated data analysis to search for links between multiple structured result profiles, law enforcement can create criminal networks and understand group actions and behaviors. In particular, natural language processing can perform so-called named entity recognition – AI can use contextual clues to distinguish, for example, a suspect from an innocent citizen by name (Jehangir et al., 2023).

All these tools increase the accuracy of investigation results and help the police find the right solutions faster. Instead of spending weeks or months developing a detailed diagram of relationships, they can use both stored data and real-time data streams and develop consolidated data for analysis, allowing them to get results faster. That's how investigative units use natural language processing to study incident reports and identify patterns of criminal activity. With this information, they can identify areas with high rates of specific types of crimes, allowing them to take proactive actions in those areas in advance (Jehangir et al., 2023). The ultimate result of applying the latest tools in law enforcement information and analytical activities should be a reduction in crime rates. Criminals are becoming increasingly sophisticated, so to successfully solve criminal cases, law enforcement officers have to use all available data, innovative solutions, tools, and methods. Today, innovative solutions based on modern IT tools and data analytics are needed to ensure the quality and speed of processing large information arrays related to the prevention, detection, and prevention of crimes.

In this work, the author proposes an innovative comprehensive approach to the formation of law enforcement information support based on the use of analytics, ML, and AI methods. An IM is built to provide operational and tactical information to law enforcement agencies based on the synthesis of models proposed in previous works (Kovalchuk, 2022; Kovalchuk et al., 2022; Berezka et al., 2022; Kovalchuk, 2023; Kovalchuk et al., 2023).

Figure 1 shows a scheme of an IM for the formation of an effective IP for law enforcement agencies. The presented model is based on the use of various data obtained from official sources.

In particular, this is data from the Department of Sentence Enforcement on the previous criminal activities of suspects/accused; data on

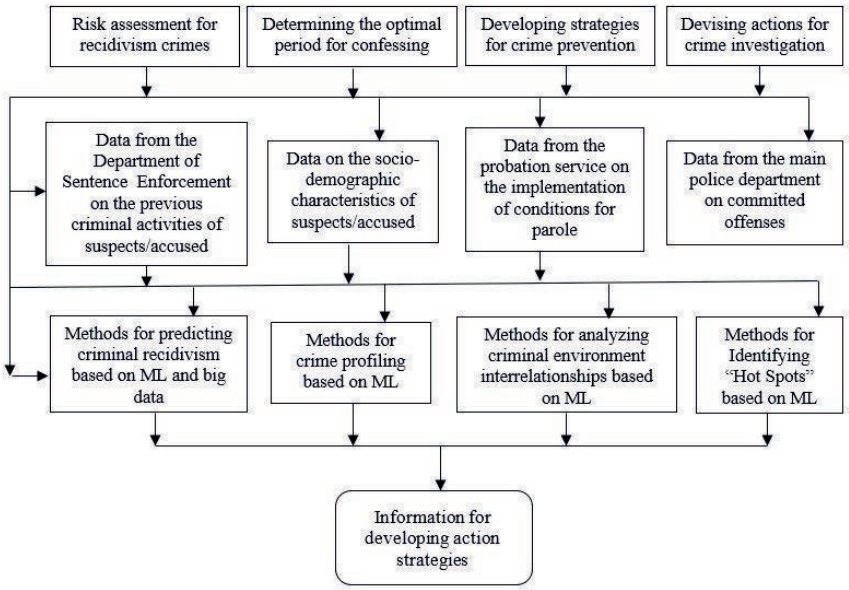

Fig. 1. Information model based on ML and big data for providing operational and tactical information to law enforcement agencies

the socio-demographic characteristics of suspects/accused; data from the probation service on the implementation of conditions for parole; data from the main police department on committed criminal offenses. Such information is used to solve the following tactical and operational tasks of law enforcement agencies: risk assessment for crime recidivism; determining the optimal period for confessing to an offense; developing strategies for crime prevention; and devising actions for crime investigation.

The proposed IM is designed to provide relevant information to ensure the effective operation of law enforcement agencies. It is based on applied solutions developed by the author in previous works: methods for predicting criminal recidivism based on ML and big data; methods for crime profiling based on ML; methods for analyzing criminal environment interrelationships; methods for identifying "hot spots" based on ML (Kovalchuk, 2022; Kovalchuk et al., 2022; Berezka et al., 2022; Kovalchuk, 2023; Kovalchuk et al., 2023). The methods used have demonstrated high accuracy and quality of results on real crime data. The created IM is based on the use of ML and big data methods, which are also applicable to new datasets on crime. Such an IM can be easily implemented in the unified judicial information system of Ukraine and adapted to the operating standards of similar judicial IS of the EU.

The digitalization of justice is not just a modernization of processes, but also ensuring fairness and security in society. The proposed innovative comprehensive approach to the formation of an IP for law enforcement agencies using analytics, machine learning, and artificial intelligence methods can become the basis for the formation of an effective IP for the activities of law enforcement agencies. The developed IM based on ML and big data for providing operational and tactical information to law enforcement agencies can be easily implemented in the unified judicial information system of Ukraine and adapted to the operating standards of similar judicial IS of the EU. The implementation of such a model will help to increase the effectiveness of police investigations and improve the functioning of the justice system as a whole.

5. Conclusions.

The article considers the need for digitalization of the judiciary and the activities of law enforcement agencies as an integral part of it. Proper IP is a key factor in the digital transformation of the activities of law enforcement agencies in the field of justice. It allows effective processing of huge volumes of digital evidence, identifying patterns of crime by analyzing big data, as well as applying the latest tools of digital forensics.

The analysis of the features of digitalization of law enforcement agencies in the context of the digital transformation of the judiciary gives grounds to draw the following conclusions: I. The variability and technological nature of the criminal

environment necessitate the digitalization of law enforcement agencies and continuous improvement of IP; II. There is an urgent need to develop new methods and non-stationary approaches to analyze crime problems based on analytical methods and innovative technologies; III. To ensure proper justice, a reliable IP for law enforcement agencies must be developed to ensure effective interaction between courts and law enforcement agencies at various stages of legal proceedings; IV. To form effective strategies for law enforcement actions, applied IMs based on data analytics and new technologies such as ML, big data and AI should be developed; V. It is advisable to improve the existing IP of cyber defense to guarantee confidentiality and integrity of information, protection against data leaks; VI. The use of big data technologies and predictive analytics ensures the detection of patterns and prediction of crime based on huge arrays of diverse information; VII. To overcome resource constraints, law enforcement agencies should use innovative investigation tools and methods based on data analytics; VIII. Modern law enforcement agencies require the development of innovative IS for organizing, analyzing, storing, and presenting data; IX. The informatization of the justice system requires the improvement of legal norms for the use of IT to ensure the information activities of law enforcement agencies by EU standards.

The digitalization of the judiciary, and proper IP for the activities of law enforcement officers with the use of the latest technologies is a prerequisite for building a modern justice system capable of effectively protecting the rights and freedoms of citizens in the era of digital transformation of society. The transition from paper to digital processes will allow law enforcement officers not to lag behind legislative changes and increase the productivity and speed of investigations of offenses. With the proper implementation of high technologies, law enforcement officers will be able to more effectively combat crime, better allocating time and resources. A further direction of research will be the adaptation of the proposed IM for providing operational and tactical information to law enforcement agencies to the standards, requirements and context of Ukraine and the EU to integrate it into a unified judicial information system.

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ДІДЖИТАЛІЗАЦІЯ ПРАВООХОРОННИХ ОРГАНІВ У ЦИФРОВІЙ ТРАНСФОРМАЦІЇ СУДОЧИНСТВА

Анотація. ***Мета***. Дослідження спрямовано на вивчення особливостей цифровізації правоохоронних органів як складника цифрової трансформації судочинства та розроблення інноваційної інформаційної моделі (ІМ) для формування надійного інформаційного забезпечення (ІЗ) правоохоронних органів. Основними завданнями є аналіз особливостей цифровізації діяльності правоохоронних органів та застосування інновацій для створення надійного ІЗ, а також формулювання рекомендацій щодо забезпечення належного рівня цифровізації правоохоронних органів у контексті цифрової трансформації судочинства. ***Методи дослідження.*** У дослідженні було використано комплексний міждисциплінарний підхід, що інтегрував різноманітні наукові методи. Компаративний аналіз застосовувався для огляду літературних джерел та наявних напрацювань із питань цифрової трансформації правоохоронної сфери. Системний аналіз дозволив ретельно вивчити специфіку створення інформаційних систем для органів правопорядку. Методи класифікації та структурування даних були залучені для аналізу різних видів інформації, що забезпечує діяльність правоохоронців під час проведення оперативно-розшукових заходів, слідчих дій, аналізу злочинів і розслідувань. Моделювання використовувалося для розроблення інноваційної ІМ для правоохоронних органів на основі синтезу авторських моделей, запропонованих у попередніх дослідженнях. Метод синтезу дозволив поєднати та інтегрувати ці рішення, засновані на ML та технологіях великих даних, в єдину інноваційну ІМ у складі інформаційної системи (ІС) правоохоронних органів. ***Результати.*** Для забезпечення належного рівня цифровізації правоохоронних органів у контексті цифрової трансформації судочинства необхідно врахувати такі аспекти: I. Забезпечити діджиталізацію діяльності правоохоронних органів та постійне вдосконалення ІЗ; II. Налагодити розроблення нових методів та нестаціонарних підходів до аналізу проблем злочинності на основі аналітичних методів та інноваційних технологій; III. Для здійснення належного правосуддя розробити надійне ІЗ правоохоронних органів, що забезпечить ефективну взаємодію судів і правоохоронних органів на різних стадіях судочинства; IV. Для формування ефективних стратегій дій правоохоронних органів належить створити прикладні ІМ на основі аналітики даних та новітніх технологій, таких як ML, big data and AI; V. Вдосконалити наявне ІЗ кіберзахисту для гарантування конфіденційності й ціліс-

ності інформації, захисту від витоків даних; VI. Використовувати технології великих даних та предиктивної аналітики для виявлення закономірностей і прогнозування злочинності на основі величезних масивів різноманітної інформації; VII. Використовувати інноваційні інструменти та методи розслідування на основі аналітики даних для подолання обмежень ресурсів правоохоронних органів; VIII. Розробити інноваційні ІС для організації, аналізу, зберігання та представлення даних; IX. Удосконалити правові норми використання ІТ для забезпечення інформаційної діяльності правоохоронних органів відповідно до стандартів ЄС. ***Висновки.*** Цифрова трансформація правоохоронних органів покликана забезпечити оперативність реагування на злочинність, якість розслідувань і прозорість на шляху до електронного судочинства. Основними викликами для формування ІЗ є проблеми з інтеграцією даних із різних джерел та відсутність інноваційних ІМ для розширеної аналітики даних. Впровадження новітніх технологій оброблення даних, як-от ML, AI та аналітики великих даних, може допомогти правоохоронним органам подолати обмеження ресурсів, виявляти приховані зв'язки між даними та прискорити розкриття злочинів. Запропонований інноваційний комплексний підхід до формування ІЗ може стати основою для підвищення ефективності діяльності правоохоронних органів у межах загальної цифровізації судочинства.

Ключові слова: цифрова трансформація, судочинство, правоохоронні органи, правові норми, інформаційні технології, інформаційна система, інформаційне забезпечення, кібербезпека, суд.

The article was submitted 17.10.2023
The article was revised 07.11.2023
The article was accepted 28.11.2023

UDC 351.82 : 330.562.39
DOI https://doi.org/10.32849/2663-5313/2023.5.08

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Kuzmenko, Dmytro (2023). National legislation and practice of international civil-military administrations in Croatia. *Entrepreneurship, Economy and Law, 5,* 53–57, doi https://doi.org/10.32849/2663-5313/2023.5.08

NATIONAL LEGISLATION AND PRACTICE OF INTERNATIONAL CIVIL-MILITARY ADMINISTRATIONS IN CROATIA

Abstract. *Purpose. Results.* The relevance of the article is due to the fact that each stage of state-building in Ukraine was not easy, mistakes were made that allow drawing appropriate conclusions, improving something, and eradicating something from the life of the country. It is obvious that in the course of formation of our state, specific processes took place in the administrative structure, which were primarily aimed at changing the qualitative state of the functioning of the executive branch, regardless of the level, functions and powers. Civil-military administrations operated on the territory of Ukraine at various times. The study of such experience is necessary in the current Ukrainian realities, as it will identify the strengths and weaknesses of models of governing territories through civil-military administrations. It is underlined that Croatia has a unique experience of introducing an international administration to reintegrate the region and reduce the overall level of tension. It should be noted briefly what constitutes an international interim administration. In general, international interim administrations are a legitimate governance structure in territories where, for whatever reason, the sovereign authority of the respective national government and administration does not extend. ***Conclusions.*** By prior compromise agreement of the parties to the conflict, international interim administrations are formed of civilian and military components, that is, this administration is civil-military. The range of powers envisaged depends on the tasks assigned to such an administration, such as issues related to the security sector (control over the disengagement of armed groups, demining), moreover, police missions can be implemented, political issues can be resolved, that is, local self-government bodies can be created that would be legitimate and recognised by the parties to the conflict and the international community, and important for the Ukrainian reality is the ability of such an administration to prepare for elections in the respective territory. Croatia chose to engage international forces to establish an international interim administration that combined military and civilian powers. This largely predetermined the success of its activities, which eventually led to the reintegration of a large part of Croatia into the EU.

Key words: interim administration, observers, military administration, disarmament.

1. Introduction

Each stage of state-building in Ukraine was not easy, mistakes were made that enabled to draw appropriate conclusions and improve something and eradicate something from the life of the country. It is obvious that in the course of formation of our state, specific processes took place in the administrative structure, which were primarily aimed at changing the qualitative state of the functioning of the executive branch, regardless of the level, functions and powers. Civil-military administrations operated on the territory of Ukraine at various times. The study of such experience is necessary in the current Ukrainian realities, as it will identify the strengths and weaknesses of models of governing territories through civil-military administrations. In addition, systematic and analysed information can be an essential basis for building a strategy for mechanisms and models of civil-military governance of territories in our time.

2. Particularities of the initiation of international administration

Croatia has a unique experience of introducing an international administration to reintegrate the region and reduce the overall level of tension. It is necessary to note briefly what an international interim administration is (it should be noted that Ukrainian peacekeeping personnel participated in the international police component of the UN Transitional Administra-

tion in East Timor. In general, international interim administrations are a legitimate governance structure in territories where, for whatever reason, the sovereign authority of the respective national government and administration does not extend. In most cases, interim administrations are formed through a compromise by the warring parties, and the UN Security Council is to establish the administration as a neutral party. The administration is established on the basis of a UN Security Council resolution in accordance with Chapter VII of the United Nations Charter. The international community has resorted to the use of the respective administrations when dealing with decolonisation (e.g., Namibia), the division of one state into several (Yugoslavia), internal conflicts (Cambodia), foreign occupation (the already mentioned East Timor) (Filipchuk, Oktysiuk, Yaroshenko, 2017, p. 8).

As mentioned above, by prior compromise agreement of the parties to the conflict, international interim administrations are formed of civilian and military components, that is, this administration is civil-military. The range of powers envisaged depends on the tasks assigned to such an administration, such as issues related to the security sector (control over the disengagement of armed groups, demining), moreover, police missions can be implemented, political issues can be resolved, that is, local self-government bodies can be created that would be legitimate and recognised by the parties to the conflict and the international community, and important for the Ukrainian reality is the ability of such an administration to prepare for elections in the respective territory. Moreover, the interim administration can deal with social issues, since in most conflict zones, unfortunately, the population needs humanitarian assistance and economic assistance (for example, the reconstruction of vital infrastructure, etc.) (Filipchuk, Oktysiuk, Yaroshenko, 2017, p. 8).

A team of authors from the International Centre for Policy Studies, who have studied models of Donbas reintegration through the use of temporary international administrations, call the mission in Croatia one of the most successful in the history of such UN operations (Filipchuk, Oktysiuk, Yaroshenko, 2017, p. 9). The research team of the Institute of World Policy within the framework of the "Think Tank Development Initiative for Ukraine" implemented by the International Renaissance Foundation (IRF) in partnership with the Think Tank Fund (TTF), in the study "Experience of Conflict Resolution in the World. Lessons for Ukraine" have concluded what the reasons for the success of certain international UN missions (including in Croatia). The study notes that: "The experience of conflict resolution in Croatia, Liberia, Bosnia and Herzegovina, Kosovo, and Angola confirms that in order to effectively monitor the implementation of the settlement plan, the mission must have executive powers and a military component, that is, the ability to threaten with force members of illegal armed groups (IAGs), who do not want to lay down their arms (e.g. UNTAES in Croatia, ECOMOG in Liberia, UNFICYP in the Republic of Cyprus, IFOR/SFOR in Bosnia), as well as access to the entire territory and infrastructure of the country, including military facilities. In all these cases, the civilian monitoring mission worked in parallel and in close cooperation with the military peacekeeping mission" (Zarembo, 2016, p. 8). In addition, the authors made disappointing assumptions that a UN or, for example, NATO mission in Ukraine is unlikely due to foreign policy circumstances.

It should be noted that negotiations on a peaceful resolution of the issue in Eastern Slavonia began almost immediately after Croatia's lightning-fast and victorious Operation "Storm" (within 84 hours, the Croats eliminated the unrecognised so-called "Republika Srpska" with their own armed forces, but only Eastern Slavonia remained uncontrolled by the Croatian authorities). The first draft of the peace agreement on Slavonia was submitted by the Croats on 25 September 1995. A series of diplomatic negotiations took place until 12 November, preceding the signing of the main peace reintegration document, the Basic Agreement on the Gradual Peaceful Reintegration of Eastern Slavonia, Baranja and Western Srijem into the Constitutional Space of Croatia. On 1 November, Presidents of Croatia and Serbia Franjo Tudjman and Slobodan Milosevic agreed to peace. The agreement was signed on 12 November 1995. The signatories were the Croatian and Serbian sides, mediated by the United States and the United Nations. The document, which consisted of only 14 articles, defined the establishment of a UN interim transitional administration, demilitarisation, restoration of property rights, return of displaced persons, the right of Croatian citizens to return to their pre-conflict places of residence, and mutual respect and recognition of human rights and freedoms (Pavelic, 2019, p. 3).

3. Particularities of the international administration in Croatia

The agreement provided for a two-year period during which the reintegration of the region was to take place. During this period, the UN was to establish an interim civil-military administration, which, in addition to the above tasks, was to organise local elec-

tions (no later than 30 days before the mission was terminated). According to M. Nahirnyi, the agreement "...envisaged that the territory of Eastern Slavonia would be demilitarised within 30 days after the deployment of the UN military contingent in the region. <...> The peaceful reintegration plan covered demilitarisation of the region, administrative reintegration, social reintegration, introduction of transitional police forces, elections, economic revival..." (Nahirnyi, 2018, p. 147). Peaceful reintegration began on 15 January 1996, when the UN Security Council adopted Resolution 1037, which established the UNTAES (United Nations Transitional Administration in Eastern Slavonia) (Pavelic, 2019, p. 3).

The tasks assigned to the UNTAES were to be implemented in several phases: the preparation phase, the deployment phase (until April 1996), the demilitarisation phase (until June 1996), the stabilisation phase and the closure phase. One of the most important tasks of the interim administration and the mission was disarmament. Demilitarisation was supposed to take place within 30 days of the deployment of international forces. The UN mission successfully managed the disarmament, and all paramilitary groups left the region. Reintegration was an important point in terms of administration. Through the civilian transitional administration of the mission, the gradual reintegration of Eastern Slavonia, Baranja and Western Srijem into the Croatian administrative system was to take place. During the transitional period, the interim civil administration, in cooperation with the Croatian authorities, was responsible for the communication and transport infrastructure of the region, it solved the issue of employment of local residents in Croatian state institutions and private enterprises, and took measures to prepare for local elections (Klein, 2010, pp. 22–23).

In this regard, thanks to good cooperation with the Croatian authorities, UNTAES developed communication and transport infrastructure, regulated the employment of local residents in Croatian state institutions and large commercial companies, and carried out all necessary activities for the preparation of local elections, especially the issuance of Croatian documents (homework, identity cards, passports) (Klein, 2010, pp. 22–23). The mission's powers included police functions. After demilitarisation, 1,600 police officers (1,200 Serbs and 400 Croats) began to operate in the area. In April 1997, with the help of the administration, elections to the Croatian parliament were held in the region.

The civilian component of the interim administration consisted of approximately 650 persons, working in several departments and dealing with various aspects of managing the reintegration process. The head of the transitional administration P. Klein, American, described the processes and structure of the civilian component of the administration as follows: the civil affairs department had six field offices, a liaison office with the Serbian mission, an economic and coordination department, and a secretariat that oversaw the reintegration process. The Office of the Interim Administration was responsible for public affairs, political and legal affairs. The auxiliary body was the Office of the Chief Administrative Officer that dealt with logistics, transport, finance, and medical services (Kasunić, 2008, p. 39).

The head of the interim administration, in general, was given a fairly wide range of powers in various sectors of governance. Under UNTAES, he was in charge of local administrative authorities and monitored the success of implementing the Erdut Agreement (the name of the document signed on 12 November 1995). In general, the entire administrative system was based on three main components. The first "pillar" was the head of the transitional administration, who simultaneously managed all the other "pillars." The second was the Council of Administration. It was responsible for the general policy of UNTAES. It was composed of representatives of local Croatian and Serbian power elites, the Croatian government, officers of the UNTAES civilian component, and local minorities. In addition, the council included representatives of foreign countries (from the EU, rf and the United States). Researcher S. Kasunich argues that it is the presence of representatives of the international community that has contributed to the broad support of the mission and this body by the parties. The third "pillar" was the so-called Joint Implementation Committees (JIC). They were closely interconnected and embodied the UNTAES executive mechanism (Kasunić, 2008, p. 41).

It is worth noting that, especially at the beginning of the reintegration process, representatives of local authorities were mostly Serbs. That is why P. Klein encouraged cooperation between Croatian and Serbian leaders through 13 joint implementation committees. Each committee had subcommittees within its own structure that dealt with various reintegration issues in administrative terms. The committees were further grouped according to the three components: political (elections, displaced persons and refugees, human rights), administrative (education and culture, healthcare and other administrative services of the civilian administration). There was also a technical component (related to the manage-

ment of railways and roads, utilities, agriculture, and municipal services (Kasunić, 2008, p. 41).

It should be noted that various actors were involved in the reintegration process, not just the UN interim administration. P. Nahirnyi distinguishes the following: the actual military and civilian components of the UN peacekeeping mission, that is, the UN civilian transitional administration, UN peacekeepers; police mission; the Croatian Bureau of Interim Administration; the Provisional Authority for the establishment of Croatian authority in Eastern Slavonia, Baranja and Western Srijem; the State Commission for the Establishment of the Constitutional Order of the Republic of Croatia in the Vukovarsko-Srijemska and Osijek-Baranska Counties; the Croatian National Committee for the implementation of confidence building, accelerated return and normalisation programmes in the war-affected areas of Croatia; Serbian political forces; the UN Civilian Police Support Group; and the OSCE International Civilian Monitoring Mission (Nahirnyi, 2018, p. 148).

4. Conclusions

In general, the presence of the interim administration in Eastern Slavonia has led to a range of significant positive effects. The presence of UN troops helped to establish peace and tranquillity in the region. The support of 5,000 military personnel and observers contributed to the effective implementation of the military administration's tasks to prevent another armed confrontation. Thanks to the international interim administration, disarmament took place relatively quickly. UNTAES also performed customs control functions on uncontrolled sections of the border. It should be emphasised that one of the most important tasks performed by the UN mission was the peaceful and rapid reintegration of Slavonia into the system of administrative division of Croatia (Zarembo, 2016, pp. 9–11).

In general, Croatia chose to engage international forces to establish an international interim administration that combined military and civilian powers. This largely predetermined the success of its activities, which eventually led to the reintegration of a large part of Croatia into the EU.

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НАЦІОНАЛЬНЕ ЗАКОНОДАВСТВО ТА ПРАКТИКА ВИКОРИСТАННЯ МІЖНАРОДНИХ ВІЙСЬКОВО-ЦИВІЛЬНИХ АДМІНІСТРАЦІЙ НА ТЕРИТОРІЇ ХОРВАТІЇ

Анотація. ***Мета.*** Актуальність статті полягає в тому, що кожен етап державотворення в Україні був непростим, було допущено помилки, які дали можливість зробити відповідні висновки і щось удосконалити, а щось взагалі викоренити із життя країни. ***Методи.*** Очевидно, що в процесі становлення нашої держави відбувалися конкретні процеси в управлінській структурі, які насамперед були спрямовані на зміну якісного стану у функціонуванні апарату виконавчої влади, незалежно від рівня, функцій та повноважень. На території України в різні часи діяли адміністрації військово-цивільного характеру. Дослідження подібного досвіду необхідне в сучасних українських реаліях,

оскільки це дозволить виявити сильні та слабкі сторони моделей управління територіями через військово-цивільні адміністрації. Наголошено, що унікальний досвід запровадження міжнародної адміністрації задля реінтеграції регіону та зменшення загального рівня напруги має Хорватія. ***Результати.*** Міжнародні тимчасові адміністрації являють собою легітимну владну управлінську структуру на територіях, на які з певних причин не розповсюджується суверенна влада відповідного національного уряду та адміністрації. За попередньою компромісною згодою сторін конфлікту, міжнародні тимчасові адміністрації формуються, включаючи компоненти цивільні та військові, тобто ця адміністрація постає як військово-цивільна. Спектр її передбачених повноважень залежить, відповідно, від поставлених до такої адміністрації завдань – це можуть бути проблеми, пов'язані із суто безпековим блоком (контроль за розведенням збройних формувань, розмінування), можуть також упроваджуватись поліцейські місії, вирішуватись політичні питання, створюватися місцеві органи самоврядування, які б мали легітимний характер і визнавались сторонами конфлікту та світовою спільнотою. ***Висновки.*** Важливим для українських реалій є можливість такої адміністрації здійснювати підготовку до проведення виборів на відповідній території. Хорватія пішла шляхом залучення міжнародних сил для заснування міжнародної тимчасової адміністрації, які сконцентрувала військові та цивільні повноваження. Це багато в чому й передбачило успішність її діяльності, після чого відбулась реінтеграція значної території Хорватії до її складу.

