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SPECIFIC FEATURES OF ESTABLISHING THE TYPE AND AMOUNT OF DAMAGE IN CRIMINAL OFFENCES RELATED TO ILLEGAL LAND ACQUISITION

Abstract. ***Purpose.*** The purpose of the article is to study the amount of damage caused by criminal offences related to illegal land acquisition, which requires a comprehensive and systematic study of a wide range of issues, and develop reasoned proposals and recommendations for reducing the amount of damage. ***Results.*** The article focuses on establishing the type and amount of damage caused by a criminal offence related to illegal land acquisition. The author emphasises that land has a special value which distinguishes it from any material object. It is limited in space and is the basis for the deployment of productive forces. In the course of various political changes, land has been a central object – it was taken away and given away, redistributed and granted. The fundamental task of land reform is to radically change the attitude towards land as the main national wealth. In the context of the transformation of land relations, which has led to an increase in the number of land owners and land users, a trend towards a rapid increase in the number of offences in the field of land relations has emerged, and the issue of effective state control over the use and protection of land is becoming increasingly important. ***Conclusions.*** It is established that criminal offences in criminal proceedings related to illegal land acquisition on the basis of the object of encroachment are grouped as follows: those which violate the right of actual use without obtaining the official status of a land plot owner; criminal offences aimed at the illegal acquisition of legal rights to land; environmental criminal offences aimed at illegal land acquisition. It is emphasized that the establishment of the nature of the damage in the course of proving in criminal proceedings related to the illegal land acquisition is individual in scope. The negative consequences of offences related to illegal land acquisition are of a tangible and intangible nature. When establishing the amount of damage caused by criminal offences in criminal proceedings related to the illegal land acquisition, it is necessary to consider the nature of the damage. Depending on the latter, the method of establishing the amount of damage is determined. The method of establishing the amount of damage is differentiated depending on the criminal offence committed.

Key words: damage, criminal offence, illegal acquisition, land, ecology, land relations, environment.

1. Introduction.

It should be noted that the problems of establishing the type and amount of damage caused by a criminal offence related to illegal land acquisition have not been specifically studied, and the scientific works known today have studied these issues in a fragmentary manner or within the framework of broader issues. No comprehensive approach has been developed to clarify this issue, which leads to an objective need for scientific research in this area.

Therefore, the need to study the amount of damage caused by criminal offences related to illegal land acquisition requires a comprehensive and systematic study of a wide range of issues, and to develop reasoned proposals and recommendations for reducing the amount of damage and this determines the relevance of the topic, its theoretical and practical significance.

In the theory of criminal procedure, a number of theorists have focused on the issues of establishing the nature and extent of damage caused by a criminal offence in proceedings related to illegal land acquisition, in particular: A.P. Bohdanov, I.A. Horodetska, O.O. Dudorov, Y.O. Diakin, V.M. Kozhurina, O.S. Litoshenko, R.O. Movchan, H.V. Muliar, V.O. Oderii,

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O.S. Khovpun, Yu.Ya. Chumak, A.M. Shulha, H.P. Shust, and others.

It should be noted that the focus of these scholars' research was mostly on material damage caused by unauthorised land acquisition, and the procedure for determining the nature and type of damage remains controversial to this day. To date, the nature of damage and the procedure for its establishment have not been defined at the theoretical level. This causes difficulties for practitioners in proving criminal offences related to the illegal acquisition of land plots.

2. Classification of criminal offences related to illegal land acquisition

According to the Constitution of Ukraine, Article 14 states that land is the main national asset under special protection of the State. This approach is a historical result of recognising the role and place of land resources in the economic development of any State (Constitution of Ukraine, 1996).

In particular, the idea of land as a territory of residence with certain natural resources has changed significantly in modern society. In the life of any society, land is of utmost importance, as it is a natural resource, an object of labour, a means of production, an element of market relations, and performs a number of other functions. If we consider land as a natural object protected by law and a resource that exists independently of human will, it has social value and performs an environmental and resource function; a social function as a place of human life; political and economic functions as a territory of the State, as well as an object of economic activity and an element of market relations.

The analysis of the state of affairs in national legislation enables to study the structure of criminal offences entailing criminal liability for illegal land acquisition and to propose their hierarchical classification based on the subject matter of the encroachment (Horodetska, 2010, pp. 135-137).

As a result of this hierarchical classification, criminal offences related to the illegal acquisition of land can be grouped as follows: those that violate the right of actual use without obtaining the official status of land owner; those aimed at the illegal acquisition of legal rights to land; and environmental criminal offences aimed at the illegal acquisition of land.

The first group of criminal offences that violate the right of actual use without obtaining the official status of a land plot owner includes an unauthorised land grab and unauthorised construction (Article 197-1 of the Criminal Code of Ukraine) and arbitrariness (Article 356 of the Criminal Code of Ukraine). The specificity of such criminal offences is that the object of encroachment is the land plot itself, not the rights to it. The subject matter of proving is the fact of land acquisition, determination of its area (Horodetska, 2010, pp. 139-140; Criminal Code of Ukraine: Law of Ukraine, 2001).

The second group consists of criminal offences aimed at the illegal obtaining of legal rights to land. This group includes fraud, abuse of power or official position, abuse of authority by persons providing public services, forgery of documents, seals, stamps and forms, their sale, use of forged documents, and official forgery. The specific feature of this group of criminal proceedings is that they involve the illegal transfer of legal rights to a land plot.

The third group includes environmental criminal offences aimed at the illegal land acquisition. These include illegal seizure of soil cover and illegal acquisition of water fund lands on a particularly large scale. This group is characterised by actions aimed at seizing soil cover or water resources without a specialised permit. The object of encroachment is the soil cover (Muliar, Khovpun, Shust, 2019, pp. 269-270).

Establishing the nature and amount of damage caused by a criminal offence related to the illegal land acquisition is one of the most difficult issues in the investigation of criminal proceedings, since the proof of certain elements of a criminal offence depends on the correct determination of the amount of material damage.

With regard to the nature of the damage caused by criminal offences related to the illegal land acquisition, it should be noted that it can be quantitative and qualitative. The quantitative measure of damage means the scale, size of the violation of rights or interests protected by law. On the other hand, the qualitative aspect of such harm determines the seriousness of the consequences for individuals, State or public interests, or the interests of legal entities (Bohdanov, 2020, pp. 128-129).

Ya.O. Diakin divides damage into tangible damage, which is reflected in monetary terms, and intangible damage, which relates to the victim's internal sphere and encroaches on intangible goods that belong to a person by birth or by virtue of law or violates his or her personal non-property rights. The specificity of intangible damage is that it does not have a mathematical system of measurement, and therefore the question of its materiality is decided by law enforcement agencies in each case based on an analysis of all the circumstances established in the criminal proceedings. It can be of an organisational or environmental nature. Organisational damage includes disruption of the activities of a separate part of the State or public apparatus, the work of a particular enterprise, institution or organisation, sus-

pension of production processes, and creation of significant obstacles to their work. Environmental damage may include significant environmental pollution, massive loss of flora and fauna (Diakin, 2019, pp. 211-212).

According to R.O. Movchan, the damage caused to the owner of a land plot or land user may include the components such as the use of land plots for other purposes than their intended purpose; removal of soil cover without special permission; losses associated with the destruction or damage to green spaces or destruction of buildings or structures located on an unauthorisedly occupied land plot; expenses that a person must incur to restore his or her violated right to a land plot or the quality of the land plot as an object of ownership or use (Movchan, 2020, pp. 162-163).

Environmental criminal offences aimed at the illegal land acquisition result in tangible and intangible damage. As an example of intangible damage in the form of creating a danger to human life, health or the environment, this is the illegal seizure of soil cover.

Material damage in the course of committing the illegal seizure of soil cover may result in the death of people, mass death of flora or fauna, or other grave consequences. Other grave consequences should be understood as causing damage characterised by increased danger to all living things, destruction or significant damage to extensive natural areas (protected tracts, forest areas, etc.), loss of unique and rare natural objects listed in the Red Data Book of Ukraine, mass deaths of people, mass deaths of animals over a large area, etc. The analysis of law application practice shows that damage in the form of death of people, mass death of flora or fauna is not inherent in this type of criminal offence (Shulha, 2023, pp. 35-36).

3. Specific features of establishing the amount of damage caused by criminal offences related to the illegal land acquisition

Establishing the amount of damage caused by criminal offences aimed at illegal acquisition of legal rights to land has its own specifics, which is due to the fact that the amount of damage is a qualifying feature rather than a element of the objective side of the criminal offence. During the investigation of land fraud, material damage is of secondary importance. Intent is of primary importance. The absence of intent to commit fraudulent acts with a land plot is grounds for an acquittal. The amount of damage caused is a qualifying feature.

Establishing the amount of damage caused by fraud committed with land plots does not require additional expertise. As a rule, in the case of a criminal offence of this category, the funds that are the subject of the offence are transferred to the suspect, accused or victim against a receipt written by the person who received such funds. Therefore, the amount of damage will be equivalent to the amount specified in the receipt. It is confirmed by the testimony of victims and witnesses. The receipt is attached to the criminal proceedings (Diakin, 2019, pp. 196-198).

In this respect, the amount of damage in criminal proceedings related to abuse of power or official position, as well as abuse of authority by persons providing public services committed with the aim of illegal acquisition of land, is determined on the basis of the monetary value of the land plot. The results of the monetary valuation of the land plot that was the subject of the criminal offence are contained in the technical documentation of the land plot and are used as a basis for establishing the amount of damage. In order to determine the compliance of the completed valuation of a land plot or rights to it with the requirements of regulations on property valuation, methodology, methods, valuation procedures, a land valuation examination is carried out, which is evidence of material damage (Movchan, Dudorov, 2020, pp. 125-126).

It should be noted that in the absence of complete information necessary to establish the value of a land plot, it is possible to conduct a land technical expertise, which is carried out by comparing similar offers of land plots as of the year in which the criminal offence was committed and determining the likely market value of the land plot and its legal status. This practice is quite controversial, but it does take place.

Therefore, the amount of damage caused by criminal offences aimed at the illegal acquisition of legal rights to land is determined on the basis of attaching to the criminal proceedings: receipts or other supporting documents on the transfer of funds; results of monetary valuation of the land plot; conclusion of land valuation and appraisal (Oderii, 2015, pp. 224-226).

The amount of pecuniary and non-pecuniary damage in the course of investigation of environmental criminal offences aimed at illegal land acquisition is determined by conducting unscheduled inspections, construction and technical expertise, which allows to establish the amount of extracted mixture from the land plot and the amount of damage caused. The amount of tangible and intangible damage in the investigation of environmental criminal offences aimed at illegal land acquisition is determined by conducting unscheduled inspections, construction and technical expertise, enabling the volume of the extracted mixture from the land plot and the amount of damage caused to be determined. A problematic issue that arises when establishing the amount of damage caused by a criminal offence in proceedings related to

illegal land acquisition is the absence of a procedure for unscheduled inspections in the CPC of Ukraine (Shulha, 2022, pp. 169-170).

4. Conclusions

A danger to human life is the creation of a real possibility of the death of at least one person. Health hazard is the impact of environmental factors that pose a real threat to health, lead to disability or even pose a real threat to the life and health of future generations. Environmental hazard is the threat of the following consequences: death of animals, plants, forest plantations; land degradation; reduction of land cover, which affects the supply of agricultural products to the population; climate change and other changes in the biological, chemical and physical composition of the soil, etc.

It is established that criminal offences in criminal proceedings related to illegal land acquisition on the basis of the object of encroachment are grouped as follows: those which violate the right of actual use without obtaining the official status of a land plot owner; criminal offences aimed at the illegal acquisition of legal rights to land; environmental criminal offences aimed at illegal land acquisition.

Thus, the establishment of the nature of the damage in the course of proving in criminal proceedings related to the illegal land acquisition is individual in scope. The negative consequences of offences related to illegal land acquisition are of a tangible and intangible nature. When establishing the amount of damage caused by criminal offences in criminal proceedings related to the illegal land acquisition, it is necessary to consider the nature of the damage. Depending on the latter, the method of establishing the amount of damage is determined. The method of establishing the amount of damage is differentiated depending on the criminal offence committed.

When revealing the content of socially dangerous consequences of unauthorised acquisition of a land plot, it is necessary to consider the rules under which current legislation provides for the procedure for determining the amount of damage for unauthorised acquisition of a land plot.

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ОСОБЛИВОСТІ ВСТАНОВЛЕННЯ ВИДУ І РОЗМІРУ ШКОДИ У КРИМІНАЛЬНИХ ПРАВОПОРУШЕННЯХ, ПОВ'ЯЗАНИХ ІЗ НЕЗАКОННИМ ЗАВОЛОДІННЯМ ЗЕМЛЕЮ

Анотація. ***Метою*** статті є дослідження розміру шкоди завданими кримінальними правопорушенням, пов'язаним із незаконним заволодінням землею потребує комплексного і системного дослідження широкого кола питань, розробки аргументованих пропозицій та рекомендацій щодо зменшення розміру шкоди. ***Результати.*** У статті наголошується на встановленні виду і розміру шкоди, завданої кримінальним правопорушенням, пов'язаним із незаконним заволодінням землею. Наголошено, що земля має особливу цінність, що відрізняє її від будь-якого матеріального об'єкта. Вона обмежена в просторі і є базисом для розміщення продуктивних сил. Упродовж різноманітних політичних змін земля виступала центральним об'єктом – її відбирали та дарували, перерозподіляли і наділяли. Фундаментальним завданням земельної реформи є радикальна зміна ставлення до землі як основного національного багатства. В умовах трансформації земельних відносин, що призвели до збільшення кількості власників землі та землекористувачів, намітилася тенденція до стрімкого зростання кількості правопорушень у галузі земельних відносин, тому особливої уваги набуває питання ефективного здійснення державного контролю за використанням та охороною земель. ***Висновки.*** З'ясовано, що кримінальні правопорушення у кримінальних провадженнях, пов'язаних із незаконним заволодінням землею за ознакою предмету посягання, поділяються на три групи, а саме: ті, які порушують право фактичного користування без одержання офіційного статусу власника земельної ділянки; кримінальні правопорушення, метою яких є незаконне набуття юридичних прав на землю; кримінальні правопорушення екологічної спрямованості, метою яких є незаконне заволодіння землею. Наголошено, що встановлення характеру шкоди під час доказування у кримінальних провадженнях, пов'язаних із незаконним заволодінням землею, носить індивідуальний характер. Негативні наслідки від правопорушень, пов'язаних із незаконним заволодінням землею, носять матеріальний та нематеріальний характер шкоди. При встановленні розміру шкоди, заподіяної кримінальними правопорушеннями, у кримінальних провадженнях, пов'язаних із незаконним заволодінням землею, необхідно враховувати характер шкоди.

Ключові слова: шкода, кримінальне правопорушення, незаконне заволодіння, земля, екологія, земельні відносини, довкілля.

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FUNCTIONS OF THE VIRTUAL ASSETS MARKET

Abstract. ***Purpose.*** The objective of the present study is to delineate the functions of the virtual asset market to enhance the efficiency of developing measures for improving the legal framework for its functioning. ***Research methods***. The purpose was achieved by using a set of methods of scientific knowledge: the formal logical approach was employed to examine the fundamental concepts and evaluate the legal instrument governing the operation of the virtual asset market. The system-structural method was applied to identify and analyze specific characteristics of the virtual asset market with a particular focus on defining its functions. The formal legal method was used to develop pertinent proposals for incorporation into legislative and enforcement activities. ***Results***. The author examines the principal doctrinal approaches to specifying market functions and analyses the general and specific functions of various markets. ***Conclusions***. Based on the study, the author proposes to divide the functions of the virtual asset market into general and specific ones. The general functions, which are inherent in all markets but manifested in the virtual asset market, include: regulatory, stimulating, distributive, rehabilitative, allocative, informational, integrating, mediating, and pricing. Using a synthesis of the scientific literature, the author presumes that the specific functions of the virtual asset market are as follows: ensuring the issuance, sale of virtual assets and the provision of intermediary services related to virtual assets; ensuring the storage or management of virtual assets or virtual asset keys; the function of exchange and transfer of virtual assets; and the investment function. Furthermore, the author proposes to include the function of redistribution of property through transactions with virtual assets among the special functions of the virtual asset market. The study has led to the conclusion that the fundamental special function of the virtual asset market can be generalized as ensuring the turnover of virtual assets. In order to streamline and formalize the functions of the virtual asset market, the author proposes to consolidate the functions of the virtual asset market within the concept or strategy for the development of the virtual asset market. In order to ensure that the virtual asset market fulfils each of its specific functions, it is necessary to formulate an appropriate action plan. The author states that further scientific research should be aimed at identifying strategies enhancing the regulatory framework governing the operation of the virtual asset market.

Key words: virtual assets, cryptoassets, virtual asset market, market functions, legal regulation of the market.

1. Introduction

Legal relations in the turnover of virtual assets constitute the market, the efficiency of which depends on determining the completeness of the market's function performance. While studying the functions of the credit market, H. V. Myskiv noted that they contribute to the consolidation of the market as an integral phenomenon and the separation of the market from other economic phenomena into an independent category (Myskiv, 2014, p. 43). The above mentioned remains pertinent to the virtual asset market. S.O. Hrytsai posited that using all macroeconomic variables would facilitate the proliferation of cryptocurrencies in Ukraine, thereby precipitating a period of accelerated growth and advancement within the digital economy. Regrettably, the regulatory apparatus governing the crypto-economy has yet to be fully developed (Hrytsai, 2023, pp. 198-199). R.V. Lukianchuk observed that the digital industry, within the context of the real force majeure regime, continues to fulfill contracts, export services, provide foreign exchange earnings, and support the national digital economy. In this context, one of the priorities for public policy is to create a legal framework for crypto companies to operate legally in Ukraine and do business (Lukianchuk, 2023, p. 114-115). From the above, it can be seen that when developing

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statutory frameworks, it is necessary to take into account the current economic component of the market in which the following market functions play an important role.

The legislative framework governing the regulation of the virtual assets market in Ukraine is currently undergoing development. The Law of Ukraine "On Virtual Assets" was adopted on 17 February 2022. However, its implementation is contingent upon the adoption of the Law of Ukraine on Amendments to the Tax Code of Ukraine concerning the particulars of taxation of transactions with virtual assets. As yet, no such law has been adopted. In the meantime, neither the extant version of the Law of Ukraine "On Virtual Assets" nor any other regulatory instrument contains any fixed market functions. Consequently, the legal framework for regulating relations in the virtual assets market requires improvement.

Certain legal issues of the virtual asset market have been the subject of research by many representatives of legal science. In particular, these issues are highlighted in the studies by T.S. Hudima, B.V. Derevyanko, A.A. Kud, A.S. Ovcharenko, V.A. Ustymenko, and others. Some aspects of the functions of virtual assets ecosystem have been covered by experts of the Financial Stability Board (The Financial Stability Board, 2022). However, science has not formed a unified understanding of the essence and list of functions of the virtual asset market, which undoubtedly affects the state of legal support for the market's functioning.

The foregoing indicates the relevance of the issue and the expediency of its elaboration.

The **purpose of the article** is to specify the functions of the virtual asset market, which will have a positive impact on the efficiency of developing measures to improve the legal framework for its functioning.

Methods. The formal logical method was used to study the basic concepts and analyze the legal act regulating the functioning of the virtual asset market. The system-structural method was used to identify and analyze certain characteristics of the virtual asset market, in particular, to specify its functions. The formal legal method was applied to formulate relevant proposals intended for lawmaking and law enforcement activities.

2. Specifying the general functions of markets in economic theory

The word "function" is understood as the purpose, role of something (Dictionary of the Ukrainian language, 1979, p. 653). According to one definition, the "function of the market" is a list of tasks it performs and goals it achieves (Okhrimenko, Paska, 2015, p. 6).

Many representatives of economic science have summarized the functions of the market. One of the approaches developed by economic theory states that the market functions include the following: regulation (the market regulates all economic processes); incentives (the market encourages producers of goods and services to reduce costs, improve the quality and consumer properties of goods); distribution (producers' and consumers' incomes are differentiated through prices); rehabilitation (the market cleanses the economic environment of uncompetitive businesses and supports the most efficient ones); allocative (the market ensures the production of the optimal combination of goods and services using the most efficient combination of resources); informative (the market informs participants through prices what is profitable to buy and what is not); integration (the market unites economic actors into one whole, contributing to the formation of a single economic space) (Bazylevych, 2007, p. 195).

Husarina N.V., Hratsiotova G.O., Bradul K.S. adhere to a similar approach, defining the main functions of the market as regulatory; distribution; information; integration and stimulating (Husarina, Hratsiotova, Bradul, 2023, p. 25).

V. Horlachuk identifies the main functions as regulatory, stimulating, economic selection, integration, distribution, allocation, information, intermediary, and sanation. V. Horlachuk adds only one function to the above mentioned – the function of economic selection, but renders it through the ability of the market to get rid of economically weak, unviable enterprises through competition (Horlachuk, 2010, p. 172-173), and therefore, duplicates the function of sanation.

O.Y. Shchehlova, in addition to the already mentioned informational and regulatory functions, also distinguishes the intermediary function (the market acts as an intermediary between the producer and the consumer); and the pricing function (the price is formed in the market based on the interaction of supply and demand) (Shchehlova, 2011, p. 150).

From the above, we can draw an interim conclusion that the common functions of all markets include the following: regulatory, incentive, distribution, rehabilitation, allocation, information, integration intermediation, and pricing. It seems that each of the above functions inherent in all markets will be exercised in the virtual asset market.

3. Special functions of markets

Researchers who have analyzed the functions of specific markets point out that such markets perform not only general functions but

also certain special functions. Thus, while studying the functions of the financial services market, M.V. Dubyna and D.V. Bondarenko refer to the main ones: transformational, servicing, market, social, information and analytical, risk minimization, and regulatory (Dubyna, Bondarenko, 2016, p. 167). It is also believed that the financial market performs the functions of pricing, liquidity, and cost savings (Yukhymenko, 2010, p. 415). S. Moshenskiy also proposed to add the following to the above-mentioned functions: the provision of risk management methods; provision of reliable information to market participants; as well as the function of solving the problem of incentives (Moshenskyi, 2008, p. 34).

Another market that can be given as an example is the insurance market. Yu. M. Klapkiv classified insurance market functions as cognitive, interpretive, prognostic, heuristic, communicative, applied, ideological, and educational as general. At the same time, he also pointed out special functions that reveal the peculiarities of the purpose of the insurance services market, which are due to their focus on the development of insurance as a special socio-economic type of economic activity that has its own nature and development trends, in particular: risk (compensation), accumulative (savings), warning (preventive), investment, control (Klapkiv, 2017, p. 62-63).

Y.M. Pavlyuchenko, in turn, summarized the functions of the agricultural market and proposed their division into basic (social, market price discovery, stimulating, selective, coordination and management, information) and additional (pricing, technical and economic, sanitation, control, distribution, allocation, communication, agricultural ecologization, etc.) (Pavliuchenko, 2019).

While studying the legal regulation of securities circulation, O. Yavorska noted that the securities market performs a set of functions: 1) accumulates temporarily free cash resources and directs them to the development of the sectors of the economy in need; 2) services the public debt; 3) redistribution of property through transactions is carried out in the securities market; 4) normal functioning of the securities market ensures stable financial profit for the securities holder and financial intermediaries through speculative transactions (Yavorska, 2015, p. 28).

4. The virtual asset ecosystem and its functions

Scientists identify a specific set of functions in each market due to the peculiarities of its functioning, and therefore it is necessary to move directly to the specifics of the turnover of virtual assets.

Indeed, virtual assets are a relatively recent phenomenon. There is no consensus among scholars and national regulators even on the functions of virtual assets. For example, J. Abate, N. Branzoli, and R. Gallo noted: "Two possible classification criteria that have caused confusion among authorities around the world relate to the intended and the actual economic function of crypto-assets. The former relates to crypto-asset economic function foreseen by its issuer/distributor, such as whether the crypto-asset should be used as a means of payment, an investment asset, or to grant holders access to a service or product or other. The latter relates to the most common use of the crypto-asset by its holders. A well-known example of crypto-asset for which the intended and actual economic function differ is Bitcoin, which has been created to provide a means of payment but it is mainly used as a speculative asset. Tax authorities have often treated Bitcoin as a currency, thus following the intended economic function, while financial authorities have often considered it broadly similar to an investment asset, thus following the actual economic function" (Abate, Branzoli, Gallo, 2023, p. 357).

Financial Stability Board experts noted that the virtual asset ecosystem has a wide range of functions and activities, many of which resemble those of the traditional financial system. These researchers identify certain functions of the virtual asset ecosystem:

First, "Creation, issuance, distribution, redemption and underlying infrastructure". This function is exercised in the following activities: creating, issuing, and redeeming crypto-assets, distribution, underwriting, placement, market-making, marketing and sales, operating infrastructure and validating transactions;

Secondly, the virtual asset ecosystem performs the function of " Wallets and custody", which is exercised in the provision of custodial (hosted) wallet and custody services, provision of non-custodial (unhosted) wallets;

Thirdly, the ecosystem performs the function of "Transfer and transactions", which is exercised in the provision of payment for/of goods, services, gifts and remittances, exchange between crypto-assets or against fiat currencies, clearing and settlement;

Finally, fourthly, the virtual asset ecosystem performs the function of "Investment, leverage and risk management". This is exercised in the provision to borrow/purchase other crypto-assets, trading/borrowing/lending of crypto-assets, insurance, direct/outright exposures to crypto-assets, synthetic/derivative exposures to crypto-assets [Financial Stability Board, 2022, p. 4].

It should be added that the study defines the "crypto-asset ecosystem" as "the entire ecosystem that encompasses all crypto-as-

set activities, market and participants", while the "crypto-asset market" is defined as "any place or system that provides buyers and sellers the means to trade crypto-assets and the associated instruments, including lending, structured investment products, and derivatives" [Financial Stability Board, 2022, p. 71]. According to provisions of Ukrainian law, which state that the virtual asset market is a set of virtual asset market participants and legal relations between them regarding the turnover of virtual assets (clause 10, part 1, article 1 of the Law of Ukraine "On Virtual Assets"), it can be concluded that the understanding of the concept of "virtual asset market" in Ukrainian law actually corresponds to the concept of "virtual asset ecosystem" in the study by the Financial Stability Board.

5. Extrapolation of the terminology of Ukrainian legislation to the functions of the virtual asset ecosystem

Taking into account the Financial Stability Board's opinion on the functions of the virtual asset ecosystem and applying the terminology of the Ukrainian legislator on the types of activities in the virtual asset market, it can be concluded that the virtual asset market has the following functions: 1) ensuring the issuance, sale of virtual assets and the provision of intermediary services related to virtual assets; 2) ensuring the storage or administration of virtual assets or virtual asset keys; 3) the function of exchange and transfer of virtual assets; 4) investment function.

It seems that the functions allocated by the Financial Stability Board are special functions specific to the virtual asset market and take into account its internal structure, reflecting the processes taking place in this market.

Nevertheless, it appears that the virtual asset market also fulfills the function traditionally attributed to the securities market – namely, the redistribution of property through transactions. Consequently, it is proposed that the redistribution of property through transactions with virtual assets be included among the special functions of the virtual asset market.

An analysis of the special functions of the virtual asset market reveals that its fundamental special function is to ensure the turnover of the virtual assets.

It is important to note that these functions are ensured by the provisions of regulatory legal acts. Therefore, it seems that the functions of the virtual asset market can serve as a basis and guideline for implementing measures aimed at improving the legal support for its functioning. It is therefore recommended that the functions of the virtual asset market be consolidated at the level of a regulatory legal act. Such an act could, for example, be a concept or strategy for the development of the virtual asset market. In order to implement this strategy, it would be necessary to develop an appropriate action plan. This would ensure that the virtual asset market performs the special functions that it is intended to fulfil. Regulatory consolidation of the functions of the virtual asset market would also contribute to the formation of a more stable understanding of their content in practice.

6. Conclusions

The study indicates that the functions of the virtual asset market can be divided into two categories: general and special. The general functions include regulatory, incentive, distribution, rehabilitation, allocation, informational, integration intermediary, and pricing. The special functions are those that ensure the issuance, sale of virtual assets and provision of intermediary services related to virtual assets; ensure the storage or administration of virtual assets or virtual asset keys; the function of exchange and transfer of virtual assets; investment function; and redistribution of property through transactions with virtual assets. A generalization of the special functions of the virtual asset market allows us to conclude that the fundamental special function of the virtual asset market can be formulated as ensuring the turnover of virtual assets.

In order to enhance the efficiency and formalize the operations of the virtual asset market, it is proposed to consolidate the functions of the virtual asset market within a comprehensive concept or strategy for its development. To this end, an action plan must be designed to ensure that the virtual asset market fulfils each of the designated special functions.

The aforementioned issues do not exhaust the problematic aspects of the virtual asset market legal regulation. Consequently, further research should be aimed at identifying potential improvements to legislation governing the functioning of the virtual asset market.