Ключові слова: тимчасова адміністрація, спостерігачі, військова адміністрація, роззброєння.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.5.09

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Kucher, Oleksii (2023). The issue of harmonisation and differentiation of labour and administrative law in the regulatory framework for liability for violation of labour legislation. *Entrepreneurship, Economy and Law, 5*, 58–62, doi https://doi.org/10.32849/2663-5313/2023.5.09

THE ISSUE OF HARMONISATION AND DIFFERENTIATION OF LABOUR AND ADMINISTRATIVE LAW IN THE REGULATORY FRAMEWORK FOR LIABILITY FOR VIOLATION OF LABOUR LEGISLATION

Abstract. ***Purpose.*** The purpose of the article is to reveal the issue of harmonisation and differentiation of labour and administrative law provisions in the regulatory framework for liability for violation of labour legislation. ***Results.*** The article, relying on the analysis of scientific views of scholars and current legislation, reveals the essence and content of disciplinary, material and administrative liability for violation of labour legislation. The author focuses on how labour and administrative law provisions are harmonised in terms of regulating liability for violation of labour legislation. The provisions of labour and administrative law are differentiated in the context of the topic presented. It is determined that pecuniary liability is primarily aimed at restoring the violated material right of an employee and/or employer in the event of actions and/or omissions that resulted in the loss of material benefits by one of the parties to the labour relationship as a result of unlawful actions of one of the entities. The specifics of this type of liability are as follows: first, it is contractual in nature, as an agreement on liability is concluded between the employee and the employer; second, both the employee and the employer may be subject to this type of liability; third, the limits of material liability are clearly defined at the legislative level; fourth, its purpose is dual: on the one hand, it provides for compensation for damage, and on the other hand, it protects employees from unjustified deductions from their wages. ***Conclusions***. It is concluded that the provisions of labour and administrative law in terms of regulatory framework for liability for violation of labour legislation are consistent in terms of determining the range of entities that may be subject to liability for committing offences in the field of public relations under study. With regards to the differentiation between the provisions of these branches in the context of the presented issues, it is due to the purpose of each type of liability: first, labour law mainly regulates the liability of employees for violations of applicable labour laws and local regulations in the course of their employment; meanwhile, administrative law regulates the liability of managers of enterprises, institutions and organisations, as well as officials of public authorities who are parties to legal labour relations ; second, sanctions that may be imposed on violators of labour laws are clearly differentiated, as well as a list of grounds and conditions for the application of the latter; third, labour and administrative law provides for different entities authorised to bring violators to a particular type of legal liability.

Key words: legal liability, labour law, administrative law, offence, legislation, labour.

1. Introduction

The effective functioning of labour relations requires the proper functioning of legal liability. However, in this context, it should be noted that one of the important issues of modern science is the problem of harmonisation and differentiation between labour and administrative law provisions regarding offenders' legal liability. Moreover, the degree and type of liability for violations of labour legislation depends: first, on the entity that committed the offence; second, on the legal status of the controlling actor; third, on the nature and severity of the offence.

Some problematic issues of liability for violation of labour legislation have been considered in the scientific works by: O.M. Bandurka, Yu.D. Batan, O.V. Dykyi, K.V. Kovalenko, L.H. Koziatnyk, K.Yu. Melnyk, A.Yu. Podorozhnii, I.A. Rymar, N.M. Khutorian and many others. However, despite a considerable number

of scientific achievements, the legal literature still does not resolve the issue of harmonisation and differentiation between labour and administrative law in the regulatory framework for liability for violations of labour legislation.

As a result, the purpose of the article is to reveal the issue of harmonisation and differentiation of labour and administrative law provisions in the regulatory framework for liability for violation of labour legislation.

2. Content of disciplinary and material liability

Legal liability, in its most general sense, is a measure of state coercion regulated by legislative provisions that may be applied to a person in the event of actions contrary to the applicable law and which is manifested in the application of measures to the offender that involve restrictions on of a personal and/or property nature. In addition, it should be noted that the specifics of legal liability directly depend on the provisions of which branch of law it is regulated.

With regard to the issues presented in this study, the specifics of the labour sphere and its parties cause the problem of harmonisation and differentiation of labour and administrative law provisions in the regulatory framework for liability for violation of labour legislation. The existence of the above problem is due to: first, a wide range of entities that may be subject to liability in case of violation of the applicable labour legislation (in particular, an employee and an employer, as well as entities legal status thereof is derived from the labour one (trade unions, the State Labour Service (and its officials)), etc.); second, several types of liability may be applied to certain categories of actors, which may be regulated by several branches of law, both labour and administrative; third, the severity of the offence. In this context, it should also be noted that labour law regulates the types of liability such as disciplinary and material liability. In turn, the provisions of the administrative law define administrative liability.

First, the content of disciplinary and material liability regulated by the labour law provisions should be considered. K.Yu. Melnyk argues that disciplinary liability is one of the types of legal liability, implying that an employee who has violated labour discipline shall suffer the punishment provided for by labour law. The scholar also notes that the main ground for disciplinary liability is a disciplinary offence (Melnyk, 2014). A.Yu. Podorozhnyi marks that disciplinary liability means the obligation of an employee to be responsible to the employer, who has disciplinary power, for a breach of labour discipline committed by him/her in the form of non-performance or improper performance of labour duties through the fault of the employee and to suffer negative consequences as a result of this, as provided for by labour law (Podorozhnii, 2018).

Therefore, disciplinary liability is the most lenient type of legal liability applied to violators of labour laws for minor offences. It is the obligation of an employee to be punished for violations of applicable laws and regulations, as well as other provisions stipulated in a collective agreement and individual employment contract. In accordance with the provisions of the Labour Code of Ukraine, disciplinary sanctions are imposed by the body that has the right to hire (elect, approve and appoint) the employee in question. Disciplinary penalties may also be imposed on employees who are disciplined in accordance with charters, regulations and other acts of legislation on discipline by bodies higher in the order of subordination to the bodies referred to in part one of this Article. Disciplinary action shall be taken by the employer immediately upon discovery of the misdemeanour, but not later than one month from the date of its discovery, not counting the time the employee is released from work due to temporary disability or is on leave. Prior to imposing a disciplinary sanction, the employer must request written explanations from the breacher of labour discipline. Only one disciplinary sanction may be imposed for each breach of labour discipline. When choosing the type of penalty, the employer should consider the severity of the breach and the damage caused by it, the circumstances under which the offence was committed, and the employee's previous work (Code of Labour Laws of Ukraine, 1971).

Therefore, disciplinary liability means imposing disciplinary sanctions on the relevant persons. This feature is crucial for disciplinary liability and reflects the essence of this type of liability so deeply that the concepts of "disciplinary liability" and "disciplinary sanction" are often used in the literature and practice as equivalent (Kovalenko, 2008). Disciplinary coercion is extrajudicial, characterised by the widespread use of moral and legal sanctions, and is carried out by entities of disciplinary power. While civil coercive measures can be applied to both individual and collective participants in legal relations, disciplinary measures are applied only to physical persons, they are not only personalised but also individualised. Within its scope, there are many sanctions and procedures designed for a specific group of people (Kovalenko, 2008).

The disciplinary liability is closely related to material liability. According to N.M. Khutorian, material liability in the labour law of Ukraine is the need for one of the parties to labour relations to compensate for material damage (and in some cases moral damage) caused to the other party

as a result of improper performance of its labour duties as provided for by labour law (Code of Labour Laws of Ukraine, 1971). With regard to employee liability, it is necessary to mention Article 130 of the Labour Code, according to which employees are liable for damages caused to an enterprise, institution or organisation as a result of breach of their employment duties (Code of Labour Laws of Ukraine, 1971). When imposing material liability, the rights and legitimate interests of employees are guaranteed by establishing liability only for direct actual damage, only in the scope and manner provided by law, and provided that such damage is caused to the enterprise, institution, organisation by the employee's guilty unlawful acts (omissions). This liability is usually limited to a certain portion of the employee's earnings and shall not exceed the full amount of the damage caused, except in cases provided for by law. If the above grounds and conditions are met, material liability may be imposed regardless of the employee's disciplinary, administrative or criminal liability. Employees may not be held liable for damage that falls within the category of normal industrial and economic risk, as well as for damage caused by an employee who was in a state of emergency. Only employees who are officials may be held liable for profits not received by an enterprise, institution or organisation. The employee who caused the damage may voluntarily cover it in full or in part. With the consent of the employer, the employee may transfer equivalent property to cover the damage or repair the damaged property (Code of Labour Laws of Ukraine, 1971).

It should be noted that not only the employee, but also the employer may be held liable. The current labour legislation of Ukraine provides for the employer's material liability for damage caused to the employee. According to Articles 117, 235, 236 of the Labour Code, the employer shall compensate the employee for damage caused by a delay in severance pay, unlawful dismissal, transfer of the employee to another job, incorrect wording of the reason for dismissal in the labour book, delay in issuing the labour book due to the fault of the owner or his/her authorised body, and delay in executing the decision to reinstate the employee. According to Article 237-1 of the Labour Code, the owner or his/her authorised body shall compensate the employee for non-pecuniary damage. Article 237 provides for material liability of an official guilty of unlawful dismissal or transfer of an employee (Code of Labour Laws of Ukraine, 1971; Rymar, 2017).

Therefore, material liability is primarily aimed at restoring the violated material right of an employee and/or employer in the event of actions and/or omissions that resulted in the loss of material benefits by one of the parties to the labour relationship as a result of unlawful actions of one of the entities. The specificities of this type of liability are: first, it is contractual in nature, as an agreement on liability is concluded between the employee and the employer; second, both the employee and the employer may be subject to this type of liability; third, the limits of material liability are clearly defined at the legislative level; fourth, its purpose is dual: on the one hand, it provides for compensation for damage, and on the other hand, it protects employees from unjustified deductions from their wages.

3. Content of administrative liability

Next, administrative liability as a type of liability should be considered, it is closely intertwined with labour law, but the procedure for its implementation is regulated exclusively by the provisions of the administrative law. According to S.M. Kremenchutskyi, administrative liability is a type of legal liability expressed in the imposition of an administrative penalty by an authorised body or official to a person who has committed an administrative offence. This type of liability is characterised by the same features as legal liability in general (Kremenchutskyi, 2009). I.P. Holosnichenko interprets administrative liability as a type of legal liability, which is a set of administrative legal relations arising in connection with the application by authorised bodies (officials) to persons who have committed an administrative offence of special sanctions – administrative penalties – provided for by the provisions of administrative law (Holosnichenko, 2004).

The factual ground for administrative liability, enabling to subject a person to it, is the commission of an administrative offence (misdemeanour). According to the Code of Administrative Offences of Ukraine, Article 9, Part 1, an administrative offence (misdemeanour) is an unlawful, culpable (intentional or negligent) act or omission that infringes upon public order, property, rights and freedoms of citizens, the established order of governance and entails administrative liability provided for by law. It should be noted that this definition simultaneously uses and identifies two terms and, thus, two concepts: "administrative offence" and "administrative misdemeanour" (Code of Ukraine on Administrative Offences, 1984).

With regard to the topic under study, the Code of Administrative Offences provides for administrative liability for committing administrative offences related to compliance with labour legislation, such as: violation of the established terms of payment of wages, payment of wages not in full, and the term

for providing employees with wages by officials of enterprises, institutions, organisations regardless of ownership and individual entrepreneurs, including former employees, upon their request, documents related to their employment at a given enterprise, institution, organisation or individual entrepreneur required for the purpose of granting a pension (length of service, salary, etc.), specified by the Law of Ukraine "On Citizens' Appeals", or submission of these documents with inaccurate data, violation of the deadline for certification of workplaces in terms of working conditions and the procedure for its conduct, as well as other violations of labour legislation; repeated violation of the above within a year for which the person has already been subjected to an administrative penalty, or the same acts committed against a juvenile, pregnant woman, single father, mother or a person replacing them and raising a child under the age of 14 or a disabled child; actual admission of an employee to work without an employment agreement (contract), admission to work of a foreigner or stateless person and persons in respect of whom a decision has been made to draw up documents for resolving the issue of granting refugee status, on the terms of an employment agreement (contract) without a work permit for a foreigner or stateless person; repeated commission of the aforementioned violation within a year for which the person has already been subjected to an administrative penalty; violation of the guarantees and benefits established by law for employees engaged in the performance of duties under the laws of Ukraine "On military duty and military service", "On alternative (non-military) service", "On mobilisation training and mobilisation"; violation of the requirements of legislative and other regulations on labour protection, except for the violations listed below; violation of the established procedure for reporting (providing information) to the central executive body implementing public policy on labour protection about an occupational accident (Koziatnyk, 2020).

The Code of Administrative Offences in force provides for administrative liability for violations of labour and occupational safety laws. The liability for these violations is provided for in the Code of Administrative Offences, Article 41, part 5 and 6. Fines range shall be from UAH 340 to UAH 850 (twenty to fifty tax-free minimum incomes). Certain special sanctions are also provided for in Articles 93 and 94 of the Code of Administrative Offences. They relate to violations of the requirements of the legislation on safe work practices and regulations on the storage, use and accounting of explosive materials in industries and facilities controlled by the central executive body that implements public policy on labour protection (Manager's responsibility for violation of labour legislation, 2022).

4. Conclusions

To sum up, it should be noted that the provisions of labour and administrative law in the issue of regulatory framework for liability for violation of labour legislation are consistent in determining the range of entities that may be subject to liability for committing offences in the field of public relations under study. With regards to the differentiation between the provisions of these branches in the context of the presented issues, it is due to the purpose of each type of liability:

– First, labour law mainly regulates the liability of employees for violations of applicable labour laws and local regulations in the course of their employment; meanwhile, administrative law regulates the liability of managers of enterprises, institutions and organisations, as well as officials of public authorities who are parties to legal labour relations;

– Second, sanctions that may be imposed on violators of labour laws are clearly differentiated, as well as a list of grounds and conditions for the application of the latter;

– Third, labour and administrative law provides for different entities authorised to bring violators to a particular type of legal liability.

However, despite the seemingly clear distinction between labour and administrative law in regulating liability for violations of labour legislation, there are still some uncertainties in this field regarding provisions to be applied to the employer in case of violations in the areas of remuneration and labour protection, in particular, the boundaries of such liability are quite blurred, which often complicates the process of bringing the latter to financial and/or administrative liability.

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ПРОБЛЕМА УЗГОДЖЕННЯ ТА РОЗМЕЖУВАННЯ НОРМ ТРУДОВОГО Й АДМІНІСТРАТИВНОГО ПРАВА В ПРАВОВОМУ РЕГУЛЮВАННІ ПРИТЯГНЕННЯ ДО ВІДПОВІДАЛЬНОСТІ ЗА ПОРУШЕННЯ ЗАКОНОДАВСТВА ПРО ПРАЦЮ

Анотація. ***Мета.*** Метою статті є розкрити проблему узгодження та розмежування норм трудового й адміністративного права в правовому регулюванні притягнення до відповідальності за порушення законодавства про працю. ***Результати.*** У статті на основі аналізу наукових поглядів учених та норм чинного законодавства розкрито сутність та зміст дисциплінарної, матеріальної та адміністративної відповідальності за порушення законодавства про працю. Акцентовано увагу на тому, як узгоджуються норми трудового та адміністративного права в питанні регулювання відповідальності за порушення законодавства про працю. Здійснено розмежування норм трудового та адміністративного права в контексті представленої проблематики. Визначено, що матеріальна відповідальність передусім спрямована на відновлення порушеного матеріального права працівника та/або роботодавця в разі вчинення дій та/або бездіяльності, що призвели до втрати матеріальних благ однією зі сторін трудових правовідносин унаслідок неправомірних дій одного із вказаних суб'єктів. Особливістю такого виду відповідальності є: по-перше, вона має договірний характер, адже між працівником та роботодавцем укладається договір про матеріальну відповідальність; по-друге, до вказаного виду відповідальності може бути притягнуто як працівника, так і роботодавця; по-третє, межі матеріальної відповідальності чітко визначені на законодавчому рівні; по-четверте, її мета має подвійний характер: так, з одного боку вона передбачає відшкодування шкоди, а з іншого – захист працівників від необґрунтованих відрахувань з їхньої заробітної плати. ***Висновки.*** Зроблено висновок, що норми трудового та адміністративного права в питанні правового регулювання притягнення до відповідальності за порушення законодавства про працю узгоджуються за напрямом визначення кола суб'єктів, яких може бути притягнуто до відповідальності за вчинення правопорушень у досліджуваній сфері суспільних відносин. Що ж стосується розмежування норм указаних галузей у контексті представленої проблематики, то в даному контексті необхідно виходити із призначення кожного виду відповідальності: по-перше, нормами трудового права регулюється здебільшого відповідальність працівників за вчинення ними порушень норм чинного трудового законодавства, а також локальних нормативних актів безпосередньо в процесі здійснення ними трудової діяльності; у свою чергу нормами адміністративного права регулюється відповідальність керівників підприємств, установ організацій, а також посадових осіб органів державної влади, які є суб'єктами трудового права; по-друге, існує чітке розмежування санкцій, які можуть бути застосовані по відношенню до порушників трудового законодавства, а також перелік підстав та умов застосування останніх; по-третє, нормами трудового та адміністративного права передбачаються різні суб'єкти, які володіють повноваженнями щодо притягнення порушників до того чи іншого виду юридичної відповідальності.

Ключові слова: юридична відповідальність, трудове право, адміністративне право, правопорушення, законодавство, праця.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 342.7(477)
DOI https://doi.org/10.32849/2663-5313/2023.5.10

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Oliinyk, Ruslan (2023). Modern national system of administrative and legal framework for the detention of prisoners of war in Ukraine. *Entrepreneurship, Economy and Law, 5*, 63–70, doi https://doi.org/10.32849/2663-5313/2023.5.10

MODERN NATIONAL SYSTEM OF ADMINISTRATIVE AND LEGAL FRAMEWORK FOR THE DETENTION OF PRISONERS OF WAR IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to study the legal and regulatory framework for relations concerning the detention of prisoners of war in Ukraine. ***Results.*** The article states that nowadays the national system of legal framework for the detention of prisoners of war is quite extensive and covers a wide range of issues. It is not limited to national and international legal instruments and generally goes beyond the administrative branch of law. The article argues that, adhering to humanistic principles, national legislation probably regulates the issue of detention of prisoners of war more thoroughly than international legal provisions, based on the functional tasks that need to be solved in practice. ***Conclusions.*** It is concluded that nowadays the national system of legal framework for the detention of prisoners of war is quite extensive and covers a wide range of issues. It is not limited to national and international legal instruments and generally goes beyond the administrative branch of law. Therefore, there are grounds to assert that adhering to humanistic principles, national legislation probably regulates the issue of detention of prisoners of war more thoroughly than international legal provisions, based on the functional tasks that need to be solved in practice. Nevertheless, some researchers still emphasise the incomplete compliance of national regulatory practice with generally accepted international provisions. If we consider the modern system of legal framework for the detention of prisoners of war as consisting of two major parts (international humanitarian law, which lays the ideological foundation, and national legislation, which mainly regulates practical activities), then both structural components, in our opinion, have shortcomings. These are: 1) international legal instruments contain provisions that, in the current situation (given the specificities of the aggressor country), lose their practical meaning. For example, the possibility of consenting to the release of a prisoner of war on the basis of honour or obligation. In addition, international humanitarian law does not consider the full variety of possible typical situations that need to be addressed or is unable to provide an answer to them. For example, international legal documents provide for a rather limited number of options for release from captivity; 2) the weakness of the set of national legal provisions, in our opinion, is a certain terminological diversity and inconsistency. For example, the simultaneous use in different legal instruments of the concepts of "capture, captivity, detention, holding, etc.) Furthermore, the national legal system is characterised by regulating separate functional tasks related to the treatment of prisoners of war in different legal regulations issued by different state authorities, which does not simplify the system in general. Another specific feature of the national system of legal regulatory framework for the detention of prisoners of war is that it is still evolving. For example, in the future, we can expect to see legislative developments on the exchange and release of prisoners of war, as well as their liability for war crimes and offences.

Key words: prisoners of war, rights of prisoners of war, detention of prisoners of war, administrative and legal framework, system, national system.

1. Introduction

The review of professional literature, scientific events, and practical activities of state bodies and officials regarding the regulatory framework and practice of organising relevant activities related to the detention of prisoners of war convincingly reveals both negative experiences and successful developments in Ukraine. The most active work in this area took place in the years immediately following the start of full-scale Russian armed aggression. And it is possible that it will be further developed and improved depending on current issues. For example, the additional regulation

of the exchange of prisoners of war, or the resolution of issues related to prisoners of war who have committed war crimes. Moreover, now is the time when it is advisable to analyse the experience already gained and to substantiate scientifically proven approaches to build a basis for further practical activities. This is the reason for the relevance of our chosen research topic.

In the context of the topic under study, it is advisable to mention scholars who have raised the issue of the national system of administrative and legal framework for the detention of prisoners of war in Ukraine in their scientific works, such as: V. Aloshyn, A. Amelin, Y. Badiukov, P. Bohutskyi, M. Buromenskyi, Ya. Hodzhek, A. Hryhoriev, M. Hrushko, O. Dzhafarova, A. Dmitriev, O. Drozd, S. Yehorov, O. Zhytnyi, J. Zhukorska, V. Zavhorodnii, V. Kaluhin, F. Kalskhoven, F. Kozhevnikov, F. Kryl, V. Lysyk, V. Lisovskyi, H. Melkov, V. Moroz, S. Nishchymna, A. Poltorak, V. Repetskyi, L. Savynskyi, L. Tymchenko, O. Tiunov, M. Khavroniuk, P. Khriapinskyi, M. Tsiurupa, S. Shatrava, and others.

The purpose of the article is to study the legal and regulatory framework for relations concerning the detention of prisoners of war in Ukraine. The task of the research is to formulate conclusions on the development of the national system of administrative and legal framework for the detention of prisoners of war in Ukraine.

2. Powers of the National Council for the Recovery of Ukraine from the War

Today, after two years of full-scale war, some administrative and managerial initiatives on regulatory issues related to the detention of prisoners of war seem unclear. For example, on April 21, 2022, the President of Ukraine issued Decree No. 266/2022, which established the National Council for the Recovery of Ukraine from the War (National Council) as his advisory body. The tasks of the National Council were defined as follows: "*to develop an action plan for the post-war recovery and development of Ukraine*...; to identify and develop proposals for priority reforms, the adoption and implementation of which is necessary in the war and post-war periods; to prepare strategic initiatives, draft laws and regulations, the adoption and implementation of which is necessary for the effective work and recovery of Ukraine in the war and post-war periods" (Decree of the President of Ukraine on the issue of the National Council for the Recovery of Ukraine from the Consequences of the War, 2022). From the perspective of current experience, this initiative (implemented less than 2 months after the start of the full-scale Russian military invasion) looks naïve and impractical at the very least.

However, the National Council, within the framework of the established 24 working groups, developed a draft of the relevant "Action Plan" in July 2022. According to Resolution of the Cabinet of Ministers of Ukraine (CMU) No. 518 of 3 May 2022 (Resolution of the Cabinet of Ministers of Ukraine On Amending Clause 3 of the Regulations on the Office of Reforms, 2022), the Secretariat of the CMU and the Office of the President of Ukraine provided organisational and technical support to the National Council, and the Office of Reforms of the CMU provided information and analytical support to the relevant working groups. Comments and suggestions to the draft Sections of the Action Plan were submitted by the National Council until 1 September 2022. (Government portal (The single web portal of the executive authorities of Ukraine), 2023).

The Justice Working Group's draft of the Recovery Plan for Ukraine alone is 161 pages long, so there were a lot of proposals. In the context of our study, it is worth focusing on the Section of the Justice Working Group's draft – "Public safety and social adaptation of convicts and prisoners. Ensuring the detention of prisoners of war". In this Section, the Working Group identified 9 key challenges and stressed that "in order to solve systemic structural problems, to form an optimal model for the execution of criminal sentences and given the devastating consequences of russia's military aggression against Ukraine and the need to ensure the detention of prisoners of war, the penitentiary system needs to be restored and further reformed". The timeframe for the implementation of the respective stages was also determined: Stage 1: 06/2022 – 12/2022; Stage 2: 01/2023 – 12/2025; Stage 3: 01/2026 – 12/2032. In other words, in the face of uncertainty and a total lack of clear, reliable information and forecasts, the planning attempt was made for a decade. However, among the project's proposals, in our opinion, there are both quite logical and rather dubious ones. For example, already for the first stage, the task (3) is defined: to create "conditions for the detention of prisoners of war. 3.1. Development of design and estimate documentation for the construction/reconstruction of a POW camp (if necessary); 3.2. Obtaining funding and conducting the necessary tender procedures and obtaining a construction permit (if necessary); 3.3. Conducting construction/repair work in the POW camp; 3.4. Putting the camp into operation" (p. 139). In addition, the draft indicates that it is advisable to develop a Law "On amendments to certain legislative instruments aimed at <...> specifying the procedure and conditions of detention of prisoners of war ..." (pp.

157–158). However, the body responsible for the implementation of this measure is for some reason not specified, nor is a clear deadline for its implementation indicated (Draft Plan for the Recovery of Ukraine Materials of the "Justice" working group of the National Council for the Recovery of Ukraine from the Consequences of the War, 2022).

In contrast, the proposals to build 2,000 places for detainees and create 1,000 places in penal institutions by 2025 and to build 28 pretrial detention centres and 29 new penal institutions by 2032 look much less reasonable. It is worth reminding that the number of convicts before the full-scale russian invasion of Ukraine had been decreasing for a long time, and colonies (penal institutions) were actively conserved and liquidated. However, the project provides a considerable indicative need for funding for these tasks (for construction and other improvements, such as software and information technology, etc.) The amounts mentioned in the project are obviously for the entire period of implementation, i.e., until 2032, and amount to UAH 148,600.00 + 111.65. The amount is not in thousands, but in millions (at today's prices, it is about $4 billion). One of the main sources of funding is loans from international financial organisations. The feasibility of borrowing such a sum (and as you know, loans are usually repayable and usually with interest) seems to us rather questionable.

We could not find any information that the draft or a part of it developed by a specific working group was adopted as a real action plan. Despite the obvious shortcomings of the project (cumbersome and unfortunate planning timeframe, which makes the project unrealistic), we believe that the main drawback is the inappropriateness of combining the tasks related to convicts and prisoners of war into one scope of work. After all, these are completely different categories of people, the experience of working with them, the need to ensure the dynamics of developing practical solutions, and their legal framework differ significantly. Therefore, in our opinion, plans for such works should be drawn up for separate categories (even if the same state actors will be involved in their implementation).

Another example of managerial activities of the state related to the treatment of prisoners of war is the Implementation Plan for the Framework on cooperation between the Government of Ukraine and the UN on prevention and response to conflict-related sexual violence (approved by the Commission for Coordination of Interaction of Executive Authorities to Ensure Equal Rights and Opportunities for Women and Men on 15.09.2022) (Government portal (The single web portal of the executive authorities of Ukraine), 2023).

For example, task 32 of the Plan provides for action 1: "Include in the thematic plans for in-service training and retraining of employees of the security and defence sector, judicial bodies and the bar a section on the specifics of detecting and investigating war crimes and crimes against humanity, including gender-based crimes". It is difficult to understand why, after six months of full-scale war, the Government still used (or agreed to use) the phrase "conflict-related sexual violence" (CRSV) in its own documents, but the initiative to "Train security and defence sector personnel responsible for POW camps/detention centres on prevention and response to CRSV (definition of CRSV, its types, risks, impact, responsibility and relevant laws, etc". (Decision of the Commission on coordination of the interaction of executive authorities on ensuring equal rights and opportunities for women and men On the approval of the Plan for the implementation of the Framework Program of Cooperation between the Government of Ukraine and the United Nations organization on the prevention and counteraction of sexual violence related to the conflict, 2022) seems, although not the most necessary, to be a useful and feasible measure.