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ФУНКЦІЇ РИНКУ ВІРТУАЛЬНИХ АКТИВІВ

Анотація. ***Мета.*** Метою дослідження є конкретизація функцій ринку віртуальних активів, що позитивно позначиться на ефективності розробки заходів з удосконалення правового забезпечення його функціонування. ***Методи дослідження.*** Досягти поставленої мети вдалось завдяки застосуванню комплексу методів – за допомогою формально-логічного методу досліджувалися основні поняття та проводився аналіз нормативно-правового акту, яким регулюється функціонування ринку віртуальних активів. Системно-структурний метод застосовувався для виділення та аналізу певних характеристик ринку віртуальних активів, зокрема для конкретизації його функцій. За допомогою формально-юридичного методу підготовлено відповідні пропозиції для використання у законотворчій та правозастосовній діяльності. ***Результати.*** Проаналізовано основні доктринальні підходи до розкриття функцій ринків, проаналізовано загальні та спеціальні функції різних ринків. ***Висновки.*** До загальних функцій, які притаманні усім ринкам, але мають свій прояв на ринку віртуальних активів віднесено: регулюючу, стимулюючу, розподільчу, санації, алокаційну, інформативну, інтеграційну посередницьку та ціноутворюючу. На підставі узагальнення наукової літератури конкретизовано, що спеціальними функціями ринку віртуальних активів є: забезпечення емісії, продажу віртуальних активів та надання посередницьких послуг, пов'язаних з віртуальними активами; забезпечення зберігання або адміністрування віртуальних активів чи ключів віртуальних активів; функція обміну та переказу віртуальних активів; інвестиційна функція. Запропоновано включити функцію перерозподілу власності через вчинення правочинів з віртуальними активами до спеціальних функцій ринку віртуальних активів. Крім того, дослідження дозволило зробити висновок про можливість узагальнити базову спеціальну функцію ринку віртуальних активів як забезпечення обороту віртуальних активів. З метою упорядкування і формалізації запропоновано закріплення функцій ринку віртуальних активів у концепції або стратегії розвитку ринку віртуальних активів, для виконання якої потрібно розробляти відповідний план заходів для забезпечення виконання ринком віртуальних активів кожної з спеціальних функцій. Як напрям подальших наукових досліджень запропоновано пошук шляхів удосконалення законодавства з питань функціонування рикну віртуальних активів.

Ключові слова: віртуальні активи, криптоактиви, ринок віртуальних активів, функції ринку, правове регулювання ринку.

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CERTAIN FEATURES OF THE LEGAL REGIME OF CRYPTOCURRENCY TRANSACTIONS

Abstract. ***Purpose***. The purpose of the article is to determine the peculiarities of the legal regime of cryptocurrency transactions based on the analysis of foreign experience and comparison of cryptocurrencies (virtual assets) with classical (fiat) money and e-money and make proposals for their improvement. ***Research methods***. The use of classical methods and techniques of scientific cognition, in particular, analytical and synthetic, comparative, historical and legal, economic modelling, systemic and structural, and others, allowed substantiating the conclusions. ***Results***. The article analyses scholarly views and certain provisions of legislation on cryptocurrency transactions and identifies the peculiarities of the legal regime of such transactions compared to the legal regime of transactions with classical (fiat) and e-money. Cryptocurrency transactions are characterised by anonymity and irreversibility, and the State has no levers of influence and control over them. ***Conclusions***. The adoption by the legislator of the Law of Ukraine "On Virtual Assets" is supported in the article. It is indicated that the adoption of the necessary legislative acts to develop the provisions of this still inoperative law will allow cryptocurrency market participants to legally carry out their activities and clearly understand their place in the market and, at the same time, be aware of their rights and obligations, and the availability of a strong legal framework will effectively protect the rights of users and investors from criminals. The need to adopt the draft law on amendments to the Tax Code of Ukraine regarding the taxation of transactions with virtual assets has been confirmed. Once the draft law is adopted, it will be the turn of market regulators (primarily the NBU) to issue their own bylaws, orders, guidelines, clarifications, letters, etc. that will clearly regulate the activities of all participants in the cryptocurrency market. The importance of applying foreign experience in legitimising cryptocurrency transactions is confirmed in the article.

Key words: cryptocurrency, virtual assets, bitcoin, electronic money, legal regulation, economic activity, Tax Code of Ukraine, Civil Code of Ukraine, Commercial Code of Ukraine, cryptocurrency "mining", the Law of Ukraine "On Virtual Assets", foreign experience.

1. Introduction

Since 2007, the global financial market has seen the emergence of another instrument – virtual money (assets) or cryptocurrency. This instrument became popular and attractive almost immediately. Cryptocurrencies are an alternative means of payment, investment, and savings to the classic currency. It can become the basis for shaping a new global financial system. However, there are still gaps in the legal framework for cryptocurrency circulation in Ukraine and many countries around the world. This is a problem for ordinary citizens, economic entities, and domestic and foreign investors. Accordingly, it is also a problem for the State, which is objectively interested in investment in the face of war and a significant economic downturn. However, in order to attract investment, the State must ensure the protection of investors' interests, as all cryptocurrency transactions – buying and selling, exchanging, even depositing – carry significant threats and risks, in addition to the possibility of getting rich quick. A few years ago, researchers named and characterised various technological, legal, and economic-legal risks, including the one caused by the lack of the legal regulation of cryptocurrency transactions, the NBU's recommendation not to conduct such transactions, the reliance on the owners of cryptocurrency wallets to protect their legitimate interests, the prohibition of their use by virtue of several provisions in the legislation and the possibility of applying liability measures not explicitly mentioned (Derevianko, 2017, p. 38). Other risks in cryptocurrency transactions include purely criminal risks associated with theft and fraud on the Internet. The

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existing judicial practice in Ukraine is not sufficient for the legal protection of cryptocurrency transactions by Ukrainian residents. However, relatively recently, the Law of Ukraine "On Virtual Assets" has been adopted to regulate relations with cryptocurrency in Ukraine, including the protection of cryptocurrency unit holders by the state (On Virtual Assets, 2022). However, the said Law did not enter into force and was not signed by the President of Ukraine, as it contains a prerequisite for making appropriate amendments to the Tax Code of Ukraine.

The above necessitates the study of the legal regime of cryptocurrency transactions and the search for ways to improve the relevant relations.

Literature review. The issue of legal support for relations with cryptocurrency transactions in Ukraine has been studied by various scholars and practitioners over the past decade and a half. Regulation of relations in the virtual asset market in Ukraine should be based on analogues that already exist in some other countries, but also take into account the peculiarities of the Ukrainian civil, commercial, administrative and legal, as well as financial and banking systems. Representatives of legal and economic sciences have different opinions on the possibility of legitimising operations in the cryptocurrency market. Among them are Vinnyk (Vinnyk and al., 2022), Hrytsai (2023), Derevianko (2018), Kalachenkova and Dovhan (2022), Makurin (2020), Marchenko and Dombrovska (Marchenko and Dombrovska, 2023), Mohyl (Mohyl, 2023), Pochynok (Pochynok, 2023), Spilnyk and Yaroshchuk (Spilnyk and Yaroshchuk, 2020), and many others. However, despite the significant number of scientific works devoted to the relevant topic, the problem of determining the legal nature of virtual assets and their possible legitimation is relevant and timely.

Purpose. Based on the above, the analysis of foreign experience, and comparison of cryptocurrencies (virtual assets) with classical (fiat) money and electronic money, the article identifies the specifics of the legal regime of cryptocurrency transactions and makes proposals for their improvement.

Research methods. The use of classical methods and techniques of scientific cognition, in particular analytical and synthetic, comparative, historical and legal, economic modelling, systemic and structural, and others, allowed to substantiate the conclusions.

2. Processes of legitimisation of cryptocurrency transactions

As mentioned above, Ukraine does not yet have any specific legislation on virtual assets. However, the Law of Ukraine "On Virtual Assets" (On Virtual Assets, 2022) has recently been adopted, which will come into force after the relevant amendments to the Tax Code of Ukraine regarding taxation of transactions with virtual assets (On amendments to the Tax Code of Ukraine regarding taxation of transactions with virtual assets, 2022). In addition to the Tax Code of Ukraine, a significant number of other Ukrainian regulations must be amended. This may be done after the Law of Ukraine "On Virtual Assets" (On Virtual Assets, 2022) enters into force. We believe that amendments and additions should be made to the Commercial Code of Ukraine (2003), the Civil Code of Ukraine (2003), the Law of Ukraine "On Banks and Banking" (2000), Law of Ukraine On Currency and Currency Transactions, 2018, Law of Ukraine On Capital Markets and Organised Commodity Markets, 2006, Law of Ukraine On Financial Services and Financial Companies, 2021), the Law of Ukraine "On the prevention and countermeasures against the legalisation (laundering) of the proceeds of crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" (On the prevention and countermeasures against the legalisation (laundering) of criminal proceedings, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, 2019), the National Bank of Ukraine (the "NBU") Regulation "On the approval of the regulation on transactions with currency values", 2019 and other legislative acts.

It should be noted that the Code of Ukraine on Bankruptcy Procedures has already been amended and supplemented to recognise virtual assets as an object of bankruptcy proceedings (Code of Ukraine on Bankruptcy Procedures, 2018), as noted by Corresponding Member of the National Academy of Legal Sciences of Ukraine Kolomoiets, who proposed to recognise cryptocurrency as debtor's property for the purposes of bankruptcy proceedings and the Code of Ukraine on Bankruptcy Procedures, taking into account the market value of which measures to restore the debtor's solvency provided for in the rehabilitation plan may be implemented, as well as to enable the use of cryptocurrency in the liquidation procedure (Derevianko, Kolomoiets, Kolpakov, 2024, p. 658).

In the Ukrainian social context, there is a tangible and growing enthusiasm for legitimising cryptocurrency transactions. Cryptocurrencies are becoming increasingly preferred not only to facilitate international transactions, but also to meet the needs of the domestic market. The decentralised financial sector is showing strong activity, with cryptocurrencies being

recognised as a de facto medium of exchange in the Ukrainian social landscape (Marchenko and Dombrovska, 2023). Thus, the establishment of a coherent and comprehensive legal framework for cryptocurrencies becomes imperative to provide clarity, promote responsible use, and mitigate risks of various kinds. Legal clarity not only protects the interests of investors and users, but also ensures that the benefits of cryptocurrency integration are aligned with broader economic and regulatory objectives (Spilnyk and Yaroshchuk, 2020). Therefore, legal regulation of cryptocurrency relations that meets the needs of civil society should ensure the social orientation of the digital economy and stimulate the social responsibility of businesses in the digital sphere.

The Law of Ukraine "On Virtual Assets" defining the legal regime of cryptocurrency transactions is a positive development. However, the rulemaking work needs to be continued in the direction of legitimising and improving the legislation (the provisions of the Law of Ukraine "On Virtual Assets" have the main positive effect of legitimising the circulation of cryptocurrencies, while the nuances of regulating such transactions require a significant number of additions) (On Virtual Assets, 2022). Given Ukraine's European integration aspirations, Ukrainian legislation on cryptocurrency circulation should fully comply with European standards. For this purpose, it is necessary to permanently amend the said Law of Ukraine in accordance with the above recommendations. In addition, it is important to conduct an information campaign to raise public awareness about cryptocurrencies and the risks of cryptocurrency transactions, as well as about "safety precautions" when conducting financial transactions on the Internet. This will help people understand the potential risks associated with investing in cryptocurrencies (Hrudnytskyi, 2023). In his study of the formation of the cryptocurrency market in Ukraine, Mohyl also confirms that the market is developing rapidly, but lacks appropriate legal and regulatory frameworks, which increases the risks for participants (Mohyl, 2023). Makurin points out that if an organisation decides to use cryptocurrency to pay for certain goods, works or services and to account for such receipts, it is necessary to conclude an additional agreement and immediately determine the date of transfer of digital assets to fix the exchange rate (Makurin, 2020). The issues of financial monitoring of cryptocurrency transactions, income declaration, and tax payment remain unresolved and controversial. To improve the effectiveness of state regulation of relations in the cryptocurrency market, it is necessary to create a unified legislative and executive framework for regulating the activities of all market participants with a clear definition of the functions and tasks of financial regulators. In the absence of a unified methodological approach to the proper accounting of cryptocurrency transactions and operations with it, it seems quite reasonable to apply international accounting standards and recommendations developed on their basis for accounting for cryptocurrency as an intangible asset. Thus, the distinction between the recommended options for accounting for cryptocurrency as an intangible asset should be based on the purpose of its use by an entity (Mohyl, 2023).

Hrytsai believes that the formation of the legal framework in Ukraine can be divided into two stages – before the emergence of the relevant law and after its appearance in the form of the Law of Ukraine "On Virtual Assets", which introduced a number of legal definitions, classification and legal framework for their regulation at the legislative level, marking the beginning of the legitimisation of cryptocurrencies in Ukraine. In his opinion, the legal framework introduced by the Law of Ukraine "On Virtual Assets" can be summarised as follows. Virtual assets are an intangible good. They have the same legal nature as information or a literary work. They are not a means of payment and cannot be exchanged for property or services. The ownership of a virtual asset is confirmed by the possession of a virtual key, which is a set of technical means. Only a financial institution may provide services in respect of virtual assets backed by currency values. Participants in the virtual asset market are entitled to judicial protection. The NBU and the NSSMC (National Securities and Stock Market Comission) supervise the activities of service providers and apply enforcement measures (Hrytsai, 2023). This theory has a theoretical and practical basis and requires further research to justify the need for changes to the relevant Law of Ukraine "On Virtual Assets", thereby bringing it closer to the practice of the leading countries of the world where cryptocurrencies are recognised as an exchange.

3. Threats of cryptocurrency transactions and certain advantages of cryptocurrency over other means of payment and accumulation

Cryptocurrency transactions can be used to circumvent sanctions, withdraw funds abroad, legalise proceeds of illegal or dubious activities, etc. It is believed that cryptocurrency transactions are risky for the state, including its national security and defence. Therefore, it is important to actively improve the security components of the legal regime for cryptocurrency transactions.

An analysis of the characteristics of cryptocurrencies in terms of their key economic properties, including decentralisation and their anonymous nature, indicates that no other classical currency or commodity money (gold, silver, etc.) can compare with the reliability, security and immutability inherent in the blockchain technology underlying, for example, bitcoin. It is believed that the economic properties of cryptocurrencies, in particular their decentralised nature, contribute to their attractiveness as a new and potentially safer form of currency. At the same time, the legal and regulatory framework governing virtual assets, including cryptocurrencies, in Ukraine needs to change (Marchenko and Dombrovska, 2023). It can be assumed that the threat of potential competition between cryptocurrencies and the national currency (hryvnia) is a factor in restraining the recognition of cryptocurrencies as a means of payment in Ukraine. This is one of the risks of cryptocurrency circulation. This idea avoids immediate legal risks for the country's financial and economic system and ignores their main purpose – to serve as a means of payment alternative to fiat money. Therefore, it is advisable to recognise cryptocurrencies as a means of payment, which will make it possible to contribute to the state budget through appropriate legislative changes in terms of the legal status of cryptoassets (Kalachenkova, Dovhan, 2022).

When analysing the legal regime for the circulation of virtual assets in Ukraine, the following aspects should be taken into account:

– decentralised blockchain technology is partially implemented at the state level, but has not yet become widespread in government agencies;

– Ukraine has established the Ministry of Digital Transformation, a body that deals with the development of special legislation for the legal protection of digital asset owners;

– the main regulatory authority is the National Securities and Stock Market Commission (hereinafter referred to as the NSSMC) of Ukraine;

– the Ministry of Finance of Ukraine is responsible for financial monitoring of cryptocurrency transactions;

– when buying and selling cryptocurrencies outside of Ukraine and making a profit due to the price difference, the income is considered as "received from foreign sources" (Skarbyk, 2023).

In view of the above, work should continue on a comparative analysis of the legal regime of cryptocurrency circulation in foreign countries and Ukraine, identifying the differences between cryptocurrency, classic and electronic money, determining the benefits and risks of using cryptocurrency by Ukrainian economic entities and government agencies in times of war, providing proposals for the legitimisation of cryptocurrency transactions, taking into account its advantages in martial law, etc.

We believe that after the legitimisation of cryptocurrency transactions, the issue of harmonising the provisions of Ukrainian legislation with the legislation of other countries will arise, as relations in the cryptocurrency market are multinational. The seller or buyer of cryptocurrency units in Ukraine does not know where their counterparty is physically located and what citizenship or nationality they have. Therefore, it is important to study foreign legislation regulating relations with cryptocurrencies. Foreign experience, once taken into account, may allow us to compare their achievements with the practical needs and realities in Ukraine.

Ukrainian researchers emphasise the need for co-regulation (involving the state and digital economic entities), technical regulation, including standardisation, as well as the search for effective means of regulating relations in the field of mining and the use of cryptocurrencies. The emphasis is placed on two components of the regulation of digitalisation relations – technical regulation, including standardisation, and regulation of relations in the field of mining and use of cryptocurrencies. The study proves the need to introduce legal mechanisms for regulating digitalisation relations, taking into account its duality (the presence of both benefits and risks), and proposes changes to the current legislation of Ukraine (Vinnyk and al., 2022).

4. **The need to strengthen state control over cryptocurrency transactions**

The legitimisation of cryptocurrency transactions poses a challenge for the state to ensure that all participants in the cryptocurrency market comply with the principles of legality, financial security and protection, provided they comply with legitimate rules and regulations.

Pochynok believes that special attention should be paid to such a subject of legal relations related to the circulation of virtual assets as cryptocurrency exchanges. The following cryptocurrency exchanges operate on the Ukrainian market: "KUNA, Exmo, BTC TRADE UA. As for currency exchangers, the most popular cryptocurrencies for exchange are Bitcoin, Ethereum and Litecoin. The regulation of cryptocurrency exchanges in Ukraine, as in most countries of the world, is limited to the level of their state registration, licensing, and permits. In particular, cryptocurrency exchanges in Ukraine operate as limited liability companies with the type of activity "computerisation consulting". There are currently no other mandatory rules for the operation

of cryptocurrency exchanges in Ukraine (Pochynok, 2023). At the same time, the entry into force of the Law of Ukraine "On Virtual Assets" is intended to change the current situation. First of all, the Law does not use the term "cryptocurrency exchange", but rather the term "service providers related to the billing of virtual assets" (On Virtual Assets, 2022). Having analysed this definition, we can conclude that the term "service providers related to the billing of virtual assets" covers the activities of cryptocurrency exchanges. Thus, the provisions of the Law are intended, among other things, to regulate the activities of cryptocurrency exchanges. The Law also establishes for the first time at the legislative level the mandatory state registration of legal entities for conducting cryptocurrency exchange activities, which can currently be carried out without appropriate registration (On capital markets and organised commodity markets, 2006). Ukrainian legislation on virtual assets applies to legal relations related to the circulation of virtual assets in connection with: the provision of services related to the circulation of virtual assets if the parties to such legal relations have a registered office or permanent establishment in Ukraine; the execution of a transaction subject to a virtual asset if the parties have determined the law of Ukraine to be applicable to the transaction as a whole or to a separate part of it; the execution of a transaction subject to a virtual asset if both parties of the transaction are residents of Ukraine; performing an action, the subject of which is a virtual asset, if the person who performs transactions with virtual assets in their own interests (the acquirer of the virtual asset) is a resident of Ukraine (Pochynok, 2023).

Having analysed certain provisions of Ukrainian legislation and the experience of foreign countries in the field of legal regulation of cryptocurrency transactions and crypto-exchanges, we can agree with certain conclusions regarding the proposal of directions and ways to introduce state control over this area in Ukraine:

1. due to the lack of regulation of the legal status of crypto-exchanges and the regime of cryptocurrency circulation, the state has no obligations;

2. the lack of a system of regulatory and legal regulation of the use of virtual assets and the existence of contradictions in approaches to defining the functions of cryptocurrencies lead to violations of the fundamental principles of the rule of law and the principles of its construction, where the rule of law plays a leading role;

3. it is necessary to develop a system of regulatory and legal regulation of the cryptocurrency market: legislative acts on the activities of cryptocurrency market participants; acts regulating the issuance of licences for the activities of crypto exchanges and crypto exchange operations; acts regulating the rights and obligations of professional participants in the cryptocurrency market; acts to control such activities; develop rules and standards for the provision of financial services in the cryptocurrency market and control over their compliance; a system of supervision over financial institutions participating in the cryptocurrency market;

4. it is necessary to ensure the implementation of international standards on cryptocurrencies defined by the Financial Action Task Force on Money Laundering (FATF) on approaches to risk assessments of cryptocurrencies and virtual asset service providers (NSSMC);

5. the legal status of crypto-exchanges and cryptocurrencies should be determined, and the main areas of their use should be regulated at the regulatory level (Levytskyi and al., 2023).

The laws that will be adopted in Ukraine to legitimise cryptocurrencies and regulate relations with them will have an impact on the state budget. We conclude that virtual assets should be characterised from the legal and technical points of view. The technical characteristics of virtual assets indicate that they are based on the interaction of information modules through the use of a single set of formats with an appropriate level of security and encryption of all transmitted data. From the legal point of view, it is advisable to establish: the essence of virtual assets, their types, scope of application, mechanisms for monitoring the use of virtual assets, as well as bringing to justice for violations of the procedure for using virtual assets (Bondarenko, 2023).

5. Conclusions

Legal regulation of relations in the virtual asset market is extremely important, as it allows to make this market civilized. The special nature of cryptocurrencies has determined the peculiarities of the legal regime of transactions, which are anonymous and irreversible, increased risk, complexity of state regulation and protection.

Adoption of the necessary legislative acts to develop the provisions of the adopted but still ineffective Law of Ukraine "On Virtual Assets" will allow market participants to operate legally and clearly understand their place in the market, while being aware of their rights and obligations. A strong legislative framework will help to effectively protect the rights of users and investors from criminals. Therefore, the most important step in the near future is the adoption of the draft law on amendments to the Tax Code of Ukraine regarding the taxation of transactions with virtual assets. Its entry

into force will be a trigger for the legitimisation and updating of the provisions of the Law of Ukraine "On Virtual Assets" and amendments to other legislative acts. Once the draft law is adopted, it will be the turn of market regulators (primarily the NBU) to issue their own regulations, orders, guidelines, clarifications, letters, etc., which, in turn, will clearly regulate the activities of all participants in the cryptocurrency market. Since the nature of virtual assets is characterised by rapid transnational transactions between users, it is necessary to consider and implement international experience in ensuring legal regulation of cryptocurrency transactions.

Prospects for further research in the field of legal sciences will include defining the legal essence of virtual assets, characterising and systematising their types, defining and clarifying the scope of application, proposing mechanisms for monitoring the use of virtual assets, and improving the mechanism for bringing to liability for violations of the procedure for using virtual assets, etc.

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ОКРЕМІ ОСОБЛИВОСТІ ПРАВОВОГО РЕЖИМУ ОПЕРАЦІЙ ІЗ КРИПТОВАЛЮТОЮ

Анотація. ***Мета.*** Ціллю статті є: на основі аналізу зарубіжного досвіду, порівняння криптовалют (віртуальних активів) із класичними (фіатними) грошима, електронними грошима визначити особливості правового режиму операцій із криптовалютою і зробити пропозиції щодо їх удосконалення. ***Методи дослідження.*** Застосування класичних методів і способів наукового пізнання, зокрема аналітико-синтетичного, порівняльного, історично-правового, економічного моделювання, системно-структурного та інших дозволило аргументувати висновки. ***Результати.*** У статті проведено аналіз поглядів дослідників, окремих норм законодавства на операції із криптовалютою, визначено особливості правового режиму таких операцій порівняно із правовим режимом операцій із класичними (фіатними) та електронними грошима. Операції із криптовалютою вирізняються анонімністю, незворотністю, держава не має важелів впливу і контролю на них. ***Висновки.*** Підтримано прийняття законодавцем Закону України «Про віртуальні активи». Вказано, що прийняття

необхідних законодавчих актів у розвиток положень цього допоки нечинного Закону дозволить учасникам ринку криптовалюти легально здійснювати свою діяльність та чітко усвідомлювати своє місце на ринку і при цьому бути обізнаними про права та обов'язки, а наявність потужної законодавчої бази дозволить ефективно захищати права користувачів та інвесторів від злочинців. Підтверджено необхідність прийняття проєкту Закону про внесення змін до Податкового кодексу України щодо оподаткування операцій із віртуальними активами. Після прийняття законопроєкту настане черга регуляторів ринку (у першу чергу – НБУ), які мають випустити свої підзаконні нормативно-правові акти, накази, вказівки, роз'яснення, листи тощо, які, у свою чергу, будуть чітко регламентувати діяльність усіх учасників відносин на ринку обігу криптовалют. Підтверджено важливість застосування іноземного досвіду під час легітимації операцій із криптовалютою.

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

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THE CONCEPT AND FEATURES OF ATYPICAL EMPLOYMENT AS A SPECIAL FORM OF EXERCISING LABOUR RIGHTS OF EMPLOYEES

Abstract. ***Purpose.*** The purpose of the article is to define the concept and reveal the features of atypical employment as a special form of exercising labour rights of employees. ***Results.*** The article, relying on the analysis of scientific views of scholars and provisions of current legislation, suggests the author's definition of "atypical employment as a special form of exercising labour rights of employees". It is proved that from the legal perspective, atypical employment is one of the forms of exercising labour rights of a person, since it, like any employment, is associated with meeting personal or social needs to obtain monetary remuneration. It is determined that atypical employment is the result of changes in social forms of production, information and digital progress, social transformations, and factors of both general and individual nature. Therefore, atypical employment should be best interpreted as a socio-economic phenomenon manifested in the flexibility of employment conditions of employees, which primarily involves their performance of labour activities outside the actual location of the business entity. ***Conclusions.*** It is concluded that the main features of atypical employment are as follows: first, it is comprehensive as it combines quite diverse forms of employment which differ from standard (typical) employment; second, it is based on a person's voluntary choice to exercise his/her right to work in a certain atypical form; third, its specificity is that atypical employment is either directly provided for by current legislation or is not prohibited by it; fourth, the employer's control over the progress of work is significantly limited, usually controlling the timeliness, efficiency and quality of work; fifth, atypical employment prevails in intellectual and creative work; sixth, atypical employment manifests itself in various forms, with each individual form having its own distinctive features that distinguish it from other forms of atypical employment.

Key words: atypical employment, labour rights, employers, labour activities, regulatory framework.

1. Introduction

Social and economic processes have a global character and gradually involve Ukraine in them, affecting the exercise of employees' labour rights. According to Yu. O. Ostapenko, the desire of employers to optimise the use of labour resources and take full advantage of scientific and technological progress leads, on the one hand, to new exploitation of employees and, on the other hand, to increased flexibility of employment. In this regard, the labour market becomes more and more flexible and, despite the fact that standard employment remains the most common in the labour market (in particular, in Ukraine and most post-Soviet countries), the trend of new types of employment becomes more and more noticeable and interesting for the parties to labour relations (Ostapenko, 2020). The flexibility of the labour market leads to diversity in exercising labour rights of employees. A striking manifestation of such changes is the emergence and popularisation of atypical forms of employment.

Some problematic issues regarding the essence and content of certain atypical forms of employment have been considered in their scientific works by: O. O. Bilous, U. Ye. Huzar, V. P. Kokhan, M. R. Lychkovska, M. V. Lutsyk, Yu. O. Ostapenko, T. V. Parpan, O. S. Prylypko, L. Yu. Prohoniuk, M. M. Toporkova, Ya. V. Saichenko. and many others. However, despite the considerable scientific heritage, there is no comprehensive research in the legal literature on the essence and content of atypical employment as a special form of exercising labour rights of employees.

Thus, the purpose of the article is to define the concept and reveal the features of atypical employment as a special form of exercising labour rights of employees.

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2. Content of the form of exercising the right to work

It should be noted that the form of exercising the right to work may be considered as active actions of a person to enter into and participate in relations regulated by legal provisions on performing labour as activities not prohibited by law aimed at earning income. According to the Law of Ukraine "On Employment of the Population" of 5 July 2012, employment can be defined as the activities of persons not prohibited by law related to meeting their personal and social needs in order to receive income (wages) in cash or in any other form, as well as the activities of members of the same family who perform economic activities or work for business entities based on their property, including free of charge (Law of Ukraine On Employment of the Population, 2012). The Law provides for two types of employment: full-time and part-time. However, it should be noted that today the traditional understanding of the right to work is based on full-time employment as typical or standard employment. The literature review reveals quite a variety of approaches to understanding this type of employment.

According to T. V. Parpan, standard employment is characterised by the fact that hired labour is performed on the basis of an employment contract concluded for an indefinite period; work is performed on a full-time basis on the territory of an enterprise, institution, organisation; these labour relations are usually formalised directly with the employer (Parpan, 2019). L. Yu. Prohoniuk, following a similar perspective, notes that typical employment is understood as employment for hire in the form of an indefinite employment contract, organised in the normal working day mode at an enterprise or organisation, under the direct supervision of the employer or his/her authorised persons (Prohoniuk, 2018).

Therefore, the authors underline the following critical criteria for understanding typical (standard) employment: a fixed working day, work place, and uncertainty of the duration of the employment contract (permanence). According to U. Ye. Huzar and M. V. Lutsyk, the concepts of "standard" and "non-standard" employment are not generally accepted but are increasingly used by researchers and policy makers. "Standard" employment is usually considered to be full-time employment on the basis of an indefinite employment contract in an enterprise or organisation, under the direct supervision of the employer or managers appointed by him/her, while all forms of employment that deviate from the described standard, including self-employment, may be considered "non-standard" (Huzar, Lutsyk, 2013).

To sum up, the following features of typical or standard employment can be distinguished: indefinite term of the employment contract; full-time work in accordance with the requirements of the applicable law; fixed start and end times; the workplace is determined by the employer and is located outside the employee's place of residence, usually on the employer's premises; working hours are usually clearly regulated.