In the context of our study, however, it would be worthwhile to focus on legislative changes that have already been implemented and have been in force almost from the very beginning of the full-scale russian invasion. For example, Law of Ukraine No. 2158-IX "On Amendments to Certain Legislative Acts of Ukraine regarding Regulation of Issues Related to Prisoners of War in a Special Period" of 24 March 2022 (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding Regulation of Issues Related to Prisoners of War in a Special Period, 2022). This legal regulation amended and supplemented the content of: the Criminal Executive Code of Ukraine; the Law of Ukraine "On Pre-trial Detention"; the Law of Ukraine "On the Armed Forces of Ukraine"; the Law of Ukraine "On Defence of Ukraine"; the Law of Ukraine "On the Military Law Enforcement Service in the Armed Forces of Ukraine"; the Law of Ukraine "On the State Criminal Executive Service of Ukraine"; the Law of Ukraine "On the Legal Regime of Martial Law".

The legislative changes implemented by this instrument include: define the powers of the central executive body (CEB) responsible for the formation and implementation of public policy on the detention of prisoners of war; clarify the distribution of powers to determine the state enterprise that will be responsible

for the functions of the National Information Bureau (the relevant entity must be established in accordance with the requirements of Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949); outline the powers of the CEA, which ensures the formation of public policy on the temporarily occupied territories of Ukraine and the adjacent territories; clarify the competence of the CEA, which implements public policy in the field of foreign relations; adjust the responsibilities of the CEA in the field of transport and postal services, etc.

Therefore, this data suggests that the distribution and regulation of new competences of CEAs related to their participation in the detention of prisoners of war was one of the first necessary steps taken at the legislative level to develop the relevant "administrative and legal system".

3. Powers of the Cabinet of Ministers of Ukraine in the Detention of Prisoners of War in Ukraine

The next step in the development was taken at the bylaw level by the Cabinet of Ministers of Ukraine (CMU). For example, CMU Resolution No. 394 of April 1, 2022 "On Amendments to the Regulation on the Ministry of Justice of Ukraine" stipulates that the Ministry of Justice is "the main body in the system of central executive authorities that ensures the formation and implementation of public legal policy <...> on detention of prisoners of war ..." (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on the Ministry of Justice of Ukraine, 2014). Moreover, subparagraphs 95-[17] and 95-[18] of paragraph 4 of the Resolution entrust the Ministry of Justice with the following tasks: "to establish camps for the detention of prisoners of war and detention centres of prisoners of war; to create conditions for the detention of prisoners of war in camps for the detention of prisoners of war and detention centres of prisoners of war in compliance with Ukraine's international obligations, in particular in the field of international humanitarian law, and the requirements of national legislation" (Resolution of the Cabinet of Ministers of Ukraine On Amendments to the Regulations on the Ministry of Justice of Ukraine, 2022).

After that, the CMU issued a number of other legal regulations that established procedures, algorithms, standards, tasks for certain state actors, etc. Examples of relevant acts are Resolution of the Cabinet of Ministers of Ukraine No. 413 "On Approval of the Procedure for the Detention of Prisoners of War" of 5 April 2022 (Resolution of the Cabinet of Ministers of Ukraine on approval of the Procedure for Detention of Prisoners of War, 2022) and Resolution of the Cabinet of Ministers of Ukraine No. 721 "On Approval of the Procedure for the Implementation of Measures for the Treatment of Prisoners of War in a Special Period" of 17 June 2022 (Resolution of the Cabinet of Ministers of Ukraine on approval of the Procedure for the implementation of measures regarding the treatment of prisoners of war in a special period, 2022). In particular, these Resolutions set tasks for: The Ministry of Justice of Ukraine; the Ministry of Foreign Affairs of Ukraine; the Ministry of Internal Affairs of Ukraine; the Ministry of Defence of Ukraine; the Ministry of Community, Territorial and Infrastructure Development of Ukraine; the State Penitentiary Service of Ukraine; and Military Administrations. Moreover, they define some specific features of communication on prisoner of war issues with the Security Service of Ukraine; the National Police of Ukraine; the Prosecutor's Office; and the Military Law Enforcement Service of the Armed Forces of Ukraine.

These entities obviously do not represent an exhaustive list of bodies involved in the detention of prisoners of war. In this context, it should also be noted that specific state actors have been created that combine representatives of a wider range of authorities. For example, the "Coordination Headquarters for the Treatment of Prisoners of War", which "is a temporary auxiliary body of the Cabinet of Ministers of Ukraine and is established to facilitate the coordination of activities of central and local executive authorities, other state bodies, local self-government bodies, military formations established in accordance with the laws, law enforcement agencies and public associations <...> (on the treatment of) <...> enemy prisoners of war" (Resolution of the Cabinet of Ministers of Ukraine on the establishment of the Coordination Headquarters for the Treatment of Prisoners of War, 2022) includes representatives of 21 state entities (from different branches of government).

Such a large number of representatives of various state authorities undoubtedly indicates the complexity of ensuring the detention of prisoners of war. Therefore, it makes sense to clarify which issues are related to such activities. For this purpose, we will use the comparison of the previously mentioned Convention and the Procedures determined by the CMU.

4. Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949

Thus, the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949 contains VI parts: General Provisions; General Provisions for the Protection of Prisoners of War; Captivity; Termination of Captivity;

Information Bureaux and Relief Societies for Prisoner of War; Execution of the Convention.

As such, Part III of the Convention consists of the following Sections and Chapters: Section I Beginning of Captivity; Section II Internment of Prisoners of War (Chapter I "General Observations"; Chapter II "Quarters, Food and Clothing of Prisoners of War"; Chapter III "Hygiene and Medical Attention"; Chapter IV "Medical Personnel and Chaplains Retained to Assist Prisoners of War"; Chapter V "Religious, Intellectual and Physical Activities"; Chapter VI "Discipline"; Chapter VII "Ranks of prisoners of war"; Chapter VIII "Transfer of prisoners of war after their arrival in the camp"); Section III Labour of Prisoners of War; Section IV Financial Resources of Prisoners of War; Section V Relations of Prisoners of War with the Exterior; Section VI Relations between Prisoners of War and the Authorities (Chapter I "Complaints of Prisoners of War respecting the Conditions of Captivity"; Chapter II "Prisoner of War Representatives"; Chapter III "Penal and Disciplinary Sanctions").

The titles of the parts, sections and chapters suggest that the authors of the Convention attempted to combine the *functional approach* (which concerns the logical course of events from the moment a person is taken prisoner until the termination of his or her captivity) and the *humanitarian approach* (which concerns the listing and enshrining of the rights of prisoners of war).

To compare the national legal regulations with the above document, CMU Resolution No. 413 "On Approval of the Procedure for the Detention of Prisoners of War" of April 5, 2022, is presented below. It has the following structure: I. General Provisions; II. General Principles of Detention of Prisoners of War; III. General Principles of Establishment and Operation of Camps; IV. Organisation of Prisoners of War Admission to Camps; IV-1. Ensuring the Participation of Prisoners of War in Investigative (Search) and Other Procedural Actions, Court Proceedings (Section added on July 07, 2022 according to CMU Resolution No. 762); V. Food for Prisoners of War; VI. Material and Household Support of Prisoners of War; VII. Medical Care of Prisoners of War; VIII. Involvement of Prisoners of War in the Performance of Work; IX. Religious, Intellectual and Physical Activities of Prisoners of War; X. Disciplinary Sanctions; XI. Funds of Prisoners of War; XII. Procedure for Receiving Letters, Postal Cards and Parcels, Granting the Right to Telephone Conversations; XIII. Organisation of Burial, Repatriation, Hospitalisation in Neutral Countries and Release of Prisoners of War; XIV. Specifics of the Functioning of POW Detention Centres.

A comprehensive study of CMU Resolution No. 413 of April 5, 2022 gives every reason to believe that it was drafted with a combination of approaches used in the drafting of the above-mentioned Convention. Meanwhile, the structures of these documents overlap but do not duplicate each other. In our opinion, the primacy in building the structure of the national legal regulation is still given to the approach of functionality.

However, the content of this Resolution alone obviously does not cover all the functional components of ensuring the detention of prisoners of war declared at the international level. For instance, the above-mentioned Convention in Section I of Part III describes the "beginning of captivity". Instead, CMU Resolution No. 413 begins to streamline the work with prisoners of war immediately with the "organisation of measures for prisoners of war admission to camps" (Section IV of the Resolution). However, this discrepancy does not constitute an omission or disregard of international provisions. After all, this aspect of work with prisoners of war is regulated by another national legal regulation, which was issued by a different government agency (the one responsible for implementing the relevant actions). We are referring to Order of the Ministry of Defence of Ukraine (MD) No. 164 "On Approval of the Instruction on the Procedure for Implementation of International Humanitarian Law in the Armed Forces of Ukraine" of March 23, 2017, registered with the Ministry of Justice of Ukraine on June 9, 2017, No. 704/30572.

It should be noted that MD Order No. 164 was issued earlier than CMU Resolution No. 413 (issued on March 23, 2017 and April 5, 2022, respectively). Moreover, MD Order No. 164 is aimed at regulating a wider range of issues than just the work with prisoners of war. However, this document, as well as virtually all other national legal regulations that address the issue of detention of prisoners of war, necessarily emphasises the requirement to comply with the established provisions of international humanitarian law and humane treatment.

It is also important that the targeted regulation at the national level of the issues of detention of prisoners of war not only gradually filled the gaps in regulating all functional stages of work with prisoners of war (in accordance with international requirements), but also somewhat expanded and specified their list.

This statement can be proved by the fact that Section IV-1 "Ensuring the Participation of Prisoners of War in Investigative (Search) and Other Procedural Actions, Court Proceedings" was added to the content of CMU Resolution No. 413 (as mentioned above); or,

for example, by the attempts of lawmakers to form a regulatory framework for the exchange of prisoners. Notably, on this issue in 2022, V. Kuznetsov and M. Syiploki argued that: "the existing draft laws on this issue" (No. 5672, 5672-1, 7436) had certain flaws and needed to be revised; 3) (according to these scholars), two procedures for the exchange of prisoners of war of the aggressor country should be provided for at the legislative level: one should apply to prisoners of war who did not commit war crimes, the other two prisoners of war who did commit war crimes; 4) at the bylaw level (regulations of the President of Ukraine, resolutions of the CMU, etc.), only the details of such procedures could be specified; 5) the exchange of prisoners of war who committed war crimes is possible only after a decision of the judicial authorities in accordance with the established procedure (Kuznetsov, Syiploki, 2022) (we consider the above conclusions and recommendations of scholars to be debatable at this time). However, in 2023, O. Tubelets, Chief Consultant of the Main Legal Department of the Verkhovna Rada of Ukraine, also criticised some of the legislative initiatives launched in this respect (Tubelets, 2023).

5. Conclusions

However, we can confidently state that nowadays the national system of legal framework for the detention of prisoners of war is quite extensive and covers a wide range of issues. It is not limited to national and international legal instruments and generally goes beyond the administrative branch of law. Therefore, there are grounds to assert that adhering to humanistic principles, national legislation probably regulates the issue of detention of prisoners of war more thoroughly than international legal provisions, based on the functional tasks that need to be solved in practice. Nevertheless, some researchers still emphasise the incomplete compliance of national regulatory practice with generally accepted international provisions.

If we consider the modern system of legal framework for the detention of prisoners of war as consisting of two major parts (international humanitarian law, which lays the ideological foundation, and national legislation, which mainly regulates practical activities), then both structural components, in our opinion, have shortcomings. These are: 1) international legal instruments contain provisions that, in the current situation (given the specificities of the aggressor country), lose their practical meaning. For example, the possibility of consenting to the release of a prisoner of war on the basis of honour or obligation. In addition, international humanitarian law does not consider the full variety of possible typical situations that need to be addressed or is unable to provide an answer to them. For example, international legal documents provide for a rather limited number of options for release from captivity; 2) the weakness of the set of national legal provisions, in our opinion, is a certain terminological diversity and inconsistency. For example, the simultaneous use in different legal instruments of the concepts of "capture, captivity, detention, holding, etc." Furthermore, the national legal system is characterised by regulating separate functional tasks related to the treatment of prisoners of war in different legal regulations issued by different state authorities, which does not simplify the system in general. Another specific feature of the national system of legal regulatory framework for the detention of prisoners of war is that it is still evolving. For example, in the future, we can expect to see legislative developments on the exchange and release of prisoners of war, as well as their liability for war crimes and offences.

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СУЧАСНА НАЦІОНАЛЬНА СИСТЕМА АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ТРИМАННЯ ВІЙСЬКОВОПОЛОНЕНИХ В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає у вивченні нормативно-правового регулювання взаємовідносин, пов'язаних із триманням військовополонених в Україні. ***Результати.*** У науковій праці констатовано, що натепер національна система правового забезпечення тримання військовополонених доволі об'ємна й охоплює широке коло питань. Вона не обмежується національними та міжнародними нормативно-правовими актами та і взагалі виходить за межі адміністративної галузі права. Стверджується, що, дотримуючись гуманістичних засад, національне законодавство, ймовірно, детальніше за міжнародні правові норми врегульовує питання тримання військовополонених, виходячи при

цьому із функціональних задач, які необхідно розв'язувати в практичній діяльності. Водночас деякі дослідники все ж звертають увагу на неповну відповідність національної практики нормативного регулювання загальновстановленим міжнародним нормам. Якщо розглядати сучасну систему правового забезпечення тримання військовополонених як таку, що складається із двох великих частин (міжнародного гуманітарного права, яке закладає ідеологічну основу, й національного законодавства, яке здебільшого врегульовує практичну діяльність), то обидва структурні складники не позбавлені недоліків, а саме: 1) міжнародні правові акти містять положення, які в умовах сьогодення (враховуючи особливості країни-агресорки) втрачають свій практичний сенс, наприклад, можливість надання згоди на звільнення військовополоненого під слово честі або зобов'язання. Крім того, міжнародне гуманітарне право не враховує все різноманіття можливих типових ситуацій, які потребують урегулювання, або не здатне надати на них відповідь. Наприклад, у міжнародних правових документах розглянуто доволі обмежену кількість варіантів звільнення з полону; 2) слабкою стороною сукупності національних правових норм, на наш погляд, є деяке термінологічне різноманіття і неузгодженість, наприклад, одночасне використання в різних нормативно-правових актах понять «захоплення, взяття в полон, тримання, утримування тощо). ***Висновки.*** Національна правова система характеризується врегулюванням окремих функціональних завдань щодо роботи з військовополоненими, викладеними в різних нормативно-правових актах, виданих різними державно-владними суб'єктами, що не спрощує систему загалом. Ще одна особливість національної системи правового врегулювання тримання полонених полягає в тому, що вона все ще продовжує розвиватися. Наприклад, надалі варто очікувати нормотворчих напрацювань із проблем обміну та звільнення військовополонених, а також їх відповідальності за воєнні правопорушення і злочини.

Ключові слова: військовополонені, права військовополонених, тримання військовополонених, адміністративно-правове забезпечення, система, національна система.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 351.74:342.95]:342.7(477)(043.5)
DOI https://doi.org/10.32849/2663-5313/2023.5.11

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Petrov, Serhii (2023). Principles of administrative legal personality of the Main Service Centre of the Ministry of Internal Affairs. *Entrepreneurship, Economy and Law, 5*, 71–77, doi https://doi.org/10.32849/2663-5313/2023.5.11

PRINCIPLES OF ADMINISTRATIVE LEGAL PERSONALITY OF THE MAIN SERVICE CENTRE OF THE MINISTRY OF INTERNAL AFFAIRS

Abstract. ***Purpose.*** The purpose of the article is to determine the principles of administrative legal personality of the Main Service Centre of the MIA. ***Results.*** The general characteristics of the administrative legal personality of the Main Service Centre of the MIA contribute to the certainty of its tasks, the definition of its general competence, functions and powers vested in such a body, the purpose of which is to ensure the proper implementation of the state's functions in a certain field of public relations. In the context of European integration processes, scholars are increasingly turning to European standards of public administration. Of course, there is no single act or document. There are the requirements of society and the response of states and the EU as a European integration association to the demands of their citizens. It is established that the Main Service Centre of the MIA, which has been established on the basis of the Regulations on the Main Service Centre of the MIA and is defined by these Regulations as a legal entity under public law which is an interregional territorial body for the provision of services of the Ministry of Internal Affairs of Ukraine, has all the features of such an entity, and moreover, it has the features of an institution, since it aims at the fullest realisation of public law interests. Of course, the definition of the Main Service Centre as an institution is conditional, made to emphasise its role and focus on fulfilling one of the state's functions of streamlining public relations in a particular sector – the operation of road transport. ***Conclusions.*** It is concluded that the Main Service Centre of the MIA and its official (head), in the course of performing public administrative functions on the grounds of the powers defined by the Regulations on the Main Service Centre, implement the functions assigned to it by the MIA: public service (aimed at ensuring the provision of services by territorial service centres of the MIA by organising their activities, methodological and logistical support to implement public policy on road safety and operation of motor vehicles) and managerial and administrative functions necessary to ensure public service activities of the system of service centres of the MIA of Ukraine.

Key words: legal personality, services, coordination, territorial service centres, public service activities.

1. Introduction

The general characteristics of the administrative legal personality of the Main Service Centre of the MIA contribute to the certainty of its tasks, the definition of its general competence, functions and powers vested in such a body, the purpose of which is to ensure the proper implementation of the state's functions in a certain field of public relations. In the context of European integration processes, scholars are increasingly turning to European standards of public administration. Of course, there is no single act or document. There are the requirements of society and the response of states and the EU as a European integration association to the demands of their citizens.

The purpose of the article is to determine the principles of administrative legal personality of the Main Service Centre of the MIA.

2. Classification of participants in administrative legal relations

To respond to the needs for the formation of "smart governance", focused on creating a favourable environment for human existence, an environment conducive to the exercise of human rights, freedoms and legitimate interests, it requires the orderliness of social relations, their adequate regulatory framework, and the effective resolution of managerial issues focused on human rights and needs.

To date, V.B. Averianov's definition of an executive body is doctrinally relevant, who defines an executive body as an organisationally independent element of the state apparatus (mechanism of the state), which is endowed with a clearly defined list of powers (competence) in accordance with the tasks and functions assigned to it, and consists of structural units and positions held by civil servants, and is referred by the Constitution and laws of Ukraine to the system of executive bodies (Averianov, 2007, p. 125). Naturally, it can be concluded that each of the state executive bodies has a unique competence inherent only to this body, enabling to identify it and distinguish it from other bodies as elements of the public administration apparatus. In addition, according to his definition, this uniqueness is generated by functional separation, determined by the tasks assigned to this body, which characterise various aspects of the competence of such body (Bilozorov, Vlasenko, Horova, Zavalnyi, Zaiats, 2017, p. 126).

T.O. Matselyk, having classified the participants in administrative relations vested with powers into collective and individual ones, defines a public authority as a collective entity of administrative law, which is a separate, organisationally defined group of people united by the unity of will, as the will of one person, which is a legal entity of public law legalised in accordance with the established procedure, which has an appropriate name and is endowed with administrative legal personality (Matselyk, 2013, p. 185).

Undoubtedly, the criterion that distinguishes one such entity (state executive body) from other authorised actors is the purpose of creation of such a body (a legal entity under public law with a special status), its scope of activities and administrative and legal status. Of course, as a legal entity under public law, it is relatively independent, unique and specific. According to T.O. Matselyk, the legal essence of such an entity includes two elements: general legal and special legal (Matselyk, 2013, p. 185). The general legal essence of a collective entity is that it is recognised as a person in law, although it is not such a person. Its legal existence is recognised on the basis of a fiction, as an admission of its "specialised legal personality" (Samoilenko, 2020, p. 89). We argue that the Main Service Centre of the MIA, which has been established on the basis of the Regulations on the Main Service Centre of the MIA and is defined by these Regulations as a legal entity under public law which is an interregional territorial body for the provision of services of the Ministry of Internal Affairs of Ukraine, has all the features of such an entity, and moreover, it has the features of an institution, since it aims at the fullest realisation of public law interests. Of course, the definition of the Main Service Centre as an institution is conditional, made to emphasise its role and focus on fulfilling one of the state's functions of streamlining public relations in a particular sector – the operation of road transport, which, by virtue of being designated as a source of increased danger, requires control and risk management through controlled training and granting special legal personality to persons managing road transport, transporting dangerous goods, controlling the compliance of vehicle designs with technical requirements, maintaining a register of owners of such vehicles, etc.

We agree with T.O. Matselyk that executive authorities are the foundation of the system of bodies (actors) of public administration. Indeed, it is the state executive authorities that are entrusted with the implementation of public authority functions in public interests. Therefore, determining the administrative and legal status of such body is a crucial stage in addressing the issues of ensuring effective public administration in a particular field of public relations, which aims to ensure their orderliness based on the principle of legality. This status is based precisely on the legal status of a legal entity under public law as a fictitious entity, which exists by virtue of an agreement by a separate participant in relations with its inherent legal personality. Of course, this construction has been developed by the doctrine of civil law science, but as a universal construction it is acceptable and is currently used in all branches, including administrative law. Therefore, through the perception of the structure of a legal entity under public law, it is possible to determine its administrative and legal status, legal nature, peculiarities of formation, structure of the body, its rights and obligations, state-defined competence, tasks and functions, powers and, most importantly, responsibility. They are understandable and accessible to the perception of the content through the form (Matselyk, 2013, p. 189).

V.B. Averianov and N.V. Aleksandrova define a state executive body as an independent element of the state apparatus, referred by the Constitution and laws of Ukraine to the system of executive bodies, endowed with a well-defined scope of executive powers in accordance with the tasks and functions assigned to it and having in its structure subdivisions and positions held by civil servants (Averianov, Aleksandrova, 2006). According to another definition, such a body is a structural part of the state apparatus, with powers of authority granted by law, as well as the ability to make regulatory (binding) decisions and acts of individual action, ensuring their

implementation, including by means of state coercion. Each body is characterised by a specific procedure of establishment and special powers (Sibilov, 2001).

Following V.K. Kolpakov, state powers are the main legal feature of a state body. That is why a state executive body is a bearer of state executive power, exercising competence in the field of public administration determined by the state on the basis of legal regulations and has a legally defined legal status of a state executive authority (Kolpakov, 2005).

Obviously, the Main Service Centre of the MIA has such features. For example, the Regulations on the Main Service Centre of the MIA stipulate that it organises the activities of RSCs, controls their activities, provides them with organisational, methodological and practical assistance, and provides them with information, analytical, logistical and financial support. The main tasks (the scope of regulating public relations) for which the state has identified the need for public administration by recognising the need for threat control and risk management are 1) implementation of public policy on administrative and other services, road safety and transportation of dangerous goods, ensuring state control over compliance by business entities and other entities with the requirements of the legislation in these sectors, monitoring compliance by business entities and other entities with the provisions and rules and standards in the relevant sector in the manner prescribed by law; 2) control over the compliance of vehicle design, configuration and equipment, number plates of vehicles with norms and standards and approval of relevant regulatory and technical documentation; 3) ensuring the state registration of registered vehicles, issuance (exchange) of driver's licences, ADR driver training certificates, certificates of training of persons responsible for the safety of dangerous goods transport, certificates of admission of vehicles to the transport of dangerous goods and accumulation of information on these issues in the Unified State Register of the MIA and the Unified State Register of Vehicles; 4) organisation and control over the training, retraining and advanced training of vehicle drivers, registration of business entities of all forms of ownership engaged in such activities, as well as the administration of examinations to test knowledge of the rules for the carriage of dangerous goods by road and the issuance of relevant certificates of the established form; 5) keeping records of business entities engaged in wholesale and retail trade in cars, buses, motorcycles of all types, brands and models, trailers, semi-trailers, motorised sidecars, other vehicles of domestic and foreign manufacture and their component parts with identification numbers, as well as providing them, in accordance with the established procedure, with number plates for one-time trips (hereinafter referred to as special products), forms of acceptance certificates for vehicles and their components with identification numbers (hereinafter referred to as blank products), and recorded exchange transactions; 6) keeping a register of entities involved in the mandatory technical control of wheeled vehicles and state control over compliance with the requirements of the legislation in this field by monitoring the information transmitted by entities conducting mandatory technical control of vehicles to the national database on the results of mandatory technical control; 7) formation of a nationwide database on the results of mandatory technical inspection of vehicles based on information on the results of inspection of the technical condition of the vehicle provided by the entities conducting mandatory technical inspection and information on the conclusion of compulsory insurance contracts for civil liability of owners of land vehicles subject to mandatory technical inspection provided by insurers (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulations on the Main Service Center of the Ministry of Internal Affairs, 2015).

We determine that these "tasks" of the SSC of the MIA are nothing more than the types and directions of its activities that determine its competence. A.O. Tkachenko refers to the latest dictionary of foreign words, which defines "competence": 1) the range of powers granted by law, charter or other act to a particular body or official; 2) the range of issues in which this person has knowledge and experience (Tkachenko, 2009, p. 192). Unfortunately, this approach virtually equates two different, but close and interrelated categories, such as "competence" and "powers".

In general, there are two approaches to this issue in science: 1) to identify these concepts; 2) to distinguish them.

In a broad sense, the competence of a state body is defined as a set of subjects of jurisdiction, tasks, powers, rights and obligations of an official or a state body or a public organisation (Skakun, 2006, p. 275).

The second approach is advocated by A.O. Tkachenko, who believes that the content of competence defined by the Constitution of Ukraine, laws and other legal regulations determines the place of a state body in the mechanism of the state, and therefore concludes that competence is broader or narrower depending on the place of a state body or its official in the hierarchical system of state authorities (Tkachenko,

2009, p. 193). According to the scientist, functions, as part of the competence of a body, determine the scope of the body's activities, answering the question of what such body deals with. This leads to the natural conclusion that the body exercises its competence by performing certain functions and powers granted to it. Therefore, the scholar draws another conclusion that functions and powers are elements of competence in a broad sense, defining competence in a narrow sense exclusively as the rights and legal obligations of the body that constitute its powers (Tkachenko, 2009, p. 193).

We agree that the Main Service Centre as a participant in administrative legal relations has its own competence, which is defined in the Regulations on the Main Service Centre of the MIA as the tasks of the SSC of the MIA, as defined above. This conclusion is consistent with the position of A.O. Tkachenko that "subjects of jurisdiction" are legally defined goals and objectives set for management entities and aimed at achieving the activities of such body. Such tasks are stated to be legally defined objectives and goals, which are a normative reference point in determining the scope of its competence (Tkachenko, 2009, p. 193).

This perspective is in line with the conclusions of O.O. Mozhovyi, who argues that the set of functions of the system of service centres of the MIA of Ukraine constitutes the main focus of public service activities of the latter, has a specific external manifestation and is aimed at ensuring the exercise of rights, freedoms and legitimate interests of individuals and legal entities in obtaining quality and affordable public services, and identifies the following features as inherent in the functions of the system of service centres of the MIA of Ukraine: 1) they are a means of simultaneous implementation of public service and law enforcement functions of the state; 2) certainty at the level of bylaws of the MIA of Ukraine; 3) they determine the structure of the functional and organisational system of service centres of the MIA of Ukraine; 4) as a rule, they are not of a public authority nature; 5) the implementation of each individual function involves its own legal instruments and procedure; 6) each function is independent and homogeneous, performing its own tasks within the general tasks of public policy on road safety in terms of proper handling of high-risk objects (Mozhovyi, 2019, p. 94).

The author determines the expediency of understanding general and special legal personality. General legal personality is determined by the legal characteristics of the Main Service Centre of the Ministry of Internal Affairs as a legal entity under public law. The special legal personality is determined by the specifics caused by: 1) the creator and the functions and tasks assigned to it; 2) specifying the purpose of the body, the range of relations in respect of which the entity is vested with powers (competence); 3) tasks; 4) specifics of the powers granted in connection with the obligation to perform such tasks.

3. Administrative and legal status of the Main Service Centre of the MIA

In our deep conviction, A.P. Rybinska, who defines the peculiarities of the administrative and legal status of the Main Service Centre of the MIA, has actually defined the scope of competence of this body, which determines the purpose of legal personality of this body. She defines "service activities of the MIA of Ukraine" as the exercise of special powers by the Ministry of Internal Affairs of Ukraine to provide administrative and other services through the service centres of the MIA of Ukraine with the purpose of acquiring, changing or terminating the rights and/or obligations of the applicant and/or provider of information under departmental and public control (Rybinska, 2019, p. 65).

We agree that the draft law was intended to define the legal basis for the exercise of rights, freedoms and legitimate interests of individuals and legal entities in the field of service provision by the Ministry of Internal Affairs of Ukraine, but unfortunately, it does not define either the rights of the applicants for service provision or the obligations of the service providers, or the definition and list of such services. However, Article 2 of the draft Law stipulates that the requirements of this Law apply to the provision of services for the issuance of permits, identifications, certificates, references, copies and duplicates of documents, but does not specify the nature and subject matter of such services. Only subparagraph 13 of part 1 of Article 3 of the draft law proposes a definition of "service" provided by the internal affairs bodies – the result of the exercise by the service centre of the powers defined by this Law, aimed at meeting the needs of individuals and legal entities, despite the fact that such powers are not defined to the necessary extent. The situation is the same with the definition of the purpose of the service centre – to exercise the powers defined by the legislation of Ukraine, introduce modern technologies, improve services and promote the development of the system of the Ministry of Internal Affairs of Ukraine. We have already argued that the purpose of such services should not be the exercise of powers by the service provider, nor the promotion of the development of the system of the Ministry of Internal Affairs of Ukraine, nor even the introduction of modern information technologies. This purpose should be to ensure safety and control of dangers and manage risks associated with

the operation of vehicles, and therefore, through ensuring the safety of their operation, to ensure the rights, freedoms and legitimate interests of a person (private law persons) in the field of public relations under study.

From this perspective, we cannot agree with the conclusion of A.P. Rybinska regarding the understanding of service activities of executive authorities, in particular the MIA of Ukraine, as the exercise of power of the central executive body to provide administrative services enshrined in the Law of Ukraine "On Administrative Services", and other services, which should be understood as the provision of information, in particular for legal entities, trade organisations, driving schools, on specific administrative services provided by such service centres, and other information on the procedure (Rybinska, 2019, p. 167). Providing information about an administrative service is not the essence of a service. We come to this conclusion by analysing the functions of territorial service centres on the basis of the Regulations on the territorial service centre of the Ministry of Internal Affairs, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 1646 of 29 December 2015 (Order of the Minister of Internal Affairs of Ukraine Regulations on the territorial service center of the Ministry of Internal Affairs, 2015). After all, it contains an exhaustive list of such services. On the contrary, according to A.P. Rybinska, the SSC of the MIA of Ukraine, with due regard to the relevant tasks, exercises functional and organisational powers regulated by clauses 4, 5, 12 of the Regulations on the Main Service Centre of the MIA of Ukraine and includes, among others: to provide paid and free services; to implement a set of measures to organise and ensure the operation of the system of service centres of the MIA of Ukraine; to keep a register of actors performing mandatory technical control and to enter information on business entities designated as actors performing mandatory technical control of vehicles into the Unified State Register of the Ministry of Internal Affairs of Ukraine; to provide actors performing mandatory technical control of vehicles with access to the national database on the results of mandatory technical control; to ensure monitoring of the information transmitted by the actors of mandatory technical control of vehicles to the national database on the results of mandatory technical control; to form and maintain an electronic register of enterprises, institutions, organisations and other business entities, regardless of ownership, engaged in wholesale or retail trade in vehicles and their components with identification numbers, and to draw up relevant documents, etc. (Rybinska, 2019, p. 77).

In addition, A.P. Rybinska's conclusion regarding the definition of a service as the exercise of the powers of a central executive body to provide administrative services enshrined in the Law of Ukraine "On Administrative Services" and other services should be evaluated. After all, the Regulations on the Main Service Centre of the Ministry of Internal Affairs define it as an interregional territorial body for the provision of service services of the Ministry of Internal Affairs. In other words, the Ministry of Internal Affairs is the central body of state executive power in charge of providing service services, and the application of the provisions of the Law of Ukraine "On Administrative Services" to the activities of the Main Service Centre of the MIA and its structural units is currently debatable, despite the desire to understand the "service" provided by a specialised body of the MIA as one of the types of administrative services. Therefore, we propose to explicitly define this issue in the Law of Ukraine "On Administrative Services" and the Regulations on the Main Service Centre of the MIA to determine their correlation as "general" and "special" (Rybinska, 2019).

We agree with O. O. Mozhovyi that the functions of the service centres of the MIA of Ukraine should be understood as a set of several areas of their activities, in particular: regulatory, public service, control, preventive, coordination and interaction, monitoring, etc., which are characterised by: systematic, related, complex, relative stability and are aimed at satisfying private and public interests in the field of road safety and are related to high-risk objects (Mozhovyi, 2019, p. 94). In general, we agree with this interpretation of the functions of the service centres of the MIA of Ukraine and determine that: 1) the object in respect of which the activities of such bodies are introduced is not any "objects of increased danger", as stated by O.O. Mozhovyi, but rather motor vehicles and their operation, the control over the safe operation thereof leads to the need to ensure road traffic. Therefore, firearms, other types of transport, animals, etc. are not within the scope of public-power and public-service activities of specialised bodies of the MIA in the provision of service.

A positive assessment of O.H. Tsyganov's study is also based on the fact that it provides a comparative analysis of the legislation on the provision of services and the specifics of their implementation in Ukraine and other foreign countries, in particular, in Poland. 1) the concept of "concierge": it implies providing simple information assistance (filling in document forms, etc.); 2) the concept of "intermediary": it implies accepting applications and requests from

applicants, as well as documents required for the provision of services, checking them for completeness and correctness of filling in and sending the package of documents to the relevant administrative body and issuing the results of service provision to applicants. Currently, in Ukraine, this concept has been implemented in the activities of the ASCs (administrative service centres) and is called the "single window"; 3) the "*one-stop-shop*" concept. According to this concept, all services are provided to the applicant in one integrated service centre, which is authorised to provide the relevant services (Tsyhanov, 2018, p. 42). In Ukraine, these are the service centres of the MIA of Ukraine: The Main Service Centre as the central body of the MIA for the provision of service and territorial service centres of the MIA. We agree that the basis of legal personality is determined by the provision of services by the Main Service Centre of the MIA and its structural units within the competence defined above. Therefore, it is responsible for this, as well as for other tasks other than public service activities, such as coordinating the activities of territorial service centres and providing them with methodological assistance, maintaining unified registers, providing them with logistical support, developing safety regulations by setting standards for conducting examinations to grant special legal personality (issuing driving licences for motor vehicles, etc.). It is the specificity of these tasks that determines, unlike territorial service centres, the primary task of which is public service activities, as well as the managerial and administrative activities of the Main Service Centre of the MIA of Ukraine.

This is exactly what O.O. Mozhovyi emphasises when classifying the functions of the system of service centres of the MIA of Ukraine into: a) internal organisational (forecasting; planning; organisation of activities; staffing; financing; logistics; information support); and b) external (rule-making; permitting; registration; law enforcement; coordination; control; representative) (Mozhovyi, 2019, p. 95).

4. Conclusions

Therefore, providing a general description of the administrative legal personality of the Main Service Centre of the MIA, we define that it and its official (head), in the course of performing public administrative functions on the grounds of the powers defined by the Regulations on the Main Service Centre, implement the functions assigned to it by the MIA: public service (aimed at ensuring the provision of services by territorial service centres of the MIA by organising their activities, methodological and logistical support to implement public policy on road safety and operation of motor vehicles) and managerial and administrative functions necessary to ensure public service activities of the system of service centres of the MIA of Ukraine.

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ЗАСАДИ АДМІНІСТРАТИВНОЇ ПРАВОСУБ'ЄКТНОСТІ ГОЛОВНОГО СЕРВІСНОГО ЦЕНТРУ МВС

Анотація. ***Мета.*** Метою статті є визначення засад адміністративної правосуб'єктності Головного сервісного центру МВС. ***Результати.*** Загальна характеристика адміністративної правосуб'єктності Головного сервісного центру МВС визначає поставлені перед ним завдання, загальну компетенцію, функції та покладені на такий орган повноваження, метою яких є забезпечення належної реалізації функцій держави в певній визначеній сфері суспільних відносин. В умовах євроінтеграційних процесів усе частіше науковці звертаються до європейських стандартів державного управління. Звичайно, окремого акту чи документу не існує, є тільки вимоги суспільства і є реакція держав та ЄС як євроінтеграційного об'єднання на запити своїх громадян. З'ясовано, що Головний сервісний центр МВС, який було створено на підставі Положення про Головний сервісний центр МВС і визнаний цим положенням як юридична особа публічного права, котра є міжрегіональним територіальним органом з надання сервісних послуг Міністерства внутрішніх справ України, має всі риси такого суб'єкта та установи, оскільки слугує найбільш повній реалізації публічно-правових інтересів громадян. Звичайно, визначення Головного сервісного центру як установи є умовним, зробленим з метою акценту на його роль і спрямованість на виконання однієї з функцій держави впорядкування суспільних відносин в окремій сфері – сфері експлуатації автомобільного транспорту. ***Висновки.*** Зроблено висновок, що Головний сервісний центр МВС та його посадова особа (начальник) під час здійснення ними публічних владних управлінських функцій на підставі повноважень, визначених Положенням про Головний сервісний центр, реалізовує покладені на нього МВС функції: публічно-сервісні (спрямовані на забезпечення надання сервісних послуг територіальними сервісними центрами МВС шляхом організації їх діяльності, методичного та матеріально-технічного забезпечення, спрямованої на здійснення державної політики у сфері забезпечення безпеки дорожнього руху та експлуатації автомобільного транспорту) та управлінські владно-розпорядчі функції, які необхідні для забезпечення публічно-сервісної діяльності системи сервісних центрів МВС України.

Ключові слова: правосуб'єктність, сервісні послуги, координація, територіальні сервісні центри, публічно-сервісна діяльність.

The article was submitted 17.10.2023
The article was revised 08.11.2023
The article was accepted 28.11.2023

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.5.12

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Skakun, Iryna (2023). Particularities of forming principles of combating domestic violence in National Police activities. *Entrepreneurship, Economy and Law, 5,* 78–85, doi https://doi.org/10.32849/2663-5313/2023.5.12

PARTICULARITIES OF FORMING PRINCIPLES OF COMBATING DOMESTIC VIOLENCE IN NATIONAL POLICE ACTIVITIES

Abstract. ***Purpose.*** The purpose of the article is to determine the particularities of forming the principles of combating domestic violence in the activities of the National Police. ***Results.*** The relevance of the article is that the activities of the National Police with regard to actions aimed at combating instances of domestic violence are administrative in nature and in some cases have a coercive power character, and it should be noted that in order to comprehensively characterise such activities, it is necessary to study the guidelines on which such activities are based. Therefore, we propose to consider a set of such principles and classify them for a better understanding of their essence and functional purpose. It should be noted that it is the study of the principles of legal framework for regulating the activities of the National Police in combating domestic violence that ensures the correct and effective application of administrative and legal provisions, and the effectiveness of administrative and legal coercion in this field. The principles of combating domestic violence in the activities of the National Police shall be understood as the basic starting points, guiding ideas enshrined in the provisions of the current legal regulations on which the activities of the National Police are based, as well as the administrative and legal impact they have on legal relations arising from domestic violence. ***Conclusions.*** A key aspect of effective combating of domestic violence by the structural units of the National Police is the statutory duty of the National Police to cooperate on this issue with local self-government bodies, non-governmental organisations and individuals on a partnership basis. The activities of the authorised units of the National Police in the field of combating domestic violence are a specific type of activities, because, firstly, they cover a very wide range of social relations that are subject to administrative and legal influence, and secondly, in most cases, they involve violations of the rights and freedoms of a person guaranteed by the current legislation, including the right to respect for private life and inviolability of the home. The list of principles of the National Police's activities in combating domestic violence is not currently enshrined in any legal regulation.

Key words: guarantees, criminal proceedings, offender, restraining order, relevant person.

1. Introduction

Considering that the activities of the National Police with regard to actions aimed at combating instances of domestic violence are administrative in nature and in some cases have a coercive power character, and it should be noted that in order to comprehensively characterise such activities, it is necessary to study the guidelines on which such activities are based. Therefore, we propose to consider a set of such principles and classify them for a better understanding of their essence and functional purpose. It should be noted that it is the study of the principles of legal framework for regulating the activities of the National Police in combating domestic violence that ensures the correct and effective application of administrative and legal provisions, and the effectiveness of administrative and legal coercion in this field.

The purpose of the article is to determine the particularities of forming the principles of combating domestic violence in the activities of the National Police.

2. Formation of the principles of combating domestic violence

The literature review reveals different definitions of the concept of administrative law principles, but these interpretations are based on well-known ideas and provisions. According to the most popular approach to understanding the above concept among scholars, the principles of administrative law are the guiding foundations that determine the content and focus

of administrative and legal regulatory framework for social relations (Kolpakov, Kuzmenko, Pastukh, Sushchenko, 2012, p. 34). However, some scholars, when defining this concept, rely on certain reasons, depending on which a certain provision enshrined in a provision can be called a principle. In his research, Yu.P. Bytiak argues that the principles of administrative law are the initial, objectively determined foundations according to which the system and content of this branch of law are formed and function. In his opinion, the principles of administrative law cannot be formed and enshrined, let alone implemented, outside social activities and practical activities of participants. Moreover (and this is important for the legislator), the principles of administrative law should objectively reflect the needs and interests of both society and the State, and by their origin should actually correspond to the existing relations (Bytiak, Harashchuk, Bohutskyi, 2010, p. 33).

Therefore, the principles of combating domestic violence in the activities of the National Police shall be understood as the basic starting points, guiding ideas enshrined in the provisions of the current legal regulations on which the activities of the National Police are based, as well as the administrative and legal impact they have on legal relations arising from domestic violence.

Moreover, the quality of administrative and legal influence exercised by the National Police units in the field of combating domestic violence depends on the correct understanding of the content of such principles and their essence.

We believe that the prevailing opinion in the science of administrative law is that the principles of administrative law should be classified according to their direct impact on social relations into general and special (Halunko, Dikhtiievskyi, Kuzmenko, Stetsenko, 2018, p. 34).

For example, general principles are fundamental to the formulation of provisions of any branch of law, including administrative law. Meanwhile, the content of general principles of law is specified in more special (sectoral) legal principles (Serdiuk, 2014, p. 73). Furthermore, it is quite logical to conclude that the general principles of administrative law include: the principle of the rule of law; the principle of legality; the principle of priority of human and civil rights and freedoms; the principle of equality of citizens before the law; the principle of mutual responsibility of the state and the individual; the principle of humanism, etc. (Paseniuk, 2007, p. 109).

Thus, specialised principles should be understood as: service of public administration bodies to each individual and society as a whole (all administrative law rules are built primarily on the basis of the interests of both each individual and society in general and are aimed at the realisation of their legitimate rights and interests); inadmissibility of unlawful interference by public administration bodies in the public and private life of a person (prohibition of interference in the public and private life of persons, except in cases clearly defined by the provisions of the current legislation of Ukraine, with the justification of the legality of such interference being entrusted to the entity that performed such interference); availability of full rights and freedoms in relations with public administrators (in relations with public administrators, a person has the widest possible range of rights to ensure the achievement of his/her goals); restriction of public administrators by the provisions of legislation, as well as judicial control over their activities (a public administrator shall act in accordance with the powers established by the current legislation of Ukraine, and a person is not deprived of the right to apply to the court and initiate a process to establish compliance of the actions taken by such an entity with the requirements of the law); principles of publicity (a public administrator in the exercise of its powers shall act openly, and in some cases inform the public about the results of its work) (Halunko, 2019).

It should be noted that this classification fully meets the requirements of the current administrative law doctrine, which is of great importance for law-making and law application in general, since the approach set out therein can be used both in the course of theoretical research and in the course of rulemaking.

However, we consider it necessary to note that the activities of the authorised units of the National Police in the field of combating domestic violence are a specific type of activities, because, firstly, they cover a very wide range of social relations that are subject to administrative and legal influence, and secondly, in most cases, they involve violations of the rights and freedoms of a person guaranteed by the current legislation, including the right to respect for private life and inviolability of the home.

The list of principles of the National Police's activities in combating domestic violence is not currently enshrined in any legal regulation.

Furthermore, we can state with certainty that the principles that regulate the activities of the National Police in combating domestic violence are enshrined in various legal regulations, as mentioned above, and have different degrees of detail.

Therefore, we propose to deviate somewhat from the above position of classification

of principles and offer the author's classification of guiding ideas that regulate the activities of the National Police in combating domestic violence.

The next criterion for distinguishing between the principles of the National Police is the focus of action and their impact on the effectiveness of combating domestic violence (functional focus). According to this criterion, the principles can be divided into:

– Principles-guidelines, which include virtually all constitutional principles and international standards, dominated by moral and ethical prescriptions, ideological guidelines (humanism, respect for human rights, etc.);

– Principles-conditions, principles ensuring the effectiveness and legitimacy of activities to combat domestic violence (rule of law, legality, legal certainty, good governance, transparency, etc.);

– Principles-actions, principles that describe certain actions that are necessary to achieve a positive social effect (continuity, interaction with the public on the basis of partnership, etc.);

– Principles-guarantees, principles ensuring certain standards in the activities of the National Police in the field of combating domestic violence (guaranteeing the safety of victims, confidentiality of information about victims and persons who have reported domestic violence, etc.) (Skakun, 2019, p. 145).

This classification enables to understand that the principles of the National Police in the field of combating domestic violence have different functional orientation, which in turn determines their different impact on the formation of legal provisions for the effective exercise of administrative and legal influence.

The third criterion for classifying the principles in the activities of the National Police to combat domestic violence is the degree of specification in the provisions of existing legal regulations. According to this criterion, the principles can be grouped into:

General (set out in the provisions of the Constitution of Ukraine, international legal acts, etc;)

Special (set out in the Law of Ukraine "On the National Police");

Specialised (set out in the Law of Ukraine "On Preventing and Combating Domestic Violence").

For example, the general principles are subject to a broad interpretation, which is why any activity of the bodies authorised to perform state functions in the implementation of administrative and legal measures, including the National Police in combating domestic violence, is based on these principles.

Instead, the special and specialised principles in the activities of the National Police to combat domestic violence differ in that the special principles enshrined in the Law of Ukraine "On the National Police" focus on regulating any activity of the employees of this body aimed at performing their functions, including those aimed at combating domestic violence.

Moreover, the specialised principles provide the basis for more specific activities, namely, aimed at creating an effective process of combating domestic violence, starting with the identification of domestic violence and ending with the legal prosecution of the perpetrator and assistance to victims.

Given that a large number of scholarly works reveal general principles, such as the rule of law and legality, we consider it necessary to focus on a more detailed analysis of the principles we have classified as special and specialised.

Therefore, the principles set out in the Law of Ukraine "On the National Police" will be considered special principles, while the principles set out in the Law of Ukraine "On Preventing and Combating Domestic Violence" meet the characteristics of specialised principles.

In particular, Section II of the Law of Ukraine "On the National Police" stipulates that the National Police is guided by the following principles in its activities: 1) the rule of law; 2) respect for human rights and freedoms; 3) legality; 4) openness and transparency; 5) political neutrality; 6) interaction with the public on the basis of partnership; 7) continuity.

According to the Law of Ukraine "On the National Police", Article 6, Part 1, the police in its activities is guided by the principle of the rule of law, according to which a person, his or her rights and freedoms are recognised as the highest values and determine the content and focus of the state's activities.

It should be noted that, considering the provisions of the Law of Ukraine "On the National Police", Article 6, Part 1, the essence of the principle of "the rule of law" is primarily that a person, his/her rights and freedoms are determined by the highest values, which in turn is decisive in the activities of all state bodies and structures, including the National Police of Ukraine (Law of Ukraine On the National Police, 2015).

The Law of Ukraine "On the National Police", Article 7, Part 1, establishes the principle of respect for human rights and freedoms, which is proposed to be understood as ensuring respect for human rights and freedoms guaranteed by the Constitution and laws of Ukraine, as well as international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine, and facilitating their implementation. Restriction of human rights and freedoms shall be allowed only on the grounds and in accordance

with the procedure defined by the Constitution and laws of Ukraine, when necessary and to the extent required for the performance of police tasks, while measures restricting human rights and freedoms shall be immediately terminated if the purpose of such measures is achieved or there is no need for their further application (Law of Ukraine On the National Police, 2015).

For example, when taking measures aimed at combating domestic violence, police officers should first of all use "proportionate" coercive measures vested in them, act exclusively within the limits of their powers and proceed from a particular situation to prevent abuse of power.

The Law of Ukraine "On the National Police", Article 8, Part 1, establishes the principle of legality which implies that the police shall act exclusively on the basis, within the scope of powers and in the manner prescribed by the Constitution and laws of Ukraine (Law of Ukraine On the National Police, 2015).

With regard to this principle, the Venice Commission states, "...The importance of the principle of legality was already underlined by Dicey. It first implies that the law must be followed. This requirement applies not only to individuals, but also to authorities. In so far as legality addresses the actions of public officials, it requires also that they act within the powers that have been conferred upon them. The legality also implies that no person can be punished unless he or she has violated previously adopted law that has already come into force, and that there should be liability for violations of the law. The implementation of the law should, to the extent possible, be ensured in practice. The term "law", as used in this chapter, refers primarily to national legislation and common law. However, the development of international law as well as the importance given by international organisations to the respect of the rule of law lead to addressing the issue at international level as well: the principle pacta sunt servanda is the way in which international law expresses the principle of legality" (Holovatyi, 2011).

Thus, when adapting the understanding of this principle to the issue raised, it should be noted that in this case, the principle of legality is considered not only as binding the National Police, in the course of taking measures to combat domestic violence, to act only within the powers conferred by law, but also to use coercion and other actions provided for by the current legislation only if necessary.

In other words, the relevant temporary restraining order against the perpetrator can only be applied if the latter has actually committed domestic violence and only if the evidence collected shows "an objective observer, beyond reasonable doubt" that the latter has committed such acts.

In this case, the guarantees inherent in criminal proceedings, such as the standard of proving "beyond reasonable doubt", should be applied, because if a National Police officer applies a measure to combat domestic violence such as a temporary restraining order to the abuser, even though it may be for a while, his or her fundamental rights and freedoms may be violated. Therefore, when performing certain actions aimed at combating domestic violence, and even more so those aimed at restricting constitutional rights and freedoms, the relevant person of the National Police shall be sure of the correctness, validity, legality and expediency of their actions that implement coercion.

According to the Law of Ukraine "On the National Police", Article 9, the police shall operate on the basis of openness and transparency within the scope defined by the Constitution and laws of Ukraine. The Police shall provide access to public information in its possession in accordance with the procedure and requirements established by law. The Police may disclose (disseminate) restricted information only in cases and in accordance with the procedure established by law (Law of Ukraine On the National Police, 2015).

3. The role of the National Police in combating domestic violence

According to the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Regulations on data sets that are subject publication in the form of open data" No. 835 of 21 October 2015, all information administrators shall publish in the form of open data a Directory of enterprises, institutions (establishments) and organisations of the information administrator and its subordinate organisations, including their telephone numbers and addresses; information on the organisational structure of the information administrator; a report on the use of budgetary funds (for information administrators using budgetary funds), in particular for certain budgetary programmes; regulations approved by the information administrator; lists of national standards, which, if voluntarily applied, are proof of compliance of products with the requirements of technical regulations; reports, including on meeting requests for information; annual procurement plans; information on the accounting system, types of information stored by the administrator; registers (lists) of open data sets; lists of administrative services, information cards of administrative services and application forms required to apply for an administrative service; administrative data collected (processed) by the information administrator; legal regulations

subject to disclosure in accordance with the Law of Ukraine "On Access to Public Information"; financial statements of public sector economic entities that fall within the scope of management of the information administrator (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on data sets that are subject to publication in the form of open data, 2015).

For example, the implementation of this principle in the field of domestic violence prevention by the National Police is based on the maintenance of the Unified State Register of cases of domestic and gender-based violence, which will contain information about the perpetrators and those subject to measures to combat domestic violence.

In view of the above, maintaining this Register will not only make the work of the National Police in combating domestic violence open, but will also help potential victims avoid harm from their abusers.

A key aspect of effective combating of domestic violence by the structural units of the National Police is the statutory duty of the National Police to cooperate on this issue with local self-government bodies, non-governmental organisations and individuals on a partnership basis.

In order to ensure the effectiveness of this partnership, the Cabinet of Ministers of Ukraine approved the Procedure for assessing the level of public trust in the National Police. The procedure defines the main tasks, principles, frequency of the assessment (at the national level at least once a year, at the territorial level as needed), the procedure for the National Police and the independent sociological service to act in organising and conducting the assessment, etc. Assessment of the level of public trust in the National Police will enable to identify problematic issues in their activities, consider public opinion to improve their work, which will contribute to the efficiency of the police, make their activities more transparent, understandable and controlled by the society (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Procedure for assessing the level of public trust in the National Police, 2018).

Following the analysis of the general principles of the National Police's activities in implementing measures aimed at combating domestic violence, we should move on to the specialised principles, which, in our opinion, are enshrined in the provisions of the Law of Ukraine "On Preventing and Combating Domestic Violence".