M. R. Lychkovska emphasises the fact that the introduction and use of exclusively standard methods and forms of employment (full-time employment on the basis of an indefinite employment contract) do not always contribute to achieving the greatest effect. According to the author, the standard (typical) model of employment is optimal only for a certain stage of socio-economic development of society, i.e., each stage of development will have its own typical model. Based on this, M. R. Lychkovska recommends that we stop calling new, flexible forms of employment "non-standard" or "atypical", which generates a negative attitude towards them (Lychkovska, 2016). V. P. Kokhan argues that the emergence of new forms of labour, which differ from the existing ones by their organisation, flexibility, use of information and telecommunication technologies and the increasing importance of the creative component of labour, has forced experts to combine them all under the name of "non-standard employment" as opposed to standard employment. In the literature, it is also referred to as atypical, non-traditional employment, or atypical labour activity (Kokhan, 2013). This remark emphasizes that atypical employment is derived from typical (standard) employment. Some authors contrast atypical employment with typical (standard, traditional) employment.

The scientific community has not developed a unified approach to understanding the concept of atypical employment. Some scholars argue that atypical employment is the labour activities of employees of a certain classification group, which are provided for or not prohibited by the current legislation of Ukraine, but due to the particularities of the organisation of working hours, workplace and working conditions do not comply with standard rules and require a special regulatory mechanism, organisational and economic support (Prohoniuk, 2019). Yu. O. Ostapenko defines atypical employment as labour relations between an employer (employers) and a person employed in an atypical manner (atypical employee), which are not prohibited or provided for by labour legislation and are based on non-standard labour contracts. Atypical employment is an objectively forced deviation from the general standards set by the legislator regarding the organisation of working

hours, workplace and working conditions, due to the special needs of the employer(s) and the atypical employee (Ostapenko, 2020). The authors define the common characteristic feature of atypical employment as either its direct enshrining in the current legislation or the absence of a direct regulatory prohibition of such employment.

M. M. Toporkova and O. O. Bilous consider atypical (non-standard) employment as the activities of citizens based on labour relations in which one or more essential features of traditional labour relations are modified: their duration, place of performance, working hours, particularities of performance of labour function by an employee, etc. (Toporkova, Bilous, 2019). These scholars base the understanding of atypical employment on the mandatory attribution of activities performed as an atypical form of employment to the scope of labour relations in which at least one of the features of typical (standard) employment is subject to change.

Ya. V. Saichenko considers non-standard employment as a form of involvement of persons in labour, which is a manifestation of increased flexibility and individualisation of labour relations, the essence of which is that one of the features differs from the standard regulatory model of relations between participants to the labour process, based on the indefinite duration of an employment contract, full-time work, work under the direct supervision of one employer in the premises belonging to him/her at one workplace with subordination to the internal labour regulations and inclusion in the labour collective (Saichenko, 2021). The characteristic features of atypical forms of employment include their flexibility, which does not coincide with the features of standard employment, resulting in a fairly wide variety of such atypical forms of employment.

3. Forms of atypical employment in Ukraine

One of the most popular forms of atypical employment in Ukraine is remote work. Based on the analysis of diversity in the field of atypical forms of employment, U. Ye. Guzar and M. V. Lutsyk identify the following types of remote employment: 1) remote employment divided into work at home and work in the office: work performed mainly by highly qualified personnel who have the trust of the employer. Most of the time is spent working at home (accountant, designer, etc.); 2) home-based work: a set of monotonous operations that do not require high qualification of their performer; 3) freelance remote work: home-based work performed by freelancers under an agreement with the employer (journalist, writer, translator); 4) mobile remote work: work that involves the use of new types of technologies. Employees contact clients using computer equipment and provide them with the services they need (sales representatives, hotline operators); 5) work in special workplaces - the employer creates special premises with telecommunication connections. Work in a team is expected (programmer, designer, marketer, etc.) (Huzar, Lutsyk, 2013). It seems that the listed types of remote employment do not exhaust all possible forms of it, however, remote forms of employment have certain common features. The essential features inherent in remote work, as one of the most common forms of atypical employment, are as follows: 1) It is applied within the framework of labour relations; 2) The place of performance of labour function does not coincide with the location of the employer (work outside the office); 3) The employee has more autonomy in the use of working time than when working in the office; 4) The process of managing hired labour is performed with the help of information and telecommunication technologies (Silchenko, Sierbina, 2021).

O. S. Prylypko underlines the spread of non-standard employment, by which the author means the work of an employee under an employment contract that provides for deviations from work under an indefinite full-time employment contract (Prylypko, 2013). Besides, the author considers borrowed labour to be a non-standard employment, and in her opinion, borrowed labour is a complex phenomenon which has three parties to labour relations: a borrowed labour employee, a private employment agency and a service customer (another employer). Borrowed labour has a large number of types, and when using this type of labour relations, services (outsourcing) or personnel (leasing of personnel, outsourcing of personnel and recruitment of temporary personnel) may be provided (Prylypko, 2013).

One of the atypical forms of employment that is developing as a result of social and economic transformations is outsourcing, a practice in which an individual or company performs tasks, provides services or produces products for another company the functions thereof could be or are usually performed within the firm (Toniuk, 2017). The essence of outstaffing is the transfer of personnel outside the employer's staff and their subsequent registration in the employer's staff, with the latter assuming full legal and financial responsibility for the employees. By providing outstaffing services, a recruitment agency assumes the powers of a formal employer for the employees of the client company, thereby ensuring full financial and legal responsibility for them, including: payment of salaries and taxes, and maintenance of personnel records in accordance with the labour

legislation of Ukraine. Therefore, outstaffing is a new way of development of HR management, which currently has a number of disadvantages and advantages that determine the feasibility of its implementation for each individual enterprise (Pysarchuk and Marachevska, 2011). According to K. S. Kosinova, in the case of outstaffing as a type of outsourcing, there are problems with the preparation of labour contracts and protection of employees' rights. In fact, the person is in an employment relationship with one employer and performs labour functions for another, and this latter shall ensure proper working conditions, although the provider company will be responsible for this (Kosinova, 2017). Outsourcing and outstaffing, as relatively new forms of atypical employment for Ukraine, obviously require more comprehensive regulatory frameworks to protect the rights and legitimate interests of employees.

L. Krasnorutska considers atypical employment as labour activities of employees of a certain classification group, which are provided for or not prohibited by the current legislation of Ukraine, but due to the specifics of the organisation of working hours, workplace and working conditions do not comply with the standard rules and require a special regulatory mechanism and organisational and economic support. The researcher identifies atypical forms of employment as borrowed labour, on-call work, part-time work, self-employment, short working week, etc. Moreover, the author notes that the content of the category of non-standard employment is not limited to these (Krasnorutska, 2018).

According to M. M. Toporkova and O. O. Bilous, the grouping of all types of atypical employment into a sub-general array significantly complicates the assessment of atypical employment as a socio-economic phenomenon. In general, its advantages and disadvantages are related to the fact that, on the one hand, it provides flexibility of the labour market, and on the other hand, it leads to an uncontrolled labour market and insecurity of the positions of its employees. The rapid informatisation of society and the innovative development of the country's economy led to the emergence and spread of new atypical types of employment that differ from the standard ones. In accordance with the right to work guaranteed by the Constitution of Ukraine, every citizen has the right to free choice of employment that provides an opportunity to earn a living. The steady growth in the popularity of atypical types of employment in Ukraine naturally requires ensuring transparency of their use in order to comply with the interests of the state, employee, employer, that is, all participants in labour relations, which requires regulatory framework (Toporkova, Bilous, 2019).

4. Conclusions

Therefore, atypical employment is the result of changes in social forms of production, information and digital progress, social transformations, and factors of both general and individual nature. Therefore, atypical employment should be best interpreted as a socio-economic phenomenon manifested in the flexibility of employment conditions of employees, which primarily involves their performance of labour activities outside the actual location of the business entity. From the legal perspective, atypical employment is one of the forms of exercising labour rights of a person, since it, like any employment, is associated with meeting personal or social needs with the aim of obtaining monetary remuneration.

The main features of atypical employment are as follows: first, it is comprehensive as it combines quite diverse forms of employment which differ from standard (typical) employment; second, it is based on a person's voluntary choice to exercise his/her right to work in a certain atypical form; third, its specificity is that atypical employment is either directly provided for by current legislation or is not prohibited by it; fourth, the employer's control over the progress of work is significantly limited, usually controlling the timeliness, efficiency and quality of work; fifth, atypical employment prevails in the field of intellectual and creative work; sixth, atypical employment manifests itself in various forms, with each individual form having its own distinctive features that distinguish it from other forms of atypical employment.

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ПОНЯТТЯ ТА ОЗНАКИ НЕТИПОВОЇ ЗАЙНЯТОСТІ ЯК ОСОБЛИВОЇ ФОРМИ РЕАЛІЗАЦІЇ ТРУДОВИХ ПРАВ ПРАЦІВНИКІВ

Анотація. Метою статті є: визначити поняття та розкрити ознаки нетипової зайнятості як особливої форми реалізації трудових прав працівників. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, запропоновано авторське визначення «нетипової зайнятості як особливої форми реалізації трудових прав працівників». Доведено, що в правовому аспекті нетипова зайнятість є однією із форм реалізації трудових прав особи, оскільки вона, як і будь-яка зайнятість, пов'язана із задоволенням особистих чи суспільних потреб з метою отримання грошової винагороди. Визначено, що нетипова зайнятість є наслідком зміни суспільних форм виробництва, інформаційного, цифрового прогресу, соціальних перетворень, факторів як загального, так і індивідуального характеру. Таким чином, нетипову зайнятість найбільш доцільно тлумачити як соціально-економічне явище, що проявляється в гнучкості умов зайнятості працівників, що, перш за все, передбачає здійснення ними трудової діяльності поза межами фактичного розташування суб'єкта господарювання. В правовому аспекті нетипова зайнятість є однією із форм реалізації трудових прав особи, оскільки вона, як і будь-яка зайнятість, пов'язана із задоволенням особистих чи суспільних потреб з метою отримання доходів. ***Висновки.*** Зроблено висновок, що основних рис нетипової зайнятості доцільно віднести такі: по-перше, вона має комплексний характер, оскільки об'єднує в собі доволі різноманітні форми зайнятості, які відрізняються від стандарт-

ної (типової) зайнятості; по-друге, вона заснована на добровільному виборі особи реалізації свого права на працю у певній, нетиповій формі; по-третє, її особливість полягає у тому, що нетипова зайнятість є такою, що або безпосередньо передбачена чинним законодавством, або не заборонена ним; по-четверте, контроль з боку роботодавця за ходом виконання роботи є суттєво обмежений, зазвичай він контролює своєчасність, оперативність та якість виконання роботи; по-п'яте, нетипова зайнятість переважає в сфері інтелектуальної та творчої праці; по-шосте, нетипова зайнятість проявляється у різноманітних формах, при цьому кожна окрема форма має свої власні відмінні риси, що відрізняють її від інших форм нетипової зайнятості.

Ключові слова: нетипова зайнятість, трудові права, працівники, трудова діяльність, правове регулювання.

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SPECIFIC FEATURES OF THE REGULATORY FRAMEWORK FOR THE INSTITUTION OF SUPERVISION AND CONTROL OVER COMPLIANCE OF LABOUR LAW PROVISIONS WITH LABOUR LEGISLATION

Abstract. ***Purpose.*** The purpose of the article is to reveal specific features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation. ***Results.*** In the article, the author analyses the provisions of current labour legislation aimed at regulating the institution of supervision and control over compliance with labour legislation. It is concluded that there is no clear legislative distinction between labour law and administrative law in the regulatory framework for the institution of supervision and control over compliance with labour legislation. The key features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation are highlighted. ***Conclusions***. It is concluded that in Ukraine no clear legislative distinction is made between labour law and administrative law in the regulatory framework for the institution of supervision and control over compliance with labour legislation. This is due to the presence of administrative law and labour law provisions in the same legal regulations, which are important sources of labour law in particular. Moreover, the labour law provisions mainly regulate the so-called internal relations on supervision and control over compliance with labour legislation, as although they are of a managerial nature, they directly relate to the organisation of labour relations of employees in terms of monitoring compliance of these relations with legal requirements. Therefore, specific features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation include the following: first, it is aimed at achieving a purpose of social significance that covers both individual and collective interests - compliance with the requirements of labour legislation; second, it is of a service nature in respect of labour relations directly, as it is focused on ensuring their emergence, implementation and termination; third, it is exercised by the provisions of labour law to the extent that it relates to labour relations, without covering purely managerial relations, which are within the scope of regulatory provisions of administrative law.

Key words: regulatory framework, supervision, control, labour legislation, labour law.

1. Introduction

Ensuring the proper functioning of labour and closely related legal relations is virtually impossible without an efficiently structured system of supervision and control. Control and supervision over compliance with labour legislation are objective, lawful, ongoing activities of authorised public authorities and public organisations to respond to reports of labour rights violations and to verify that the participants in labour relations fulfil their obligations and comply with the prohibitions provided for by labour legislation in order to protect the right to work and other labour rights of the population through preventive activities and legal liability. (Kailo, 2020). Nevertheless, effective supervision and control depends on many factors, among which the regulatory framework plays a key role. Moreover, the scientific literature is full of debates about which branch of law is the key to the relevant regulatory framework.

Some problematic issues related to the legal framework for supervision and control over compliance with labour legislation have been considered in their scientific works by: N.D. Hetmatseva, K.M. Husov, Yu.P. Dmytrenko, O.V. Zabrodina, L.V. Mohilevskyi, V.O. Neviadovskyi, D.V. Sychov, Ye.Yu. Podorozhnyi,

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A.M. Sotskyi, O.M. Yaroshenko, and many others. However, despite the significant theoretical achievements, the legal literature lacks comprehensive studies on the specific features of the regulatory framework for institution of supervision and control over compliance of labour law provisions with labour legislation.

Thus, the purpose of the article is to reveal the specific features of the regulatory framework for institution of supervision and control over compliance of labour law provisions with labour legislation.

2. Specific features of the regulatory framework for labour law supervision and control over compliance with labour legislation

In order to outline the peculiarities of the regulatory framework for labour law supervision and control over compliance with labour legislation, we should first of all have a clear understanding of the specifics of the subject matter of labour law. Usually, the subject matter of labour law includes labour and closely associated relations. Therewith, the legal literature review reveals quite different perspectives on the specific content of the relations that constitute the subject matter of labour law.

O.Yu. Balitska argues that labour relations are a complex category which encompasses a number of simpler legal relations: performance of work in a certain job function, remuneration, work for a fixed period of time, etc. However, no doubt that the main place in the system of labour relations belongs to legal relations between an employer and an employee, which are based on the employee's work and take the form of an employment contract. Therefore, the author defines labour relations as relations regulated by labour law, which arise through an employment contract between an employer and an employee, and at the same time labour relations are a legal form of expression of social and labour relations arising on a bilateral basis: between the employer or an authorised body and an employee (Kucher, 2017).

According to H.I. Chanysheva and O.S. Shchukin labour relations are relations arising on the basis of an agreement between an employee and an employer on the personal performance by the employee of a labour function (work in a certain profession, speciality, qualification, position) for timely and full wages in the interests, under the direction and control of the employer provided that the employee complies with the internal labour regulations and the employer provides proper, safe and healthy working conditions as prescribed by law, collective bargaining agreements, labour contracts, and other agreements (Chanysheva, Shchukin, 2021). Therefore, this refers exclusively to individual labour relations as the main object of the regulatory framework for labour law provisions.

Following N.D. Hetmatseva and I.H. Kozub, labour relations include all legal relations regulated by labour law, the main ones being those arising between an employee and an employer. In addition, the authors emphasise that these relations do not exhaust the list of labour relations. N.D. Hetmatseva and I.H. Kozub include legal relations on employment and recruitment, organisational and managerial legal relations, supervision and control over compliance with labour legislation and labour protection, legal relations on material liability of the parties to an employment contract and on resolution of labour disputes, etc. Moreover, according to the authors, they are labour relations at least because they are regulated by labour law (Hetmatseva, Kozub, 2013). Therefore, the researchers consider the fact that legal relations are regulated by labour law to be a key feature of labour relations.

In O.O. Protsevskyi's opinion, other relations which constitute the subject matter of labour law are: 1) those characterising joint work, in particular, relations of organisation and management; 2) those arising from the participation of a trade union body in organising remuneration, creating appropriate conditions and managing a collective agreement, resolving labour disputes; 3) those arising from violation of labour rights; 4) relations on social protection of actors; 5) relations in the field of state social guarantees; 6) in the field of social partnership (Protsevskyi, 2001). Therewith, the author does not distinguish supervisory and control relations over compliance with labour legislation into a separate group of other subjects of labour law.

Thus, the labour law regulatory framework for supervision and control over compliance with labour legislation is primarily based on their direct connection with individual labour relations arising between an employer and an employee. The legal literature also lacks unanimity in determining which functional group of other institutions closely related to individual labour relations the institution of supervision and control over compliance with labour legislation belongs to.

3. Regulatory and legal framework for the institution of supervision and control over compliance with labour legislation

It should be noted that a significant number of scholars refer to relations concerning supervision and control over compliance with labour legislation as organisational and managerial relations. Organisational and managerial relations, as a derivative of labour relations, ensure the existence of a link between an individual employee

and authorised persons, a person (enterprise, institution, organisation), their role in ensuring that all employees perform their labour function with the use of incentives and guarantees. The role of organisational and managerial relations in labour law should be considered comprehensively: between employees as a labour collective and the employer's authorised person(s), the authorised person and the trade union, and between the trade union and employees. The content of organisational and managerial relations significantly affects the scope of legal powers and duties of the parties to the main labour relationship, as it determines the nature of working conditions, organisation of remuneration and other issues affecting the interests of employees of a given enterprise, institution or organisation. In most cases, the specific bearer of the relevant obligations is the administration, although the labour collective may also assume certain obligations, usually of an additional nature to those established by law, for example, a reduction in the time limit for completing production tasks, etc. (Danylova, 2013). M.V. Danilova considers that the content of organisational and managerial relations in labour law is subjective rights, which are linked by mutual properties and legal relations, and corresponding legal obligations in the field of organisation and management of labour at an enterprise, institution or organisation with the participation of employees, employers and their representatives (Danylova, 2013).

Therefore, the institution of supervision and control over compliance with labour legislation is regulated by labour law as a type of relations closely linked to the relations arising between an employee and an employer to ensure compliance with the requirements of the legislation in the course of hired labour, which are managerial in nature. The close connection with the purely labour relations arising between the employer and the employee and the supervision and control relations as the object of the regulatory framework for labour law is due to the preventive and incentive effect on the participants in these labour relations. Such influence is exercised even before a candidate for employment acquires the status of an employee, during the employment relations and their termination.

The regulatory framework for institution of supervision and control over compliance of labour law provisions with labour legislation is implemented within the existing regulatory mechanism for labour relations. In the legal literature, all the means of the regulatory framework for labour relations are usually divided into certain groups depending on the purpose of the actor involved in regulating, namely: legal means of state regulatory framework; legal means of contractual regulatory framework, which combines legal means of individual contractual and collective contractual regulatory framework. The legal means of state regulatory framework include labour law provisions, principles, international acts ratified by Ukraine and legal regulations. The labour law provisions define both the social relations themselves (their scope, parties, content) regulated by labour law and the legal means of ensuring the possible or actual behaviour of the parties to labour relations (Hetmantseva, Mytrytska, 2021). The legal regulatory framework for the institution of supervision and control over compliance with labour law provisions with labour legislation is based on international legal acts, laws of Ukraine, bylaws and collective bargaining agreements.

It should be noted that the Labour Code of Ukraine defines the very existence of supervision and control over compliance with labour legislation as a necessary part of labour relations, specifying the legal framework for this institution in a particular Chapter XVIII "Supervision and Control over Compliance with Labour Legislation". The very content of this Chapter indicates the comprehensive nature of state supervision and control over compliance with labour legislation, since Article 259 provides that state supervision and control over compliance with labour legislation covers all legal entities regardless of their form of ownership, type of activities, business, as well as individual entrepreneurs who use hired labour.

It is essential to mention that the structure of the regulatory framework for supervision and control over compliance with labour protection legislation is also contained in the Law of Ukraine "On Labour Protection". The Law lists the bodies that exercise state supervision over compliance with laws and other legal regulations on labour protection, the rights of officials of the central executive body that implements public policy on labour protection, and a reference provision to the Law of Ukraine "On Civil Service" in terms of the liability of officials of the central executive body, implementing public policy on labour protection for the performance of their duties, general issues of social protection of these officials, including the very fact that the state guarantees social protection to such persons, assistance to these persons by law enforcement officials, preservation of the right to benefits under the law for persons dismissed from positions in state supervisory bodies due to age or illness or injury, as well as for family members or dependents of an official who has died while performing official duties (Law of Ukraine On Labor Protection, 1992). In this regard, it is reasonable to agree that

such provisions are the prerogative of administrative law (and they are simply duplicated in labour law) (Dvornyk, 2018). Therefore, the provisions of the Labour Code of Ukraine and the provisions of the Law of Ukraine "On Labour Protection" insofar as they regulate the list and powers of actors exercising supervision and control over compliance with labour legislation in relation to enterprises, institutions and organisations regardless of ownership and individuals using hired labour, are in fact sources of administrative and legal provisions.

The Law of Ukraine "On Employment of the Population" provides for a separate Section on control and responsibility in the field of employment, which covers the range of actors authorised to exercise state and public control over compliance with legislation in this field, as well as the range of offences with sanctions imposed on those responsible for committing them (Law of Ukraine On Employment of the Population, 2012).

The Law of Ukraine "On Labour Protection" contains provisions relating to public control over compliance with labour protection legislation, establishing the range of actors, issues subject to public control in this field, powers of actors exercising public control, in particular trade unions, as well as persons authorised by employees on labour protection issues, and sets out certain guarantees for their activities, in particular, it provides that any legitimate interests of employees in connection with the performance of their duties as persons authorised by employees on labour protection issues cannot be infringed upon. Their dismissal or disciplinary or financial liability may be exercised only with the consent of employees in accordance with the procedure established by the collective agreement (Law of Ukraine on labor protection, 1992). In addition, it should be emphasised that the provisions relating to liability for violations of labour protection legislation in the Law "On Labour Protection", unlike the Labour Code, are placed outside the section on supervision and control in a separate section, which should be considered fully justified. Therefore, the same legal regulation contains provisions of both administrative law and labour law regarding the regulatory framework for control and supervision over compliance with labour legislation. We should agree with S.I. Dvornik's opinion that in terms of relations arising from labour relations, the issue of control and supervision over compliance with labour legislation falls within the regulatory framework for labour law provisions (Dvornyk, 2018).

4. Conclusions

To sum up, no clear legislative distinction is made between labour law and administrative law in the regulatory framework for institution of supervision and control over compliance with labour legislation. This is due to the presence of administrative law and labour law provisions in the same legal regulations, which are important sources of labour law in particular. Moreover, the labour law provisions mainly regulate the so-called internal relations on supervision and control over compliance with labour legislation, as although they are of a managerial nature, they directly relate to the organisation of labour relations of employees in terms of monitoring compliance of these relations with legal requirements.

Therefore, the specific features of the regulatory framework for the institution of supervision and control over compliance of labour law provisions with labour legislation include the following: first, it is aimed at achieving a purpose of social significance that covers both individual and collective interests - compliance with the requirements of labour legislation; second, it is of a service nature in respect of labour relations directly, as it is aimed at ensuring their emergence, implementation and termination; third, it is exercised by the provisions of labour law to the extent that it relates to labour relations, without covering purely managerial relations, which are within the scope of regulatory provisions of administrative law.

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ОСОБЛИВОСТІ ПРАВОВОГО РЕГУЛЮВАННЯ ІНСТИТУТУ НАГЛЯДУ І КОНТРОЛЮ ЗА ДОДЕРЖАННЯМ ЗАКОНОДАВСТВА ПРО ПРАЦЮ НОРМАМИ ТРУДОВОГО ПРАВА

Анотація. ***Метою*** статті є розкрити особливості правового регулювання інституту нагляду і контролю за додержанням законодавства про працю нормами трудового права. ***Результати.*** У статті здійснено аналіз норм чинного трудового законодавства, норми якого спрямовані на регулювання інституту нагляду і контролю за додержанням законодавства про працю. Зроблено висновок про відсутність чіткого законодавчого розмежування норм трудового та норм адміністративного права у сфері правового регулювання інституту нагляду і контролю за додержанням законодавства про працю. Виокремлено ключові особливості правового регулювання інституту нагляду і контролю за додержанням законодавства про працю нормами трудового права. ***Висновки***. Зроблено висновок, що в Україні відсуне чітке законодавчого розмежування норм трудового та норм адміністративного права у сфері правового регулювання інституту нагляду і контролю за додержанням законодавства про працю. Це пов'язано з наявністю адміністративно-правових та трудо-правових норм в одних і тих же нормативно-правових актах, що є важливими джерелами насамперед трудового права. При цьому нормами трудового права врегульовуються переважно так звані внутрішні відносини із здійснення нагляду та контролю за додержанням законодавства про працю, оскільки вони хоча і мають управлінський характер, але безпосередньо стосуються організації трудових відносин найманих працівників з точки зору забезпечення моніторингу відповідності цих відносин законодавчим вимогам. Тож, до особливостей правового регулювання інституту нагляду і контролю за додержанням законодавства про працю нормами трудового права доцільно віднести те, що: по-перше, воно спрямовано на досягнення соціально значущої мети, яка охоплює як індивідуальні, так і колективні інтереси – виконання вимог законодавства про працю; по-друге, має обслуговуючий характер по відношенню безпосередньо до трудових правовідносин, оскільки спрямовано на забезпечення їх виникнення, реалізацію та припинення; по-третє, здійснюється нормами трудового права в тій мірі, в якій це стосується саме трудових відносин, без охоплення суто управлінських відносин, які входять до кола правового регулювання норм адміністративного права.

Ключові слова: правове регулювання, нагляд, контроль, трудове законодавство, трудове право.

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PROSPECTS OF UKRAINE IN DEVELOPING THE LEGAL AND REGULATORY FRAMEWORK FOR LABOUR MIGRANTS' RIGHTS

Abstract. ***Purpose.*** Prospects of Ukraine in developing the legal and regulatory framework for labour migrants' rights. ***Results.*** The article focuses on the need to ratify a number of international legal instruments in the field of labour migration. As a normative source, the author uses the Recommendations of the parliamentary hearings on "Ukrainian labour migration: State, problems and ways to solve them" of 5 November 2013, which clearly outlines the international acts that are waiting for their enforcement. The purpose of the article is to reveal the key aspects of these treaties and, thus, to substantiate and focus on the need for their ratification in Ukraine. It is clarified that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a kind of "Constitution" for migrant workers and members of their families. Moreover, it requires States to take measures to prevent irregular movement as well as to employ migrants in crisis. The Convention also emphasises that the fundamental rights of irregular migrants shall also be guaranteed. Therefore, Ukraine's delay in signing the Convention puts labour migrants in a discriminatory position in relation to those migrants who come from countries that have ratified it. In this context, it is important for the Cabinet of Ministers of Ukraine to at least intensify negotiations with recipient countries of Ukrainian labour migrants with whom agreements have not been concluded to regulate employment and social protection of labour migrants. Only under such conditions Ukraine can guarantee labour migrants certain protection and support abroad. ***Conclusions.*** It is concluded that international legal framework for external labour migration, with due regard to the analysis of the above sources, is limited to the settlement of the following main issues: liberalisation and simplification of existing labour migration flows; levelling excessive bureaucracy, optimisation of the process of movement across State borders; balancing the interests of the parties; ensuring a regime that is as acceptable as possible for labour migrants and their families; strategic planning of migration flows; reducing the rate of illegal migration. Therefore, international standards are both instruments of administrative and legal framework for labour migration and the basis for the legal status of labour migrants.

Key words: labour migrants, protection of rights, legal status, ratification, interaction.

1. Introduction

Issues related to the protection of the rights of migrant workers and their families have been relevant since the foundation of the United Nations. In general, to date, the international community has done a tremendous amount of work in this area: a huge number of international, regional and national legal instruments have been adopted, relevant institutions have been established, and cooperation is underway. Unfortunately, not all states are ready to join this work. The reasons for this inaction can vary from weak economic development to internal and external conflicts and the unwillingness of the state to cooperate.

Ukraine strives to develop in this direction. A number of international treaties have been ratified, but it is also worth noting that many issues remain open. For example, the Recommendations of the parliamentary hearings on "Ukrain-

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ian labour migration: State, problems and ways to solve them" of 5 November 2013 emphasises the importance of ratification of the following Conventions: 1) Migration for Employment Convention (No. 97); 2) Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers; 3) Maintenance of Social Security Rights Convention (No. 157); 4) ILO Private Employment Agencies Convention (No. 181); 5) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, adopted by UN General Assembly Resolution 45/178. This need is due to the need to ensure full protection of human, economic, professional, social and other interests and rights of Ukrainian labour migrants and their families. Therefore, the purpose of the article is to reveal the key aspects of these treaties and, thus, to substantiate and focus on the need for their ratification in our country.

External labour migration is a fairly widespread phenomenon that has been studied by many scholars, such as K. Levchenko, I. Harna-Ivanova, S. Husarov, Ye. Malyshev, M. Azarov, O. Bandurka, O. Vostroknutova, Ye. Nikiforova, O. Sazonova, Ye. Malynovska and a number of others. We will try to continue this chain of scientific activities so that public policy on external labour migration can reach a new level of development.