For example, according to the Law of Ukraine "On Preventing and Combating Domestic Violence", Article 4, Part 1, activities aimed at preventing and combating domestic violence are based on the following principles: 1) guaranteeing victims security and protection of fundamental human rights and freedoms, including the right to life, liberty and personal integrity, respect for private and family life, fair trial, and legal aid, with due regard to the case law of the European Court of Human Rights; 2) due regard for each fact of domestic violence in the implementation of measures to prevent and combat domestic violence; 3) consideration of the disproportionate impact of domestic violence on women and men, children and adults, adherence to the principle of ensuring equal rights and opportunities for women and men in the implementation of measures to prevent and combat domestic violence; 4) awareness of the social danger of domestic violence and ensuring intolerance to any cases of domestic violence; 5) respect, impartial and caring attitude to victims by actors implementing measures to prevent and combat domestic violence, ensuring the priority of rights, legitimate interests and safety of victims in the implementation of measures to prevent and combat domestic violence; 6) confidentiality of information about victims and persons who reported domestic violence; 7) voluntary nature of assistance to victims, save for children and legally incapable people; 8) consideration of the special needs and interests of victims, in particular persons with disabilities, pregnant women, children, legally incapable persons, the elderly; 9) effective cooperation between actors implementing measures to prevent and combat domestic violence and public associations, non-governmental organisations, mass media and other stakeholders (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017).

Next, we consider the key principles that guide the National Police in its efforts to combat domestic violence.

Thus, the first principle enshrined in the Law of Ukraine "On Preventing and Combating Domestic Violence", Article 4, Part 1, clause 1, is "...guaranteeing victims security and protection of fundamental human rights and freedoms..." (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017). In the context of the activities of the National Police and their measures to combat domestic violence, it should be noted that this principle is disclosed in the first stages after the fact of domestic violence is detected.

According to the Law of Ukraine "On the National Police", Article 43, part 1, a police officer shall warn the person in advance of any use of physical force, special equipment and firearms, and give him/her enough time to fulfil the lawful demand of the police officer, unless

a delay may cause an assault against life and health of such person and/or the police officer or lead to other grave consequences, or if in the given situation such warning is unreasonable or impossible. (Law of Ukraine On the National Police, 2015).

For example, if a patrol police officer responds to a phone call received via the 102 network for his or her personal protection or to protect victims of domestic violence, if the offender poses a direct threat, the officer has the right to use special means, physical force or even firearms against the offender.

In addition, one of the means of implementing this principle in the activities of the National Police is the application of a temporary restraining order against the offender.

The Law of Ukraine "On Preventing and Combating Domestic Violence", Article 4, Part 1, clause 2, establishes that one of the principles of combating domestic violence is due cognisance to every case of domestic violence during the implementation of measures to prevent and combat domestic violence (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017).

Accordingly, the initial fact of responding to domestic violence may be the recording of a reported act with signs of domestic violence on the 102 telephone line.

In accordance with clause 5 of Section II of the Procedure for keeping a unified record in the police bodies (units) of statements and reports of criminal offences and other events, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 100 of 8 August 2019, an application (message) received by telephone using the abbreviated emergency number of the police "102" is registered in the ITS IPNP with automatic assignment of serial numbers to the UR (Order of the General Prosecutor's Office of Ukraine On the approval of the Regulation on the procedure for maintaining the Unified Register of Pretrial Investigations, 2016).

Therefore, the procedure for responding to incidents of any kind, including cases of domestic violence, is regulated by the current legislation of Ukraine, and the conscientious implementation of these instructions by the police officers will ensure a quick and high-quality response to any case of domestic violence, which in turn is a guarantee of preventing possible more serious consequences.

The Law of Ukraine "On Preventing and Combating Domestic Violence", Article 4, Part 1, clause 3, establishes that the National Police acts in compliance with the principle of ensuring equal rights and opportunities for women and men when taking measures to prevent and combat domestic violence (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017).

For example, in accordance with clause 1 of section 3 of the Regulations on the Procedure for maintaining the Unified Register of Pretrial Investigations, approved by Order No. 139 of the PGO of 06 April 2016, the information in the Register is entered in compliance with the terms set by the CPC of Ukraine (Order of the General Prosecutor's Office of Ukraine On the approval of the Regulation on the procedure for maintaining the Unified Register of Pretrial Investigations, 2016).

Following the CPC of Ukraine, Article 214, Part 1, the investigator, public prosecutor shall be required immediately but in any case no later than within 24 hours after submission of a report, information on a criminal offense that has been committed or after he has learned on his own from any source, about circumstances which are likely to indicate that a criminal offence has been committed, to enter the information concerned in the Unified Register of Pre-Trial Investigations, and to initiate investigation and within 24 hours of entering such information, provide the applicant with an extract from the Unified Register of Pre-trial Investigations (Criminal Procedure Code of Ukraine, 2012).

5. Conclusions

The principles that regulate the activities of the National Police in combating domestic violence are based on the following criteria: 1) by legal force of the legal regulation that enshrines the principles of the National Police in the field of combating domestic violence: a) principles enshrined in the Constitution of Ukraine; b) principles enshrined in international legal acts; c) principles enshrined in the Laws of Ukraine; 2) by the focus of action and their impact on the effectiveness of combating domestic violence (functional focus): a) principles-guidelines, which include virtually all constitutional principles and international standards, dominated by moral and ethical prescriptions, ideological guidelines (humanism, respect for human rights, etc.); b) principles-conditions, principles ensuring the effectiveness and legitimacy of activities to combat domestic violence (rule of law, legality, legal certainty, good governance, transparency, etc.); c) principles-actions, principles that describe certain actions that are necessary to achieve a positive social effect (continuity, interaction with the public on the basis of partnership, etc.); d) principles-guarantees, principles ensuring certain standards in the activities of the National Police in the field of combating domestic violence (guaranteeing the safety of victims, confidentiality of information about victims and persons who have reported domes-

tic violence, etc.); 3) by the degree of specification in the provisions of existing legal regulations: a) general (set out in the provisions of the Constitution of Ukraine, international legal acts, etc.); b) special (set out in the Law of Ukraine "On the National Police"); c) specialised (set out in the Law of Ukraine "On Preventing and Combating Domestic Violence").

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ОСОБЛИВОСТІ ФОРМУВАННЯ ПРИНЦИПІВ ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ В ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ

Анотація. ***Мета.*** Метою статті є визначення особливостей формування принципів протидії домашньому насильству в діяльності Національної поліції. ***Результати.*** Актуальність статті полягає в тому, що діяльність Національної поліції щодо вчинення дій, які направлено на протидію про-

явам домашнього насилля, носить адміністративний характер та має в деяких випадках владно-примусовий характер. Слід зауважити, що для надання комплексної характеристики такої діяльності є необхідним дослідження керівних засад, на яких базується така діяльність. Тому запропоновано розглянути комплекс таких принципів та надати класифікацію для більш кращого розуміння їх сутті та функціонального призначення. Варто звернути увагу на те, що саме дослідження принципів правового регулювання у сфері регулювання діяльності Національної поліції зі здійснення протидії проявам домашнього насильства забезпечує правильне та дієве застосування адміністративно-правових норм, забезпечення дієвості адміністративно-правового примусу в зазначеній сфері. Під принципами протидії домашньому насильству в діяльності Національної поліції слід розуміти основні вихідні положення, керівні ідеї, закріпленні положеннями чинних нормативно-правових актів, на яких будується діяльність Національної поліції, а також здійснюваний ними адміністративно-правовий вплив на правовідносини, що виникають у зв'язку із вчиненням домашнього насильства. ***Висновки.*** Ключовим аспектом здійснення ефективної протидії проявам домашнього насильства структурними підрозділами Національної поліції є нормативно встановлений обов'язок Національної поліції співпрацювати із зазначеного питання з органами місцевого самоврядування, неурядовими організаціями та окремими громадянами на партнерських засадах. Діяльність уповноважених підрозділів Національної поліції у сфері протидії проявам домашнього насильства є специфічним видом діяльності, адже, по-перше, охоплює дуже широкий спектр суспільних відносин, на які здійснюється адміністративно-правовий вплив, а по-друге, в більшості випадків стосується порушення прав і свобод особи, гарантованих чинним законодавством, у тому числі й права на повагу до особистого життя та недоторканості житла. Перелік принципів діяльності Національної поліції щодо протидії домашньому насильству натепер не закріплений у жодному нормативно-правовому акті.

Ключові слова: протидія домашньому насильству, кримінальне провадження, кривдник, обмежувальний припис, відповідна особа.

The article was submitted 17.10.2023
The article was revised 07.11.2023
The article was accepted 28.11.2023

UDC 342.95
DOI https://doi.org/10.32849/2663-5313/2023.5.13

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Teremetskyi, Vladyslav, Kovalchuk, Olha (2023). Smart technologies in justice: perspectives for Ukraine. *Entrepreneurship, Economy and Law, 5*, 86–95, doi https://doi.org/10.32849/2663-5313/2023.5.13

SMART TECHNOLOGIES IN JUSTICE: PERSPECTIVES FOR UKRAINE

Abstract. ***Purpose.*** This article aims to substantiate the feasibility and ways of implementing the smart justice paradigm in Ukraine in the context of the digitalization of judicial processes and the improvement of the functioning of the judicial branch of government. The article aims to explore the concept of smart justice, identify prospects for its implementation in Ukraine, and consider legal aspects and necessary legislative changes for the full integration of innovative technologies into the national justice system. ***Research methods.*** The paper employed a set of various general scientific and special methods for a comprehensive study of the problem and substantiation of the prospects for implementing smart justice in Ukraine. The method of analysis was used to study scientific publications, legal acts, and international documents on the digitalization of justice and the application of innovative technologies in the legal sphere. This allowed us to explore the theoretical foundations of the concept of "smart justice", existing practices, and legal regulation. Comparative analysis was conducted to compare the current state of digitalization of the judicial system of Ukraine with international experience in implementing smart technologies and identify gaps and opportunities for improvement. The systematic approach was used for a comprehensive consideration of smart justice as a multi-component concept with various interrelated elements. Empirical methods were applied to study the experience of using digital technologies in documenting war crimes in Ukraine. The modeling method was used to develop the proposed model of a chatbot for sending electronic court summons as an example of a smart tool for process optimization. The project method contributed to determining the necessary legislative changes and developing a regulatory framework for the full implementation of smart justice. ***Results***. According to the set goal and objectives, the following key results were obtained in the study: I. the concept of "smart justice" was explored as a paradigm of modernization of the justice system through the widespread introduction of modern information technologies (IT) into judicial processes; II. the main goals, elements, and technologies of smart justice were identified; III. the prospects for the implementation of smart justice in Ukraine were considered; IV. the urgent need for digitalization of justice was substantiated amidst war conditions to ensure the continuity of justice; V. the experience of using IT tools for documenting war crimes was analyzed; VI. the legal aspects of the introduction of smart technologies in the judiciary of Ukraine were studied; VII. the existing regulatory framework and gaps in legislation were identified; VIII. the need to develop special comprehensive legislation was substantiated; IX. a model of a chatbot for automated sending of electronic court summons was developed as an example of a smart tool for optimizing judicial processes; X. the ways were outlined and recommendations were given on the harmonious integration of digital technologies into the judicial system of Ukraine, taking into account the principles of the rule of law and protection of citizens' rights. The obtained results provide a basis for a substantiated implementation of the smart justice paradigm in Ukraine to digitalize and improve the functioning of the judicial branch of government. ***Conclusions***. The expediency and ways of introducing the smart justice paradigm in Ukraine for the digitalization of judicial processes and modernization of the judicial system have been substantiated. The concept of smart justice involves the wide integration of the latest technologies, including electronic

document management, video conferencing, AI, and blockchain in the judiciary to increase its efficiency, transparency, and accessibility. The study revealed the urgent need for the active introduction of digital solutions in domestic courts in the conditions of war to ensure the continuity of justice. At the same time, there is a need to develop specific legislation to regulate the use of innovative technologies in judicial processes while observing the principles of the rule of law and the protection of human rights. The proposed model of a chatbot for electronic court summons demonstrates the capabilities of smart tools for optimizing judicial proceedings. The results of the study provide a basis for a substantiated and balanced implementation of the smart justice paradigm in Ukraine, which will contribute to the digitalization, and increase in efficiency and transparency of the national judicial system while simultaneously observing the principles of the rule of law and protection of citizens' rights.

Key words: smart justice, digitalization of justice, electronic court, artificial intelligence, electronic evidence, judicial reform, legal regulation of IT in the judiciary, digitalization of judicial system, cybersecurity.

1. Introduction.

The modern world is rapidly transforming into a "smart" one thanks to innovative IT and smart devices. Artificial intelligence (AI), big data, blockchain, Internet of Things, smart cities, digitalization, automation, robotics, and nanotechnologies are opening up new opportunities for all spheres of human activity, including the military sphere, national security, and justice. At the same time, these technological revolutionary changes are creating new threats that will intensify in the digital society of the future. Smart devices are vulnerable to cyberattacks, leading to an increase in cybercrime and security threats. Therefore, judicial and law enforcement bodies must focus on IT, data science, and analytics, which provide innovative opportunities for detecting, preventing, and solving cyberspace-related crimes. However, along with this, ensuring fair justice and respect for human rights remain key priorities for any society. The introduction of smart technologies in the judiciary must guarantee impartial and equal access to justice for all citizens, as well as protect their fundamental rights and freedoms. The use of AI, data analytics, and automated decision-making systems in the judicial system must be based on the principles of transparency, accountability, and non-discrimination to prevent bias and violations of human rights.

Recently, the field of smart justice has been actively studied at both the national and international levels. The relevant topic is actively examined by organizations such as the UN, WHO, Council of Europe, and the European Commission for the Efficiency of Justice. They publish reviews, guidelines, and recommendations on best practices for using innovative technologies in judicial systems. The number of scientific publications dedicated to smart justice is growing. In particular, R. Sathyaprakasan et al. studied the possibilities of implementing blockchain technology for the digitization of the forensic evidence management system and to ensure the proper maintenance of the chain of custody over evidence (Sathyaprakasan et al., 2021). G. Lupo and D. Carnevali examine the institutional, organizational, and technological factors that shape the development of smart technologies within highly regulated public institutions, such as justice systems (G. Lupo and Carnevali, 2022). Demertzis et al. proposed a framework that leverages artificial intelligence innovations like natural language processing, ChatGPT, ontology alignment, and semantic web technologies, combined with blockchain and privacy techniques, to analyze and provide recommendations for improving the administration of justice (Demertzis et al., 2023). The researcher M.A. Wojcik studied the possibilities of applying algorithmic decision-making for making decisions regarding the prosecution of arrested individuals (Wojcik, 2020). D. Garingan & A.J. Pickard investigated theoretical frameworks for promoting algorithmic literacy among legal information professionals (Garingan & Pickard, 2021). A. Zhuk investigated the application of blockchain technology to the legal system through decentralized online dispute resolution mechanisms, with a specific emphasis on the Kleros platform (Zhuk, 2023). D. Barysė studied the implementation of legal technologies in courts (Barysė, 2022). To date, an international environment has been formed for a fruitful exchange of ideas and best practices in the field of digitalization of justice. However, this area is insufficiently studied. In addition, IT is rapidly developing, constantly offering new technological solutions. The digitalization of justice is one of the priorities of judicial reform in Ukraine. The introduction of innovative IT into the judicial system is considered a means of increasing the efficiency, transparency, and accessibility of justice. Therefore, research on smart justice is relevant and important for modernizing the judicial system of Ukraine through current technological trends and best global practices.

The study employed a set of general scientific methods, including analysis, synthesis, comparison, and modeling, as well as specific

empirical and project methods for a comprehensive study of the problem and substantiation of prospects for implementing smart litigation in Ukraine. The method of analysis was applied to study scientific publications, legal acts, international documents on digitalization of legal proceedings, and the application of innovative technologies in the legal sphere. This allowed us to examine the theoretical foundations of the "smart litigation" concept, existing practices, and legal regulation. Comparative analysis was used to compare the current state of digitalization of the judicial system in Ukraine with international experience in implementing smart technologies to identify gaps and opportunities for improvement. A systematic approach was implemented for the systematic consideration of smart litigation as a comprehensive approach with various interrelated elements –electronic document management, video conferencing, AI, blockchain, electronic evidence, etc. Empirical methods were implemented to study the experience of using digital technologies to document war crimes during the war in Ukraine. The modeling method was used to develop the proposed model of a chatbot for sending electronic court summons as an example of a smart tool for optimizing court processes. The project method was used to determine the necessary legislative changes and develop a legal framework for the full implementation of smart litigation in the Ukrainian judicial system.

The main goal of the study is to substantiate the feasibility and ways of implementing the smart litigation paradigm in Ukraine to digitalize court processes and improve the functioning of the judicial branch of government.

2. The Concept of Smart Litigation

Against the backdrop of the informatization of information activities of judicial and law enforcement bodies, there is no doubt about the feasibility of using machine learning, big data, AI algorithms, and blockchain technology in the justice system (Kovalchuk et al., 2023; Sathyaprakasan et al., 2021; Vasconcelos et al., 2023). These and other innovative technological tools have become the basis for the paradigm of smart litigation. Smart litigation is the concept of modernizing the justice system through the widespread introduction of modern IT into court proceedings. It is a comprehensive approach aimed at increasing the efficiency, transparency, and accessibility of litigation through digital solutions. The goal of smart litigation is to optimize processes, reduce case processing times, reduce administrative costs, ensure equal access to justice, and increase transparency of the judicial system as a whole. At the same time, it must be based on the principles of the rule of law, impartiality, and fairness. This innovative approach to the administration of justice involves the widespread introduction of digital technologies into court proceedings and the justice system as a whole (Lupo & Carne, 2022). Its main purpose is to modernize and optimize the judicial system and increase its efficiency, transparency, and accessibility for citizens. One of the key components of smart litigation is the concept of an electronic court, which involves the complete digitalization of document flow, case registration, scheduling of court hearings, and communication between participants through a single electronic platform (Kovalchuk & Teremeckyi, 2023). Such a system ensures a rapid exchange of information, reduces paperwork and bureaucratic procedures, accelerates case processing, and saves resources. Digital tools for smart litigation include electronic document management systems, video conferencing, analytical systems, AI, cloud services, and more. They optimize workflows and increase productivity.

Smart litigation actively employs artificial intelligence (AI) and big data analytics technologies for automated searching and analysis of precedents, legislative acts, and judicial practice, providing judges with a powerful tool for making more substantiated and consistent decisions (Ho et al., 2022; Berezka et al., 2022). Ensuring the digital integrity and authenticity of electronic evidence is also an important aspect, which is addressed through appropriate technologies for protecting and verifying digital data.

The justice system bodies are increasingly using blockchain technology for transparent and secure collection, processing, and access to evidence. Blockchain technology is a distributed database or electronic ledger under decentralized control, allowing it to deviate from traditional investigative actions (Demertzis et al., 2023). The most widespread application of blockchain technology is Bitcoin, which is increasingly becoming a tool for committing crimes on the dark web (Kovalchuk et al., 2021). With blockchain solutions, evidence can be tracked throughout the entire investigation period: from the crime scene to the courtroom, ensuring transparency, integrity, and immutability. Blockchain can provide reliable information support to criminal justice investigators, court authorities, and prosecutors in criminal decision-making. The implementation of blockchain technologies in law enforcement practice will reduce the rate of wrongful convictions, ensure fairness and transparency of the criminal justice system, and increase trust in it.

The widespread use of video conferencing allows court hearings to be conducted remotely, saving time and money for the participants and making justice more accessible for peo-

ple with disabilities or those living in remote regions. Providing citizens with online access to information about court cases, the ability to submit documents and track their status significantly increases the overall transparency of the system (Garingan & Pickard, 2021).

One of the elements of smart litigation is digital evidence. It plays a key role in modern litigation and criminal investigations. This is any information collected in digital form that can be used as evidence in court or investigation (Karagiannis & Vergidis, 2021). Digital evidence can include electronic documents, digital photographs, audio and video recordings, metadata, geolocation data, digital traces in social networks, and messengers. Ensuring the integrity, authenticity, and protection of digital evidence from unauthorized changes is an extremely important task (Lone & Mir, 2019). Therefore, special methods of collecting, processing, storing and verifying digital data are needed, as well as appropriate technologies and expertise for presenting them in court proceedings.

Providing citizens with online access to information about court cases is an important step toward ensuring transparency and accountability of the judicial system (Barysė, 2022). Through special web portals or mobile applications, people can access registers of court decisions, review case materials, and track their status and progress. This increases public trust in the judiciary, as anyone can trace the progress of a particular case. Online access also makes it easier for citizens to submit documents to the court in electronic form, saving time and resources. At the same time, it is necessary to ensure proper protection of personal data and confidential information when providing such online access (Zhuk, 2023).

Enhanced cybersecurity measures are critically important for ensuring data protection in smart litigation. As huge amounts of confidential information and personal data will be processed in electronic court systems, robust barriers against cyberattacks, data leaks, and unauthorized access are needed. This includes the use of encryption, multi-level authentication, data backup, regular software updates, and training staff on cybersecurity hygiene principles. Judicial institutions must carefully control and audit access to their information systems. Collaboration with cybersecurity experts and continuous threat monitoring will help detect and quickly respond to potential incidents, ensuring the integrity and confidentiality of court data (Demertzis et al., 2023).

An essential element of implementing smart litigation is digital tools for the training and professional development of judges, court staff, and lawyers. Online courses, webinars, virtual training, and simulations allow effective mastery of new technologies, legal innovations, and best practices. Interactive learning platforms provide convenient access to materials anytime and anywhere. The use of virtual and augmented reality can simulate court proceedings for skills practice. Digital tools also facilitate experience sharing between professionals and experts from different regions. Regular training of court system employees in new digital tools is necessary for the successful implementation of smart technologies in court operations.

Smart litigation is a cutting-edge approach to organizing court proceedings with the widespread use of digital technologies. Implementing smart technologies in litigation requires careful planning, staff training, building the necessary infrastructure, and strengthening cybersecurity measures to protect confidential data from leaks and cyberattacks. However, the benefits of such a digital transformation of the judicial system are obvious –increased efficiency, transparency, accessibility of justice for citizens, as well as strengthening the rule of law and trust in the judicial branch of government.

3. Prospects for Implementing Smart Litigation in Ukraine

Since the mid-1990s, leading countries around the world have been actively researching and implementing IT in the judicial system. This changes not only the usual process of hearing court cases but also breaking the established stereotype of court proceedings in a "face-to-face" format. Such radical changes raise concerns about the rapid and reckless implementation of new technologies, which must take place in harmony with the main mission of law and the court. Many progressive countries have already introduced so-called virtual litigation, based on the comprehensive use of modern IT and telecommunication means in the administration of justice (Romdoni et al., 2022). The informatization of Ukrainian litigation is currently limited to the automatic distribution of cases, technical recording of sessions, an automated document management system, and infrequent cases of virtual proceedings with video conferencing, which are additional to the traditional procedures of court interaction with the participants (Teremetskyi, 2023a; Kovalchuk & Banakh, 2023). The achievements of the Ukrainian judicial system in recent years should not be underestimated or dismissed. On the contrary, it is necessary to use the existing, proven technologies for the further development of the entire information system, up to a full-fledged virtual court in the future. The implementation of true virtual litiga-

tion involves not only an extensive system for recording proceedings but also means of communication between the court and participants, the possibility of remote case consideration, automated workplaces for judges, assistants, experts, automated decision-making and support systems, forensic examination, generating statistical reports, and more (Barysė, 2022).

In Ukraine, smart litigation is still in its initial stage. Since March 2023, it has been possible to receive notifications about court cases and court decisions in digital format through the "Diia" mobile application (Mobilnyi zastosunok Diia zavantazhyly 1,9 mln ukraintsiv, 2020). However, modern innovative technologies can become the basis for creating smart litigation in Ukraine. The issue of digitalization and automation of court proceedings is becoming particularly important in the context of the full-scale war unleashed by Russia against Ukraine (Teremetskyi, 2023b). This aggression has caused enormous destruction to the country's infrastructure, including the judicial system. Many court buildings were damaged or destroyed due to shelling and bombing. Hundreds of judges and court staff had to evacuate from the combat zones. In such a critical situation, digital technologies and automated court processes can ensure the continuity of justice and citizens' access to legal protection. Smart litigation enables the use of electronic document flow, video conferencing, online case registration, and more. This allows courts to function remotely and avoid work interruptions due to the war.

Ukraine is actively using advanced digital tools for systematic documentation, thorough investigation, and ensuring accountability for war crimes committed by Russian troops during the full-scale invasion. Unlike past conflicts, where the main focus was on crimes against life and health, the current war investigates a wider range of violations. In particular, cases of sexual violence, environmental crimes (such as damage to nuclear facilities, and destruction of the natural environment with long-term negative consequences), and cyberattacks in the context of their potential qualification as war crimes are being thoroughly studied. One of the most challenging tasks is identifying specific perpetrators of crimes. For this purpose, the latest IT solutions are being actively used, such as Palantir tools for big data analysis, and Microsoft for voice and face recognition based on artificial intelligence. These unique technologies help to comprehensively analyze and properly record the evidence base (Bergengruen, 2022).

The Ministry of Digital Transformation of Ukraine has created several digital tools to engage citizens in documenting destruction, collecting evidence, and classifying violations during the war. These include crowdsourcing chatbots, programs for recording damage to buildings, tools for adding geotags, timestamps to photos/videos, and recognizing the faces of military personnel. All collected information is stored in a single centralized database of the Office of the Prosecutor General. In combat zones, civilians can use smartphones to quickly collect photo and video evidence of violations directly at the scene. Specialized software allows recording time, geolocation data, and cryptographic tags to confirm their authenticity and integrity. Blockchain technology prevents the loss or substitution of digital evidence (Batista et al., 2023; Ali et al., 2022). Public-key cryptography provides reliable source authentication, while cloud storage ensures the backup of collected materials in different data repositories (Bergengruen, 2022).

The use of IT tools for documenting war crimes is regulated by several international documents, including the Geneva Conventions (Zhenevski konventsii pro zakhyst zhertv viiny 1949 roku, 1949), Additional Protocols (Dodatkovyi protokol do Zhenevskykh konventsii vid 12 serpnia 1949 roku, shcho stosuietsia zakhystu zhertv mizhnarodnykh zbroinykh konfliktiv, 1977)), the Statute of the International Criminal Court (Rymskyi statut mizhnarodnoho kryminalnoho sudu, 1998), UN Security Council resolutions (Rezoliutsis, 2023), and the UN Guidelines on the Collection of Digital Evidence (Cybersecurity and New Technologies. Guide for First Responders on the Collection of Digital Devices in the Battlefield, 2023). This helps to increase the legal force of digital evidence for effectively bringing those responsible for war crimes to justice (Guidelines First Responders on the Collection of Digital Devices in the Battlefield, 2023).