2. Main non-ratified international conventions regulating the rights of labour migrants

In our opinion, we should begin to characterise and substantiate the fundamental provisions of the non-ratified treaties with the Migration for Employment Convention. Its key requirements are as follows:

– Maintain an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information or make sure that such service already exists in its country;

– Facilitate the departure, journey and reception of migrants for employment.;

– Maintain, within its jurisdiction, appropriate medical services responsible for: 1) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health; 2) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination;

– Apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals.

In addition, Convention 97 contains amendments to: 1) recruitment, introduction and placing of migrants for employment who are recruited otherwise than under Government-sponsored arrangements for group transfer; 2) recruitment, introduction and placing of migrants for employment who are recruited under Government-sponsored arrangements for group transfer (Migration for Employment Convention, 1975).

Provisions of Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers are aimed at suppressing clandestine movements of migrants for employment and illegal employment of migrants, and as well as at ensuring equal rights, opportunities and decent treatment of migrants' labour, social security, etc. according to Article 12 of the Convention, each Member shall, by methods appropriate to national conditions and practice: 1) seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in this Convention; 2) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy; 3) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection; 4) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy; 5) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment; 6) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue; 7) guarantee equality of treatment, with regard to working conditions, for all

migrant workers who perform the same activity whatever might be the particular conditions of their employment (Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, 1975).

Furthermore, the Convention provides for a number of other requirements for states that have ratified it, which is one of the reasons why Ukraine has been delaying its signing.

Maintenance of Social Security Rights Convention (No. 157) has been ratified by the smallest number of states to date. However, it refers to a number of important proposals to preserve the rights of migrant workers in the field of social security. These include: 1) medical care; 2) sickness benefit; 3) maternity benefit; 4) invalidity benefit; 5) old-age benefit; 6) survivors' benefit; 7) employment injury benefit, namely benefit in respect of occupational injuries and diseases; 8) unemployment benefit; 9) family benefit (Maintenance of Social Security Rights Convention, 1986).

The provisions of the Private Employment Agencies Convention (No. 181) of 19 June 1997, which are also awaiting ratification by Ukraine, are equally important. This Convention guarantees the protection of the rights of labour migrants from various abuses concerning the activities of private employment agencies. It underlines that in order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability. Furthermore, the processing of personal data of workers by private employment agencies shall be, first, done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice; second, limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information (Private Employment Agencies Convention, 1997). In addition, Private Employment Agencies Recommendation (No.188) provides for that Private employment agencies should not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind, as well as should inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment. Moreover, Private employment agencies should be prohibited from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organisation (Private Employment Agencies Recommendation, 1997).

3. Recommendations of the parliamentary hearings as a promising basis for further regulatory and legal improvements in regulating the rights of labour migrants

Furthermore, Recommendations of the parliamentary hearings on the topic: "Ukrainian labour migration: State, problems and ways to solve them" focus on the need for the Cabinet of Ministers of Ukraine to take steps to sign and ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990. The Convention was adopted by UN General Assembly Resolution 45/178 (On the Recommendations of the parliamentary hearings on the topic: "Ukrainian labour migration: State, problems and ways to solve them": Resolution of the Verkhovna Rada of Ukraine, 2013). This Convention provides a rather extensive classification of labour migrants but it shall not apply to: 1) persons, whose admission and status are regulated by general international law or by specific international agreements or conventions; 2) persons who participate in development programmes and other co-operation programmes, whose admission and status are regulated by a specific agreement and who, in accordance with that agreement, are not considered migrant workers; 3) persons taking up residence in a State different from their State of origin as investors; 4) refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned; 5) students and trainees; 6) seafarers and workers on an offshore installation who have not been admitted taking up residence and engage in a remunerated activity in the State of employment (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990). Furthermore, the Convention prohibits discrimination against the rights of labour migrants, and a wide range of rights are guaranteed to them and their family members, including the right to free movement, the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the prohibition of slavery or forced labour, the right to freedom of thought, the right to privacy

and family life, the right to property, the right to humane treatment and respect for one's personality, the prohibition of collective expulsion, the right to recognition of the legal personality of a labour migrant and his/her family members, the right to social protection and a number of other vital opportunities.

According to this Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: 1) access to educational institutions and services; 2) access to vocational guidance and placement services; 3) access to vocational training and retraining facilities and institutions; 4) access to housing, including social housing schemes, and protection against exploitation in respect of rents; 5) access to social and health services, provided that the requirements for participation in the respective schemes are met; 6) access to co-operatives and enterprises, which shall be subject to the rules and regulations of the bodies concerned; 7) access to and participation in cultural life (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

In other words, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a kind of "Constitution" for migrant workers and members of their families. Moreover, it requires States to take measures to prevent irregular movement as well as to employ migrants in crisis. The Convention also emphasises that the fundamental rights of irregular migrants shall also be guaranteed. Therefore, Ukraine's delay in signing the Convention puts labour migrants in a discriminatory position in relation to those migrants who come from countries that have ratified it. In this context, it is important for the Cabinet of Ministers of Ukraine to at least intensify negotiations with recipient countries of Ukrainian labour migrants with whom agreements have not been concluded to regulate employment and social protection of labour migrants. Only under such conditions Ukraine can guarantee labour migrants certain protection and support abroad.

4. Conclusions

In general, the international legal framework for external labour migration, with due regard to the analysis of the above sources, is limited to the settlement of the following main issues:

– Liberalisation and simplification of existing labour migration flows;

– Levelling excessive bureaucracy, optimisation of the process of movement across State borders;

– Balancing the interests of the parties;

– Ensuring a regime that is as acceptable as possible for labour migrants and their families;

– Strategic planning of migration flows;

– reducing the rate of illegal migration.

Therefore, international standards are both instruments of administrative and legal framework for labour migration and the basis for the legal status of labour migrants.

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ПЕРСПЕКТИВИ УКРАЇНИ У РОЗВИТКУ НОРМАТИВНО-ПРАВОВИХ РЕГУЛЮВАННЯ ПРАВ ТРУДОВИХ МІГРАНТІВ

Анотація. ***Мета.*** Перспективи України у розвитку нормативно-правових регулювання прав трудових мігрантів. Результати. Стаття зосереджена на питаннях про необхідність ратифікації низки міжнародно-правових актів у сфері трудової міграції. Як нормативне джерело використовувалися Рекомендації парламентських слухань на тему: «Українська трудова міграція: стан, проблеми та шляхи їх вирішення» від 5 листопада 2013 року, де чітко прописувалися міжнародні акти, які чекають на свою правозастосовну долю. Мета статті полягала в тому, щоб відобразити ключові аспекти цих договорів і, таким чином, обґрунтувати та акцентувати увагу на необхідності їхньої ратифікації в Україні. Зясовано, що Міжнародна конвенція про захист прав усіх трудящих-мігрантів та членів їх сімей виступає своєрідною «Конституцією» для трудових мігрантів та членів їх сімей. Більше того, вона вимагає від держав вжити заходів для запобігання незаконному переміщенню, а також працевлаштуванню мігрантів у кризовій ситуації. Конвенція також наголошує, що основні права нелегальних мігрантів також повинні гарантовано виконуватися. Тому зволікання України у її підписанні ставить трудових мігрантів у дискримінаційне становище стосовно тих мігрантів, які прибули з країн, що її ратифікували. За таких умов Кабінету Міністрів України важливо щонайменше активізувати переговорний процес із країнами-реципієнтами українських трудових мігрантів, угоди з якими не укладені, щодо врегулювання питань працевлаштування та соціального захисту трудових мігрантів. Лише за таких умов Україна може гарантувати трудовим мігрантам певний захист та підтримку за кордоном. ***Висновки.*** Зроблено висновок, що міжнародно-правове забезпечення зовнішньої трудової міграції, виходячи з аналізу наведених джерел, зводиться до врегулювання таких основних питань: лібералізація та спрощення існуючих потоків трудової міграції; нівелювання надмірної бюрократії, оптимізація процесу переміщення через державні кордони; забезпечення балансу інтересів сторін; забезпечення режиму максимально прийнятного для трудових мігрантів та членів їхніх сімей; стратегічне планування міграційних потоків; зниження показників нелегальної міграції. Таким чином, міжнародні стандарти виступають одночасно і інструментами адміністративно-правового забезпечення трудової міграції та основою правового статусу трудового мігранта.

Ключові слова: трудові мігранти, захист прав, правовий статус, ратифікація, взаємодія.

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RIGHTS AND FREEDOMS OF THE CHILD AS AN OBJECT OF ADMINISTRATIVE AND LEGAL PROTECTION

Abstract. ***Purpose.*** The purpose of the article is to analyse the problematic issues of rights and freedoms of the child as an object of administrative and legal protection. ***Results.*** The article provides a theoretical and legal description of rights and freedoms of the child as an object of administrative and legal protection. In the context of ensuring administrative and legal protection of rights and freedoms of the child in Ukraine, it is important to note that both the procedure for upbringing of children and the availability and possibility of exercising children's property and non-property rights are directly linked to the persons responsible for their upbringing, parents or persons who perform such duties until the child comes of age. Hence, the importance of considering the issues of property and non-property rights under various types of Ukrainian legislation, the content and essence of children's passive and active legal capacity, as well as the legal framework for the care and upbringing of orphans and children deprived of parental care, is directly related to the administrative and legal protection of rights and freedoms of the child and should be considered in the context of this study. Although criminal law protection of rights and freedoms of the child goes beyond the concept of administrative law protection, we believe that it is necessary to specify the relevant boundaries in order to separate these institutions from each other. For example, administrative and legal protection of rights and freedoms of the child may cover the institution of administrative liability for offences against children, as well as administrative and legal procedures and relevant administrative jurisdictional activities related to the enforcement of rights and freedoms of the child, both by children and by persons authorised to do so. In addition, the institution of criminal law protection of rights and freedoms of the child is a sanctioning mechanism that provides for criminal prosecution of persons who have committed respective offences against children. ***Conclusions.*** It is concluded that an important aspect of improving the mechanism of administrative and legal protection of rights and freedoms of the child is to ensure a socio-legal formulation of the phenomenon of childhood as an important stage in the formation of a young citizen's consciousness, which will further affect the ability and willingness to fulfil their duties regarding the development and protection of their State. In this context, the possibility and realistic way of implementing the function of national and patriotic education of the population, namely children, is clearly considered by expanding the possibilities for their exercise of rights and strengthening the mechanism of administrative legal protection of such rights, which will further lead to an early sense of responsibility for their actions and, accordingly, will contribute to maturation.

Key words: children's rights, legal protection, liability, international law, observance of rights, object of administrative law.

1. Introduction.

The rights and freedoms of the child as an object of administrative and legal protection have been studied by scholars repeatedly, which, in our opinion, although suggests the existence of a certain foundation in the relevant theoretical and practical topics, but considering the current requirements and dynamics of society, as well as the current legal regime of martial law in Ukraine and in the context of total and flagrant violation of the rights and freedoms of the child, in particular through the commission of crimes related to Russia's military aggression against Ukraine, this legal institution requires additional analysis. In particular, we believe that such an analysis may be possible if the material for the study is considered as retrospectively as possible, allowing for the establishment of certain regularities in the functioning of the institution of ensuring the rights and freedoms

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of the child through administrative and legal protection and legislation in general.

In the first half of the twentieth century, a philosopher, psychologist, and educator V. Zenkovskyi (1881-1962), in his study of the philosophical portrait of the child, saw in it an organic unity of wisdom and naivety, which from the first moments of life is endowed with individual characteristics that gradually begin to be reflected in a particularly vivid way under the influence of life circumstances. The dominance of the real Self, the weak power of the empirical Self, leads to the fact that there is nothing artificial, forced, or corrective in children; the child acts directly in accordance with his or her own urges and feelings; it is thanks to this that childhood is full of truly spiritual freedom (Zinkivskyi, 1950).

Representatives of the ethnographic approach have made a significant contribution to the study of childhood as a social phenomenon. In particular, A. Bogush distinguishes two trends: the first trend: childhood is seen as a cultural and historical value, it is about the psychological anthropology of childhood (F. Boas, E. Kurulenko, B. Malinowskyi, M. Mead); the second trend: childhood is studied in the historical aspect, the history of childhood, ways of upbringing and the world of childhood are investigated (V. Abramenkova, F. Ariès, L. DeMause, E. Erikson, V. Kudriavtsev, M. Osorina, etc.) (Bohush, Varianytsia, Havrysh, Kurinna, Pechenko, 2006; Kryvachuk, Kostyshyn, 2014). However, a number of issues still remain unresolved at the strategic level and therefore require further research.

The object of the article is public relations in the field of ensuring the protection of the rights and freedoms of the child.

The purpose of the article is to analyse the problematic issues of rights and freedoms of the child as an object of administrative and legal protection.

2. The child as an object of administrative and legal protection

M. Mead (1901-1978) is considered to be the first anthropologist to study childhood. She studied the position of the child in different cultures. According to M. Mead, in any society, a child is born with universal biological inclinations. However, each culture uses them in its own way. In her concept, M. Mead distinguishes three types of culture characterised by different intergenerational relations: post-figurative culture, one of the oldest, according to which children adopted the traditions and experience of previous generations; configurative culture, in which the centre of the clash of values is the present, and the peer group is more important for children; prefigurative culture that we live in is rapidly transforming, characterised by constant dynamics and life-creativity, which requires children and adults to be partners, with life values projected into the future. The analysis of M. Mead's concept is in full agreement with academician A. Bogush, who argues that "the main conclusion that follows from M. Mead's concept should be that the specific nature of the present requires a fundamentally new, different from the previous ones, nature of relations between generations". F. Ariès was the first to conclude that the category of "childhood" has not only a biological (natural) character, but also a social and historical one. In his study, he proves that approaches to the interpretation of children have been different in different historical periods, and the concept of "childhood" has been changing correspondingly; it is not only a natural universal phase of human development, but a concept that has a complex social and cultural content that varies in different epochs. By focusing on childhood as a historical construct, F. Ariès's study triggered a real explosion of research on this issue in the second half of the twentieth century. (Kryvachuk, Kostyshyn, 2014).

Accordingly, the understanding of the sociological and legal content of the concept and category of childhood in general, as well as the awareness of the need to construct a regulatory and legal context for the administrative and legal protection of the rights and freedoms of the child, lead to a new legal reality in which the application of a human-centred approach to the child is extremely important. Therefore, given that a child, as a young member of society, needs to work with himself or herself and to be explained certain norms and rules of the society in which he or she grows up, liability for failure to fulfil the relevant obligation and causing destructive harm to such a child should be relevant.

Advocates of F. Ariès's ideas include I.S. Kon, O.Ye. Koshelova, O.Ye. Sapohova, and others. In contrast to the views of F. Ariès, the Norwegian theologian and historian Odd Magne Bakke put forward his statements, proving that it was Christianity that influenced the perception of childhood as a special period in human life. The Christian religion has contributed to the prohibition of infanticide, abortion, child abandonment, and sexual exploitation of children, putting forward instead the idea of children's purity and innocence, their resemblance to the image of God (Bakke, 2005). It should be noted that the influence of the Christian religion was not only positive, but also negative, which was reflected in the inequality of rights of illegitimate children, daughters and sons in inheriting property, etc. Prominent studies in the field of childhood anthropology were made by L. DeMause and M. Mead (Opolska, 2019).

In our opinion, the focus should be on some specific features of the sociological and legal concept of understanding the essence and content of certain legislative structures. According to a number of scholars, the provisions and norms of Ukrainian legislation, having deep historical and social roots, derive their standards and values from religion and established traditions of society that, in our opinion, correlates with the principles on which Ukrainian legislation is constructed, and accordingly, this position has a place in the rule-making system of Ukraine and should be considered when forming the architecture of administrative and legal protection of children's rights and freedoms.

3. The content of children's rights and freedoms

The increased development of domestic research on the idea of child equality, ensuring the needs and interests of children, and protecting their rights has been observed since the late nineteenth century. It is advisable to distinguish between the views of lawyers and educators of this period on the recognition and protection of children's rights. For example, some foreign lawyers focused on the protection of children's rights, the possibility of realising their interests and meeting their needs. Problematic issues of parent-child relationships were studied, distinguishing them from purely civil ones. For example, M. Kapustin focused on such issues. In his work "Theory of Law. General Dogmatics" (1868), the researcher recognised the need to complement the imperfect development of others as the driving force of humanity. This character is marked by the support of the weak by the stronger, mercy, education (Opolska, 2019).

In our opinion, through the prism of this concept it is possible to describe the administrative and legal mechanism for the protection of the rights and freedoms of the child comprehensively, since it complements both Ukrainian legislation and social and legal reality, in the context and dynamics, with modern democratic values regarding the treatment of the child, and provides him or her with his or her own and unique legal personality in the context of his or her awareness, is the key to the effective and continuous development of such a child as an independent member of the relevant society, which will further allow the development of democratic principles and the foundations of the state based on the rule of law in a particular country. It is through the prism of this approach that the existential essence and content of the modern world statehood aimed at continuous development and empowerment is considered.

During this period, the issues of abuse of parental power and the growth of juvenile delinquency were also studied. A.I. Zahorovskyi in his monograph *A Course in Family Law* (1909) pointed out that there are many parents who exploit children and illegally use their property. The researcher noted that international prison congresses have repeatedly raised the issue of the growth of juvenile delinquency. According to him, the reasons for the early manifestations of delinquency in children were the low moral level of their parents, poverty and need. Often, child delinquency was the result of abuse of parental authority (Zahorovskyi, 1909). In the medical and biological approach, childhood is studied within the framework of such sciences as paediatrics, anatomy, physiology and focuses on the study of the period of human growth, physiological development of children, childhood diseases, etc. These sciences considered morphological features in the periodisation of a child, such as the change of milk teeth, completion of puberty, skeletal formation, etc. I. Sikorskyi (1842-1919), a psychologist and pedagogue, Doctor of Medicine, Professor, made a significant contribution to the development and research of childhood issues. One of the leading areas of I. Sikorskyi's research was to clarify the meaning of childhood, in particular preschool. The scientist was one of the first in the national science to single out the preschool period of a child's life as one of the most important (Fediaieva, 2010). We believe that O.I. Levytskyi highlighted important examples of parents abusing their power and violating the child's personal rights, as some researchers do not recognise that various forms of child abuse were practised in Ukraine, which occurred in many countries of the world during this period (Levytskyi, 1909; Opolska, 2019). However, in our opinion, the mechanism of legal protection of the child cannot be viewed through the prism of family law or any other law, since the set of norms ensuring the rights and freedoms of the child, for example, in Ukraine, is determined by administrative legislation, which provides for a clear mechanism of enforcement for the child, as well as the possibility of bringing to justice those persons who were obliged to fulfil their parental responsibilities towards the child and promote the comprehensive development of such an individual.

4. Conclusions

In the context of ensuring administrative and legal protection of rights and freedoms of the child in Ukraine, it is important to note that both the procedure for upbringing of children and the availability and possibility of exercising children's property and non-property rights are directly linked to the persons responsible for their upbringing, parents or persons who perform such duties until the child comes of age. That is

why the importance of considering the issues of property and non-property rights under various types of Ukrainian legislation, the content and essence of children's passive and active legal capacity, as well as the legal framework for the care and upbringing of orphans and children deprived of parental care, is directly related to the administrative and legal protection of rights and freedoms of the child and should be considered in the context of this study.

Although criminal law protection of rights and freedoms of the child goes beyond the concept of administrative law protection, in our opinion, it is necessary to specify the relevant boundaries in order to separate these institutions from each other. For example, administrative and legal protection of rights and freedoms of the child may cover the institution of administrative liability for offences against children, as well as administrative and legal procedures and relevant administrative jurisdictional activities related to the enforcement of rights and freedoms of the child, both by children and by persons authorised to do so. In addition, the institution of criminal law protection of rights and freedoms of the child is a sanctioning mechanism that provides for criminal prosecution of persons who have committed respective offences against children.

Therefore, through the prism of the analysed we believe that an important aspect of improving the mechanism of administrative and legal protection of rights and freedoms of the child is to ensure a socio-legal formulation of the phenomenon of childhood as an important stage in the formation of a young citizen's consciousness, which will further affect the ability and willingness to fulfil their duties regarding the development and protection of their State. In this context, the possibility and realistic way of implementing the function of national and patriotic education of the population, namely children, is clearly considered by expanding the possibilities for their exercise of rights and strengthening the mechanism of administrative legal protection of such rights, which will further lead to an early sense of responsibility for their actions and, accordingly, will contribute to maturation.

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ПРАВА І СВОБОДИ ДИТИНИ ЯК ОБ'ЄКТ АДМІНІСТРАТИВНО-ПРАВОВОЇ ОХОРОНИ

Анотація. ***Метою*** статті є аналіз проблемних питань прав і свобод дитини як об'єктів адміністративно-правової охорони. ***Результати.*** У статті було надано теоретико-правову характеристику правам і свободам дитини як об'єкту адміністративно-правової охорони. В контексті забезпечення адміністративно-правової охорони прав і свобод дитини в Україні важливим є зазначення того, що як процедура виховання дітей так і наявність та можливість правореалізації майнових і немайнових прав дитини безпосередньо пов'язується з тими особами, що відповідають за її виховання, батьками або особами, що виконують такі обов'язки до моменту повноліття дитини. Саме тому, важливість розгляду тематики майнових і немайнових прав за різними видами законодавства України, змісту і сутності дієздатності і правоздатності дітей, а також правових засад утримання та виховання дітей сиріт і дітей позбавлених батьківського піклування, безпосередньо пов'язано з адміністративно-правовою

охороною прав і свобод дитини та має бути розглянуто в контексті цього дослідження. Хоч кримінально-правова охорона прав і свобод дитини і виходить за межі поняття адміністративно-правової охорони, на нашу думку необхідним є зазначення відповідних меж з метою розділення зазначених інститутів між собою. Так адміністративно-правова охорона прав і свобод дитини може охоплювати інститут адміністративної відповідальності за вчинення правопорушень щодо дитини, а також адміністративно-правові процедури та відповідну адміністративну юрисдикційну діяльність пов'язану з правореалізацією прав і свобод дитини, як нею самою так і уповноваженими на це особами. У той же час інститут кримінально-правової охорони прав і свобод дитини являє собою санкційний механізм що передбачає притягнення до кримінальної відповідальності осіб що вчинили відповідні правопорушення щодо дитини. ***Висновки.*** Зроблено висновок, що важливим в удосконаленні механізму адміністративно-правового захисту прав і свобод дитини є забезпечення соціально-правового формулювання феномену дитинства, як важливого етапу становлення свідомості молодого громадянина, що в подальшому впливатиме на можливість та бажання виконання ним покладених обов'язків, щодо розвитку та захисту своєї держави. В цьому контексті чітко розглядається можливість та реальний спосіб реалізації функції з національно-патріотичного виховання населення, а саме дітей, у спосіб розширення можливостей правореалізації ними та укріплення механізму адміністративного правової охорони реалізації таких прав, що в подальшому спричинить зародження раннього відчуття відповідальності за свої вчинки та відповідно сприятиме дорослішанню.

Ключові слова: права дитини, правова охорона, відповідальність, міжнародне право, дотримання прав, об'єкт адміністративного права.

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PRINCIPLES OF INFORMATION AND COMMUNICATION SUPPORT FOR EDUCATIONAL PROCESS IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to reveal the principles of information and communication support for the educational process in Ukraine, relying on a comprehensive analysis of the theory of administrative and information law, systematisation of legal regulations and determination of practical activities of the actors involved in the educational process. ***Results.*** In the article, it is determined that the principles of information and communication support for the educational process in Ukraine are the fundamental provisions and ideas governing the basis of and trends in the regulating of administrative, information and communication relations in education, ensuring systematic and consistent legal provisions on the use of information and communication technologies in the educational process, and guaranteeing the exercise of educational and information rights and freedoms of participants in the educational process. ***Conclusions.*** It is concluded that the system of principles of information and communication support for the educational process in Ukraine is based on constitutional provisions and special legislation, which creates a solid legal basis for regulating the use of information and communication technologies in education. The principles of information and communication support for the educational process in Ukraine are primarily aimed at ensuring equal access to educational resources and technologies for all participants, regardless of their social, economic or physical capabilities. The system of principles of information and communication support for the educational process in Ukraine is not sustainable, as it should quickly adapt to changing conditions and individual needs of participants in the educational process. An integral part of the system of principles of information and communication support for the educational process is data security, as it is now important to ensure a high level of protection of information and personal data of participants in the educational process, which is crucial in the modern information society.

Key words: state information policy, information support, information society, information, coordination, mechanism, education, procedures, actors, technologies.

1. Introduction

In the modern world, information and communication technologies (ICTs) become an integral part of the educational process. While the digitalisation of education opens up new opportunities for access to knowledge, interactive learning and collaboration, it should also be clearly regulated and guided by appropriate principles to ensure the effective use of ICT. The COVID-19 pandemic has highlighted the importance of distance learning and the use of ICTs in ensuring the continuity of the educational process.

In the context of rapid technological development, it is important to ensure equal access to educational resources for all participants in the process, regardless of their place of residence, social status or physical abilities. The growing use of ICTs in education is accompanied by increased cybersecurity risks and the threat of losing confidential information. Accordingly, the study of the principles of information and communication support enables the development of effective measures to protect data and information security of the participants in the educational process.

Leading scholars in the field of administrative and information law have focused on the issues of information and communication support for the educational process in Ukraine: I.V. Aristova, O.M. Bandurka, K.I. Bieliakov, O.V. Dzhafarova, O.Yu. Drozd, T.O. Kolomoiets, V.K. Kolpakov, A.T. Komziuk, V.I. Olefir, I.V. Panova, S.O. Shatrava, and others.

With due respect to the achievements of scholars, a new approach is now needed to

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form the theoretical basis and practical implementation of the updated model of information and communication support for the educational process in Ukraine from the perspective of administrative and information law.

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

The purpose of the article is to reveal the principles of information and communication support for the educational process in Ukraine, relying on a comprehensive analysis of the theory of administrative and information law, systematisation of legal regulations and determination of practical activities of the actors involved in the educational process.

2. General approaches to defining princes

In scientific and educational literature, principles are characterised as the most general requirements for social relations and participants thereof, as well as the initial guiding principles, starting points that convey the essence of law and derive from the ideas of justice and freedom, determine the general direction and most essential features of the current legal system (Tsvik, Petryshyn, Avramenko, 2009, pp. 197–198).

The concept of "principle" in Latin means "beginning", "primary basis", "primacy". Since ancient times, the principle has been considered the foundation of any social system (including the legal system), the requirements thereof applying to all phenomena that belong to this system. The principles do not formulate specific rights and obligations and are not always backed by specific legislative sanctions, but the nature of the state itself (democratic, totalitarian, etc.) can largely determine the principles on which the legal order is based (Tsvik, Petryshyn, Avramenko, 2009, pp. 197–198).

The leading role of principles is ensured by their direct or indirect enshrining in legal provisions. Principles that are not enshrined in legal provisions are ideas of law and belong to the sphere of legal consciousness. These ideas-principles precede the creation of a system of law. Principles of law may be explicitly stated in legislation or may be derived from its general meaning. Although in most cases the principles are directly enshrined in preambles and general articles of legal regulations, it is necessary to develop and specify them in separate rules of conduct. Moreover, the principles become a guideline for law-making and law enforcement activities of state bodies, an indisputable requirement for such activities (Tsvik, Petryshyn, Avramenko, 2009, pp. 197–198).

If the scope is narrowed down to information law, for example, I.V. Panova understands the principles of information law as fundamental (basic) ideas, provisions, requirements that characterise the content of information law, reflect the laws of its development and determine the directions and mechanisms of regulating social relations in the information sector. The principles of information law of Ukraine are based on the provisions of the main constitutional provisions that enshrine information rights and freedoms, guarantee their exercise, as well as on the specific features and legal properties of information as an object of legal relations (Panova, 2009, pp. 41–48).

According to T. Katkova, the principles of information law are the rules and ideas enshrined in the legal provisions governing information relations which define the essence and content of information law, make its rules and institutions systemic, and enable consideration of the integrity of the mechanism of regulating information relations in society. Principles and provisions are closely interconnected, as evidenced by the fact that principles are necessarily reflected in legal provisions, which in turn shall be consistent with legal principles (Katkova, 2019).

Therefore, we argue that the principles of information and communication support for the educational process in Ukraine are the fundamental provisions and ideas governing the basis of and trends in the regulating of administrative, information and communication relations in the field of education, ensuring systematic and consistent legal provisions on the use of information and communication technologies in the educational process, and guaranteeing the exercise of educational and information rights and freedoms of participants in the educational process.

The principles of information and communication support for the educational process in Ukraine are based on constitutional provisions, allow for the peculiarities of information as an object of legal relations and the specifics of the subjects of the educational process, and are aimed at creating an effective, transparent and accessible educational environment through information and communication technologies.

3. Legal and regulatory framework for the educational process in Ukraine

Article 6 of the Law of Ukraine "On Education" stipulates that the principles of public policy on education and the principles of educational activity are: human centredness; rule of law; ensuring the quality of education and the quality of educational activity; ensuring equal access to education without discrim-

ination on any grounds, including disability; development of an inclusive educational environment, including in educational institutions that are most accessible and close to the place of residence of persons with special educational needs; ensuring universal design and reasonable accommodation; scientific nature of education; diversity of education; integrity and continuity of the education system; transparency and publicity of making and implementing management decisions; responsibility and accountability of educational authorities and educational institutions, other actors of education to the society; institutional separation of control (supervision) functions and functions of ensuring the activities of educational institutions; integration with the labour market; inseparable connection with world and national history, culture, national traditions; freedom to choose the types, forms and pace of education, educational programme, educational institution, other actors of education; academic integrity; academic freedom; financial, academic, personnel and organisational autonomy of educational institutions within the limits established by law; humanism; democracy; unity of education, upbringing and development; formation of patriotism, respect for the cultural values of the Ukrainian people, its historical and cultural heritage and traditions; formation of a conscious need to comply with the Constitution and laws of Ukraine, intolerance of their violation; formation of respect for human rights and freedoms, intolerance of humiliation of honour and dignity, physical or psychological violence, as well as discrimination on any grounds; formation of a conscious need to observe the Constitution and Laws of Ukraine, intolerance to their violation; formation of the civic culture and culture of democracy; formation of the culture of healthy lifestyles, environmental culture and caring attitude to the environment; non-interference by political parties into the educational process; non-interference by religious organisations into the educational process (except for instances established by this Law); versatility and balance of information on political, worldview and religious issues; public-social governance; public-social partnership; public-private partnership; promoting life-long learning; integration into the international educational and scientific space; intolerance to corruption and bribery; affordability of all forms and types of educational services offered by the State for every citizen. Education in Ukraine should be built on the principle of equal opportunities for all (Law of Ukraine On Education, 2017).

This system of principles is very voluminous and does not apply to the process of information and communication support.

In the course of the analysis of legal regulations, V. Savishchenko concludes that the principles of education can be classified according to three criteria: pedagogical, socio-political and axiological. The pedagogical criterion is determined by the level of knowledge of the regularities of the processes of education and upbringing; the socio-political criterion is determined by the level and direction of development of society, public policy on education; the axiological criterion is determined by the priority moral and ethical values (Savishchenko, 2016, pp. 127–130). Comparison of the principles of education of the current legislation with the developed principles of didactics has enabled the scientist to argue that the legal regulations do not reflect all the principles that meet the current level of pedagogical science and the needs of society and the state. These are the principles of: pedagogical emphasis, systematicity and consistency, consciousness, encouragement, accessibility, continuity of education, diversity of education, strength, cooperation, competence, public awareness, freedom and pluralism, and the priority of education in the life of society and the country. The implementation of educational ideals and principles involves the creation of socially accepted rules of conduct and their regulatory and legal framework through relevant regulations. Each principle of education is based on the complement of the previous one, and they all exist effectively only in interaction and absolute integrity. Failure to respect individual principles of education can lead to its destruction (Savishchenko, 2016, pp. 127–130).

According to T. Maiboroda, the basic and specific principles typical for state regulation in general and the education sector ensure the following: efficiency, which implies the provision of quality educational services and obtaining the final economic effect as a result of state intervention in the form of positive socio-economic externalities; fairness, which implies that the state ensures equal conditions of education and access to it for different social categories of citizens (i.e., an inclusive environment without any signs of discrimination on the basis of humanism and democracy); – stability at the macro and micro levels, which is manifested in ensuring sustainable development of society and the state, establishing cross-sectoral partnerships and integration; systematicity, i.e. the use of comprehensive state regulatory tools, with due regard for the impact on other areas of economic activity (including the labour market); adequacy, which is manifested in monitoring and assessing the feasibility of individual measures and actions by the state and adjusting them in accordance with the environment; opti-

mality, i.e. the balanced use of administrative and economic measures of direct and indirect influence; gradual and phased implementation of state regulatory measures and possible changes (Maiboroda, 2019, pp. 54–55).

With the consideration of the special legislation and the perspectives of scientists, we believe that the system of principles of information and communication support for the educational process in Ukraine is based on the following principles

– accessibility;
– continuity of learning:
– interactivity:
– adaptability;
– innovation;
– security;
– transparency;
– integration;
– personalisation;
– cooperation;
– environmental friendliness;
– legal compliance.

4. Conclusions

In general, the system of principles of information and communication support for the educational process in Ukraine is based on constitutional provisions and special legislation, which creates a solid legal basis for regulating the use of information and communication technologies in education. The principles of information and communication support for the educational process in Ukraine are primarily aimed at ensuring equal access to educational resources and technologies for all participants, regardless of their social, economic or physical capabilities. The system of principles of information and communication support for the educational process in Ukraine is not sustainable, as it should quickly adapt to changing conditions and individual needs of participants in the educational process. An integral part of the system of principles of information and communication support for the educational process is data security, as it is now important to ensure a high level of protection of information and personal data of participants in the educational process, which is crucial in the modern information society.

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ПРИНЦИПИ ІНФОРМАЦІЙНО-КОМУНІКАЦІЙНОГО ЗАБЕЗПЕЧЕННЯ ОСВІТНЬОГО ПРОЦЕСУ В УКРАЇНІ

Анотація. ***Мета*** статті полягає в тому, щоб на основі комплексного аналізу теорії адміністративного та інформаційного права, систематизації нормативно-правових актів, та визначення практичної діяльності суб'єктів освітнього процесу, розкрити принципи інформаційно-комунікаційного забезпечення освітнього процесу в Україні. ***Результати.*** У статті визначено, що принципи інформаційно-комунікаційного забезпечення освітнього процесу в Україні – це фундаментальні положення та ідеї, що визначають основи та напрямки регулювання адміністративних, інформаційних та комунікаційних відносин у сфері освіти, забезпечують системність та узгодженість правових норм, що регулюють використання інформаційно-комунікаційних технологій в освітньому процесі, та гарантують реалізацію освітніх та інформаційних прав та свобод учасників освітнього процесу. ***Висновки.*** Зроблено висновок, що система принципів інформаційно-комунікаційного забезпечення освітнього процесу в Україні базується на конституційних положеннях та спеціальному зако-

нодавстві, що створює міцний правовий фундамент для регулювання використання інформаційно-комунікаційних технологій в освіті. Принципи інформаційно-комунікаційного забезпечення освітнього процесу в Україні, в першу чергу, спрямовані на забезпечення рівного доступу до освітніх ресурсів та технологій для всіх учасників, незалежно від їхніх соціальних, економічних чи фізичних можливостей. Система принципів інформаційно-комунікаційного забезпечення освітнього процесу в Україні не є сталою, адже повинна швидко адаптуватися до змінних умов та індивідуальних потреб учасників освітнього процесу. Невід'ємною складовою системи принципів інформаційно-комунікаційного забезпечення освітнього процесу є безпека даних, адже нині важливо забезпечити високий рівень захисту інформації та особистих даних учасників освітнього процесу, що є критично важливим в умовах сучасного інформаційного суспільства.

Ключові слова: державна інформаційна політика, інформаційне забезпечення, інформаційне суспільство, інформація, координація, механізм, освіта, процедури, суб'єкти, технології.

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CONTROL AND SUPERVISORY PROCEDURES FOR ENSURING THE NATIONAL SECURITY OF UKRAINE IN THE CONTEXT OF EUROPEAN INTEGRATION

Abstract. ***Purpose.*** The purpose of the article is to reveal the particularities of control and supervisory procedures for ensuring the national security of Ukraine, as well as also to highlight certain problematic aspects of the implementation aspect. ***Results.*** The study reveals that control and supervisory procedures, as a type of administrative procedures in ensuring the national security of Ukraine, have a dual legal nature, which is manifested in the context of development of administrative law relations arising from both authorisation and the need to ensure the effective functioning of the system of ensuring the national security of Ukraine in the context of European integration. Their implementation is due to the general purpose of ensuring the protection of Ukraine's national interests, its compliance with international obligations, identifying shortcomings and stopping illegal or even unlawful actions and bringing offenders to justice. ***Conclusions.*** It is determined that the subject matter of control and supervision is, on the one hand, the inspection of entities subject to control by the authorisation system, and, on the other hand, the efficiency of the functioning of the system of ensuring national security of Ukraine in the context of European integration. According to this criterion, two groups of control and supervisory procedures are characterised with their own varieties, such as: the functioning thereof is conditioned by the authorisation system; the availability thereof is a consequence of the functioning and development of the system of ensuring national security of Ukraine in the context of European integration. It is clarified that control and supervisory procedures for the effective functioning of the national security system of Ukraine in the context of European integration can also be classified by the actors of democratic civilian control specified in the Law of Ukraine "On National Security of Ukraine". The essence of the state financial control is independently described. It is summarised that control and supervisory procedures for ensuring Ukraine's national security in the context of European integration do not exist independently, and, in practice, they are intertwined with each other. For example, when controlling the content and status of implementation of strategic programmes and plans, the implementation of measures and the effectiveness of the funds allocated for their implementation are analysed at the same time.

Key words: administrative procedure, administrative and legal mechanism, European integration, security, control, supervision, national security.

1. Introduction

National security has a procedural form. This is an axiom, because any activity aimed at protecting public or individual values must be carried out in a manner and within the framework of legal requirements.

As a general rule, the procedural form provides for a step-by-step implementation of a specific action, a certain order of its performance. Therefore, it is logical that such actions are classified according to certain criteria, grouped according to a certain criterion.

Control and supervisory procedures, as a type of administrative procedures in the field of ensuring national security of Ukraine, have a dual legal nature, which is manifested in the context of development of administrative and legal relations arising from both authorisation and the need to ensure the effective functioning of the system of ensuring national security of Ukraine in the context of European integration.

Since the content and essence of such procedures are an under-researched issue within the administrative and legal field of scientific knowledge, this study is directly aimed at revealing their features, as well as highlighting certain problematic aspects of the implementation aspect.

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The issues being analysed are characterised by a fairly solid scientific basis of a general nature. In particular, this refers to the sufficient scientific validity of the legal nature of such procedures in general. However, despite the existence of certain general theoretical basis regarding the specifics of the issue raised, the content and essence of control and supervisory procedures in the field of national security in the context of European integration have not been scientifically covered, which calls for a more thorough study.

2. General approaches to defining control and supervisory procedures

In general, control and supervisory procedures are to ensure the protection of public goods. Therefore, their practice should be as formalised as possible. The main tools of such procedures are inspection, monitoring and response measures. In turn, inspections can be scheduled and unscheduled.

It should be noted that, in our opinion, control and supervisory procedures in the field of national security in the context of European integration are clearly arranged performance, defined by law, of control and supervisory actions by authorised actors and public entities, which are carried out within the provisions of the Law of Ukraine "On National Security of Ukraine". Relying on its provisions and the content of European integration standards, we believe that they are implemented to ensure the protection of Ukraine's national interests, its compliance with international obligations, identifying shortcomings and stopping illegal or even unlawful actions and bringing offenders to justice.

Moreover, the subject matter of control and supervision is, on the one hand, the inspection of entities subject to control by the authorisation system, and, on the other hand, (1) compliance with the requirements of the national legislation in force and European standards in the activities of the national security bodies, prevention of their use for the usurpation of power, violation of human and civil rights and freedoms; (2) the content and state of implementation of strategies, doctrines, concepts, state programmes and plans in the field of national security and European integration; (3) the level of support to the national security bodies (staffing, equipment with modern weapons, military and special equipment, provision of necessary stocks of material resources and readiness to perform assigned tasks in peacetime and in a special period); (4) efficiency of the use of resources, including budgetary funds and financial assistance provided by European partners (Law of Ukraine On National Security of Ukraine, 2018).

Therefore, the subject matter of control and supervision as a basis enables to examine certain types of control and supervisory procedures for ensuring Ukraine's national security in the context of European integration.

First, these are ones related to the inspection of the activities of entities subject to control by the authorisation system. For example, the media sector can be considered.

Thus, the National Council supervises and controls compliance by media entities with the law and licence conditions in accordance with the requirements of Law of Ukraine No. 2849-IX "On Media" of 13 December 2022. When considering the issue of violation of legislation and/or licence conditions by a media entity, the National Council shall allow for: the results of the official monitoring of the National Council; explanations of the media entity, officials and employees, other persons; expert opinions; information provided by other state bodies within their competence; materials of inspections conducted by the National Council; any other factual data that enable to establish the presence or absence of a violation (Law of Ukraine On Media, 2022; Hulatkan, 2022).

Based on the results of the review of the violation of the law and/or the terms of the licence, the National Council makes one of the following decisions: (1) no violation of the law and/or the terms of the licence; (2) additional inspection; (3) the application of response measures to a media entity, such as prescriptions, fines, entering information on the cancellation of a licence by a court decision, cancellation of registration, prohibition of publication and distribution of print media, temporary or complete prohibition of online media distribution (Law of Ukraine On Media, 2022; Hulatkan, 2022).

Furthermore, the provisions of the law being analysed stipulate that supervision and control over compliance with legislation in the field of protection of economic competition, use of the radio frequency resource of Ukraine for broadcasting and electronic communications, as well as compliance with other legal requirements, are carried out by state bodies within their competence. If the National Council identifies signs of a possible violation of the law, the response to which does not fall within its powers, the National Council shall apply to the state body that is authorised to take appropriate response measures (Law of Ukraine On Media, 2022).

Therefore, the control and supervisory procedure for ensuring the national security of Ukraine in the context of European integration in the media sector is primarily aimed

at ensuring the creation of an optimal regime for the functioning of the legal field for the development of a domestic model of the communication environment within the country that will meet public demands, requirements of European legislation and strategic priorities of Ukraine's development.

Moreover, in our opinion, other control and supervisory procedures for ensuring Ukraine's national security in the context of European integration in the authorisation sector can be defined in a similar way, with the only difference between them being the object component. In the procedure analysed above, such an object is a model of the communication environment within the country.

For the area under study, the control and supervisory procedures for ensuring Ukraine's national security in the context of European integration, which relate to the efficiency of the system of its ensuring, are of greater importance.

The comprehensive consideration of this issue requires clarifying that the concept of "effectiveness" is inextricably linked to the concept of "effect" (Raizberh, 2002). However, this category is relative; it is inherent only in a purposeful process. In addition to effectiveness, researchers have always paid considerable attention to the concept of "efficacy." According to P. Drucker, efficacy is the result of doing the right things; and effectiveness is the result of doing properly these things. That is, both of these concepts are equally important (Krasnorutskyi, Vlasenko, Halych, 2016; Druker, 2015).

3. Effectiveness of control and supervisory procedures

It is believed that effectiveness is an indicator of development. It is also its most important incentive. In an effort to improve the effectiveness of a particular type of activities and their combination, specific measures that contribute to the development process are identified and those that lead to regression are cut off (Demchenko, Momot, 2013, p. 208). Accordingly, in the context of the study, this category can be understood as the results of the activities of administrative units that can be objectively assessed (Danylenko, 2019, p. 225).

Thus, control and supervisory procedures for the effective functioning of the national security system of Ukraine in the context of European integration are a procedure for the purposeful activity of the actors of this system, which is carried out with the aim of assessing the actions taken and decisions made by the entities subject to their control or accountable to them.

In this context, we mean the following:

– Control and supervisory procedures for compliance with legislation and European standards in the field of national security in the context of European integration. The essence of such a procedure is to verify compliance with legal requirements to follow all stages of procedural activities, identify deviations from the established rules and eliminate obstacles that may provoke such deviations;

– Control and supervisory procedures regarding the content and state of implementation of strategies, doctrines, concepts, state programmes and plans for ensuring national security in the context of European integration. Their essence is represented by the comparison of the planned and desired with the result obtained. During their implementation, the following is analysed and examined: 1) the completeness, timeliness and effectiveness of the planned measures; 2) whether the measure has been fully implemented in relation to the expected results; 3) whether the deadlines for the implementation of measures have been met (Anti-corruption program of the Security Service of Ukraine for 2021-2024, 2022) etc;

– Control and supervisory procedures regarding the level of resource provision for the security and defence sector entities. The essence of such procedure is to analyse the needs of personnel, technical, material, financial, regulatory, methodological and other areas. It should be noted that it is difficult to find information in open sources on how the state provides for the security and defence forces, let alone the results of control and supervision procedures;

– Control and supervisory procedures for the proper use of resources, including budget funds and financial assistance provided by European partners. The purpose of these procedures is to identify ineffective use or misuse of funds, resources, and assistance provided to ensure national security in the context of European integration. These procedures examine the effectiveness of state property management, the effectiveness of management of public and international funds, and the efficacy, cost-effectiveness and productivity of the use of public and international funds.

It should also be noted that control and supervisory procedures for the effective functioning of the national security system of Ukraine in the context of European integration can also be classified by the actors of democratic civilian control specified in the Law of Ukraine "On National Security of Ukraine." It should be noted that this law defines the types of democratic civilian control, which creates a regulatory framework for the control and supervisory procedures carried out by: the President of Ukraine, the Verkhovna Rada of Ukraine, the National Security and Defence Council

of Ukraine, the Cabinet of Ministers of Ukraine, executive authorities and local self-government bodies, the judiciary in the form of control procedures; and the public in the form of public supervision (Law of Ukraine On National Security of Ukraine, 21).

This is quite logical, since the European Commission for Democracy through Law (Venice Commission) in its report on the democratic oversight of security services (European Commission for Democracy through Law (Venice Commission), 2015) noted that, given certain specificities of the activities of state bodies responsible for national security, the state shall control them through the following mandatory mechanisms: parliamentary accountability, judicial accountability, expert accountability and a complaints mechanism.

For example, according to the Regulations of the Verkhovna Rada of Ukraine, parliamentary control and oversight procedures are as follows: (1) the procedure of parliamentary hearings on national security and defence issues of public interest that require to be regulated by law; (2) the procedure for conducting a parliamentary inquiry on issues of public interest in a particular area; (3) the procedure for a public-parliamentary inquiry; (4) the procedure for a parliamentary inquiry and appeal.

It should also be noted that in today's environment, non-compliance with financial discipline is perhaps the main problem of ensuring Ukraine's national security in the context of European integration. Therefore, the state financial control exercised by the Accounting Chamber is of particular importance as a type of parliamentary control over the implementation of the state budget.

According to the Accounting Chamber's reports for 2018-2021, it can be stated that during the state external financial control (audit) measures, the auditors of the Accounting Chamber identified violations and shortcomings in the administration of state budget revenues in accordance with Articles 116 and 119 of the Budget Code of Ukraine, as well as violations of budget legislation (including misuse of budget funds and planning violations), inefficient use of the State Budget of Ukraine, totalling over UAH 262 billion. For more details, see the table (Official website of the Accounting Chamber, 2022) (Table 1).

Moreover, most financial violations occurred at the stage of planning the use of budget funds; in some reporting years, this amounted to more than 60% (Official website of the Accounting Chamber, 2022). In the field of national security and defence, the Accounting Chamber identified violations worth over UAH 16 billion (in 2019, UAH 5,390.2 million; in 2020, UAH 5.5 billion; in 2021, UAH 5.2 billion).

These violations are detected during the implementation of a number of external state financial control measures (financial audit, performance audit, examination, analysis and other control measures) (Law of Ukraine On the Accounting Chamber, 2015). For example, the 2019 report of the Accounting Chamber states that it has audited: the effectiveness of the use of budget funds, allocations for medical care and health improvement of personnel and maintenance of preschool education institutions of the Security Service of Ukraine but marked "restricted" and an audit of the effectiveness of the use of budgetary funds allocated to support the activities of the National Anti-Corruption Bureau of Ukraine marked "Secret". In general, in 2019, the Accounting Chamber carried out 5 external state financial control (audit) measures in the field of state security and defence, two of which were classified as "Secret", one as "Top Secret" and one as "For Official Use" (Official website of the Accounting Chamber, 2022); in 2020, 7 external state financial control (audit) measures were carried out, including five performance audits

Table 1

Based on the reports of the Accounting Chamber for 2018-2021

No.	Types of violations	Years of audit by the Accounting Chamber			
		2018	2019	2020	2021
1	Violation of revenue administration	UAH 6 billion 834,7 million	UAH 2 billion 967,4 million	UAH 4 billion 767,5 million	UAH 8,8 billion Including in planning – 83,8 billion
2	Violations of budget legislation, including misuse of funds and violations in planning	UAH 5 billion 794,7 million	UAH 32 billion 108,5 million	UAH 9 billion 562,9 million	UAH 65,7 billion
3	Inefficient management of funds and their inefficient use	UAH 4 billion 410,9 million	UAH 14 billion 684,1 million	UAH 11 billion 928 million	UAH 27,7 billion

and 2 financial audits, with two control measures being classified as "Top Secret" and one as "Secret" (Official website of the Accounting Chamber, 2022).

4. Conclusions

To sum up, the control and supervisory procedures for ensuring Ukraine's national security in the context of European integration do not exist independently, and in practice they are intertwined with each other. For example, when controlling the content and status of implementation of strategic programmes and plans, the implementation of measures and the effectiveness of the funds allocated for their implementation are analysed at the same time. In other words, shortcomings of both organisational, regulatory and financial nature are identified, the solution of which contributes to the timely and effective implementation of the planned goals and objectives in full.

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КОНТРОЛЬНО-НАГЛЯДОВІ ПРОЦЕДУРИ ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ УКРАЇНИ В УМОВАХ ЄВРОІНТЕГРАЦІЇ

Abstract. ***Purpose.*** Метою статті є розкрити особливості контрольно-наглядових процедур забезпечення національної безпеки України, а також висвітлення окремих проблемних аспектів реалізаційного аспекту. ***Results.*** Уточнено, що контрольно-наглядові процедури, як різновид адміністративних процедур у сфері забезпечення національної безпеки України мають подвійну юридичну природу, яка розкривається у розрізі розвитку адміністративно-правових зв'язків, породжених як дозвільною діяльністю, так і необхідністю забезпечення ефективності функціонування системи забезпечення національної безпеки України в умовах євроінтеграції. Їхнє здійснення обумовлене загальною метою – забезпечення захисту національних інтересів України, дотримання нею міжнародних зобов'язань, виявлення недоліків та припинення неправомірних чи навіть протиправних дій

й притягнення до відповідальності порушників. ***Conclusions.*** Визначено, що предметом контролю і нагляду з одного боку є перевірка підконтрольних суб'єктів дозвільної системи, а з іншого – ефективність функціонування системи забезпечення національної безпеки України в умовах євроінтеграції. За цим критерієм схарактеризовано дві групи контрольно-наглядових процедур, що мають власні різновиди, зокрема: функціонування яких обумовлено дозвільною системою; наявність яких є наслідком функціонування та розвитку системи забезпечення національної безпеки України в умовах євроінтеграції. Уточнено, що контрольно-наглядові процедури щодо ефективності функціонування системи забезпечення національної безпеки України в умовах євроінтеграції можна класифікувати також за суб'єктами здійснення демократичного цивільного контролю, які зазначені у Законі України «Про національну безпеку України». Окремо схарактеризовано сутність державного фінансового контролю. Узагальнено, що контрольно-наглядові процедури забезпечення національної безпеки України в умовах євроінтеграції не існують автономно, у практичній площині вони переплітаються одна з одною. Наприклад, при проведенні контрольних заходів щодо змісту та стану реалізації стратегічних програм і планів одночасно проводиться аналіз виконання заходів й ефективність виділених коштів на їхню реалізацію.

Ключові слова: адміністративна процедура, адміністративно-правовий механізм, євроінтеграція, забезпечення безпеки, контроль, нагляд, національна безпека.

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THE ESSENCE AND IMPORTANCE OF ADMINISTRATIVE AND LEGAL FRAMEWORK FOR DETENTION OF PRISONERS OF WAR

Abstract. ***Purpose.*** The purpose of the article is to analyse the legal framework for detention of prisoners of war, ensure the relevant legal conditions at the national level and regulate the actions and procedures required for this purpose. ***Results.*** The article emphasises that, at the national level, engaging a large number of different actors, the State has long been conducting considerable rule-making work to regulate the issues related to prisoners of war. Furthermore, the data also suggests that the practice of war captivity requires regulating numerous issues. Therefore, such work should be focused on many areas. Thus, it should be assumed that ensuring the proper detention of prisoners of war, which is the focus of this part of our study, should also be distinguished by a certain structured approach to the above issues. ***Conclusions.*** It is concluded that after the beginning of the full-scale Russian military invasion, another step in developing the system of legal framework for detention of prisoners of war has been taken. It is characterised by rapid and intensive rule-making changes, innovations and development of legal practices which were carried out to address urgent practical issues and implemented in various branches of law, while affecting the activities of many State authorities. We believe that the most comprehensive assessment of the relevant implementation can be made from the perspective of administrative law, since the content of this particular branch covers the rule-making and administrative activities of executive authorities and the management of state entities in general, including those involved in the implementation of the detention of prisoners of war. After all, the proper detention of the latter certainly requires establishing and ensuring appropriate legal conditions at the national level and regulating the necessary actions and procedures aimed at the practical implementation of the requirements of international humanitarian law.

Key words: prisoners of war, rights of prisoners of war, detention of prisoners of war, administrative and legal protection, administrative and legal framework, armed conflicts, limitation of violence in time of war.

1. Introduction

To date, the issue of administrative and legal framework for detention of prisoners of war should be considered from different perspectives. Moreover, the situation can be viewed both from the perspective of Ukraine's attempts to protect the rights of our military personnel captured by the enemy and from the perspective of the need to hold captured Russian occupants in compliance with international law and the moral and ethical customs of a healthy democratic society.

However, the state's care for Ukrainian prisoners of war is primarily implemented at the international level and is manifested mainly as a political rather than purely legal initiative. However, we consider it necessary to emphasise the legal framework for the state to regulate a number of issues within the national legal system in order to ensure the rights of Ukrainian prisoners of war. Summarised information on this issue can be found, for example, in the "Memo to participants of the Russian-Ukrainian War: Rights, responsibilities and guarantees of social protection" (as amended on November 20, 2023).

The Memo was published with the support of the "After Service" Charitable Foundation with the assistance of the National Endowment for Democracy (NED). It was developed by the Yurydychna Sotnia NGO in cooperation with experts from the Ministry of Social Policy of Ukraine, the Ministry of Veterans Affairs of Ukraine, the Ministry of Defence of Ukraine and the General Staff of the Armed Forces of Ukraine (Memo to the participants

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of the Russian-Ukrainian war: rights, obligations and guarantees of social protection, 2023). Recommendations and practical advice on the specifics of the status of missing persons and prisoners of war are set out on pages 144-162 (i.e., extensive).

Specifically, the information materials list state, non-governmental and international actors working in this area. The content of the Memo outlines their legal status, tasks, and the regulatory instruments governing their activities. For example, it is stated that: "The Joint Centre for Coordination of Search and Release of Illegally Deprived Persons in the Area of Implementation of Measures to Ensure National Security and Defence, Repulse and Deter the Armed Aggression of the Russian Federation in Donetsk and Luhansk Oblasts ", operates on the basis of the joint Order of the Security Service of Ukraine (SBU), the Ministry of Defence of Ukraine (MD), the Ministry of Internal Affairs of Ukraine (MIA) No. 573/152/252 of 08 April 2019 (On the approval of the Regulation on the Joint Centre for the Coordination of Search, Release of Illegally Deprived Persons in the Area of Implementation of Measures to Ensure National Security and Defence, Repulse and Deter Armed Aggression of the Russian Federation in the Donetsk and Luhansk Oblasts: Order of the Security Service of Ukraine, Ministry of Defence of Ukraine, Ministry of Internal Affairs of Ukraine, 2019); the "Coordination Headquarters for the Treatment of Prisoners of War," established according to Decree of the Cabinet of Ministers of Ukraine (CMU) No. 257 of 11 March 2022 (On the establishment of the Coordination Headquarters for the Treatment of Prisoners of War: Decree of the Cabinet of Ministers of Ukraine, 2022); etc.

The Memo sets out the contacts and methods of communication, provides examples of standard forms of documents, explains the issues of financial support, payment of additional remuneration, benefits, outlines the competence of state entities and the procedure for interaction with them on other issues, and provides links to relevant regulations. For example, these are: Resolution of the Cabinet of Ministers of Ukraine No. 884 of 30 November 2016 (On the approval of the Procedure for payment of financial support to the families of servicemen captured or held hostage, as well as interned in neutral states or missing: Resolution of the Cabinet of Ministers of Ukraine, 2016); Order No. 260 of the MD of 07 June 2018 (Order of the Ministry of Defence of Ukraine Approving the Procedure for Paying Financial Support to Servicemen of the Armed Forces of Ukraine and Some Other Persons, 2018); Resolution of the CMU No. 168 of 28 February 2022 (Resolution of the Cabinet of Ministers of Ukraine On the issue of certain payments to military personnel, rank and file officers, police officers and their families during martial law, 2022) etc.

These examples are enough to argue that at the national level, engaging a large number of different actors, the State has long been conducting considerable rule-making work to regulate the issues related to prisoners of war. Furthermore, the data also suggests that the practice of war captivity requires regulating a large number of different issues. Therefore, such work should be focused on many areas. Based on this, it should be assumed that ensuring the proper detention of prisoners of war, which is the focus of this part of our study, should also be distinguished by a certain structured approach to the above issues.

To date, there are few comprehensive studies on the practice of regulating the detention of prisoners of war and military captivity. This is due to the fact that developed democratic states, primarily European countries, have not experienced wars and large-scale armed international conflicts for a long time. Therefore, they do not have practical experience in dealing with prisoners of war. On the other hand, non-democratic countries are understandably uninterested in studying this topic in depth or at least in presenting unbiased research results. Therefore, it is inappropriate to refer to such studies. The widespread belief that "the practice of the First and Second World Wars, other wars and armed conflicts proves that almost any state, any army in the world grossly violates the provisions of the Conventions on Prisoners of War" (Wikipedia website, 2023) cannot be ignored. Such divergent views, unfortunately, are not without reason and, as a result, do not add to the popularity of this area of research.