The active implementation of smart litigation in Ukraine is an urgent necessity in the context of the war with Russia. This will help preserve the functioning of the judicial system, ensure citizens' access to justice, and increase the efficiency and transparency of court proceedings. On 02/23/2023, the State Judicial Administration of Ukraine approved the order "On Approval of the Procedure for Sending Court Summons, Notifications and Subpoenas to Participants in Court Proceedings in Electronic Form" (Pro zatverdzhennia Poriadku nadsylannia sudovykh povistok, povidomlen i vyklykiv uchasnykam sudovoho protsesu v elektronnii formi, 2023). In this regard, the development of chatbots for the automated sending of court summons is appropriate and promising. Such a chatbot can perform the following functions:

1. Send messages to persons to whom a court summons is addressed, informing them of the need to appear in court at the specified time and place. The message may contain a summary of the case and the date, time, and location of the court hearing. If necessary, the chatbot can request confirmation of receipt of the summons from the recipient.

2. Send reminders a certain period before the court hearing date (e.g., 3 days, 1 day, etc.). Reminders may contain details of the court hearing and links to relevant documents or instructions.

3. Send special messages to persons whose appearance is mandatory (witnesses, experts, etc.). The message may contain a warning about possible consequences of non-appearance without good reason. The chatbot may require confirmation of receipt of the mandatory summons.

4. Promptly inform all recipients of changes in the date, time, or location of the court hearing. Provide updated information on the new date and time of the hearing.

5. Provide additional information upon request about procedures, required documents, court address, etc. Send instructions or links to detailed explanations on how to get to the court, where to wait, rules of conduct, etc.

6. Collect feedback from users on the quality of the information sent, clarity of instructions, etc. Allow users to ask questions and provide answers within the competence of the chatbot.

The proposed chatbot can significantly facilitate the process of notifying participants in court proceedings, ensure prompt communication, and improve the efficiency of case consideration. However, it should be taken into account that not all participants in court proceedings can receive electronic summons. Of course, this is a significant minority. Nevertheless, it is necessary to provide alternative options for ensuring equal access to legal information for all categories of the population and to develop legal mechanisms that would regulate this issue at the state level. At the same time, the introduction of digital technologies in litigation contributes to increasing the transparency and efficiency of the judicial system. All procedural actions can be recorded electronically, ensuring access for parties and the public. Automation of certain processes reduces the workload on judges and staff, accelerating case consideration.

The legal basis for the implementation of smart technologies is the legal framework (regulatory framework for electronic litigation, electronic document flow, electronic digital signature). Currently, Ukraine does not have special legislation that would comprehensively regulate the use of smart technologies in litigation. However, there are a number of regulations that create a legal basis for the introduction of individual digital tools in the judicial sphere: The Law of Ukraine "On the Judiciary and the Status of Judges" (Pro sudoustrii i status suddiv, 2016) provides for the possibility of using video conferencing during a court session; The Law of Ukraine "On Electronic Trust Services" regulates electronic document flow, electronic signatures and seals (Pro elektronnu identyfikatsiiu ta elektronni dovirchi posluhy, 2017); The Law of Ukraine "On Electronic Communications" concerns the use of electronic means of communication in various fields (Pro elektronni komunikatsii, 2020); The decision of the National Security and Defense Council of Ukraine "On the Concept of Artificial Intelligence Development in Ukraine" identifies the use of AI as a priority, including in the field of justice (Pro skhvalennia Kontseptsii rozvytku shtuchnoho intelektu v Ukraini, 2020); separate procedural codes (Civil, Commercial, Criminal Procedure Codes) contain norms on the use of electronic evidence (Kryminalnyi kodeks Ukrainy, 2001; Tsyvilnyi kodeks Ukrainy, 2003; Hospodarskyi kodeks Ukrainy, 2003). There are also bylaws and program documents, in particular the Concept of E-Governance Development (Pro skhvalennia Kontseptsii rozvytku elektronnoho uriaduvannia v Ukraini, 2017), which outline the directions of digitalization of the judicial system.

For the full and comprehensive implementation of smart technologies in litigation, it is necessary to develop special legislation that would regulate the legal aspects of using AI, electronic evidence, online case consideration, etc., while adhering to the principles of the rule of law and the protection of citizens' rights. A comprehensive study of this issue will help develop a strategy for the harmonious integration of IT solutions into the judicial system. Legal regulation of smart litigation requires amendments to procedural codes, the development of regulations on the use of IT solutions, and ensuring a balance between digitalization and guarantees of human rights in the judicial process.

4. Conclusions

The present study substantiated the feasibility and ways of implementing the smart litigation paradigm in Ukraine for the digitalization of court proceedings and modernization of the judicial system. The concept of smart litigation involves the widespread introduction of modern IT, such as electronic document flow, videoconferencing, AI, big data analytics, blockchain, electronic evidence, etc., to increase the efficiency, transparency, and accessibility of justice. The study revealed an urgent need for the active implementation of smart technologies in the litiga-

tion of Ukraine in the conditions of war with Russia. This will ensure the continuity of court operations, and citizens' access to legal protection, and increase the productivity of court proceedings. The practical experience of using advanced digital tools for documenting war crimes, which can be extrapolated to the judicial sphere, is considered. An analysis of the current legislation of Ukraine revealed the absence of special comprehensive regulation of the use of innovative technologies in court proceedings. The necessity of developing special legislation in this area, amending procedural codes regarding the use of AI, electronic evidence, online case consideration, etc., while adhering to the principles of the rule of law and protection of human rights, is substantiated. As an example of a smart tool for optimizing court processes, a model of a chatbot for automated sending of electronic court summons with capabilities for informing, reminding, and collecting feedback is proposed.

Following the set goal and objectives, the following key results were obtained in the study: I. The concept of "smart litigation" as a paradigm for modernizing the justice system through the widespread introduction of modern IT in court proceedings was investigated; II. The main goals, elements, and technologies of smart litigation were identified; III. Prospects for the implementation of smart litigation in Ukraine were considered; IV. The urgent need for digitalization of litigation in wartime conditions to ensure the continuity of justice was substantiated; V. The experience of using IT tools for documenting war crimes was analyzed; VI. Legal aspects of the implementation of smart technologies in the judicial sphere in Ukraine were studied; VII. The existing legal framework and gaps in legislation were identified; VIII. The necessity of developing special comprehensive legislation was substantiated; IX. A model of a chatbot for the automated sending of electronic court summons was developed as an example of a smart tool for optimizing court processes; X. The ways and recommendations for the harmonious integration of digital technologies into the judicial system of Ukraine were outlined, taking into account the principles of the rule of law and protection of citizens' rights. The obtained results create the basis for the harmonious integration of digital technologies into the domestic justice system, taking into account ensuring a balance between digitalization and the protection of citizens' rights in the judicial process. Further research should be aimed at developing a detailed strategy for the comprehensive digital transformation of litigation in Ukraine.

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СМАРТ-ТЕХНОЛОГІЇ В СУДОЧИНСТВІ: ПЕРСПЕКТИВИ ДЛЯ УКРАЇНИ

Анотація. ***Мета***. Метою статті є обґрунтування доцільності та шляхів імплементації парадигми смарт-судочинства в Україні в контексті діджиталізації судових процесів і вдосконалення функціонування судової гілки влади. У статті поставлено завдання дослідити концепцію смарт-судочинства, визначити перспективи її впровадження в Україні, розглянути правові аспекти та необхідні законодавчі зміни для повноцінної інтеграції інноваційних технологій у вітчизняну систему правосуддя. ***Методи дослідження.*** У дослідженні було використано набір різних загальнонаукових та спеціальних методів для комплексного вивчення проблеми та обґрунтування перспектив упровадження смарт-судочинства в Україні. Метод аналізу застосовувався для вивчення наукових публікацій, нормативно-правових актів, міжнародних документів з питань цифровізації судочинства та застосування інноваційних технологій у правовій сфері. Це дозволило дослідити теоретичні засади концепції «смарт-судочинства», наявні практики та правове регулювання. Порівняльний аналіз було проведено для зіставлення поточного стану цифровізації судової системи в Україні з міжнародним досвідом впровадження смарт-технологій, щоб виявити прогалини та можливості для вдосконалення. Системний підхід реалізовано для комплексного розгляду смарт-судочинства як багатокомпонентної концепції з різними взаємопов'язаними елементами. Емпіричні методи застосовувалися для вивчення досвіду використання цифрових технологій у документуванні воєнних злочинів в Україні під час війни. Метод моделювання було залучено для розроблення запропонованої моделі чат-боту

для надсилання електронних судових повісток як приклад смарт-інструменту оптимізації процесів. Проєктний метод використовувався для визначення необхідних законодавчих змін та розроблення нормативно-правової бази для повноцінної імплементації смарт-судочинства. ***Результати.*** Відповідно до поставленої мети та завдань у дослідженні було отримано такі ключові результати: 1) досліджено концепцію «смарт-судочинства» як парадигму модернізації системи правосуддя шляхом широкого впровадження сучасних інформаційних технологій (ІТ) у судові процеси; 2) визначено основні цілі, елементи та технології смарт-судочинства; 3) розглянуто перспективи імплементації смарт-судочинства в Україні; 4) обґрунтовано нагальну потребу в цифровізації судочинства в умовах війни для забезпечення безперервності правосуддя; 5) проаналізовано досвід застосування ІТ-інструментів для документування воєнних злочинів; 6) досліджено правові аспекти впровадження смарт-технологій у судовій сфері в Україні; 7) визначено наявну нормативно-правову базу та прогалини в законодавстві; 8) обґрунтовано необхідність розроблення спеціального комплексного законодавства; 9) розроблено модель чат-боту для автоматизованого надсилання електронних судових повісток як приклад смарт-інструменту оптимізації судових процесів; 10) окреслено шляхи та надано рекомендації щодо гармонійної інтеграції цифрових технологій у судову систему України з урахуванням принципів верховенства права та захисту прав громадян. Отримані результати створюють підґрунтя для обґрунтованої імплементації парадигми смарт-судочинства в Україні з метою діджиталізації та вдосконалення функціонування судової гілки влади. ***Висновки.*** Обґрунтовано доцільність і шляхи впровадження парадигми смарт-судочинства в Україні для діджиталізації судових процесів та модернізації судової системи. Концепція смарт-судочинства передбачає широку інтеграцію новітніх технологій, зокрема електронний документообіг, відеозв'язок, ШІ, блокчейн у судочинство для підвищення його ефективності, прозорості та доступності. Дослідження виявило нагальність активного впровадження цифрових рішень у вітчизняних судах в умовах війни для забезпечення безперервності правосуддя. Водночас існує потреба в розробленні спеціального законодавства для регулювання використання інноваційних технологій у судових процесах із дотриманням принципів верховенства права та захисту прав людини. Запропонована модель чат-боту для електронних судових повісток демонструє можливості смарт-інструментів для оптимізації судочинства. Результати дослідження створюють підґрунтя для обґрунтованого та збалансованого впровадження парадигми смарт-судочинства в Україні, що сприятиме діджиталізації, підвищенню ефективності й прозорості національної судової системи за одночасного дотримання принципів верховенства права та захисту прав громадян.

Ключові слова: смарт-судочинство, цифровізація правосуддя, електронний суд, штучний інтелект, електронні докази, судова реформа, правове регулювання ІТ у судочинстві, діджиталізація судової системи, кібербезпека.

The article was submitted 17.10.2023
The article was revised 07.11.2023
The article was accepted 28.11.2023

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.5.14

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Shaparenko, Oleksandr (2023). Type of and grounds for legal liability of a judicial assistant. *Entrepreneurship, Economy and Law, 5,* 96–100, doi https://doi.org/10.32849/2663-5313/2023.5.14

TYPE OF AND GROUNDS FOR LEGAL LIABILITY OF A JUDICIAL ASSISTANT

Abstract. ***Purpose.*** The purpose of the article is a theoretical and legal description of the types of and grounds for legal liability of a judicial assistant. ***Results.*** The article studies the types of and grounds for legal liability of a judicial assistant as a subject of the court's patronage service and a civil servant with whom the relevant state institution has close employment relations. The author proves that, in general, the administrative and legal status of a judicial assistant is characterised as the legal status of a special-purpose civil servant who is authorised to perform the functions of the State in a specific area and is associated with ensuring the functioning of a separate public authority. The judiciary is one of the most important institutions of the State, which, given its strategic and comprehensive nature, cannot function without internal organisational mechanisms. The most effective patronage unit from a nationwide perspective is the institute of judicial assistants; moreover, given the rigidity of public policy, it should be noted that the issue of certain types and forms of bringing judicial assistants to justice for failure to perform (improper performance of) their duties is still pending. The author underlines that legal liability as a basic theoretical and legal category is considered by researchers as a basic institution in administrative law and a lever of public administration pressure which enables to regulate certain relations related to the performance (non-performance) of functions assigned to a particular person, including the introduction of a sanction regime (i.e., imposition of penalties of a certain form and type). ***Conclusions.*** The author proves that legal liability of a judicial assistant as a basic category of administrative law is characterised by the fact that the latter is a specific administrative unit and may be subject to certain types of disciplinary sanctions (related to his/her legal status of a civil servant), as well as sanctioning provisions of labour law, and provisions of administrative, criminal and constitutional law. Furthermore, it is proved that the disciplinary liability of a judicial assistant implies bringing the latter to justice and imposing appropriate sanctions for failure to fulfil the duties assigned by Ukrainian legislation and improper exercise of powers to ensure the effective work of a judge and the performance of his/her legal duties.

Key words: judicial assistant, liability, interaction, labour law, right to protection, court support.

1. Introduction

At the present stage of formation of the institution of human and civil rights and freedoms, a separate area of activities of law enforcement bodies and human rights organisations of Ukraine is the effectiveness of the main management processes related to the functioning of national institutions designed to prevent violations of human and civil rights and freedoms.

In this context, the judiciary is one of the most important institutions of the State, which, given its strategic and comprehensive nature, cannot function without internal organisational mechanisms. The most effective patronage unit from a nationwide perspective is the institute of judicial assistants; moreover, given the rigidity of public policy, it should be noted that the issue of certain types and forms of bringing judicial assistants to justice for failure to perform (improper performance of) their duties is still pending.

Scholars identify the institution of legal liability of judicial assistants as a separate area of research, as this issue is a cornerstone in the functioning of the judiciary and is considered to be a top priority, including in the context of active hostilities in Ukraine and repulsing russia's armed aggression.

Moreover, it should be noted that this issue has been studied, among others, by researchers such as: I.B. Azemsha, O.D. Hryn, A.A. Ivanyshchuk, Ye.Yu. Podorozhnii, O.M. Radchenko, N.P. Svyrydiuk, T.O. Chepulchenko and others. However, given the large-scale russian invasion, the threatening situation for the institution of human and civil rights and freedoms, as well as the significant need to improve state mechanisms so that the highest results are achieved

with the least effort, this topic requires new research and scientific analysis.

The purpose of the article is a theoretical and legal description of the types of and grounds for legal liability of a judicial assistant. This, in turn, necessitates solving the following research tasks: 1. Define the essence and content of the concept of "legal responsibility" in the context of the functioning of the court and its patronage service; 2. Substantiate the essence and content of the types of and grounds for legal liability of a judicial assistant as basic disciplinary and procedural categories; 3. Outline the main areas for improving the functioning of the mechanism outlined as the subject of the study.

The object of the article is public relations in the field of ensuring the judiciary's activities and protection of human and civil rights and freedoms.

The subject matter of the study is the types of and grounds for legal liability of a judicial assistant.

2. Formation of the institution of legal liability

It should be noted that the current situation with the functioning of the mechanism for the protection of human and civil rights and freedoms requires significant improvement, in particular in terms of developing standards of legal liability of special-purpose civil servants, who are also employees of patronage services, and in the context of the subject matter of this article, such persons are judicial assistants.

The institution of legal liability has been widely used in civilised society for a long time, as it is a sign of a democratic state system and characterises society as safe from infringement of human and civil rights and freedoms, as well as promising in terms of social and technological progress. It should be noted that the institution of a judicial assistant, like other civil servants, is inherently designed to help the state mechanism function more efficiently in various sectors of social life and ensure the sustainability and balance of democratic processes.

Currently, there is no single correct approach to defining the concept of legal liability; each of the scientific positions has both advantages and disadvantages. In addition, a number of views on the issue of legal liability allow for a more meaningful and in-depth approach to its study and development on this basis of a more or less unified, universal approach to the definition of the concept of "legal liability" (Podorozhnii, 2014). In our opinion, it is quite logical to apply this approach to the definition of basic concepts, terms and categories, since it is in this format that complex scientific, theoretical and applied conclusions can be substantiated.

A. Ivanyshchuk defines the administrative and legal status of a judicial assistant as a set of his/her legal personality, professional tasks, obligations and rights to assist a judge and prepare court cases for consideration, fulfil other legal instructions of a judge and the head of the court staff, combined with professional restrictions and special disciplinary liability (Ivanyshchuk, 2015). Accordingly, since the judicial assistant is a person who has a number of powers and performs tasks important for the functioning of the court, the issue of his/her legal liability is doctrinally relevant, since not every person appointed to the respective position performs his/her functions to the fullest extent.

I.B. Azemsha rightly notes that if we accept the term "responsibility" in the broad sense in which it is used in everyday life, in philosophical literature and even in the everyday life of lawyers, the specificity of the legal understanding of responsibility is lost and there is a need to clarify the definition that denotes what is included in the concept of responsibility in legal terms. The need for a special legal concept of liability, even if it is the most general, will allow to distinguish responsibility in legal terms from other phenomena defined by the same term, since it denotes one of the most important institutions of law (Azemsha, 2010). Therefore, it is important to note that from the modern perspective, the content and essence of the concept of liability can be adapted depending on the scope of its application, and in addition, in a particular field, such as legal, it can be used in the context of various branches and areas of law application. For example, such restrictions are contained in the legislation of Ukraine, in terms of determining the types and forms of liability applicable to individuals (whether civil servants or other persons).

The need to introduce such an institution in Ukrainian courts arose as a result of the so-called "small-scale judicial reform" of 2001, which led to a significant increase in the workload of courts in general and judges in particular. The main purpose of introducing the position of judicial assistant in Ukrainian courts was to relieve judges from performing routine technical work during the preparation and consideration of court cases (Radchenko, 2014). In line with the need to introduce the institution of judicial assistants into the judicial system, the issue of ensuring proper principles of their legal liability has become increasingly relevant, which in turn will fundamentally affect the observance of human and civil rights and freedoms in the activities of such officials.

Liability arises as a result of the social need to coordinate human behaviour with the sys-

tem of social relations as a sphere of boundaries, the framework of necessary human behaviour, the requirements of society (or class) to the individual, as the inevitability of giving an account of one's behaviour to a person or organisation that has the right to call for an account. Liability is a social relation of restricting the freedom of each individual from the perspective of the interests of society, the reliance of the will of society on the individual's free will, directing his/her activities within certain limits (Chepulchenko, 2010). Accordingly, it should be emphasised that the liability of a judicial assistant may arise in several circumstances, the most important of which is the fact of holding office by such person (i.e., the stability of legal relations), the presence (vesting) of his/her powers, as well as an indication of the fact of failure to fulfil a certain duty or improper exercise of powers.

3. Distinguishing the types of legal liability

There is still an ongoing discussion about the dual nature of the understanding of legal liability and the expediency of distinguishing its positive form and the possibility of its application in practice. Very useful and informative works are being carried out in the field of highlighting the correlation between legal liability and legality, characterisation of the ideological foundations, particularities of its application in civil, criminal, constitutional law, etc. Moreover, when covering certain problems of legal liability, authors use different methodological approaches, defining legal liability as a means, as a system, as an institution or as a form of state legal influence (Svyrydiuk, 2011; Hryn, 2016). In the context of the above, we propose to interpret legal liability as a system that ensures law and order in the activities of a judicial assistant. It is a mechanism the main task thereof is to ensure compliance with the ratio of functions/tasks performed and compliance with the legislation of Ukraine, as well as their completeness and extent. In the event of non-compliance of the undertaken/performed activities with the legislation of Ukraine, or activities performed not in the manner expressly provided for by the legislation of Ukraine, it is important to ensure that legal consequences automatically occur – which is what the institution of legal liability is all about.

It should be emphasised that many definitions of social responsibility have in common that responsibility is seen as a form of interconnection and interaction between society and the individual. Social responsibility is defined as accountability, as an individual's attitude to social requirements, which is expressed in specific actions, as a person's conscious and volitional attitude to the requirements imposed by society and the obligation to strictly comply with them, as a corresponding positive or negative assessment of a person's activities by society. Therefore, social responsibility is one of the manifestations of the relationship and interdependence of the individual and society (Malinovska, 2017). Although this perspective enables to distinguish and clearly delineate the boundaries and content of social responsibility and legal liability, in the context of bringing to it and applying specific sanctions to the relevant judicial assistant, it is possible only in the context of clear legal certainty.

For example, interpretation of theoretical and legal developments requires considering the provisions of the Regulations on Judicial Assistants (No.21 approved by the Council of Judges of Ukraine on 18 May 2018), which stipulates that depending on the type and nature of the violation, the judicial assistant shall be disciplinary, civil, administrative or criminal liable in accordance with applicable law: for non-performance, untimely or improper performance of his/her duties; for exceeding his/her powers as defined by law; for inactivity or unfair use of the rights granted to him/her; for non-compliance with the legislation on information, state secrets and personal data protection; for non-compliance with the anti-corruption legislation of Ukraine; for non-compliance with the requirements of regulatory legal acts on labour protection and fire safety; for failure to comply with the restrictions established by this Regulation related to admission to patronage service and completion of patronage service; for violation of the rules of internal labour regulations of the court and labour discipline; for violation of the Rules of Conduct for court employees (Regulations on the judicial assistant: decision of the Council of Judges of Ukraine, 2018). Accordingly, these provisions clearly define the limits of the judicial assistant's liability and its specific types, although in our opinion, the relevant document is a brief and specialised summary of the provisions and norms of the relevant sectoral legislation of Ukraine, which directly provides for such liability, and its clauses and parts may only be of a referential nature.

4. Conclusions

The article studies the types of and grounds for legal liability of a judicial assistant as a subject of the court's patronage service and a civil servant with whom the relevant state institution has close employment relations. The author proves that, in general, the administrative and legal status of a judicial assistant is characterised as the legal status of a special-purpose civil servant who is authorised to perform the functions of the State in a specific area and is associated with ensuring the functioning of a separate public authority.

The author underlines that legal liability

as a basic theoretical and legal category is considered by researchers as a basic institution in administrative law and a lever of public administration pressure which enables to regulate certain relations related to the performance (non-performance) of functions assigned to a particular person, including the introduction of a sanction regime (i.e., imposition of penalties of a certain form and type).

The author proves that legal liability of a judicial assistant as a basic category of administrative law is characterised by the fact that the latter is a specific administrative unit and may be subject to certain types of disciplinary sanctions (related to his/her legal status of a civil servant), as well as sanctioning provisions of labour law, and provisions of administrative, criminal and constitutional law.

Furthermore, it is proved that the disciplinary liability of a judicial assistant implies bringing the latter to justice and imposing appropriate sanctions for failure to fulfil the duties assigned by Ukrainian legislation and improper exercise of powers to ensure the effective work of a judge and the performance of his/her legal duties.

The prospect for further research is the need for a comprehensive theoretical, legal and administrative analysis of the powers of a judicial assistant as the main element of his/her administrative and legal status.

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ВИДИ ТА ПІДСТАВИ ЮРИДИЧНОЇ ВІДПОВІДАЛЬНОСТІ ПОМІЧНИКА СУДДІ

Анотація. ***Мета.*** Метою статті є теоретико-правова характеристика видів та підстав юридичної відповідальності помічника судді. ***Результати.*** У статті досліджено види та підстави юридичної відповідальності помічника судді як суб'єкта патронатної служби суду та державного службовця, з яким відповідна державна установа перебуває в тісних трудових відносинах. Обґрунтовано позицію про те, що загалом адміністративно-правовий статус помічника судді характеризується як правове становище державного службовця спеціального призначення, котрий уповноважений на здійснення функцій держави в специфічній галузі, пов'язаний із забезпеченням функціонування окремого органу державної влади. Одним із найбільш пріоритетних інститутів держави є судова гілка влади, котра з огляду на її стратегічність та всеохопність не може функціонувати без внутрішньо організаційних механізмів. Найбільш ефективним патронатним підрозділом у загальнодержавному розумінні є інститут помічників судді, водночас, ураховуючи жорсткість державної політики, належить зауважити на питанні окремих видів і форм притягнення помічників судді до відповідальності за невиконання (неналежне виконання) своїх функційних обов'язків. Звертається увага на те,

що юридична відповідальність як базова теоретико-правова категорія розглядається дослідниками як базовий інститут в адміністративному праві й такий важіль державно-управлінського тиску, що вможливлює унормування окремих взаємин, пов'язаних із виконанням (невиконанням) покладених на конкретну особу функцій, у тому числі запровадження щодо неї санкційного режиму (тобто накладання стягнень певного виду та типу). ***Висновки.*** Доведено, що юридична відповідальність помічника судді як базова категорія адміністративного права характеризується тим, що останній є специфічною адміністративною одиницею та до нього може бути застосовано як окремі види дисциплінарних стягнень (пов'язаних із його правовим статусом державного службовця), так і норми санкційного типу трудового законодавства, а також положення адміністративного, кримінального та конституційного законодавства. Додатково обґрунтовано позицію про те, що дисциплінарна відповідальність помічника судді полягає в притягненні останнього до відповідальності та накладання відповідних санкцій за невиконання покладених законодавством України обов'язків і неналежну реалізацію повноважень щодо забезпечення ефективної роботи судді та виконання ним своїй законних обов'язків.

Ключові слова: помічник судді, відповідальність, взаємодія, трудове законодавство, право на захист, забезпечення роботи суду.

The article was submitted 16.10.2023
The article was revised 07.01.2023
The article was accepted 27.11.2023

UDC 342.721
DOI https://doi.org/10.32849/2663-5313/2023.5.15

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Kolesnikov, Andrii (2023). Cybersecurity as a necessary condition for the functioning of the justice administration system. *Entrepreneurship, Economy and Law, 5*, 101–107, doi https://doi.org/10.32849/2663-5313/2023.5.15

CYBERSECURITY AS A NECESSARY CONDITION FOR THE FUNCTIONING OF THE JUSTICE ADMINISTRATION SYSTEM

Abstract. ***Purpose.*** System analysis of the cybersecurity status in Ukraine, research on its impact on the justice system, and an outline of the ways to eliminate identified threats. ***Research methods.*** The structure of the article is built in accordance with theoretical, analytical, and prognostic tasks; it reflects the use of individual methods of scientific research and scientific materials. The author uses a theoretical method to study the category apparatus. Structural, functional, and systemic methods are applied to study the regulatory framework for cybersecurity. In the study of the problems and threats of cybersecurity violations in the conditions of the military invasion of the Russian Federation, the method of abstraction was used, which made it possible to single out among a large number of criteria the most significant in the author's opinion. The author applies the method of scientific generalization to substantiate the conclusions. ***Results.*** Cybersecurity is defined as the practice of protecting the interests of people, society, and the state in cyberspace for their sustainable development. In the justice administration system, information security is considered an object of legal security to protect the data of all judicial system participants. The author defines the components of administrative and legal support for cybersecurity. The article substantively discusses the need for a systematic approach to countering cyber threats at the international level. The paper defines legal regulation of information security as the legal influence of the state on relevant social relations. Cybersecurity is a component of national security. Ukraine has adopted a number of documents on information society development and ensuring cybersecurity. But it is necessary to improve specialized regulatory acts and harmonize them with international standards, in particular ISO/IEC 27000. It is justified that a complex administrative and legal mechanism for ensuring information security and its subject interaction will allow to identify of problems and ways to solve them. This requires the development of a single document on information security in court proceedings. ***Conclusions.*** Cybersecurity is a critical point to the effective operation of the justice system, ensuring the confidential data protection of the participants in the legal process. Ukraine developed a legal framework in this area, but the war with the Russian Federation revealed a number of problems: insufficient infrastructure protection, weak coordination of cybersecurity entities, etc. To increase the level of protection, it is necessary to improve the legal mechanism for ensuring cybersecurity and adopt a single document on the regulation of all aspects of information security in the judicial system. It is also encouraging to use artificial intelligence, promising that it is properly protected against threats.