Therefore, the list of scholars who have studied the issues of the legal framework for the settlement of the issues of war captivity is small and mostly repeated in most specialised publications. Usually, the following foreign researchers of international legal protection of war victims are mentioned first of all: I. Brownlie, F. Bugnion, H.P. Gasser, Fr. Kalshoven, F. De Mulinen, S. Nakhlik, L. Oppenheim, J. Pictet, W. Slomanson, C. Hyde, R. Higgins, A. Schlesinger.

According to this, M. Hrusko in her thesis research of 2015 noted: "at present, there is no institutional study of war captivity in the legal science of Ukraine. Certain issues of war captivity were studied in theses and monographs on human rights and IHL. In addition, several theses were written on the history of prisoners of war during and after the Second World War (O. Potylchak, A. Tchaikovskyi, etc.)" (Hrushko, 2015: 7).

However, specific issues of the treatment of prisoners of war, as well as the implementation of their exchange, were considered in the works by the following Ukrainian researchers: D. Azarov, P. Brodik, I. Vinokurov, N. Volkova, M. Hnatovskyi, L. Denysenko, O. Dzhafarova, I. Zharovska, D. Koval, A. Korynevych, Kravchenko, E. Krapyvin, V. Kuznetsov, M. Manko, A. Muzyka, A. Pavliuk, V. Poluda, O. Salata, M. Syiploki, O. Taran, L. Tymchenko, O. Tiunov, M. Tomak, M. Khavroniuk, S. Shatrava, I. Shopina, V. Yavorska, O. Yanovska, H. Yarmaki and others.

The following (already mentioned) specialised sources were also useful for our research: *a thesis* "Formation and Specificity of the International Legal Regime of Prisoners of War" (M. Hrushko; 2015); *a report* - "Prisoners of War. International Practice on the Release of Prisoners of War, Hostages and Political Prisoners: Conclusions for Ukraine" (M. Tomak and others; 2018); *a discussion paper* – "Is the Status of 'Prisoner of War' a New Challenge for the Justice System in Ukraine?" (A. Pavliuk, D. Koval, Ye. Krapyvin; 2022); *a manual* - "International Humanitarian Law (for employees of the SPS of Ukraine)" (T. Korotkyi et al.; 2023). Special attention should also be paid to information and reference materials, such as those available *on the websites*: Training Centre of Prosecutors of Ukraine – https://ptcu.gp.gov.ua/uk/czentr-znan/informaczijni-dovidky-z-mizhnarodnogo-gumanitarnogo-prava/ ; or the Territorial Defence Forces of the Armed Forces of Ukraine - https://sprotyvg7.com.ua/lessons/intern_human_law. In addition, the results of all-Ukrainian and international scientific and practical *conferences* are useful, for example, the following: "Counteracting Criminal Offences under Martial Law" (Kropyvnytskyi, Donetsk State University of Internal Affairs, October 27, 2022); "Theoretical and Applied Problems of Legal Framework in Ukraine" (Lviv, Lviv State University of Internal Affairs, December 09, 2022); the previously mentioned conference "Actual Problems of State Security" (Kyiv, Kyiv Institute of the National Guard of Ukraine, May 26, 2023); etc.

Therefore, we can state that recently, the issue of legal framework for the detention of prisoners of war, as well as practical developments in this field, have become a matter of increasing attention for legal researchers, officials and non-governmental organisations.

2. Specific features of the national terminological legal framework

With the focus on administrative and legal framework for the detention of prisoners of war, it should be noted that some researchers propose to distinguish between such concepts as "captured persons" and "prisoners of war". For example: "persons who have been captured by the units of one of the parties to the conflict, have become captured persons, but such persons may not fall under the characteristics of prisoners of war, are not prisoners of war, and acquire a different legal and factual status depending on their actions during the armed conflict on the side of one of the parties, or in the absence of support from any party..." (Kobets, 2023: 285).

We would like to emphasise that currently the national legal terminology (zakon.rada.gov.ua/laws/main/termin) does not use the term "captured persons". But even so, we quote from the materials of the All-Ukrainian Scientific and Practical Conference: Actual Problems of Ensuring State Security" (held in Kyiv on 26 May 2023 with the participation of scholars, teachers and students of higher education institutions), obviously leaves room for discussion. However, it raises the problem of implementing the relevant practical activities. After all, in real life circumstances, the "capture of a person" actually takes place first, and only then his/her legal status is established.

Moreover, the analogy with the lawful "detention of a person without a decision of an investigating judge or court", which is provided for in Article 207 of the current Criminal Procedure Code of Ukraine (CPC of Ukraine), is hardly adequate in this case. After all, according to Article 211 of the CPC of Ukraine, such detention is limited to a certain (short) period and should be accompanied by other actions provided for by procedural legislation, which are obviously not in question in this case. In addition, "the conditions and grounds for liability of prisoners of war have specific features, including the right to participate in hostilities and not be held liable for it. Such immunity is limited and does not apply to cases of criminal offences. Furthermore, the system of rights of prisoners of war includes their special rights as prisoners of war and general rights that apply to all persons ... (therefore) the establishment of the status of a prisoner of war is relevant for various applications of law" (Taran, 2022: 683).

In this context, the above also suggests that the legal status of a prisoner of war is secondary, as some researchers also emphasise. In fact, not only combatants, but also other persons may be detained (captured) in the course of hostilities. However, granting such persons the status of prisoners of war will depend on a number of circumstances.

However, the formulation "captured person" still has not only a practical meaning, but also a certain official basis. This is the category used, for example, in the Doctrine of Treatment of Captured Persons, Documents and Property, approved by the Chief of the General Staff of the Armed Forces of Ukraine on 27 October 2020. The Doctrine states that: "during the conduct of operations (hostilities), the Armed Forces of Ukraine (AFU) will most likely have to deal with the capture of persons,

material assets (materials) and documents. Therefore, captured persons can be grouped into three main categories: prisoners of war, internees and persons whose liberty has been restricted. It should be noted that in this Doctrine, the term "captured persons" does not include refugees, displaced persons and other persons who have been detained for their own protection" (Dealing with captured persons, documents and property, 2020: 12).

It is important that the annexes to the Doctrine contain the following forms of documents: *Capture* Report; Report on Search of a *Captured Person*; Report on Tactical Interrogation; Registration Card of a *Captured Person (Prisoner)*; Report on Interrogation of a *Captured Person*; Indicative Flowchart with Algorithm for Evacuation of *Captured Persons*; other standard documents. It should be noted that the year of publication of the Doctrine is 2020, that is, before a full-scale Russian military invasion. Moreover, the names of the standard forms of documents listed above clearly indicate that the relevant state body was building a certain algorithm of practical actions at that time. Furthermore, they emphasise certain terminological problems that stem from this algorithm and are directly related to it.

In this context, in order to draw further conclusions, it seems appropriate to quote the information materials prepared by JustTalk. This online platform claims to be "a platform for professional discussion about criminal justice; it is also one of the activities of the JustGroup, an organisation that promotes modern standards of professionalism in the criminal justice system". (JustTalk website, 2022).

3. Legal situations related to the detention of prisoners of war

For example, in June 2022, JustTalk, with the coordination support of the Organisation for Security and Co-operation in Europe (OSCE), published the paper "Is the Status of 'Prisoner of War' a New Challenge for the Justice System in Ukraine?" The authors of this information source (A. Pavliuk, D. Koval and Ye. Krapyvin) rightly emphasise that: "after 24 February 2022, namely the full-scale invasion of the territory of Ukraine by Russian troops as part of the armed conflict that has been going on for eight years, Ukraine has faced new challenges in the field of international humanitarian law. While before there were few prisoners of war, and the aggressor state denied the presence of Russian troops on the territory of Ukraine, now their number is measured in thousands. ... The lack of experience in working with prisoners of war and the insufficient understanding of the status of prisoners of war under international law by investigators and prosecutors resulted in a situation where, in the first month of the full-scale war, criminal proceedings were opened against all prisoners of war with the qualifications of encroachment on territorial integrity (Article 110 of the Criminal Code of Ukraine) and organisation of illegal border crossing (Article 334 of the Criminal Code of Ukraine). The next step was to submit a petition to the investigating judge for a preventive measure in the form of detention (or, in cases of proximity to the territory of hostilities, a decision by the prosecutor to take them into custody) to ensure their detention. ... After a series of expert advice, including from international lawyers, the Office of the Prosecutor General changed this practice to the proper one - these actions (such as involvement with enemy forces) are not qualified as a crime (unless there is information about involvement in war crimes). Accordingly, the decision of an investigating judge is not required to hold a prisoner of war, as a report from the authority responsible for the placement of a prisoner of war is sufficient." (Pavliuk, Koval, Krapyvin, 2022).

Since our study is concerned with the field of administrative, not criminal procedure law, we did not study or verify the statistics on the above-mentioned procedural practice. However, it seems appropriate to mention the relevant explanations (which are also mentioned by those authors) issued by the Prosecutor General's Office (PGO) in this regard.

For example, the letter of orientation of the Prosecutor General's Office of March 17, 2022, No. 18/1-125VYX-134OKV-22 to the heads of regional prosecutor's offices "On the application of the provisions of international humanitarian law on the treatment of prisoners of war and the specifics of qualifying their actions under the Criminal Code of Ukraine" states the following: "...in the case of capturing persons participating in the armed conflict on the side of the aggressor state, they should be presumed to have the status of prisoners of war and treated accordingly. If there is any doubt as to whether a detainee has the status of a prisoner of war, he or she continues to retain it and therefore enjoys the protection of Geneva Convention III and Additional Protocol I to the Geneva Conventions. Therefore, the actions of the detained servicemen of the armed forces of the Russian Federation related to their participation in hostilities, and in respect of whom there is no evidence of their committing crimes under Article 438 of the Criminal Code of Ukraine ("Violation of the laws and customs of war"), do not require legal qualification under any article of the Criminal Code of Ukraine. ... From now on, in order to keep prisoners of war in camps and other specially designated places, there is no need to detain them in accordance with Article 208 of the CPC of Ukraine, or to apply a preventive measure in the form of custody. Criminal proceedings regarding the notification of POWs of suspicion in the armed conflict (crimes against the national security of Ukraine and the inviolability of state borders)

are subject to closure on the basis of the CPC of Ukraine, Article 284, part 1, para. 2, due to the absence of corpus delicti. ... Meanwhile, civilians from among the citizens of the Russian Federation, citizens of Ukraine, as well as citizens of other states who commit subversive acts, apply corrective marks, collect information on the movement of troops, etc., spies and hired guns cannot have the status of prisoners of war. With regard to persons of this category, if their actions constitute a relevant criminal offence, the general procedure for criminal prosecution, as defined by the Criminal Procedure Code of Ukraine, should be followed." (Orientation letter of the Office of the Prosecutor General to the heads of regional prosecutor's offices on the application of the provisions of international humanitarian law regarding the treatment of prisoners of war and the specifics of the qualification of their actions under the Criminal Code of Ukraine, 2022).

The above quotation clearly demonstrates an example of solving complex typical legal situations (in the field of criminal law) related to the detention of prisoners of war in the current conditions of a full-scale war.

4. Conclusions

To sum up, after the beginning of the full-scale Russian military invasion, another step in the development of the system of legal framework for detention of prisoners of war has been taken. It is characterised by rapid and intensive rule-making changes, innovations and development of legal practices which were carried out to address urgent practical issues and implemented in various branches of law, while affecting the activities of many State authorities. We believe that the most comprehensive assessment of the relevant implementation can be made from the perspective of administrative law, since the content of this particular branch covers the rule-making and administrative activities of executive authorities and the management of state entities in general, including those involved in the implementation of the detention of prisoners of war. After all, the proper detention of the latter certainly requires establishing and ensuring appropriate legal conditions at the national level and regulating the necessary actions and procedures aimed at the practical implementation of the requirements of international humanitarian law.

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СУТНІСТЬ ТА ЗНАЧЕННЯ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ТРИМАННЯ ВІЙСЬКОВОПОЛОНЕНИХ

Анотація. ***Метою*** статті є аналіз правового врегулювання утримування військовополонених, а також забезпечення на національному рівні відповідних правових умов та врегулювання необхідних для цього дій і процедур. ***Результати.*** В статті наголошено, що на національному рівні держава, із залученням великої кількості різних суб'єктів, вже тривалий час провадить чималу нормотворчу роботу щодо врегулювання проблематики, яка стосуються військовополонених. Разом із тим, наведені дані також дозволяють зробити висновок про те, що застосування військового полону потребує унормування чималої кількості різноманітних питань. Отже, така робота повинна вестись за багатьма напрямами. Виходячи з цього, варто припустити, що і забезпечення належного тримання військовополонених, якому саме і присвячена ця частина нашого дослідження, також повинно відрізнятись певною структурованістю означеної проблематики. На національному рівні держава, із залученням великої кількості різних суб'єктів, вже тривалий час провадить чималу нормотворчу роботу щодо врегулювання проблематики, яка стосуються військовополонених. ***Висновки.*** Зроблено висновок, що після початку повномасштабного російського воєнного вторгнення відбувся черговий крок розбудови системи правового забезпечення тримання військовополонених. Він характеризувався швидкими та інтенсивними нормотворчими змінами, новаціями та виробленням правових практик, які здійснювались для вирішення нагальних практичних задач та реалізувались у різних галузях права, торкаючись при цьому діяльності багатьох державно-владних суб'єктів. Ми вважаємо, що найбільш комплексно відповідні здійснення можна оцінити з позицій адміністративного права, оскільки зміст саме цієї галузі охоплює нормотворчу і розпорядчу діяльність органів виконавчої влади та в цілому управління державних суб'єктів, в тому числі таких, що задіяні в реалізації тримання військовополонених. Адже належне утримування останніх безумовно потребує створення і забезпечення на національному рівні відповідних правових умов та врегулювання необхідних для цього дій і процедур, спрямованих на практичне виконання вимог міжнародного гуманітарного права.

Ключові слова: військовополонені, права військовополонених, тримання військовополонених, адміністративно-правова охорона, адміністративно-правове забезпечення, збройні конфлікти, обмеження насильства під час війни.

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PARTICULARITIES OF THE CORRELATION OF FUNCTIONS AND FULL POWERS OF THE MAIN SERVICE CENTRE AND THE TERRITORIAL SERVICE CENTRE OF THE MIA

Abstract. ***Purpose.*** The purpose of the article is to determine the particularities of the correlation of functions and full powers of the Main Service Centre of the MIA. ***Results.*** In scholarly works and legal regulations, the concepts of "functions" and "powers" are used as identical concepts or synonyms for "competence". It is determined that the powers vested in the Main Service Centre of the MIA are a "legal obligation", since they impose an obligation to perform activities defined within its competence and provide a set of powers enabling it to apply methods and means of both regulating relations (exercise of public organisational and administrative powers and provision of public services, or, more generally, performing public service activities). This allows classifying such powers into two categories: 1) binding; 2) empowering. The Regulations on the Main Service Centre of the MIA distinguish between the two, defining the former as functions and the latter as rights of the SSC, although both define its powers. ***Conclusions.*** Currently, the functions, powers and principles of activities of the Main Service Centre of the MIA and its territorial units are regulated by a number of legal regulations. This characterises the defining feature of this participant in service relations as an entity with a specialised administrative and legal status subordinated to the MIA of Ukraine. It is emphasised that permitting and registration services are services, the content of which implies provision of an administrative service at the request of the applicant – a private individual. All others are power-administrative, public-organisational and law enforcement functions aimed at ensuring the provision of a legitimate administrative service to an applicant in the field of road traffic safety and road transport operation safety. It is determined that the exercise of public service functions can hardly be called managerial, while management in the field of public service provision is undoubtedly one of the manifestations of managerial activities in which the power and administrative status (power and administrative full powers) is also implemented.

Key words: powers, permitting services, legal regulation, interpretation.

1. Introduction

Frequently, the concepts of "functions" and "powers" are used as identical concepts in scholarly works and in legal regulations. Sometimes they are even synonymous with "competence". If the competence of the Main Service Centre of the Ministry of Internal Affairs is understood as the scope of issues, the scope of public relations, which the main body in the system of territorial bodies for the provision of service of the Ministry of Internal Affairs is assigned to "administer", then "powers" are understood as the range or even the list of issues that this body is supposed to resolve. In addition, we determine that "competence" distinguishes such a body (in this case, the Main Service Centre of the MIA) from other subjects of administrative law and participants in administrative legal relations, and such a competence should undoubtedly be recognised as service activity (organisation and provision of service services) as the activity of a specialised state body of state executive power in the system of bodies of the MIA, which are vested with the authority to provide an exclusive list of services (the list of services determined by the MIA of Ukraine and included in the statutory list of services provided by the service centres of the MIA). The purpose of the article is to determine the particularities of the correlation

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of functions and full powers of the Main Service Centre of the MIA.

2. Functions of the Main Service Centre of the MIA

According to Yu.O. Frytskyi's approach, the competence of a public authority is understood as follows: 1) a sector of public life which is the object of activities of a public authority; 2) a state function which the authority should perform in a certain sector of public life; 3) those powers which are the means of achieving the set goals, tasks and defined functions (Decree of the Cabinet of Ministers of Ukraine On approval of the development strategy of internal affairs bodies of Ukraine, 2014).

Professor B.M. Lazariev defines competence as a system of powers of a public administration body, which includes "the duty (to the state) and the powers (in respect of administered objects) to perform certain tasks and functions ... in relation to these objects". In other words, the competence of an executive body should be understood as a set of its rights and duties (Decree of the Cabinet of Ministers of Ukraine On some issues of the provision of administrative services by executive power bodies through centers for the provision of administrative services, 2014).

Since the Regulations on the Main Service Centre of the MIA explicitly define the main features of its administrative and legal status, in particular: as an interregional territorial body for the provision of services of the Ministry of Internal Affairs, as an entity that organises the activities of RSCs, controls their activities, provides them with organisational, methodological and practical assistance and their information, analytical, logistical and financial support, and in accordance with the Regulations on the Main Service Centre of the MIA, Section III, para. 1, subpara. 23, (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015) provides administrative and other services, there are sufficient grounds to recognise that it is vested not only with direct powers of "public service" activities, but also with administrative powers, power-administrative ones, since the Head of the Main Service Centre of the MIA is empowered under subpara. 7 of para. 12 of Section V of the said regulation to issue binding regulations within the scope of his/her powers and to ensure control over their implementation.

In order to define the functions of the Main Service Centre of the MIA, we refer to the general theoretical understanding of the category of "function". The Newest Philosophical Dictionary defines the concept of "function" (from Latin *Functio* – performance, fulfilment) as: activities, the role of an object within a certain system to which it belongs; a type of connection between objects when a change in one of them entails a change in the other, with the second object also being called a function of the first (Hrytsiak, Orzhel, Hladkova, 2011).

Of course, the Main Service Centre of the MIA has a specific field of activities, the field of performing the functions of the state executive power. According to V.B. Averianov, public administration is the main area of activities for executive authorities. In addition, he argues that executive authorities act either as public administrators or as actors of public service, which leads to the reasonable conclusion that public service is not a type of public administration, but a separate field of its administrative activities, that is, activities as a participant in administrative and legal relations (Averianov, 2007).

We determine that the exercise of public service functions can hardly be called managerial, while management in the field of public service provision is undoubtedly one of the manifestations of managerial activities in which the power and administrative status (power and administrative full powers) is also implemented.

O.O. Mozhovyi classifies public services provided by the service centres of the MIA of Ukraine as follows: 1) permitting services (issuance of permits for the installation and use of special and light signalling devices; issuance of certificates of approval of the vehicle design to ensure road safety); 2) registration services (registration and maintenance of the Unified State Register of the MIA; state registration (re-registration), deregistration of vehicles, preparation and issuance of registration documents; register of enterprises, institutions, organisations and other business entities engaged in trade in vehicles and their components with identification numbers); 3) recognition of a certain status, right of a person (issuance of a certificate of criminal prosecution; issuance of a certificate of absence (presence) of a criminal record, its removal, cancellation); 4) information services (provision of access to the Unified State Register of the MIA; maintenance of an electronic register of enterprises, institutions, organisations and other business entities engaged in wholesale and retail trade in vehicles and their component parts with identification numbers; maintenance of a register of subjects of mandatory technical control); 5) services for issuing conclusions in the field of road safety (inspection of business entities for compliance of the material and technical base and documentation with the established requirements for activities related to the sale of vehicles with the issuance of an act (con-

clusion); approval of design projects, determination of technical capabilities and conditions for the conversion of vehicles with the issuance of relevant certificates and conclusions) (Mozhovyi, 2019, p. 114). We agree with the proposed classification and determine that the scientist correctly identifies the subject matter of these services – almost all of them have vehicles as their object, the safety of which must be controlled. The main types of services in relation to such objects are permitting and registration services.

That is, out of the entire scope of permitting services provided by the MIA bodies in the course of their authorisation activities, only a part of objects that can be characterised as high-risk objects has been allocated to the MIA service system, i.e. the Main Service Centre of the MIA and its separate structural units, in particular, regional and territorial service centres of the territorial service centres of the MIA. To ensure the safety of their use and security in connection with their use, the authorisation system operates. According to V.A. Humeniuk, it is an organisational and legal activities that should ensure public order, public safety, and the established order of management in a certain field of public relations, which is performed through control and supervision over compliance with the binding rules provided by law: opening and operation of strictly defined business entities, manufacturing, acquisition, sale, accounting, storage, transportation, use and destruction of items and substances, the unlawful use of which may cause significant damage to public and state interests, as well as directly to the life and health of citizens (Humeniuk, 1999, p. 29).

T.O. Kolomoyets proposes the concept of "authorisation system" in the broad and narrow sense. In the broad sense, the permitting system is a set of rules for obtaining permits for certain activities and rules that regulate the control over such activities (manufacture, acquisition, storage, transportation, accounting and use of certain groups of things), including materials and substances that require a special regime of their use to ensure safety, as well as the establishment and operation of enterprises, workshops and laboratories for the creation or use of such facilities, in order to protect the interests of the state and the safety of citizens). In a narrow sense, the authorisation system should be understood as a special procedure for actions, listed in the Regulations on the Authorisation System, that require special permits from the competent authorities (Kolomoiets, 2004).

In general, we agree with this definition and would like to expand on it by defining the elements of such authorisation system: 1) the existence of special rules governing the procedure for handling certain types of things characterised by increased danger (rules governing the legal regime of such objects); 2) the existence of legal provisions that regulate the procedure for granting and obtaining permits for activities in relation to a certain group of objects with hazardous properties; 3) the system of state executive authorities vested with powers in the field of permitting activities; 4) the activities of entities granting permits for the use and operation of objects with hazardous properties and sources of increased danger; 5) controlled activities of entities on the use and operation of objects with hazardous properties and sources of increased danger; 6) legal relations in which the special legal personality of state bodies in the field of permitting activities and entities using and operating objects with hazardous properties and sources of increased danger is implemented.

It should be noted that other definitions have been proposed by scholars. For example, V.O. Kharytonov defines the authorisation system as a set of legal relations arising between executive authorities authorised to issue permits (permittees) and individuals and legal entities (applicants) regarding the possibility of such applicants to perform actions (exclusive rights) in relation to a certain list of hazardous objects (acquisition, use of substances, materials, objects or engagement in activities that may be dangerous to human life and health, threaten the state interests) with further control and supervision over compliance with the established rules for actions in relation to such facilities (Kharytonov, 1999, p. 43). We believe that this definition should clarify the purpose of such permitting activities. It should be determined not only by the need to ensure human life and health and relate to state interests. We have already substantiated that in the context of human rights protection there is no independent interest of the state – such interest is public, and the state is an apparatus containing the mechanism and means of its ensuring. These public interests also include the interest in protecting the environment as a human habitat, which must be safe. That is why the Regulations on the Main Service Centre of the MIA refer to the control of potential hazards and risk management: ensuring the state registration of registered vehicles, issuance (exchange) of driver's licences, ADR driver training certificates, certificates of training of persons authorised to carry dangerous goods, certificates of admission of vehicles to the carriage 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, which is focused on ensuring the carriage of dangerous goods (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015).

According to O.O. Mozgovyi, the characteristic features of public services provided

by the service centres of the MIA are 1) the subject matter is the activity of individuals and business entities related to the use of objects with increased dangerous properties, which, if released from control, can cause material damage, including damage to public relations in the field of road safety; 2) dependence of the defined security on hazard control and risk management through the decision to grant a permit, which is an administrative act of individual action; 3) provision of services by authorised entities: the Main Service Centre of the MIA and territorial service centres of the MIA of Ukraine; 4) the activities related to the provision of service are based on the law and specified by by-laws and regulations and are of an organisational and administrative nature; 5) they provided in the procedural form prescribed by law; 6) fee-based nature – the amount of the fee should be determined by the need to cover the costs of the functioning of the authorising state entities; 7) increased requirements for control over the procedure of their provision (Mozghovyi, 2019, p. 114).

Currently, the functions, powers and principles of activities of the Main Service Centre of the MIA and its territorial units are regulated by a number of legal regulations. This characterises the defining feature of this participant in service relations as an entity with a specialised administrative and legal status subordinated to the MIA of Ukraine.

These regulations define the procedure for the provision of services and interaction between public authorities in the course of the Main Service Centre of the MIA exercising its powers.

A comparative analysis of the content of the Regulations on the Main Service Centre of the MIA and the Regulations on the Territorial Service Centre of the MIA based on the dogmatic method of cognition (cognition of the direct content of a legal regulation and its interpretation) enables to understand the different functions and tasks assigned to the Main Service Centre of the MIA and the territorial service centres of the MIA.

According to Section II of the Regulations on the territorial service centre of the MIA, approved by Order No. 1646 of the Ministry of Internal Affairs of Ukraine 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), the main functions of the SSC of the MIA are to provide paid and free services in the field of ensuring road traffic safety and operation of motor vehicles.

For example, permitting and registration services are services, the content of which implies provision of an administrative service at the request of the applicant – a private individual. All others are power-administrative, public-organisational and law enforcement functions aimed at ensuring the provision of a legitimate administrative service to an applicant in the field of road traffic safety and road transport operation safety.

Nevertheless, the main problem is that Section III, para. 1, subpara. 23, among other functions that we have defined as the functions of organising and performing permitting or registration administrative services, defines the function of providing "administrative and other services".

Instead, under the Regulations on the Main Service Centre of the MIA, approved by Order No.1393 of the Ministry of Internal Affairs of Ukraine of 07 November 2015 (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015) other categories of functions are defined, the specificity of which is determined by the fact that the SSC of the MIA is the main body in the system of territorial bodies providing services of the Ministry of Internal Affairs.

4. Full powers of the Main Service Centre of the MIA of Ukraine

We determine that the powers vested in the Main Service Centre of the MIA are a "legal obligation", since they impose an obligation to perform activities defined within its competence and provide a number of powers enabling it to apply methods and means of both regulating relations (exercise of public organisational and administrative powers and provision of public services, or, more generally, performing public service activities). This enables to classify such powers into two categories: 1) binding; 2) empowering. The Regulations on the Main Service Centre of the MIA distinguish between the two, defining the former as functions and the latter as rights of the SSC, although both define its powers.

When classifying the binding powers defined in clauses 1, 2 of Section III of the Regulations on the Main Service Centre of the MIA, we determine that they combine two groups of powers: 1) public service: a) permitting services (issuing permits for the installation and use of special and light signalling devices; approval of design projects, determination of technical feasibility and conditions (requirements) for re-equipment of vehicles with the issuance of relevant certificates and conclusions; certificates of approval of vehicle design to ensure road safety); b) registration services (registration, re-registration and deregistration of vehicles; formation of 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; c) pre-judicial (organises the issuance of certificates of criminal prosecution, absence (presence) of a criminal record or

restrictions under the criminal procedure legislation of Ukraine within the system of service centres of the MIA); d) information services (providing access to the Unified State Register of the MIA; maintaining the register of subjects of mandatory technical control; performing the functions of the administrator of the Unified State Register of the MIA, the Unified State Register of Vehicles, and the register of administrative offences in the field of road safety); 2) administrative (power-organisational, power-administrative, aimed at ensuring the functioning of the service centre system of the MIA): a) organisational; b) methodological; c) control; d) monitoring; e) regulatory; f) educational; g) logistical and accounting; h) law enforcement; i) European integration.

The authorising obligations of the Main Service Centre of the MIA are defined for the first time in the theory of administrative law. In the Regulations on the Main Service Centre of the MIA, approved by Order No. 1393 of the Ministry of Internal Affairs of Ukraine of 07 November 2015 (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Regulation on the Main Service Center of the Ministry of Internal Affairs, 2015), they are defined in Section IV as "Rights of SSC of the MIA". We substantiate this approach by the fact that, unlike civil law, where, according to Part 1 of Article 12 of the Civil Code of Ukraine, a person exercises his or her civil rights freely, at his or her own discretion. It follows that in private relations, no one is obliged to exercise his or her right or use it. In public relations, in particular, in the activities of the Main Service Centre of the Ministry of Internal Affairs, the exercise of these rights is mandatory if the law requires it in a particular situation. Furthermore, we acknowledge that in this case such rights are to a greater extent the powers of such a body, which, along with other elements, determine the specifics of its administrative and legal status.