Key words: justice, court, information security, cybersecurity, regulatory and legal support of cybersecurity, martial law.

1. Introduction

Rapid progress and widespread use of information and computer technologies have led to the significant dependence of critical national infrastructures on the level of their security in the information aspect. In current conditions, cybersecurity has become an important prerequisite for the viability of society. Its provision is of particular importance for the effective administration of justice, as it provides an opportunity to protect human and civil rights and freedoms. The absence or imperfection of information security tools hinders the ability to achieve this task, which is crucial for the judicial system. In this case, the objects of protection are information systems and software products, as well as registers and databases that contain information about the subjects of the adminis-

tration of justice and all participants in the judicial process. New threats in the field of cyber defense in the context of the military invasion of the Russian Federation add relevance to this scientific research. The purpose of this article is to study the legal foundations of cybersecurity in Ukraine in general, as well as for ensuring human rights and freedoms in particular.

The structure of the article is built in accordance with theoretical, analytical, and prognostic tasks; it reflects the use of individual methods of scientific research and scientific materials. The author uses a theoretical method to study the category apparatus. Structural, functional, and systemic methods are applied to study the regulatory framework for cybersecurity. In the study of the problems and threats of cybersecurity violations in the conditions of the military invasion of the Russian Federation, the method of abstraction was used, which made it possible to single out among a large number of criteria the most significant in the author's opinion. The author applies the method of scientific generalization to substantiate the conclusions.

The purpose of the article is to systematically analyze the cybersecurity condition in Ukraine, to research its impact on the justice administration system, and to outline ways to eliminate the identified threats.

To ensure the systematic presentation of the material, the article is logically divided into the following blocks: introduction, content definition, legal basis for ensuring cybersecurity, cybersecurity problems under martial law, ways to strengthen cybersecurity and conclusions.

2. Content definition

Since information has become the basis of social relations, the need for legal regulation of informational functions of the state and its institutions has arisen. Information is a complex phenomenon. On the one hand, it is a property of objects of living nature to reflect their movement in surrounding world in the form of mental sensations (content side of information, data), and on the other hand, it is an ability of some objects of living nature to convey sensations (images), experienced by them, to other objects of living nature (representative side of information, message).

The dialectic of the law and information interdependence shows that the law remains a key tool in regulating information-related relations under the conditions of information support for all other social relations. Legal norms not only regulate but also get influenced by the information environment. This leads to the emergence of new objects of regulation and changes the methods of their influence on social relations.

The Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity in Ukraine" provides the legal definition of the term cybersecurity. In this law, it is defined as "the protection of human and civil vital interests, society, and the state during the use of cyberspace, which ensures the sustainable development of the information society and digital communication environment and the timely detection, prevention, and counteraction of real and potential threats to the national security of Ukraine in cyberspace" (Law of Ukraine On the Basic Principles of Cybersecurity, 2017).

In the judicial system, information security should be considered as an object of administrative and legal protection, taking into account the fact that it is not only a state of security, but also a system of social relations that contribute to the emergence of a state of security.

From a legal point of view, information is data that is the object of communication. The encroachment on information should be considered on two levels: as an encroachment directly on information and as an encroachment on the possibility of its unimpeded transmission (communication) (Perun, 2019, p. 31). Taking that into account, information in the justice system is a substance that determines the implementation of legal relations in the context of obtaining, possessing, protecting, using, and transferring information to protect human and civil rights and freedoms.

The author agrees with the approach of scientists regarding the definition of the legal content of ensuring information security in relation to its components: administratively sanctioned provision of information security; administrative and jurisdictional provision of information security; administrative casual provision of information security (Ostapenko, Baik, 2021, p. 174).

Taking this into account, the author defines following components of the administrative and legal support of cybersecurity:

– conditions for the emergence and development of information security threats (social, economic, natural, political, technogenic);

– factors affecting the occurrence of threats (natural, technogenic, biological);

– sources of security threats (man-made, natural, biological);

– objects of security infringement (constitutional rights, freedoms and legitimate interests of a person, society, state);

– subjects of information protection (individuals, entities);

– the sphere of administrative and legal regulation of ensuring public safety (objective, subjective, functional, situational) (Ostapenko, Baik, 2021, p. 170).

Today information security has gone beyond the national framework and has become one of the key aspects of the international security system. This system provides the principle of indivisibility of security and state responsibility for their information space (Hetman, Politanskyi, Hetman, 2023, p. 97). This determines the need for a systematic and continuous approach to countering cyber threats at the international level.

3. Legal basis for ensuring

The normative and legal regulation of information security is a form of powerful legal influence of the state on social information relations with the aim of organizing them, consolidating them, and ensuring order.

In the global dimension, cybersecurity is a component of the state's national security. Ensuring information security is defined as one of the important functions of the state in Article 17 of the Constitution of Ukraine (Constitution of Ukraine, 1996).

On May 15, 2013, the Cabinet of Ministers of Ukraine approved the National Strategy of the Information Society in Ukraine. The strategy defines the need for information society development focused on people's interests, open to everyone, in which every person can create and accumulate information and knowledge, have free access to knowledge, use and exchange the knowledge, have the opportunity to fully realize their potential, contribute to social and personal development, and improve the quality of life (Order of the Cabinet of Ministers of Ukraine, 2013) In fact, access to information in order to satisfy people's needs, including the protection of rights and freedoms, is the fundamental basis of information support for the justice administration.

Information security is defined in the Law "On the Basic Principles for the Development of an Information-Oriented Society in Ukraine for 2007–2015" as "a state of protection of the vital interests of a person, society and the state, in which harm is prevented due to: incompleteness, untimeliness and implausibility of the information used; negative information impact; negative consequences of the use of information technologies; unauthorized distribution, use and violation of integrity, confidentiality and availability of information" (Law of Ukraine On the Basic Principles for the Development of an Information-Oriented Society, 2007).

The Information Security Doctrine of Ukraine, approved by the President of Ukraine in 2017, defines the priority directions of state policy in the following areas: ensuring information security; ensuring the protection and development of the information space of Ukraine, as well as the citizens' constitutional right to information; openness and transparency of the state to citizens; formation of a positive international image of Ukraine (Decree of the President of Ukraine On the Information Security Doctrine, 2017).

In 2020, the Decree of the President of Ukraine put into effect the updated National Security Strategy of Ukraine, "Human security – the security of the country". This legal act pays considerable attention to various aspects of countering cyber threats, primarily from the Russian Federation. Paragraph 52 of the Strategy states that the main task of the development of the cybersecurity system is to guarantee the cyber resilience and cybersecurity of the national information infrastructure (Decree of the President of Ukraine On the National Security Strategy, 2020). One of the elements of such an infrastructure is the functioning of the Unified Judicial Information Telecommunication System, the purpose of which is the formation and development of new forms of communication between judicial authorities and other participants in the judicial process.

In 2021, predicting a growing threat from the Russian Federation, a decree of the President of Ukraine put into effect the Decision of the National Security and Defense Council of Ukraine on the Military Security Strategy of Ukraine (Decree of the President of Ukraine On Strategy of Military Security, 2021). In the act, among the tasks, there were defined the countermeasures to the threads to Ukraine in cyberspace. At the same time, the National Security and Defense Council, by Decision 106/2021 as of March 11, 2021, established the Center for Countering Disinformation. The main purpose of the Center is to counter threats to the national security and national interests of Ukraine in the information sphere, fight against propaganda, destructive informational influences, and companies, and prevent manipulation of public opinion (Decree of the President of Ukraine On establishment Center for Countering Disinformation, 2021).

One of the important legal documents in the field of ensuring information space security is the Decree of the President of Ukraine, "Cybersecurity Strategy of Ukraine. Safe cyberspace is the key to the successful development of the country" (Decree of the President of Ukraine On Cybersecurity strategies of Ukraine, 2021). The strategy states that cyberspace is considered to be one of the possible places for conducting military operations, along with other physical spaces. The concept of cyber warfare is growing in popularity, which includes not only the protection

of critical information systems from cyber-attacks but also active actions in cyberspace, such as attacks aimed at paralyzing enemy facilities by destroying their information systems. At the same time, the adoption of these and other doctrinal, regulatory and strategic documents defines only the general principles of ensuring information and cybersecurity. The peculiarities of their implementation in different spheres determine the need to adopt more specialized documents or make appropriate amendments to the existing ones. For example, in Regulation on the Procedure of Functioning the Separate Subsystems of the Unified Judicial Information Telecommunication System (UJITS), approved by the Decision of the Supreme Council of Justice in 2021, it is stated that organizational and financial support for the creation and functioning of individual subsystems (modules) of the Unified Judicial Information Telecommunication System is carried out by the State Judicial Administration of Ukraine, which carries responsibility for their proper functioning and ensuring information protection (Decision of the Supreme Council of Justice on the approval of the Regulation, 2021). However, its functions, tasks, powers of the responsible unit or person, and features of responsibility are not defined.

Another condition for the effectiveness of regulatory and legal protection for cybersecurity is its compliance with international norms. Thus, the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" defines the need to achieve compatibility with the relevant standards of the European Union and NATO, taking into account the best global practices and international standards on cybersecurity and cyber protection (Perun, 2019). Scientists of the National Institute of Strategic Studies in the analytical note Problems of implementing modern information security standards in the conditions of the national cybersecurity system formation in Ukraine notice that the national information protection standard ND TZI (Regulatory Document of the Technical Information Protection System) 2.5-004-99, oriented on the compliance of the architecture and parameters of the software and hardware of the object, comply with the norms of the ISO/IEC 27000 series of standards, which is focused on information security management (Analytical note, 2018, p. 5). Implementation of ISO/IEC 27000 allows for optimization of the process of information resource protection and risk management for these resources.

Today, in this area, there are the NSTU standards (National Standards of Ukraine) ISO/IEC 27005:2023 for information security, cybersecurity, and privacy protection and the information security risk management guideline (ISO/IEC 27005:2022, IDT).

4. Problems under martial law

In the context of the Russian-Ukrainian war, information products distributed by mass media become a means of psychological and technological influence on the consciousness of society and certain groups of people. Mass media can make wrong conclusions that affect the decision-making process, offering them with certain goals, sometimes even inciting illegal actions (Vyzdryk, Melnyk, 2023, p. 198).

Today, we note that during the military invasion of the Russian Federation, this threat materializes in the form of numerous attacks on the information infrastructure of state bodies.

The factors which made such attacks successful include:

– inconsistency of the state's electronic communications infrastructure, its level of development, and security with modern requirements;

– insufficient level of coordination, interaction, and information exchange between cybersecurity entities;

– unsystematic cyber protection measures for critical information infrastructure;

– poor level of protection of critical information infrastructure, state electronic information resources, and information; protection against cyber threats is required and established by law;

– insufficient development of the organizational and technical infrastructure for ensuring cybersecurity and cyber protection of critical information infrastructure and state electronic information resources;

– deficient effectiveness of the security and defense entities of Ukraine in countering cyber threats of a military, criminal, terrorist, and other nature.

Understanding the influence of the factors above led to the closure of the vast majority of state law registries in the first days of the military invasion of the Russian Federation. This issue, for some time, actually limited the public's access to information about the administration of justice. On February 24, 2022, the State Enterprise "National Information Systems" temporarily suspended the work of the Unified and State Registers. The Registers worked under the authority of the Ministry of Justice of Ukraine. Also, until August 1, 2022, the Open Data Portal was terminated. In this way, state bodies tried to find a balance between ensuring human and civil rights and freedoms and providing tools for countering threats in the field of information security. In fact, this became a manifestation of the application of Article 376-1 of the Criminal Code of Ukraine. The norm of law pro-

hibits and establishes responsibility for illegal interference in the work of automated systems in bodies and institutions of the justice system. An additional threat to cybersecurity is the intensive spread of artificial intelligence, which can potentially become a new tool of cybercrimes.

5. Ways to strengthen

Researcher defines operational and administrative-legal approaches to ensuring information security (Shopina, 2023, p. 30). Actually, the second one considers the creation of a protection mechanism for information in the justice administration system. Scientists have discussed these aspects in recent research (Teremetskyi, Duliba, 2023). The administrative-legal mechanism development for the comprehensive provision of information security and the systemic interaction of its various subjects will fully reveal problematic aspects of information security in the system of justice and outline the vectors of their solution. This would be possible with the adoption of a single system document that would regulate all aspects of ensuring information security in the judicial system.

The threats in cyberspace mentioned above are caused by the spread of artificial intelligence, which, on the other hand, can be considered a new tool for state control and ensuring cybersecurity.

6. Conclusions

Cybersecurity is an essential tool for the effective functioning of all state institutions, including the justice system. It ensures the protection of information systems, registers, and databases containing confidential information about participants in the legal process.

Ukraine has formed a sufficient regulatory and legal framework to ensure cybersecurity. However, the war with Russia revealed a number of problems and threats that require urgent solutions, including in the justice system, in particular, the insufficient level of critical information infrastructure protection, the imperfection of coordination and interaction mechanisms between sub-objects to ensure cybersecurity, etc.

To increase the level of cybersecurity in the justice system, it is necessary to improve the administrative and legal mechanisms for its support and to adopt a single system document that will regulate all aspects of information security in the judicial system.

The implementation of the latest technologies based on artificial intelligence can be a promising direction for strengthening cybersecurity, but this also requires strengthening protection against potential cyber threats associated with the use of these innovations.

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КІБЕРБЕЗПЕКА ЯК НЕОБХІДНА УМОВА ФУНКЦІОНУВАННЯ СИСТЕМИ ЗДІЙСНЕННЯ ПРАВОСУДДЯ

Анотація. ***Мета.*** Метою статті є системний аналіз стану кібербезпеки України, дослідження її впливу на функціонування системи здійснення правосуддя, а також окреслення шляхів усунення виявлених загроз. ***Методи дослідження.*** Структура статті побудована відповідно до теоретичних, аналітичних та прогностичних завдань і відображає використання окремих методів наукового дослідження та наукових матеріалів. Для дослідження категорійного апарату використано теоретичний метод, нормативно-правової бази забезпечення кібербезпеки – структурно-функціональний та системний методи. Під час дослідження проблем та загроз порушення кібербезпеки в умовах військового вторгнення Російської Федерації використано метод абстрагування, що дозволив виокремити серед значної кількості критеріїв найбільш значущі, на думку автора. В обґрунтуванні висновків використано метод наукового узагальнення. ***Результати.*** Кібербезпека визначена як захист інтересів людини, суспільства і держави в кіберпросторі для сталого розвитку. У системі здійснення правосуддя інформаційна безпека розглядається як об'єкт правової охорони для захисту даних усіх учасників системи судочинства. Визначено складники адміністративно-правового забезпечення кібербезпеки. Обґрунтовано необхідність системного підходу до протидії кіберзагрозам на міжнародному рівні. Під нормативно-правовим регулюванням інформаційної безпеки розуміємо правовий вплив держави на відповідні суспільні відносини. Кібербезпека є складовою частиною націо-

нальної безпеки. В Україні прийнято низку документів щодо розвитку інформаційного суспільства та забезпечення кібербезпеки, однак потрібно вдосконалювати спеціалізовані нормативні акти, гармонізувати їх з міжнародними стандартами, зокрема ISO/IEC 27000. Обґрунтовано, що комплексний адміністративно-правовий механізм забезпечення інформаційної безпеки та взаємодія його суб'єктів дозволить виявити проблеми та шляхи їх вирішення. Для цього потрібен єдиний документ щодо інформаційної безпеки в судочинстві. ***Висновки.*** Кібербезпека є важливою для ефективного функціонування системи правосуддя, забезпечуючи захист конфіденційних даних учасників процесу. Україна має нормативно-правову базу в цій сфері, проте війна з РФ виявила низку проблем – недостатній захист інфраструктури, слабку координацію суб'єктів кібербезпеки тощо. Для підвищення рівня захисту потрібно вдосконалити правовий механізм забезпечення кібербезпеки, прийняти єдиний документ з регламентації всіх аспектів інформаційної безпеки в судовій системі. Перспективним також є застосування штучного інтелекту за умови належного захисту від загроз.

Ключові слова: правосуддя, суд, інформаційна безпека, кібербезпека, нормативно-правове забезпечення кібербезпеки, воєнний стан.

The article was submitted 16.10.2023
The article was revised 07.01.2023
The article was accepted 27.11.2023

UDC 343.98
DOI https://doi.org/10.32849/2663-5313/2023.5.16

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Sysoliatin, Valerii (2023). Problematic aspects of the initial stage of investigation of criminal offences related to using Internet banking. *Entrepreneurship, Economy and Law, 5*, 108–113, doi https://doi.org/10.32849/2663-5313/2023.5.16

PROBLEMATIC ASPECTS OF THE INITIAL STAGE OF INVESTIGATION OF CRIMINAL OFFENCES RELATED TO USING INTERNET BANKING

Abstract. ***Purpose.*** The purpose of the article is to study the initial stage of investigation of criminal offences related to using Internet banking. ***Results***. The article focuses on certain aspects of the investigation of criminal offences related to using Internet banking. The article examines the initial stage of investigation of a certain category of unlawful acts. It is noted that at the initial stage of investigation there are numerous investigative (search) actions, CISA and other procedural actions, as well as search activities that should be carried out in any case. Of course, they should be correlated with the specific unlawful act committed. In particular, during a murder investigation, this includes examination of the corpse and its expertise to establish the circumstances and mechanism of death; theft – examination of the scene to determine the mechanism of the unlawful act and identify material evidence; fraud – interrogation of the victim to determine the method of its commission, etc. During the investigation of criminal offences related to using Internet banking, there shall be mandatory procedural steps to ensure an adequate evidence base. ***Conclusions.*** It is established that the initial stage accumulates the procedural actions necessary for the maximum collection of evidence at the beginning of criminal proceedings. The article identifies the forensic versions that are put forward at the initial stage of the investigation: a criminal offence related to using Internet banking for obtaining material gain by a "hacker" or an employee of a certain institution with skills in working with computer equipment, or for the purpose of obtaining restricted information by a person who has free access to certain computer equipment. It is established that during the investigation of the category of unlawful acts under study, it is necessary to ensure the maximum preservation of information stored on flash drives, hard drives, cache memory of the relevant device, cloud storage, etc.

Key words: criminal offences, Internet banking, cybercrime, initial stage of investigation, investigative (search) action, version.

1. Introduction

At the initial stage of investigation there are numerous investigative (search) actions, CISA and other procedural actions, as well as search activities that should be carried out in any case. Without doubt, they should be correlated with the specific unlawful act committed. In particular, during a murder investigation, this includes examination of the corpse and its expertise to establish the circumstances and mechanism of death; theft – examination of the scene to determine the mechanism of the unlawful act and identify material evidence; fraud – interrogation of the victim to determine the method of its commission, etc. During the investigation of criminal offences related to using Internet banking, In addition, there are also mandatory procedural steps that shall be taken prior to entering information into the URPI and immediately thereafter to ensure a proper evidence base.

An important contribution to the development of criminal investigation has been made by scholars such as Yu.P. Alenin, V.P. Bakhin, A.V. Ishchenko, B.Ye. Lukianchykov, Ye.D. Lukianchykov, S. Yu. Petriaiev, V.V. Piaskovskyi, M.V. Saltevskyi, R.L. Stepaniuk, V.V. Tishchenko, K.O. Chaplynskyi, Yu.M. Chornous, V.Yu. Shepitko, and others. However, our study specifies certain positions of the initial stage of investigation in criminal proceedings of this category, with regard to the current forensic practice and perspectives of scholars.

The purpose of the article is to study the initial stage of investigation of criminal offences related to using Internet banking.

2. Particularities of the initial stage of investigation of criminal offences

Considering the initial stage of the investigation, we refer to the thesis by S.V. Velikanov, who states that: "The element of "the investiga-

tion stage" as a component of spatial and temporal localisation has the following meanings: "primary", "subsequent", "final"; the element "professional qualities of the person conducting the investigation" – "highly competent", "competent", "insufficiently competent", "incompetent", etc; the element "consequences of the crime" is composite, and depending on the type of crime under investigation, it changes its structure, including various linguistic variables, for example, when investigating lucrative crimes, its part, such as the linguistic variable "damage caused", has the following meanings "significant", "large", "especially large". Therefore, depending on the situation, linguistic variables take on appropriate meanings. The set of such meanings is individual in each case" (Velikanov, 2002). According to O.S. Sainchin, there are initial, subsequent and final stages of investigation. In addition, the author indicates that the initial stage of the investigation begins from the moment when signs of a criminal offence are found. The scholar also notes that this stage lasts until the person suspected of committing the offence is identified and the degree of his/her guilt is determined, and the issue of serving a notice of suspicion is resolved (Sainchyn, 2018). As we can see, different researchers define the names of the "primary-initial" stages in different ways. But the difference in name does not change their content. In our work, we have decided to use the terms "initial" and "following" stages of the investigation.

With regard to the initial stage of criminal proceedings, we consider it appropriate to cite the perspective of V.V. Tishchenko that the following tasks are implemented during it, namely: "1. Identify and record evidentiary information regarding the crime being investigated in hot pursuit. 2. Take measures to prevent the loss of evidential information contained in traces, documents, other objects, its timely detection and recording. 3. Clarify and assess the investigative situation after the initiation of a criminal case. 4. Identify sources of information about the crime under investigation. 5. Determine the direction of the investigation and development of an investigation plan. 6. Choose the form and methods of interaction with the bodies and services that carry out operative-search work. 7. Search and obtain information about the mechanism and environment of the crime. 8. Collect and study information about the victim's identity. 9. Search for, obtain and analyse information about the perpetrators of the offence, their search and detention" (Tishchenko, 2007, p. 137).

According to O.M. Dufeniuk, the initial stage of the investigation involves "...collecting and evaluating primary information, establishing the presence or absence of signs of a criminal offence in the act of a person (persons) or in an event (fact) that occurred; making a decision to enter information into the URPI and initiate a pre-trial investigation; conducting urgent investigative (search) actions; taking measures to solve a criminal offence in "hot pursuit"; determining the directions of investigation; formulating initial versions. At the initial stage, we can state the existence of an investigative situation, which will determine the sequence of certain procedural actions, procedural decisions, and other measures. The forensic situation that exists before the start of criminal proceedings usually has a small amount of evidential information. Therefore, the main task of the initial stage of the pre-trial investigation is an intensive process of collecting (identifying, recording, seizing, storing) evidence" (Priakhin, 2016).

Another group of scholars (O.V. Uzunova, K.V. Kaliuha), based on their own research, concludes that "...the initial stage of the investigation is characterised by uncertainty due to lack of information and its incompleteness, so the dominant activity of the investigator at this stage is identification of the necessary evidentiary and tactical information and its carriers (sources). This task is solved with due regard to the current investigative situation by conducting a set of investigative, other procedural and organisational actions. Frequently, the ground for conducting investigative actions is a forensic version. The main task of the initial stage is usually to identify the person involved in the commission of the crime. Therefore, the collection of information about the person begins with a retrospective study of the traces left at the crime scene, in the memory of eyewitnesses, etc. The information obtained is used to put forward versions of the perpetrator of the crime, to determine the direction of the search" (Uzunova, Kaliuha, 2018). Relying on the above statements, we can conclude that the initial stage accumulates the procedural actions necessary to maximise the collection of evidence at the beginning of criminal proceedings.

With regard to the initial stage of investigation of criminal offences related to using Internet banking, for example, a separate group of scholars (B.Ye. Lukianchykov, S.Yu. Petriaiev) states that reports of unauthorised intrusion into a computer system or computer network are more often received from users who have discovered such a fact. The authors emphasise that this happens when a computer starts reporting false data, there are frequent crashes, some or all useful information is destroyed, and customers of the computer network complain. In addition, scientists emphasise that these may be signs of illegal actions: unauthorised entry

or use of malware or violation of operating rules. Moreover, forensic scientists suggest the following possibilities for putting forward and processing the following typical versions of the initial stage of the investigation: "...1) a computer crime is committed for the purpose of obtaining material benefit: a) by an employee of the institution with skills in working with computer equipment; b) by a group of persons by prior conspiracy or an organised group with the participation of an employee of the institution; c) by a group of persons without the participation of employees of the institution, one of the perpetrators has skills in working with computer equipment; 2) the crime is committed for the purpose of obtaining restricted information: a) by a person (persons) who has free access to computer equipment; b) by a person (persons) who does not have free access to computer equipment; 3) the crime is committed with the purpose of preparing for the theft of material assets: a) by a person (persons) who has free access to computer equipment; b) by a person (persons) who does not have free access to computer equipment; 4) the crime is committed with the purpose of copyright infringement: a) by a person(s) having free access to computer equipment; b) by a person(s) not having free access to computer equipment; 5) the crime is committed with the purpose of violating the algorithm of information processing, destruction or damage of computer programmes and databases, as well as their carriers: a) by a person who has access to computer equipment; b) by a person who does not have access to computer equipment; c) destruction or violation of the algorithm of information processing occurred as a result of a failure or malfunction in an automated system and is not a computer crime" (Lukianchykov, Lukianchykov, Petriaiev, 2017, p. 473). In support of this position, relying on the analysed criminal proceedings, we will try to determine the forensic versions that are put forward at the initial stage of the investigation:

– a criminal offence related to using Internet banking for obtaining material gain by a "hacker";

– a criminal offence related to using Internet banking committed for obtaining material gain by an employee of a certain institution with skills in working with computer equipment;

– a criminal offence related to using Internet banking for obtaining restricted information by a person (persons) who has free access to certain computer equipment;

– a criminal offence related to using Internet banking for obtaining restricted information by a person who does not have free access to certain computer equipment;

– a criminal offence related to using Internet banking for violating the data processing algorithm, destroying or damaging computer programmes and databases, as well as their carriers.