We classify these "rights" as powers, since they include both the right to act and the right to demand from subordinate entities or participants in legal relations for the provision of service: 1) information: a) to create, use and destroy information: to create, modify, collect, process, store, destroy information on paper and electronic media necessary for the exercise of its powers and maintenance of the Unified State Register of the MIA and the Unified State Register of Vehicles; to provide such information on the basis and in accordance with the procedure established by law, using an electronic document management system, automatic control devices, and an electronic digital signature; b) to receive information: in accordance with the competence, in accordance with the procedure established by law, to receive information, documents and materials necessary to perform its functions from state and local self-government bodies, enterprises, institutions, organisations regardless of ownership and their officials, as well as citizens and their associations; c) to use information databases of the Unified Information System of the MIA, other state authorities, access to which is provided by law, the state government communication system and other technical means in accordance with the procedure established by law; d) to make changes or corrections to the information contained in the Unified State Register of the MIA and the Unified State Register of Vehicles; 2) administrative (power-administrative): to convene meetings to organise the proper performance of its tasks; to engage enterprises, institutions, organisations and individuals, including volunteers, to provide services in the manner prescribed by law on a contractual basis; to inspect the activities of the RSC and TSC of the MIA, to engage scientists, specialists and representatives of civil society institutions to perform certain work and to participate in the study of certain issues; 3) representative: to enter into contracts, to be a plaintiff and defendant in court.

4. Conclusions

Therefore, we determine that these powers are in the line of public policy, affecting the formation of conceptual approaches to the renewal of public administration. No exception is the sector of service provision, which, having been formed in the activities of the MIA service centre system, has entered public life and is subject to new requirements, including quality, transparency, consideration of the needs of consumers of such services, and digitalisation as the main direction of formation of modern civilised e-government, which is based on a new philosophy of high-speed communication, digital document processing and information exchange, online access to registers and services, ensuring the human right to information, to access to information, and to complete and accurate information.

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ОСОБЛИВОСТІ СПІВВІДНОШЕННЯ ФУНКЦІЙ ТА ПОВНОВАЖЕНЬ ГОЛОВНОГО СЕРВІСНОГО ЦЕНТРУ ТА ТЕРИТОРІАЛЬНОГО СЕРВІСНОГО ЦЕНТРУ МВС

Анотація. ***Мета*** Метою статті є визначення особливостей співвідношення функцій та повноважень Головного сервісного центру МВС. ***Результати.*** В працях науковців та в нормативно-правових актах поняття «функції» та «повноваження» використовуються як тотожні поняття або синонімами «компетенції». Визначено, що повноваження, які покладено на Головний сервісний центр МВС є «правообов'язком», оскільки покладають обов'язок здійснювати діяльність, визначену в межах його компетенції та надають низку правомочностей, що дозволяють йому застосовувати методи та засоби як регулювання відносин (здійснення публічних організаційно-владних повноважень, так і надання публічно-сервісних послуг, або ж, здійснення публічно-сервісної діяльності). Це дозволяє класифікувати такі повноваження за двома категоріями: 1) зобов'язуючі; 2) управомочуючі. Положення про Головний сервісний центр МВС розподіляє їх, визначаючи перші функціями, а другі – правами ГСЦ, хоча і перші, і другі визначають його повноваження. ***Висновки.*** Наразі функції, повноваження та принципи діяльності Головного сервісного центру МВС та його територіальних підрозділів регламентовано низкою нормативно-правових актів. Це характеризує визначальну ознаку цього суб'єкта сервісних відносин, як суб'єкта із спеціалізованим адміністративно-правовим статусом, підпорядкованим МВС України. Наголошено, що дозвільні та реєстраційні послуги є сервісними, змістом яких є надання адміністративної послуги на звернення суб'єкта звернення, – особи приватного права. Всі інші є владно-розпорядчими, публічно-організаційно-забезпечуючими та правоохоронними, спрямованими на забезпечення надання правомірної адміністративної послуги суб'єкту звернення у сфері забезпечення безпеки дорожнього руху та безпеки експлуатації автомобільного транспорту. Визначено, що здійснення публічно-сервісних функцій навряд чи можна назвати управлінськими, в той час як управління у сфері надання публічно-сервісних послуг, безперечно, є одним із проявів управлінської діяльності, в якій реалізовується і владно-розпорядчий адміністративно-правовий статус (владно-розпорядчі повноваження).

Ключові слова: повноваження, дозвільні послуги, нормативно-правовий акт, тлумачення.

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SPECIFICS OF IMPLEMENTING PUBLIC HEALTH POLICY IN THE FIELD OF PALLIATIVE CARE IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to reveal, relying on a systematic analysis of the integration of administrative and medical law, the specific features of implementing public health policy in the field of palliative care in Ukraine. ***Results.*** The article reveals that palliative care is a multidisciplinary system of medical, social, psychological, and spiritual measures aimed at improving the quality of life of patients suffering from serious and incurable diseases, as well as supporting their families, including early identification and assessment of symptoms, relief of pain and other suffering, provision of psychological support, ensuring proper care and support, assistance in self-care, provided in accordance with established standards and regulations, to ensure a decent standard of living and reduce physical and moral suffering of patients at all stages of the disease. It is determined that the procedure for providing palliative care in Ukraine is a comprehensive system that includes various aspects of support for patients with incurable diseases in order to ensure the maximum quality of life for patients and their families. Palliative care has specific coordination and management features, in particular, the Ministry of Health of Ukraine and local authorities coordinate the provision of palliative care in administrative units, form clinical pathways for patients and ensure interaction between different institutions and organisations. ***Conclusions.*** It is revealed that the basic principles of palliative care are: 1) multidisciplinary approach. Palliative care is provided by a multidisciplinary team composed of doctors, nurses, social workers, psychologists, spiritual advisers and other specialists. The composition of the team is determined individually, depending on the patient's condition and needs; 2) individuality. For each patient in need of palliative care, an individual care plan is drawn up, consented to by the patient or his/her legal representative, allowing for his/her wishes regarding the place of care and place of death. The care plan is periodically reviewed and adjusted in accordance with changes in the patient's condition; 3) continuity and succession. Palliative care is integrated into the overall healthcare system, ensuring continuity and succession at all levels of care, including coordination between healthcare facilities, social services, volunteers and other organisations; 4) ethics and humanity. Palliative care is based on respect for the patient's dignity, right to informed consent and autonomy in decision-making. Care providers must adhere to ethical standards and ensure humane treatment of patients and their families.

Key words: administrative legislation, public policy, accessibility, health, medical care, medical services, healthcare, patient, principles, actors.

1. Introduction

At present, Ukraine's development as an independent and social state is taking place in the context of the socio-political and economic crisis, which encourages public authorities to modernise and improve the effectiveness of the palliative care system as an important component of social protection. Currently, the development of a palliative care system is urgently needed, given the high level of need in Ukrainian society and Ukraine's European integration processes to ensure international social standards for its citizens (Danyliuk, 2017, pp. 218-229).

One of the priorities of the healthcare and public health system of Ukraine is to develop and improve the quality of palliative care in accordance with international standards, as palliative care is a set of medical, social and psychological measures aimed at improving the quality of life of patients with incurable diseases and a limited life expectancy. To create a highly effective palliative care system in Ukraine, a number of barriers need to be overcome (Saturska, 2021, pp. 33–39).

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Modern research emphasises the need to develop and implement a public policy that would meet the needs of society and address current challenges. Issues that focus on an integrated approach to reforming the healthcare system in the context of administrative law are covered in the works by the following scholars: V. Averianov, I. Buriak, Z. Hladun, D. Homon, H. Muliar, A. Kuchur, A. Manzhula, A. Markina, S. Sabluk, O. Sidelkovskyi, Ye. Sobol, S. Stetsenko, O. Yunin, and others.

Moreover, given the difficult political, social and environmental conditions of the Ukrainian population, new administrative and legal approaches and mechanisms are required to ensure quality healthcare and the readiness of the healthcare system to respond to global threats.

The purpose of the article is to reveal, relying on a systematic analysis of the integration of administrative and medical law, the specific features of implementing public health policy in the field of palliative care in Ukraine.

2. Public Health Policy

According to the Fundamentals of Healthcare Legislation of Ukraine, palliative care is a set of measures aimed at improving the quality of life of patients of all ages and their families who have faced problems related to life-threatening illnesses. This includes measures to prevent and alleviate patient suffering through early identification and assessment of symptoms, pain relief and other physical, psychosocial and spiritual problems. Palliative care is provided free of charge upon referral by the attending physician in accordance with the procedure determined by the central executive body responsible for the formation and implementation of public health policy. Palliative care is subdivided into general and specialised palliative care by type. The procedure, content and scope of palliative care, calculation of the need for the number of palliative care services to provide it, and the list of relevant medical indications are determined by the central executive body that ensures the formation and implementation of public health policy (Law of Ukraine Fundamentals of Ukrainian legislation on health care, 1992).

In addition, Ukraine has the Procedure for interaction of entities in the provision of social palliative care services at home to terminally ill persons, approved by Order of the Ministry of Social Policy of Ukraine, Ministry of Health of Ukraine No. 317/353 of 23.05.2014, which defines the mechanism of interaction between entities providing social palliative care services to terminally ill elderly persons, persons with disabilities who have reached the age of 18, as well as central and local executive authorities in the organisation of social palliative care services at home. This Procedure defines a special concept of "social service of palliative care" (hereinafter - palliative care), which is used in the following meaning: assistance in self-care (personal hygiene, physical activity, medication, feeding); monitoring of health; assistance in the provision of medical services; assistance in providing technical means of rehabilitation, training in their use; training of family members in care; representation of interests; psychological support for individuals and their family members; provision of information on social protection issues; assistance in obtaining free legal aid; organisation and support of self-help groups (Order of the Ministry of Social Policy of Ukraine, the Ministry of Health of Ukraine On the approval of the Procedure for the interaction of subjects in the provision of social services of palliative care at home for the terminally ill, 2014).

The main tasks of palliative care, according to H.S. Saturska, I.M. Shyshatska, O.V. Saturskyi, include the maximum possible reduction of pain, physical and mental suffering, elimination or reduction of disorders of vital activity and other severe manifestations of diseases, professional care, psychological, social and spiritual support for patients and their families (Saturska, 2021, pp. 33–39).

K. Danyliuk argues that palliative care is a complex, multidimensional social phenomenon, which is organised by a number of different and at the same time interrelated factors that affect the processes and mechanisms of public administration of such care. In other words, palliative care has different dimensions, including political, economic, social, organisational, legal, cultural, etc. The public administration of palliative care is a multidimensional, complex process, in the implementation of which, as practice convincingly shows, one has to face a number of diverse problems in various spheres of public life. Of course, the effectiveness of solving the problems of public administration of palliative care depends primarily on their clear identification, comprehensive and thorough analysis (Danyliuk, 2017, pp. 218-229).

According to A. Verhun, the fundamental principles of palliative care are respect for life, priority of the patient's interests, and collegiality in decision-making. The main principles and ways of providing medical care to incurable patients and secondary prevention of complications, in particular pressure ulcers, in conditions of polymorbidity and comorbidity are implemented after the main causes of deterioration of the patient's health and condition are established (pain syndrome, nutritional disorders, metabolic processes, neuropsychiatric

disorders, compression of organs and tissues, etc.), determination of the leading link that led to the emergence of a particular pathological syndrome, manifestations of the tumour process itself and/or paraneoplastic conditions, nonspecific and specific complications, concomitant pathology, neuropsychiatric reactions. The main measures of care and treatment in a palliative care unit include: nutrition (including through a tube), pressure ulcer prevention, symptomatic therapy (including pain relief), patient hygiene, parenteral nutrition, antibiotic therapy, chemotherapy and palliative radiotherapy, interventional and surgical treatment (including in the event of acute conditions and complications, including purulent ones). In the course of treatment, doctors are obliged to alleviate the patient's suffering, always guided by the patient's interests, prognosis and quality of life criteria (Verhun, 2020, p. 43).

Relying on the analysis of the world experience of palliative care and its comprehensive evaluation, T. Kolenichenko and A. Kuzmenko have formulated the basic principles and conditions under which this area can effectively develop and function in Ukraine. These principles are based on a very important problem, without solving which a successful and effective system of palliative care in Ukraine will not be created. This problem is the policy of the state authorities. If political forces consider the social problems of Ukrainian society, it is possible to build a system of palliative care. However, it is not only the attention of political forces to the pressing social problems of society that determines whether the palliative care system will be sufficiently effective. This process is influenced by several other very important factors that should not be overlooked. The first factor is the availability of effective educational programmes and reliable ways to train highly qualified personnel at all levels in accordance with the principle "from volunteer to doctor". The second factor is the availability of medicines, without which palliative care loses its meaning and cannot be considered as such (Law of Ukraine On the Public Health System, 2022; Kolenichenko, Kuzmenko, 2016).

In our opinion, palliative care is a multidisciplinary system of medical, social, psychological and spiritual measures aimed at improving the quality of life of patients suffering from serious and incurable diseases, as well as supporting their families, including early identification and assessment of symptoms, relief of pain and other suffering, psychological support, provision of appropriate care and support, and assistance in self-care, provided in accordance with established standards and regulations, to ensure a decent standard of living and reduce physical and moral suffering of patients at all stages of the disease.

3. Palliative care in Ukraine

The Procedure for Palliative Care, approved by the Order of the Ministry of Health of Ukraine No. 1308 of 04 June 2020, states that the basis for the provision of palliative care is a multidisciplinary approach, which provides for the engagement of a multidisciplinary team, which may be different and is determined depending on the patient's condition, the amount of care, and the size of the service area. The activities of the multidisciplinary team are regulated by the procedure for interaction between palliative care providers and social service providers approved by the Ministry of Health of Ukraine and the Ministry of Social Policy of Ukraine. The main components of palliative care are medical (symptomatic therapy, prevention and treatment of chronic pain syndrome, drug therapy, provision of effective pain relief), social (including provision of social palliative care services), spiritual and psychological support for the Patient and his/her family, and other persons caring for the Patient. The provision of palliative care is based on the principles of accessibility, planning, continuity and succession, in accordance with the wishes of the Patient regarding the choice of the place of treatment and place of death, ensuring the possibility of receiving curative treatment in parallel with palliative care, considering the ethical and humane treatment of the Patient and his/her family members, other persons caring for the Patient, 7 days a week (Order of the Ministry of Health of Ukraine On improving the organization of palliative care in Ukraine, 2020).

According to international standards, the focus of palliative care should be on the patient and his or her family, not the disease itself. Ukraine has made international commitments to implement palliative and hospice care. The Ministry of Health of Ukraine is creating a European model of palliative care, which includes three links: "family doctor - mobile service - inpatient care (hospice)" (Saturska, 2021, pp. 33–39).

Ukraine is one of the countries with separate specialised palliative and hospice care institutions, but the work of these institutions does not have signs of systematic organisation at the state level (no signs of integration into the general health care system). The principles of palliative and hospice care should be developed as part of an innovation in the public health system. Not all the main directions of development of the palliative and hospice care system meet the current needs of the medical community and Ukrainian society (Nesterenko, 2021, p. 62).

In order to determine the plan and scope of palliative care provided by a healthcare facility that provides palliative care, the individual entrepreneur draws up a plan for monitoring a patient in need of palliative care. The choice of the place of palliative care and place of death for the Patient shall be discussed and agreed with the Patient and/or his/her legal representative. The Patient's wishes are a priority and are recorded in the Care Plan. Continuity and succession of palliative care involves the cross-cutting integration of palliative care into the process of medical care in all healthcare facilities and coordination of palliative care. Specialists providing palliative care interact with each other and ensure continuity of care in accordance with the needs and clinical pathway of the Patient. The duration of stay of a Patient in need of palliative care in a specialised healthcare facility is determined by members of the multidisciplinary team and recorded in the Care Plan. If necessary, measures to be taken at the Patient's place of residence/stay in accordance with the Care Plan are determined. Palliative care involves monitoring of the Patient's condition, drawing up and reviewing the care plan, taking into account changes in the condition and needs of the Patient and/or his/her family, other persons caring for the Patient, as well as the use of the necessary highly specialised diagnostic and therapeutic methods in case of changes in the Patient's condition (Order of the Ministry of Health of Ukraine On improving the organization of palliative care in Ukraine, 2020).

It should also be noted that technological and innovative factors largely determine the development of palliative care, including the material, technical, informational, staffing, socio-medical and other dimensions of this system. Experience has convincingly shown that the best Western models of palliative and hospice care are based on the results of research and innovation, and the widespread introduction of innovations into the practice of this system. Obviously, the "generator" of scientific and technological innovations is the results of fundamental, scientific and applied research, which should be the basis for the activities of palliative and hospice care facilities, as well as the professional training of medical, social and other workers in this system. These employees should be qualified specialists who are able to apply various innovations in their professional activities, effectively, efficiently and timely perform the tasks assigned to them (Danyliuk, 2017, pp. 218-229).

The Ministry of Healthcare of Ukraine, the Ministry of Healthcare of the Autonomous Republic of Crimea, structural units for healthcare of oblast, Kyiv and Sevastopol city state administrations within their competence coordinate the work on palliative care in the respective administrative-territorial units (including hospital districts) and determine the responsible specialist and/or structural unit for this purpose. The coordination of palliative care implies the approval of clinical pathways for patients of all ages for palliative care, measures to ensure the continuity and succession of palliative care for patients by healthcare facilities regardless of their form of ownership and subordination, as well as by individual entrepreneurs, and the identification of healthcare facilities that are responsible for the function of the regional palliative care network coordination centre. Information about healthcare facilities and individual entrepreneurs providing palliative care and the availability of round-the-clock counselling is posted on the official websites of the Ministry of Health of Ukraine. The content and scope of palliative care services are determined by the programme of state guarantees of medical care for the population for the relevant year. The regional palliative care network consists of all institutions, facilities, services and individual entrepreneurs providing palliative care at all levels of medical care on the territory of the relevant administrative-territorial unit (amalgamated territorial communities, hospital district). Palliative care units established within the structures of healthcare facilities are part of the regional palliative care network. One of the healthcare facilities providing specialised palliative care is defined as the coordination centre of the regional palliative care network. Coordination of palliative care implies interaction between healthcare facilities that provide palliative care, other healthcare facilities, social protection and education institutions, volunteers and non-governmental organisations to ensure continuity and succession of palliative care to the Patient (Order of the Ministry of Health of Ukraine On improving the organization of palliative care in Ukraine, 2020).

The legislation of Ukraine separately establishes a special procedure for the interaction of entities in the provision of social palliative care services at home to terminally ill patients, including the Ministry of Social Policy of the Autonomous Republic of Crimea and structural units for social protection of the population: coordinate the work on the provision of social palliative care services at home by local executive authorities and territorial centres; promote the engagement of other entities providing social palliative care services at home, civil society institutions, religious organisations (with their consent). Territorial centre of social services: - keeps records

of people in need of social palliative care services at home; - addresses the person's need for technical rehabilitation equipment; - assesses the person's social, emotional and psychological state and religious views (religion, observance of rituals, religious traditions, etc.) with the engagement of a doctor or psychologist, if necessary; - performs other powers. Local executive authorities: 1) make a decision to establish (if necessary) a structural unit within the territorial centre to organise the provision of social palliative care at home; 2) involve non-state entities in the provision of social palliative care at home on a competitive basis by concluding agreements with them on the attraction of budgetary funds for the provision of social services; 3) organise professional development of persons providing social palliative care at home. The Ministry of Health of the Autonomous Republic of Crimea, structural units for health care of oblast, Kyiv and Sevastopol city state administrations coordinate the work on palliative care within their competence. Healthcare institutions: 1) cooperate with territorial centres on the organisation of palliative care at home; 2) identify persons with a high degree of health loss; 3) organise palliative care for terminally ill patients; 4) promote social and educational work (social advertising, issuing social bulletins, etc.) on the development of palliative care; 5) take measures to cooperate with NGOs on the development of palliative care (Order of the Ministry of Social Policy of Ukraine, the Ministry of Health of Ukraine On the approval of the Procedure for the interaction of subjects in the provision of social services of palliative care at home for the terminally ill, 2014).

4. Conclusions

Therefore, the procedure for the provision of palliative care in Ukraine is a comprehensive system that includes various aspects of support for patients with incurable diseases in order to ensure the maximum quality of life for patients and their families. Palliative care has specific coordination and management features, in particular, the Ministry of Health of Ukraine and local authorities coordinate the provision of palliative care in administrative units, form clinical pathways for patients and ensure interaction between different institutions and organisations.

The basic principles of palliative care are:

1) Multidisciplinary approach. Palliative care is provided by a multidisciplinary team composed of doctors, nurses, social workers, psychologists, spiritual advisers and other specialists. The composition of the team is determined individually, depending on the patient's condition and needs;

2) Individuality. For each patient in need of palliative care, an individual care plan is drawn up, consented to by the patient or his/her legal representative, allowing for his/her wishes regarding the place of care and place of death. The care plan is periodically reviewed and adjusted in accordance with changes in the patient's condition;

3) Continuity and succession. Palliative care is integrated into the overall healthcare system, ensuring continuity and succession at all levels of care, including coordination between healthcare facilities, social services, volunteers and other organisations;

4) Ethics and humanity. Palliative care is based on respect for the patient's dignity, right to informed consent and autonomy in decision-making. Care providers must adhere to ethical standards and ensure humane treatment of patients and their families.

Palliative care includes certain components, including:

1) Medical care (symptomatic therapy and medication; prevention and treatment of chronic pain; provision of effective pain relief, etc;)

2) Social care (provision of social services, including palliative care; assessment of the need for technical rehabilitation equipment; support for the patient's social and living conditions);

3) Psychological and spiritual support (providing psychological assistance to patients and their families; providing spiritual support in accordance with the patient's religious beliefs).

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ОСОБЛИВОСТІ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я ЩОДО НАДАННЯ ПАЛІАТИВНОЇ ДОПОМОГИ В УКРАЇНІ

Анотація. ***Мета*** статті полягає в тому, щоб на основі системного аналізу інтеграції адміністративного та медичного права, розкрити особливості реалізації державної політики у сфері охорони здоров'я щодо надання паліативної допомоги в Україні. ***Результати.*** У статті розкрито, що паліативна допомога – це багатопрофільна система медичних, соціальних, психологічних та духовних заходів, спрямованих на поліпшення якості життя пацієнтів, які страждають від важких та невиліковних захворювань, а також підтримку їхніх родин, що включає ранню ідентифікацію та оцінку симптомів, полегшення болю та інших страждань, надання психологічної підтримки, забезпечення належного догляду та супроводу, допомогу в самообслуговуванні, що надається відповідно до встановлених стандартів та нормативів, з метою забезпечення гідного рівня життя та зменшення фізичних і моральних страждань пацієнтів на всіх етапах хвороби. Визначено, що порядок надання паліативної допомоги в Україні є комплексною системою, що різні аспекти підтримки пацієнтів з невиліковними захворюваннями з метою забезпечення максимальної якості життя пацієнтів та їх родин. Паліативна допомога має особливості щодо координації та управління, зокрема, Міністерство охорони здоров'я України та місцеві органи влади координують роботу з надання паліативної допомоги в адміністративно-територіальних одиницях, формують клінічні маршрути пацієнтів та забезпечують взаємодію між різними закладами та організаціями. ***Висновки.*** Розкрито, що основні засади надання паліативної допомоги включають: 1) мультидисциплінарний підхід. Паліативна допомога надається мультидисциплінарною командою, до складу якої входять лікарі, медсестри, соціальні працівники, психологи, духовні наставники та інші фахівці. Склад команди визначається індивідуально, залежно від стану пацієнта та його потреб; 2) індивідуальність. Для кожного пацієнта, що потребує паліативної допомоги, складається індивідуальний план спостереження, що погоджується з пацієнтом або його законним представником та враховує його побажання щодо місця надання допомоги та місця смерті. План спостереження періодично переглядається та коригується відповідно до змін у стані пацієнта; 3) безперервність та наступність. Паліативна допомога інтегрується в загальну систему охорони здоров'я, забезпечуючи безперервність та наступність на всіх рівнях медичної допомоги, що включає координацію між закладами охорони здоров'я, соціальними службами, волонтерами та іншими організаціями; 4) етичність та гуманність. Паліативна допомога ґрунтується на повазі до гідності пацієнта, його права на інформовану згоду та автономію в прийнятті рішень. Надавачі допомоги зобов'язані дотримуватись етичних стандартів та забезпечувати гуманне ставлення до пацієнтів та їх родин.

Ключові слова: адміністративне законодавство, державна політика, доступність, здоров'я, медична допомоги, медичні послуги, охорона здоров'я, пацієнт, принципи, суб'єкти.

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JUDICIAL ASSISTANT'S POWERS IN ORGANISATIONAL SUPPORT FOR COURT PROCEEDINGS

Abstract. ***Purpose.*** The purpose of the article is to provide a theoretical and legal description of the judicial assistant's powers with regard to the organisational support of court proceedings. ***Results.*** The institution of a judicial assistant of a court of any level is aimed at regulating certain organisational issues related to the support for court proceedings. This, in our opinion, is crucial, among other things, in terms of effective, full and fair court proceedings, since the final result - bringing a person to justice or not, or the further outcome of a legal dispute in favour of a particular person - depends on the level of support for the relevant processes. The article studies a judicial assistant's powers with regard to organisational support for court proceedings. The role and place of a judicial assistant in ensuring the functioning of the court apparatus are determined, and the perspective on what constitutes organisational support and what forms of it are provided for by Ukrainian legislation and which forms arise, in the aggregate, from several legal regulations is substantiated. Powers as a theoretical and legal category have been considered by many researchers, but only a few, in our opinion, have properly substantiated their positions and synchronised the relevant concept with the legislation of Ukraine. The author argues that the content and essence of the legal category of powers creates legal grounds for determining the scope of competence of such person (official or competence of a separate body), and also enables clear performance of tasks and duties. ***Conclusions.*** It is proved that organisational support of the court process is a set of elements aimed at creating an environment favourable for the administration of justice by a judge of the relevant court and at enabling the exercise of such power in general. The areas of ensuring the organisation of court proceedings by a judicial assistant are: organisational- managerial and analytical. In addition, the author proves that the powers of a judicial assistant with regard to organisational support for court proceedings are formed from a set of rights of the assistant as an official of the relevant court, duties, as well as a set of elements of the administrative and legal status of the court itself as an institution, the tasks of its functioning and activities from the national and local perspectives. Further research is prospective in terms of the need for an additional analysis of the duties, rights and other elements of the administrative and legal status of a judge's assistant as the main entity which organisationally ensures court proceedings.

Key words: assistant, support, responsibility, court, activities, powers.

1. Introduction

At the present stage of formation of the institution of rights and freedoms of man and of the citizen, the functioning of mechanisms and state institutions that ensure law and order and protection of human rights and freedoms should be the focus of special attention. In addition, it should be noted that the court is the most important in this context, as the functional and structural embodiment of the judicial branch of power in the overall system of state authorities.

It is also important that at the current stage of transformation of the law enforcement and human rights system, ensuring the observance of rights and freedoms of man and the citizen and the restoration of violated rights, requires significant improvement both from the regulatory and legal perspective and from the organisational and managerial perspective. The institutions that ensure its functioning as a public authority and facilitate the administration of justice in the general sense are important in the work of the court.

As of today, it should be noted that the issues related to the functioning of the institution of judicial assistants and their powers in the context of ensuring the conduct of court hearings require improvement and new scientific research, since the large-scale russian invasion makes significant destructive adjustments to the legal reality of society.

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In addition, it should be noted that the issue of analysing the administrative and legal status of a judicial assistant and his/her powers to organise a court session was addressed in the works of scholars such as: I.B. Azemsha, Y.P. Bytiak, V.V. Zui, O.D. Hryn, A.A. Ivanyshchuk, E.Y. Podorozhnyi, O.M. Radchenko, N.P. Svyrydiuk, T.O. Chepulchenko, and others. However, given the current trends in reforming the law enforcement and human rights sector, as well as the large-scale russian invasion of Ukraine, it is important to develop new ways to improve the relevant mechanism in the current realities.

The purpose of the article is to provide a theoretical and legal description of the judicial assistant's powers with regard to the organisational support of court proceedings. This, in turn, necessitates solving the following research tasks: 1. Characterize the powers of a judicial assistant as a general theoretical and legal category; 2. Substantiate the role and place of powers in the system of administrative and legal status of a judicial assistant; 3. Outline the main areas for improving the functioning of the mechanism for judicial assistant's powers.

The object of the article is public relations in the field of organisation of effective administration of justice.

The subject matter of the study is the powers of a judicial assistant in terms of organisational support for court proceedings.

2. Powers as a theoretical and legal category

The institution of a judicial assistant of a court of any level is aimed at regulating certain organisational issues related to the support for court proceedings. This, in our opinion, is crucial, among other things, in terms of effective, full and fair court proceedings, since the final result - bringing a person to justice or not, or the further outcome of a legal dispute in favour of a particular person - depends on the level of support for the relevant processes.

According to O. Radchenko, the position of a judicial assistant was introduced in general courts of Ukraine in accordance with the Law of Ukraine "On the Judiciary of Ukraine" (Radchenko, 2014). The scholar emphasises that the need to introduce this institution in Ukrainian courts is a result of the so-called "small 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 (On the judicial system of Ukraine: Law of Ukraine, 2002). However, in our opinion, it is possible to conceptually define the role and place of a judicial assistant in any court proceedings only through the prism of understanding his/her powers, which are actually a separate element of the relevant legal status.

Powers as a theoretical and legal category have been considered by many researchers, but only a few, in our opinion, have properly substantiated their positions and synchronised the relevant concept with the legislation of Ukraine.

Powers are an element of competence and are related to the subject matter, as they determine the extent of possible and necessary behaviour of competence subjects in certain areas of public life within their jurisdiction (Bytiak and Zui, 1996). In other words, the powers of a judicial assistant, including those related to the organisational support for court proceedings, consist of rights and duties that are clearly defined by Ukrainian legislation, including the Law of Ukraine "On the Judiciary and the Status of Judges", as well as other documents more focused on the legal status of a judicial assistant.