3. Investigation of criminal offences related to using Internet banking

D.V. Pashniev and M. H. Shcherbakovskyi describe the following tactical tasks. For example, the researchers emphasised the need to establish the following facts: the place of unlawful penetration into a computer network (from within the organisation or from outside); the method of unlawful access (copying, modification, destruction of information, introduction of malware) and its results; means used to commit the crime (hardware, software, data storage media); ways to overcome security (selection of keys and passwords, password theft, disabling security means, etc.); detection of traces of an unlawful act. In addition, the authors argue that the following priority investigative (search) actions should be taken to implement the above tasks: "...inspection of the scene (if it was not carried out before the criminal proceedings were commenced), interrogation of witnesses (staff of the organisation where the offence was detected) and the victim, appointment of a computer-technical examination. Then, procedural decisions are made on temporary access to documents and measures to identify and search for the perpetrator, search for his workplace from where the computer (computer system) was intruded. Forensic records are checked to obtain data that enables conclusions to be drawn about the involvement of a particular person in a crime, the commission of several crimes in one way, etc. On this ground, CISA may be conducted (audio and video control of a person – Article 260 of the CPC, arrest, inspection and seizure of correspondence – Articles 261–262 of the CPC, removal of information from transport telecommunication networks and electronic information systems – Articles 263–264 of the CPC, surveillance of a person, thing or place – Article 269 of the CPC, audio and video control of a place – Article 270 of the CPC, etc." (Volobuiev, Stepaniuk, Maliarova, 2018).

For their part, V.V. Kornienko and V.I. Strelianyi argue that the head of the investigative team shall prepare in advance for the conduct of investigative (search) actions. According to scholars, it is worthwhile to carefully examine, for example, the bank's geographical location, determine whether the bank is located in a built-in, attached, or detached building, examine entrances and exits (main and backup), and the number of locations of currency exchange offices. In addition, the authors state

that it is necessary to clearly identify "...the location of the bank's internal premises: vault; special cash desk; recounting cash desk; night cash desk; operating room; automated information processing centre (computer server centre, archiving, Bank-Client modem); premises where individual safes for storing valuables are located; offices of the bank's management, chief accountant (to know which offices have computers that are connected to the network); utility rooms, especially rooms in front of vaults (they should be inspected thoroughly); warehouses" (Korniienko, Strelianyi, 2015).

According to O.V. Kurman, unlawful interference with the operation of electronic computers and computer networks is possible under the following conditions: "...1) the owner of the information should determine the conditions and rules for obtaining and processing information; 2) the owner of computers, automated systems, computer networks or telecommunication network operator should develop measures to protect information in the system; 3) the owner of computers, systems and network operators should develop rules for the system; 4) the owner (operator, provider) of the system and the owner of the information should conclude an agreement on the protection of information in the system; 5) the offender has performed at least one of the following operations, in particular: collection, input, recording, reading, storage, destruction, registration, acceptance, receipt, transmission of information" (Kurman, 2017, p. 247).

In the context of our study, we consider the position of D.V. Pashnev and M.G. Shcherbakovsky to be relevant, as they state that "upon arrival at the scene, the investigator shall take such preventive measures that ensure the integrity and immutability of information on computer carriers: – protect and secure the premises where the computer equipment is located; – keep people away from the equipment and power sources; – identify the state of the computer equipment (switched off or on); – make sure that under no circumstances will the switched-off computer be switched on. During the inspection (search), the specialist directly assists the investigator: – in identifying computer equipment, its individual components, documentation and other objects that may contain traces of illegal actions; – in disconnecting computer equipment from the power supply correctly (from the point of view of preserving traces of the crime); – in describing the computer equipment, its individual components and documentation to be seized, in the protocol and annexes thereto; – in deciding on the composition of the computer equipment or its individual components to be seized or isolated from free access; – in preparing the computer equipment for transportation (packing, sealing)" (Volobuiev, Stepaniuk, Maliarova, 2018). Indeed, during the investigation of the category of unlawful acts under study, it is necessary to ensure the maximum preservation of information stored on flash drives, hard drives, cache memory of the relevant device, cloud storage, etc.

Therefore, we support the opinion of V.V. Korniienko and V.I. Strelianyi, who determined the following procedure for the work of the investigative team: "1) thoroughly study the plan of the bank's premises with the location of all internal offices; 2) if necessary, ensure the protection of main and emergency entrances and exits; 3) review the documents defining the bank's organisational structure, regulations on management (departments), an order on the distribution of duties between the management, and a licence to conduct operations issued by the NBU; 4) ensure the presence of bank officials and, in some cases, representatives of the NBU. During investigative actions, it is necessary to: 1) ensure the presence of employees at their workplaces (no employee should be allowed to leave the workplace); 2) closely monitor cashiers (the location of their personal belongings); 3) control the actions of employees of the automated information processing centre, preventing them from conducting transactions at the time of the investigation, as well as of all employees working on computers connected to the network; 4) inspect the bank's premises to identify computer equipment that may be "illegally" operating on behalf of a fictitious company; 5) monitor telephone communications, as a bank employee can give an order to debit funds from any account of a banking institution or enterprise; 6) ensure external surveillance of the bank and internal security of the main and backup entrance and exit, ensuring that only those who wish to enter the bank can do so; 7) during the inspection of the operating room, quickly identify fictitious firms using a printout based on the following signs: firms with high turnover that have started operating recently (from 1–3 days to 2–3 months). After identifying the director and chief accountant of these firms, determine whether the data held by the bank matches the address bureau (whether the documents presented when opening the account were previously lost or stolen). Check whether the company is located at the legal address according to the bank documents. 8) in case of suspicion, it is necessary to immediately stop the movement of non-cash funds in terms of conducting expenditure transactions on bank accounts (current, settlement, deposit) simultaneously for all departments" (Korniienko, Strelianyi, 2015, p. 49).

4. Conclusions

To sum up, the initial stage accumulates the procedural actions necessary for the maximum collection of evidence at the beginning of criminal proceedings. The article identifies the forensic versions that are put forward at the initial stage of the investigation: a criminal offence related to using Internet banking for obtaining material gain by a "hacker or an employee of a certain institution with skills in working with computer equipment, or for the purpose of obtaining restricted information by a person who has free access to certain computer equipment or does not have such access; a criminal offence committed for the purpose of violating the data processing algorithm, destroying or damaging computer programmes and databases, as well as their carriers. It is established that during the investigation of the category of unlawful acts under study, it is necessary to ensure the maximum preservation of information stored on flash drives, hard drives, cache memory of the relevant device, cloud storage, etc.

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ПРОБЛЕМНІ АСПЕКТИ ПОЧАТКОВОГО ЕТАПУ РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ ІЗ ВИКОРИСТАННЯМ ІНТЕРНЕТ-БАНКІНГУ

Анотація. ***Мета.*** Метою статті є дослідження початкового етапу та окремих аспектів розслідування кримінальних правопорушень, пов'язаних з використанням інтернет-банкінгу. ***Результати.*** Зазначено, що на початковому етапі розслідування є досить багато слідчих (розшукових) дій, НСРД та інших процесуальних дій, а також розшукових заходів, які варто провести в будь-якому випадку, корелюючи їх у відповідності до конкретного протиправного діяння, яке було вчинено. Зокрема, під час розслідування вбивства – це огляд трупа та його експертиза для встановлення обставин та механізму смерті особи; крадіжки – огляд місця події для з'ясування механізму вчинення протиправного діяння та виявлення матеріальної доказової інформації; шахрайства – допит потерпілого для визна-

чення способу його вчинення тощо. У розслідуванні кримінальних правопорушень, пов'язаних із використанням інтернет-банкінгу, наявні обов'язкові процесуальні дії для забезпечення належної доказової бази. ***Висновки.*** Встановлено, що початковий етап акумулює процесуальні дії, необхідні для максимального збору доказової інформації на початку кримінального провадження. Визначено криміналістичні версії, які висуваються на початковому етапі розслідування кримінальних правопорушень з використанням інтернет-банкінгу: кримінальне правопорушення, пов'язане з використанням інтернет-банкінгу, вчинене з метою отримання матеріальної вигоди «хакером» або співробітником певної установи, яка володіє навичками роботи з комп'ютерною технікою, чи з метою заволодіння інформацією з обмеженим доступом особою, що має вільний доступ до визначеної комп'ютерної техніки. З'ясовано, що під час розслідування досліджуваної категорії протиправних діянь потрібно максимально забезпечити збереження інформації, яка перебуває на флеш-накопичувачах, жорстких дисках, кеш-пам'яті відповідного пристрою, в хмарних сховищах тощо.

Ключові слова: кримінальні правопорушення, інтернет-банкінг, кіберзлочинність, початковий етап розслідування, слідча (розшукова) дія, версія.

The article was submitted 16.10.2023
The article was revised 07.01.2023
The article was accepted 27.11.2023

UDC 343.9
DOI https://doi.org/10.32849/2663-5313/2023.5.17

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ALL-SOCIAL MEASURES TO PREVENT CRIMINAL OFFENCES COMMITTED IN THE DEFENCE INDUSTRY OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to formulate all-social measures to prevent criminal offences committed in the defence industry of Ukraine. *Results.* The article formulates, with due regard for the strategic goals of national security and specific features of the functioning of the military-industrial complex of Ukraine, promising general social measures for the prevention of criminal offences, which requires a different regulatory approach through recognition of the problem of criminal offences at the level of a destructive phenomenon among the current and predictable factors affecting its development, especially under martial law; formulation and implementation of algorithmic strategic tasks of criminological policy under martial law at the operational, tactical and strategic levels. It is established that the main areas of development of personnel policy in the defence industry of Ukraine are: the personnel management system (implementation of a unified personnel policy, making rational management decisions on determining the needs for personnel resources in the defence industry); personnel training (application of modern HR management approaches at all stages of professional development, from selection and training to dismissal); social and humanitarian support for personnel. The author emphasises that the effective fight against corruption in the defence industry of Ukraine, in addition to political will, requires legislative (a set of legal provisions regulating the mechanisms of corruption prevention, as well as liability for corruption offences) and executive support (formation of an effective system of criminal justice bodies, proper coordination of the formation and implementation of anti-corruption policy, implementation of preventive measures to prevent corruption and overcome it). Considering these circumstances, it is proposed to introduce a number of amendments and additions to the current legislation. ***Conclusions.*** The author concludes that an important task in the field of law-making is to create a new paradigm of legislation aimed at improving the functioning of the defence industry, and to form and develop criminological policy in this field.

Key words: defence industry, strategy, law, criminal offence, programme, concept, prevention.

1. Introduction

The Joint Stock Company "Ukrainian Defence Industry" was established on the basis of the State Concern "Ukroboronprom", the latter's activities were terminated as a result of reorganisation (2023). Moreover, in accordance with Part 1 of Article 12 of the Law of Ukraine "On National Security of Ukraine", the defence industry is part of the security and defence sector of Ukraine, whose main task is to provide the security and defence forces with new and modernised weapons, military and special equipment (Law of Ukraine "On National Security of Ukraine", 2018).

Nowadays, the terrorism of Ukraine's historical enemy leads to a constant increase in the military needs of the state, which the domestic defence industry, due to the fact that the phenomenon of criminal reality has emerged, is not able to properly meet. Along with the purely corruption-related factors that intensified after the revival of the defence industry (2014–2015), the situation was further complicated by a surge in misappropriation, embezzlement or seizure of property through abuse of office, collaboration, espionage and other subversive and reconnaissance activities in 2022–2023, both in Ukraine and at defence industry facilities.

The task of criminologists is to provide the political system and society in general with an effective strategy for influencing crime, a strategy that would allow for the most effi-

cient allocation of resources in countering such negative social manifestations. The goal is, first of all, to prevent mass violations of criminal law by influencing the processes of determination and causation of crime, and in case of violation, to apply coercive measures to the perpetrators in order to ensure their abandonment of criminal behaviour (Iepryntsev, 2023, p. 210).

2. General approaches to defining crime prevention and features of crime prevention

At present, the prevention of criminal offences is a range of very different in nature and objectives, but organically interrelated social measures, given that the Constitution of Ukraine entrusts the state with the task of ensuring the security of society, proper law and order, guaranteed protection of the rights and interests of citizens, state organisations and institutions, public formations, and all private structures (Constitution of Ukraine, 1996).

Obviously, the problem of crime prevention occupies a special place in the establishment of a legal state, which cannot be created without ensuring proactive efforts in this direction and achieving a slowdown in the growth of crime based on the priorities identified, gradual increase in efforts, improvement of legislation, organisation of means and methods of prevention, detection and investigation of criminal offences (Holovkin, 2011, p. 293).

O.M. Dzhuzha, P.P. Mykhailenko and O. H. Kulyk define crime prevention as a special type of social management designed to ensure the safety of protected values and consists in the development and implementation of special measures to identify and eliminate the determinants of crime, as well as to exert a preventive influence on persons prone to unlawful behaviour (Dzhuzha, Mykhailenko, Kulyk, 2011, p. 140).

Prevention of criminal offences in the defence industry undoubtedly has a complex and specific structure, which covers measures of various nature and content. The diverse nature of the relevant measures necessitates their classification, which, in turn, allows for the correct selection of methods, techniques, methods, means specific to each level, as well as the identification of entities responsible for their implementation.

I. H. Bohatyrov (2018) and A. M. Babenko (2014) propose to define general social prevention as a social reaction of the state and society to crime, the preventive potential of which involves counteracting negative phenomena and processes that contribute to crime and stimulate law-abiding behaviour of the country's population. General social prevention includes a set of political, socio-economic, cultural and educational measures.

According to V.V. Holina, the main goal of this preventive trend is to overcome or limit criminogenically dangerous contradictions in society, gradually eradicate negative phenomena created by political, economic, ideological and other factors of criminal potential in society (economic and political crises, property stratification of the population, unemployment, delayed wages, decline in morality, prostitution, drug addiction, alcoholism, homelessness, etc.) (Holina, 2011, p. 19). Based on these scientific approaches, V. V. Vasylevych reasonably concluded that general social crime prevention is a positive effect of a well-thought-out social policy, which is implemented not only and not so much for the purpose of direct crime prevention, but is aimed primarily at solving the general economic and social tasks of the state (Dzhuzha, Vasylevych, Hida, 2011, p. 20).

Therefore, V.P. Khomenko also argues that general social prevention is associated with virtually all socio-economic transformations in our country at the present stage of development. Reform of the economic mechanism, formation of market relations as the basis for an efficient economy, ensuring social and legal protection are prerequisites for the elimination, limitation, neutralisation of criminogenic factors that serve as the basis for committing criminal offences (Khomenko, 2017). We should also agree with O.M. Lytvynov on the understanding of general social (state) measures as a set of socio-economic, legal, ideological, organisational, managerial, cultural and educational measures aimed at further development and improvement of social relations and elimination or neutralisation of the determinants of crime (Lytvynov, 2008, p. 114).

The objectively existing feature of security is its direct dependence on the totality of risks and criminogenic threats that cause danger (Nikitin, 2009, p. 153). A.O. Kaliaiev accurately emphasises that public policy on defence industry development should be based on the priority of creating a modern regulatory framework that could fully regulate its development. In addition, the need for a set of reforms within its management system is determined by the fact that the current level of strategic management is insufficient, and there is a need for a more rational combination of market mechanisms and state regulation. This implies the use of economic methods and the application of legal and administrative mechanisms. In addition, restructuring within the defence industry should also address certain needs of national security and defence, the existing economic situation of defence enterprises and organisations and the main conditions that facilitate their functioning, as well as the economic capabilities of the state (Kaliaiev, 2007, p. 173).

3. Legal and regulatory framework for the prevention of criminal offences committed in the defence industry of Ukraine

V. Moiseenko argues that the main efforts of the legislator should be focused on creating appropriate "rules" under which economic dividends from legal economic activity will exceed the benefits of going "underground". In other words, the emphasis in state regulation of economic relations should shift from repressive influence on violators of economic legislation to preventive influence (Moiseienko, 2021).

It should be reminded that on 23 March 2000, the Law of Ukraine "On state forecasting and development of economic and social development programmes of Ukraine" (2000) was adopted. The Law established a general procedure for the development, approval and implementation of forecasting and programme documents for economic and social development, as well as the rights and responsibilities of participants in state forecasting. However, this law did not directly regulate the development, approval and implementation of state targeted crime prevention programmes. Therefore, the third programme, entitled "Comprehensive Crime Prevention Programme for 2001–2005", was approved by a Presidential Decree. However, on 18 March 2004, the Law of Ukraine "On State Targeted Programmes" (2004) was adopted, which sets out the basic principles for the development, approval and implementation of state targeted programmes.

In accordance with the provisions of this Law, the fourth in a row, but structurally and substantively different from the previous ones, Comprehensive Programme for the Prevention of Offences for 2007–2009 was developed and approved, which provided for unclear "cascading" control over the implementation of this programme. Later, the Concept of the State Programme for the Prevention of Offences for the period up to 2015 was approved. Comparing the concepts of the previous Comprehensive Programmes for the Prevention of Offences (for example, for 2007–2009 and 2011–2015) it is evident that their policy prescriptions are very similar and sometimes repeat each other. And this is no accident, as the problems remain unresolved.

The current challenges and threats faced by society and the defence industry highlight the need to strengthen measures to prevent and combat corruption, coordinated and systematic anti-corruption activities in all areas, and consistent implementation of the principle of integrity for employees of all structures. O. Shostko emphasises that prevention measures should be a priority, but given the new challenges associated with establishing the facts of multi-billion-dollar embezzlement of the state budget, the priority is to implement the principle of inevitability of punishment for all persons guilty of corruption offences and return their illegally obtained income to the Ukrainian state (Shostko, 2014, p. 71). In this context, we should focus on the adoption of the Law of Ukraine on regulating lobbying activities as part of the de-oligarchisation action plan, which should meet European standards and be the result of an open and inclusive discussion with a wide range of stakeholders (including civil society organisations).

In the context of the fact that building integrity, upholding the rule of law and good governance are essential elements for the effective prevention and detection of corruption, we recommend further consideration of the proposals for amendments to:

The Law of Ukraine "On Prevention of Corruption" in relation to*:*

– Supplementing the Law with a new Article 19-1, which specifies the public authorities where integrity codes should be implemented, their main provisions, grounds, procedure and consequences of conducting an integrity audit, etc;

– Supplementing the content of the Law with a new Article 53-10 "Monetary Incentives for Whistleblowers", as follows: "A whistleblower who has reported a corruption offence and whose information has been confirmed in the course of the inspection is entitled to a monetary incentive";

The Law of Ukraine "On Defence Procurement" in terms of:

– Reducing the level of corruption risks and promoting the elimination of the potential corruption in defence procurement, namely, *supplementing Article 22, part 1, para. 2 as follows: "After the conclusion of a defence procurement contract, the state customer shall, within a period not exceeding three days, send information to the authorised body for combating corruption and other criminal offences";*

The Criminal Code of Ukraine with regard to*:*

– Supplementing Article 191, part 2, with the words *"for oneself or another individual or legal entity",* in order to bring the law and court practice under Articles 191 and 364 of the Criminal Code of Ukraine in line with Articles 17 and 19 of the UN Convention against Corruption, and to stop qualifying the misappropriation of another's property in favour of third parties as abuse of office;

To the Cabinet of Ministers of Ukraine:

– Develop and implement a single unified system for collecting, summarising and visualising statistical information on the results of the activities of specially authorised preven-

tion agencies and other state bodies in detecting, investigating and reviewing cases (proceedings) initiated on the basis of criminal offences in the defence industry;

– Consider the option of using polygraphs in the defence industry, with the following areas of use being provided for:

1) testing persons during internal investigations into corruption or corruption-related offences;

2) when deciding on the appointment of certain categories of employees (managers, deputy managers);

3) in the course of consideration of applications/reports on corruption or corruption-related offences;

– Instruct the relevant state authorities to collect and compile information on the land used by the defence industry, ensure the inventory of such land plots, especially those whose registration procedure is still incomplete and whose information is not entered in the State Land Cadastre;

The National Agency for the Prevention of Corruption:

– Develop and implement a procedure for monitoring compliance by persons who have ceased activities related to the performance of state and local government functions with the restrictions on employment and business transactions with private law entities or individual entrepreneurs during the year;

– Determine criteria for improving the mechanism for internal control and prevention of corruption in law enforcement bodies and the prosecutor's office;

– Develop and approve unified criteria and standards of integrity for vetting employees of all law enforcement bodies and prosecutor's offices, as well as for their ongoing monitoring;

– Continue measures to monitor the implementation of the State Anti-Corruption Programme for 2023–2025 with the involvement of relevant civil society institutions, in particular through a special interactive information system that will allow anyone to monitor and coordinate the implementation of this Programme online.

Therefore, the degree of guarantee of criminological security in the defence industry is determined, first, by the effectiveness of legislation, and second, by the quality of its implementation. It should be emphasised once again that prevention of such criminal offences is one of the tasks of public policy on strengthening the country's defence capability, and therefore raising the level of prevention is a national priority.

Considering the strategic goals of national security and the specific features of the defence industry, the following are prioritised as general social measures:

– A project to create enterprises, institutions and organisations engaged in the production of combat aircraft (helicopters), air/ballistic missile and aerospace defence systems, high-precision hypersonic aircraft, as well as radio components and microelectronics;

– Modernisation of premises, upgrading of technologies, creation of appropriate achievements of the fifth and sixth technological modes, ensuring compliance of the line of systems, subsystems of weapons and military equipment produced by enterprises and achieving a superior share of the domestic order portfolio over the foreign one;

– Restoration of the defence industry enterprises that were lost as a result of hostilities, which produced weapons, military and special equipment and/or participated in cooperative relations with other enterprises;

– Improvement of the parameters of economic activity of defence enterprises (research, production, labour productivity, personnel, etc;)

– Organisation of defence industry activities in accordance with the principles defined in ISO standards, which are the most adapted mechanisms for managing material production in market conditions in terms of quality;

– Planning, control of and support for business activities using global practices, including continuous operational improvement technologies, product life cycle information support systems, lean manufacturing and others;

– Improving vocational training, recruitment and provision of skilled labour.

To sum up, we consider it appropriate to improve *the Strategy for the Development of the Defence-Industrial Complex of Ukraine* (Decree of the President of Ukraine On the decision of the National Security and Defence Council of Ukraine dated June 18, 2021 "On the Strategy for the Development of the Defence-Industrial Complex of Ukraine", 2021) by enshrining: a) recognition of the problem of criminal offences at the level of a destructive phenomenon among the current and projected factors affecting the development of the defence industry; b) tasks of criminological policy; c) step-by-step algorithms for performing the tasks at three classification levels:

I. *Operational*:

– Adopt *the Concept of the State Programme for Combating Crime in the Defence and Industrial Complex* and implement it at the law enforcement, general social, specialised criminological, organisational and managerial levels;

– Establish a Central Coordination Centre for forecasting, collecting information on legislative and other measures related to the activities of the defence industry, analyse their effectiveness and eliminate shortcomings;

– Introduce a unified register of records and statistical reporting on criminal offences committed in the defence industry;

II. *Tactical:*

– Ensure integration of criminological policy in the defence and security sector in the process of its interaction with criminal law, criminal procedure and criminal executive policies;

– Improve the mechanism of bringing to criminal responsibility and preventing recurrence in the future;

– Introduce scientific achievements and best domestic and foreign experience into the theory and practice of criminology;

– Improve scientific, educational and methodological support for the activities of bodies and institutions of the criminal justice system;

III. *Strategic*:

– Streamline the political system of society, elect and appoint an independent and functional supervisory board on a transparent basis, neutralise any harmful government influence on decision-making by defence officials, appoint directors of state-owned enterprises/joint stock companies on a competitive basis, and regulate the system of state procurement and taxation;

– Ensure at the state level the effective activity of scientific and educational institutions to train specialists in the field of criminological practice to address the problems of neutralising criminogenic factors in the defence industry;

– Consolidate the relevant provisions of a huge array of sectoral regulations in the defence industry, as well as eliminate fragmentation of legal regulation, inconsistency of regulatory material and logical and legal errors in the content of legislative provisions;

– Introduce mandatory criminological expertise of legal regulations;

– Clarity, consistency and intensification of anti-corruption policy, identification and elimination of motivation for officials to commit theft;

– Develop and implement a multisectoral system of public control over the activities of executive authorities in the field of security and defence;

– Comprehensive state response to the circumstances and factors contributing to crime.

4. Conclusions

Thus, an important task in the field of lawmaking is to create a new paradigm of legislation aimed at improving the functioning of the defence industry, and to form and develop criminological policy in this field.

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ЗАГАЛЬНОСОЦІАЛЬНІ ЗАХОДИ ЗАПОБІГАННЯ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ, ЩО ВЧИНЯЮТЬСЯ В ОБОРОННО-ПРОМИСЛОВОМУ КОМПЛЕКСІ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є сформувати загальносоціальні заходи запобігання кримінальним правопорушенням, що вчиняються в оборонно-промисловому комплексі України. *Результати.* У статті, з урахуванням стратегічних цілей національної безпеки та особливостей функціонування оборонно-промислового комплексу України, сформовано перспективні загальносоціальні заходи запобігання кримінальним правопорушенням, що вимагає іншого нормативного підходу через визнання проблеми кримінальних правопорушень на рівні деструктивного феномену серед умов поточних та прогнозованих чинників, які впливають на його розвиток, особливо в умовах воєнного стану; постановку та виконання алгоритмізованих стратегічних задач кримінологічної політики в умовах воєнного стану на оперативному, тактичному та стратегічному рівнях. Встановлено, що основними напрямами розвитку кадрової політики в оборонно-промисловому комплексі України є: система кадрового менеджменту (реалізація єдиної кадрової політики, прийняття раціональних управлінських рішень щодо визначення потреб у кадрових ресурсах оборонної промисловості); підготовка кадрів (застосування сучасних підходів кадрового менеджменту на всіх етапах професійного росту, починаючи від відбору, підготовки і, завершуючи звільненням); соціальне та гуманітарне забезпечення персоналу. Акцентовано увагу на тому, що ефективна боротьба проти корупції в оборонно-промисловому комплексі України, крім наявності політичної волі, вимагає законодавчого (комплекс нормативно-правових приписів, що регулюють механізми запобігання корупції, а також відповідальність за вчинення корупційних порушень) та виконавчого забезпечення (формування дієвої системи органів кримінальної юстиції, належне координування формування та реалізація антикорупційної політики, здійснення превентивних заходів запобігання корупції, а також її подолання). З огляду на такі обставини пропонується внести низку змін та доповнень до чинного законодавства. ***Висновки.*** Зроблено висновок, що важливим завданням у сфері законотворчої діяльності залишається робота зі створення нової парадигми законодавства, спрямованого на покращення функціонування оборонно-промислового комплексу, формування та розвиток кримінологічної політики в цій сфері.

Ключові слова: оборонно-промисловий комплекс, стратегія, закон, кримінальне правопорушення, програма, концепція, запобігання.

The article was submitted 17.10.2023
The article was revised 07.11.2023
The article was accepted 28.11.2023