3. Legal and regulatory framework for the powers of a judicial assistant

For example, the Law of Ukraine "On Civil Service" defines civil service in Ukraine as the professional activities of persons holding positions in state bodies and their apparatus in the practical performance of tasks and functions of the state and receiving salaries from state funds (Law of Ukraine On Civil Service, 2015). Accordingly, given that the judicial assistant is a civil servant, the scope of his/her competence and the content of his/her powers are filled with the provisions of the relevant law and legal status in general.

According to the Regulations on judicial assistants (approved by Decision No. 21 of the Council of Judges of Ukraine on 18 May 2018), a category such as powers of judicial assistants is not regulated at all, although in our opinion the content and essence of the concept of "powers" is clearly reflected in the provisions of Section III "Tasks, Rights and Duties of a Judicial Assistant". For example, this section states, among other things, that a judicial assistant: selects legal regulations and materials of judicial practice necessary for consideration of a particular court case; participates in preliminary preparation of court cases for consideration, in the processing of court cases, and, on behalf of the judge, prepares draft court decisions, inquiries, letters, and other materials related to the consideration of a particular case; prepares copies of court decisions to be sent to the parties to the case and other participants in the case in accordance with the requirements of procedural law, controls the timeliness of sending copies

of court decisions; prepares draft court orders for the execution of certain procedural actions by courts of other states, for serving court documents in civil, commercial, administrative, criminal cases, for extradition of offenders to the territory of Ukraine; performs other orders of the judge regarding the organisation of court proceedings (Decision of the Council of Judges of Ukraine on the approval of the Regulations on Assistant Judges, 2018). The above clearly demonstrates that almost all of the defined tasks of a judge are correlated with ensuring the organisation of court hearings, preventing violations of the rights and freedoms of participants in the trial, including through non-compliance with basic procedural rules.

In addition, these Regulations stipulate that a judicial assistant shall timely and efficiently execute the assignments given to him/her, comply with the deadlines for preparing documents and executing assignments, constantly improve his/her professional level and qualifications, take care of the court property, and prevent violations of the rights and freedoms of man and the citizen in the performance of his/her duties (Decision of the Council of Judges of Ukraine on the approval of the Regulations on Assistant Judges, 2018).

In our opinion, the above clearly demonstrates that both the tasks and the rights and duties of a judge assistant, as defined by the legislation of Ukraine, clearly formulate the competence of the relevant official and construct all elements of the relevant legal status in a manner that maximises the influence of the judicial assistant on the organisation of court proceedings. Furthermore, the provisions of the Law of Ukraine "On Civil Service" require a separate study to analyse the rights and duties defined for civil servants and to establish the relationship between them and those already mentioned in this paper.

On behalf of the judge, the judicial assistant: may exercise the powers of the court registrar in his/her absence if it is impossible to replace him/her with another registrar; coordinates the work of the court registrar and provides him/her with methodological and practical assistance, including ensuring the recording of the court proceedings by technical means; checks the timeliness of court records in cases under the judge's jurisdiction; controls the timely submission of court cases heard under the judge's chairmanship to the court office and/or the court archive by the court registrar; prepares and documents statistical data; summarises court practice, generalises the number and status of court cases of all categories considered by a judge; analyses cancelled and amended decisions of a judge after review of cases by courts of appeal and cassation (Decision of the Council of Judges of Ukraine on the approval of the Regulations on Assistant Judges, 2018).

4. Conclusions.

In the article, a judicial assistant's powers with regard to organisational support for court proceedings are studied. The role and place of a judicial assistant in ensuring the functioning of the court apparatus are determined, and the perspective on what constitutes organisational support and what forms of it are provided for by Ukrainian legislation and which forms arise, in the aggregate, from several legal regulations is substantiated.

The author proves that the content and essence of the legal category of powers creates legal grounds for determining the scope of competence of such person (official or competence of a separate body), and also enables clear performance of tasks and duties.

It is proved that organisational support of the court process is a set of elements aimed at creating an environment favourable for the administration of justice by a judge of the relevant court and at enabling the exercise of such power in general. The areas of ensuring the organisation of court proceedings by a judicial assistant are: organisational- managerial and analytical.

In addition, the author proves that the powers of a judicial assistant with regard to organisational support for court proceedings are formed from a set of rights of the assistant as an official of the relevant court, duties, as well as a set of elements of the administrative and legal status of the court itself as an institution, the tasks of its functioning and activities from the national and local perspectives.

Further research is prospective in terms of the need for an additional analysis of the duties, rights and other elements of the administrative and legal status of a judge's assistant as the main entity which organisationally ensures court proceedings.

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ПОВНОВАЖЕННЯ ПОМІЧНИКА СУДДІ ЩОДО ОРГАНІЗАЦІЙНОГО ЗАБЕЗПЕЧЕННЯ СУДОВОГО ПРОЦЕСУ

Анотація. ***Метою*** статті є теоретико-правова характеристика повноважень помічника судді щодо організаційного забезпечення судового процесу. ***Результати.*** Інститут помічника судді, суду будь-якого рівня має на меті врегулювання окремих організаційний питань, пов'язаних і забезпеченням судового процесу. Це, на нашу думку є визначальним, серед іншого й у питанні ефективного, повноцінного та справедливого судочинства, оскільки від рівня забезпеченості відповідних процесів, залежить кінцевий результат – притягнення чи не притягнення особи до відповідальності чи подальша доля певного юридичного спору на користь тієї чи іншої особи. У статті досліджено повноваження помічника судді щодо організаційного забезпечення судового процесу. Встановлено роль і місце помічника судді в забезпеченні функціонування апарату суду, обґрунтовано позицію про те, що є організаційним забезпеченням і які його форми передбачаються законодавством України, а які витікають, за сукупністю з декількох нормативно-правових актів. Повноваження, як теоретико-правова категорія розглядались багатьма дослідниками, проте лише деякі, на нашу думку належним чином обґрунтували власні позиції та синхронізували відповідне уявлення із законодавством України. Автор обґрунтовує позицію про те, що зміст і сутність правової категорії повноважень створює юридичні підстави визначення кола компетенції такої особи (посадової особи чи компетенції окремого органу), а також уможливлює чітке виконання поставлених завдань й обов'язків. ***Висновки.*** Доведено, що організаційне забезпечення судового процесу є комплексом елементів, спрямованих на створення сприятливих умов здійснення правосуддя суддею відповідного суду та уможливлення реалізації такого повноваження загалом. Напрямами забезпечення організації судового процесу з боку помічника судді є: організаційно-управлінський та аналітичний. Додатково обґрунтовано позицію про те, що повноваження помічника судді щодо організаційного забезпечення судового процесу формуються з комплексу прав помічника, як посадової особи відповідного суду, обов'язків, а також комплексу елементів адміністративно-правового статусу самого суду як інституції, завдань його функціонування та діяльності в загальнодержавному та локальному розумінні. Перспектива подальшого дослідження полягає в необхідності додаткового аналізу обов'язків, прав й інших елементів адміністративно-правового статусу помічника судді, як основного суб'єкта, шо організаційно забезпечує судовий процес.

Ключові слова: помічник, забезпечення, відповідальність, суд, діяльність, повноваження.

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Kolesnikov, Andrii (2023). State Policy of Ukraine in the Field of Justice Digitalization. *Entrepreneurship, Economy and Law, 6*, 78–82, doi https://doi.org/10.32849/2663-5313/2023.6.14

STATE POLICY OF UKRAINE IN THE FIELD OF JUSTICE DIGITALIZATION

Abstract. ***Purpose.*** The purpose of the article is to study the state policy of Ukraine in the field of justice digitalization and substantiate the ways of its further development. ***Research methods.*** The structure of the article involves solving analytical, theoretical, and prognostic tasks. The tasks require the use of certain research methods and scientific materials. The study of the shortcomings in the implementation of the state policy of digitalization of justice is carried out using the problem-search method. The regulatory framework analysis of the digitalization of justice is carried out using structural-functional and systemic methods. The author used the method of abstraction, which made it possible to highlight important aspects that needed to be addressed while studying certain problems of the Unified Judicial Information Telecommunication System. The author applied the method of scientific generalization to substantiate the conclusions. ***Results.*** The article examines the relevance of integrating the latest information technologies into the judicial system of Ukraine to increase its efficiency, transparency, and accessibility to citizens. The article described the key aspects of the digital transformation of justice which include the implementation of the Unified Judicial Information and Telecommunication System and cybersecurity. The author emphasizes the need to improve the digital literacy of judges and judicial officers for the successful implementation of digital reforms. It is noted that such measures will facilitate the effective exchange of data between different authorities, increase public confidence in the judiciary, and ensure equal access to justice for citizens. ***Conclusions.*** The modern development of the judicial system requires the introduction of the latest information technologies to increase the efficiency, transparency, and accessibility of justice for citizens. The digital transformation of justice has the potential to fundamentally change the traditional model of legal services, ensuring synergy between the latest technological capabilities and legal instruments for protecting human rights and freedoms. The implementation of the Unified Judicial Information and Telecommunication System and cybersecurity are critical to creating a single information space for judicial proceedings, which will facilitate the rapid exchange of data and increase trust in the judiciary. It is also important to focus on improving the digital literacy of judges and judicial officers, which is essential for the successful implementation of digital reforms in the justice sector.

Key words: justice, court, digitalization, UJITS, e-court, digital literacy.

1. Introduction

Forming a state policy for the digital transformation in the justice administration is a relevant and strategically important task. It is required to ensure the effective functioning of the judicial system, to increase access to justice and its transparency, as well as to strengthen public trust in the judiciary. This involves a systematic approach, which includes legislative initiatives, technological innovations, educational programs, and public engagement.

The digital transformation of judicial proceedings involves the comprehensive implementation of innovative technologies in all areas of court activities, from electronic document management to the use of artificial intelligence for analyzing judicial practice. This allows for optimizing court processes, increasing their efficiency and responsiveness, providing convenient and quick public access to justice, as well as reducing the workload on judges and court staff.

We have previously investigated certain aspects of justice digitalization (Bryntsev, 2016).

Methods. The structure of the article aims to solve analytical, theoretical, and prognostic tasks, requiring the use of specific research methods and scientific materials. The author studied disadvantages in implementing the state justice digitalization policy using the problem-search method. The analysis of the legal framework for justice digitalization was carried out using struc-

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tural-functional and systemic methods. When examining specific issues of the UJITS functioning, the abstraction method was used, allowing the identification of important aspects requiring solution. The scientific generalization method was used to substantiate the conclusions.

The article aims to investigate Ukraine's state policy in the field of justice digitalization and substantiate the ways for its further development.

Ensuring systematic and logical presentation of the material determined the division of the article into the following sections: introduction, basic principles, implementation of the Unified Judicial Information and Telecommunication System, implementation challenges, development prospects, and conclusions.

Basic Principles

The development of state policy for the digital transformation in the justice administration should be based on clear strategic goals and objectives defined at the highest state level. Among these, it is worth noting amendments to the Law of Ukraine "On the Judiciary and the Status of Judges." The amendments concern additional informing of court parties through the Unified State Web Portal of Electronic Services and the "Diia" mobile application (Pro vnesennia zmin do Zakonu Ukrainy "Pro sudoustrii i status suddiv", 2022).

One of the key directions of the state policy's digital transformation should be the attraction of citizens to more intensive use of the electronic justice system. This activity involves ensuring the ability to file claims, complaints, petitions, and other procedural documents electronically, conducting court hearings via videoconferencing, maintaining electronic case files, and electronic document management. Currently, the Ministry of Digital Transformation is working on updating the concept of an electronic court, which will allow citizens to have even more digital functions. At present, around 50,000 court employees and more than 6.7 million citizens, notaries, lawyers, investigative bodies, and business representatives use electronic court services. The number of court decisions reviewed in the period 2021–2023 amounted to 16,904,405 (Tsyfrovizatsiia sudovoi sfery).

Special attention requires creating and developing the information and communication infrastructure of the judicial system. State policy should provide for the elaboration of a unified judicial information and telecommunication system that would ensure uninterrupted data exchange between courts, public authorities, and other participants in the judicial process. This requires the implementation of modern secure electronic document management systems, the development of data processing centers, the introduction of cloud technologies, etc.

An important sphere of state policy is ensuring information security and cybersecurity in the judicial system. State policy should provide for the development and implementation of effective mechanisms to protect the information resources of courts from unauthorized access, cyber-attacks, viral threats, and other cyber incidents. This requires the creation of specialized cybersecurity units, the introduction of modern intrusion detection and prevention systems, means of cryptographic information protection, and the development of cybercrimes response plans.

The development of state policy on the use of artificial intelligence and big data analytics in legal proceedings also requires attention. These technologies can significantly increase the efficiency of judges and court staff by helping them quickly find and analyze relevant case law, identify potential risks and trends, and make predictions. Currently, an element of such a policy is the Concept for the Development of Artificial Intelligence in Ukraine. The document has a separate subsection dedicated to the administration of justice (Kontseptsiia rozvytku shtuchnoho intelektu v Ukraini, 2020).

An important aspect is also the creation of a unified information space for legal proceedings by integrating the information systems of courts, registers, cadastres, and other state information resources. This will ensure the prompt exchange of data between various authorities, contribute to the effective and immediate consideration of court cases, and increase the level of information openness in courts.

2. Implementation of the Unified Judicial Information and Telecommunication System

One of the main steps in justice digitalization was the adoption by the High Council of Justice of the "Regulation on the Procedure for the Functioning of Separate Subsystems (Modules) of the Unified Judicial Information and Telecommunication System" (Zurian, 2020) (the Regulation). The system was created with the aim of: "forming a single information space for bodies and institutions of the justice system; inter-agency circulation of information, its exchange; ensuring maximum transparency and accessibility of the justice system for society; accelerating the consideration of court cases and proceedings; automation of work; transition to digital versions of documents in court proceedings; digitization of court archives; providing users of the UJITS with quick access to information, taking into account access rights; ensuring confidentiality, integrity, and avail-

ability of information in the UJITS; uniform application by courts of substantive and procedural law, practices of organizing judicial proceedings" (Teremetskyi, Duliba, 2023, p. 133).

The regulation defines 20 main functions. Implementation of those functions will contribute to the digitalization of the justice system. The overall UJITS system implies the existence of three modules: the "Electronic Cabinet" subsystem, the "Electronic Court" subsystem, and the videoconferencing subsystem. The concept of UJITS is defined as "a set of information and telecommunication subsystems (modules) that ensure the automation of processes of activity of courts, bodies and institutions in the justice system defined by legislation and this Regulation, including document flow, automated distribution of cases, exchange of documents between the court and participants in the court process, recording of the court process and participation of participants in the court session via videoconference, compilation of operational and analytical reports, provision of information assistance to judges, as well as automation of processes that ensure financial, material, organizational, staff, information and telecommunication and other needs of UJITS users" (Zurian, 2020).

The full construction of the UJITS modules is defined in the Concept of the Program for Informatization of Local and Appeals Courts and the Project for the Construction of the Unified Judicial Information and Telecommunication System for 2022-2024, which outlines a list of 17 functionalities: subsystems ("Electronic Cabinet", "Electronic Court", electronic document flow, personnel management and financial and economic activities, "Judge's Dossier", automated case distribution, "Judicial Power Contact Center", "Electronic Archive", "Case Law", analytics, statistics, planning, reporting, "Open Data Sets"), modules (recording sessions with technical means, providing video broadcasts and videoconferencing, automated interaction with other automated systems, "Information Security and Access Management") and other functionalities (web portal Judicial Power of Ukraine, Unified State Register of Judgments (USRJ), Unified State Register of Enforcement Documents (USRED), etc. (Kontseptsiia prohramy informatyzatsii mistsevykh ta apeliatsiinykh sudiv, 2022). At the same time, the author agrees with researchers who extend the phenomenon of electronic courts beyond the UJITS. Digital court ensures the use of various technologies for the administration of justice, which is broader than the perception of a separate UJITS module (Rusanova, 2021, p. 241). Thus, this tool is an integrated communication system that creates a new information space in the administration of justice and expands the possibilities for protecting human and civil rights and freedoms.

The full implementation of UJITS requires more systematic legislative regulation, taking into account the specifics of remote and electronic justice, especially in conditions of martial or emergency law (Oliinychuk, Oliinychuk, Kolesnikov, 2021). At the same time, an important criterion for the effective functioning of remote justice is maintaining a balance between ensuring the right to access to justice and guaranteeing the safety of participants in the legal process.

3. Implementation Challenges

Despite certain measures to update technical means and develop the Unified Judicial Information and Telecommunication System (UJITS) in previous years, the level of provision of informational means in courts and institutions of the justice system remains insufficient. The Concept of the Program for Informatization of Local and Appeals Courts and the Project for the Construction of the Unified Judicial Information and Telecommunication System states that this indicator was about 82% of the normative need. In particular, only 82% of judges are provided with personal computers, and 67% of courtrooms are equipped for audio/video recording and video conferencing tools.

A significant part of the existing equipment (over 42%) has been in use for 6 or more years, which creates risks of failure due to aging and the inability to repair (Kontseptsiia prohramy informatyzatsii mistsevykh ta apeliatsiinykh sudiv, 2022). Network equipment is mostly represented by low-speed devices without proper information security. The software is also morally outdated and does not allow for full automation of court activities.

Another problem is that interaction with state registers takes place through separate modules instead of a single node. The existing systems do not meet the requirements for technical information protection.

An important issue that does not allow for a proper level of informatization and implementation of UJITS is insufficient funding for both capital and operating expenditures.

O. Bryntsev notes that one of the most important problems in e-justice today is the mismatch between information technologies and procedural rules. This hinders the domestic judicial system from transitioning to a qualitatively new information technology level (Bryntsev, 2016).

From a systematic approach, the author notes that the judicial system was institutionally unprepared for the implementation of the initially planned 13 UJITS subsystems.

The issues of digital literacy among judges, court staff, and other participants in the judicial process deserve special attention. State policy should provide for the development and implementation of training and retraining programs in digital technologies application, as well as measures to promote and explain the advantages of the digital transformation of justice.

4. Development Prospects

At the same time, we agree with the position of S. Kravtsov, S. Pravnyk and L. Moshura that solving the issues of technical support and literacy of judges and court staff will not determine a potential breakthrough in the use of the e-justice system. To reach the breakthrough, it is necessary to implement state programs to improve the digital literacy of the population, including the use of the latest judicial services (Kravtsov, Pravnyk, Moshura, 2021, p. 227). Today, some projects for using digital services are being implemented in the administration of justice, but they are not popular among the general population.

The key result of the digitalization of justice is the minimization of paper-based document flow. Currently, documents received through the electronic cabinet require mandatory printing and storage in paper form, which negates the key advantage of electronic justice – the protection of human and civil rights and freedoms in digital format. The further development of electronic justice aims to eliminate the need for paper form of documentation and the administration of electronic justice exclusively in digital format. Such result necessitates the development of additional information protection tools and amendments to the normative documents regulating the implementation of electronic justice.

Another prospect of digital technologies in the justice administration is the potential use of artificial intelligence. While AI use as a independent judge is not timely and can't be a subject of discussion in the near future, it can be used as an auxiliary tool in the practice of Ukrainian judicial proceedings in the near future (at least in a test mode). One of such application is the implementation AI to solve partially the court secretary's functions, including: court summons and notices; checking the presence and absence of persons; technical recording of court hearings; keeping a record of court proceedings; sending copies of court decisions; issuing writs of execution; arranging case files; preparing information on cases scheduled for consideration; and compliance with internal labor regulations [Zurian, 2020, pp. 176-177].

5. Conclusions

The current development stage of the judicial system requires the integration of cutting-edge information technologies to enhance the efficiency, transparency, and accessibility of justice for citizens. The digital transformation of justice has the potential to radically change the traditional model of providing legal services. This will ensure a symbiosis of advanced technological capabilities and legal instruments for protecting the rights and freedoms of individuals and citizens. The implementation of such a policy will improve the efficiency, responsiveness, and transparency of the judicial system, ensure equal public access to justice, and strengthen public trust in the judiciary.

The implementation of the Unified Judicial Information and Telecommunication System and ensuring cybersecurity are critically important steps towards creating a unified information space for judicial proceedings. These achievements will facilitate prompt data exchange and increase public trust in the judiciary. It is also necessary to enhance the digital literacy of judges and judicial staff, which is crucial for the successful implementation of digital reforms in justice system.

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ДЕРЖАВНА ПОЛІТИКА УКРАЇНИ У СФЕРІ ЦИФРОВІЗАЦІЇ ПРАВОСУДДЯ

Анотація. ***Мета.*** Дослідження державної політики України у сфері цифровізації правосуддя та обґрунтування шляхів її подальшого розвитку. ***Методи дослідження.*** Побудова структури статті передбачає вирішення аналітичних, теоретичних, та прогностичних завдань, що зумовлює необхідність використання окремих методів наукового дослідження та наукових матеріалів. Дослідження недоліків реалізації державної політики цифровізації правосуддя здійснено з використанням проблемно-пошукового методу. Аналіз нормативно-правової бази цифровізації правосуддя здійснено за допомогою структурно-функціонального та системного методів. При дослідженні окремих проблем функціонування ЄСІТС використано метод абстрагування, що дозволило виокремити важливі аспекти, що потребують вирішення. При обґрунтуванні висновків використано метод наукового узагальнення. ***Результати.*** У статті розглядається актуальність інтеграції новітніх інформаційних технологій у судову систему України для підвищення її ефективності, прозорості та доступності для громадян. Описуються ключові аспекти цифрової трансформації правосуддя, включаючи впровадження Єдиної судової інформаційно-телекомунікаційної системи та забезпечення кібербезпеки. Наголошується на необхідності підвищення цифрової грамотності суддів та працівників судової системи для успішного впровадження цифрових реформ. Зазначено, що такі заходи сприятимуть ефективному обміну даними між різними органами влади, підвищенню рівня довіри суспільства до судової гілки влади та забезпечать рівний доступ громадян до правосуддя. ***Висновки.*** Сучасний розвиток судової системи вимагає впровадження новітніх інформаційних технологій для підвищення ефективності, прозорості та доступності правосуддя для громадян. Цифрова трансформація правосуддя має потенціал кардинально змінити традиційну модель надання правових послуг, забезпечуючи синергію між новітніми технологічними можливостями та правовими інструментами захисту прав і свобод людини. Впровадження Єдиної судової інформаційно-телекомунікаційної системи та забезпечення кібербезпеки є критично важливими для створення єдиного інформаційного простору судочинства, що сприятиме оперативному обміну даними та підвищенню довіри до судової влади. Важливо також зосередитися на підвищенні цифрової грамотності суддів та працівників судової системи, що є необхідним для успішної реалізації цифрових реформ у сфері правосуддя.

Ключові слова: правосуддя, суд, цифровізація, ЄСІТС, електронний суд, цифрова грамотність.

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CRIMINOLOGICAL PORTRAIT OF THE COMMITTER OF FRAUD THROUGH ILLEGAL TRANSACTIONS USING ELECTRONIC COMPUTING EQUIPMENT

Abstract. ***Purpose.*** The purpose of the article is to study the criminological portrait of a person who commits a crime in the form of fraud through illegal transactions using electronic computing equipment. ***Results.*** The article considers the personality of a criminal offender who commits an act of tortious conduct in the form of fraud through illegal transactions using electronic computing equipment. Any criminal offence is the result of an offender's unlawful encroachment on a particular range of social relations. Effective work on prevention of crimes and criminal misconduct is impossible without studying the personality of a criminal offender, since it is the consideration of the latter's characteristic features that allows general and special actors of a criminal offence to develop effective measures aimed at counteracting acts of tortious conduct. ***Conclusions.*** Based on the analysis of the data of the State Judicial Administration on the composition of those convicted under Part 3 of Article 190 of the Criminal Code of Ukraine for the period from 2018 to 2022 (inclusive), as well as court verdicts in cases related to the commission of a criminal offence of fraud by a person through illegal transactions using electronic computing equipment, the article reveals the socio-demographic, criminal law and social role characteristics of the perpetrator of this tort. The following criminological portrait of a person committing fraud through illegal transactions using electronic computing equipment has been established: a male citizen of Ukraine born in the city, at the time of the criminal offence was in the age range of 30 to 50 years, unmarried, has a complete secondary education (since 2021, the trend has changed slightly to basic secondary education), has no previous convictions, is able-bodied, and does not have an official place of work or study.

Key words: electronic computing equipment, law, crime prevention, Criminal Code of Ukraine, criminological portrait, fraud.

1. Introduction

Article 41 of the Constitution of Ukraine provides that everyone has the right to own, use and dispose of his or her property and the results of his or her intellectual and creative activity. No one may be unlawfully deprived of their property rights (Constitution of Ukraine, 1996).

As of today, Ukraine demonstrates alarming dynamics of the spread of criminal offences under Section VI of the Criminal Code of Ukraine, among which torts in the form of fraud committed through illegal transactions with the use of electronic computing equipment occupy a special place. Statistical reports of the National Police (Official website of the National Police of Ukraine, *npu.gov.ua*) in general and its structural units in particular (Official website of the cyber police of Ukraine Official website of the cyber police of Ukraine, *cyberpolice.gov.ua*), data from the Office of the Prosecutor General (Office of the Prosecutor General: official website, *gp.gov.ua*), data of the State Judicial Administration (Judicial power of Ukraine: official website, court.gov.ua) and materials of the Unified Register of Court Decisions for the last five years (from 2018 to 2022 inclusive) demonstrate that the number of cases of fraud through illegal transactions using electronic computers in the territory of our country has been steadily increasing since 2020, due to a number of determinants (the coronavirus pandemic, the large-scale war that the Russian Federation insidiously unleashed against Ukraine in February 2022, etc.).

Any criminal offence is the result of an offender's unlawful encroachment on a particular range of social relations. Effective work on prevention of crimes and criminal misconduct is impossible without studying the personality of a criminal offender, since it is the consider-

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ation of the latter's characteristic features that allows general and special actors of a criminal offence to develop effective measures aimed at counteracting acts of tortious conduct.

The issue of the criminological portrait of a person who commits fraud was partially addressed in the works of such national scholars as S.I. Afanasenko, I.O. Bandurka, O.Yu. Busol, V.S. Batyrhareieva, V.S. Berezniak, V.M. Beschastnyi, P.D. Bilenchuk, I.H. Bohatyrov, V.V. Holina, V.K. Hryshchuk, O.M. Dzhuzha, Yu.A. Dorokhina, P.M. Kovalenko, O.M. Komar, I.M. Kopotun, L.F. Lefterov, V.V. Markov, S.I. Minchenko, S.A. Mozol, V.V. Pakhomov, M.S. Puzyrov, D.O. Rychka, O.V. Taran, T. H. Taran, O.V. Tarasova, P.L. Fris, H.M. Chernyshov, S.S. Cherniavskyi, V.V. Shablystyi, O.Yu. Shostko, O.S. Yunin, and others. However, the criminological portrait of a person who commits a tort in the form of fraud through illegal transactions with the use of electronic computing equipment remains insufficiently analysed at the scientific level.

The purpose of the article is to study the criminological portrait of a person who commits a crime in the form of fraud through illegal transactions using electronic computing equipment.

2. Criminological portrait of the perpetrator of fraud

When revealing the identity of a criminal offender, scholars usually analyse their socio-demographic, criminal law, and social role characteristics (Shablystii, 2012, p. 109). The following are considered in more detail.

Socio-demographic characteristics are gender, age, education, place of birth and residence, citizenship and other demographic information. These characteristics are inherent in any person and have no criminological significance in themselves. However, in the statistical totality of persons who have committed crimes, socio-demographic characteristics provide important information, without which a complete criminological characterisation of the offender is impossible (Dzhuzha, Vasylevych, Cherniei, Cherniavskyi, 2020, p. 107).

The analysis of the statistical data of the State Judicial Administration (on the composition of those convicted under Part 3 of Art. 190 of the Criminal Code of Ukraine in general in the period from 2018 to 2022) (408 persons were convicted during this period) (Judicial power of Ukraine: official website, court.gov.ua) has provided the following results of differentiation of convicts according to the relevant criteria related to the socio-demographic characteristics of the criminal offender:

1. Citizenship: 1) citizen of Ukraine – 403 people (99%); 2) citizen ('national') of another state – 5 people (1%);

2. Gender differentiation: 1) men – 282 people (69%); 2) women – 126 people (31%);

3. Age at the time of the crime: 1) from 30 to 50 years old – 181 people (44%); 2) from 18 to 25 years old – 98 convicts (24%); 3) from 25 to 30 years old – 94 people (23%); 4) from 50 to 65 years old – 28 convicts (7%); 5) from 16 to 18 years old (1%); 6) from 65 years old – 3 people (1%).

4. Education: 1) complete secondary education – 120 people (29%); 2) complete higher education – 39 convicts (23%); 3) basic secondary education – 89 people (22%); 4) vocational education – 74 convicts (18%); 5) basic higher education – 25 people (6%); 6) no education – 4 convicts (1%); 7) primary education – 3 people (1%).

Criminal law features are not only data on the composition of the crime committed, but also on the orientation and motivation of criminal conduct, the individual or group nature of criminal activity, types of complicity (executor, organiser, instigator, aider and abettor), the intensity of criminal manifestations, criminal record, etc.

This information gives an idea of the person who committed the offence from a criminal law perspective and covers the qualities inherent in the offender, not any other person, such as an immoral person or a violator of labour discipline, not to mention law-abiding citizens (Dzhuzha, Vasylevych, Cherniei, Cherniavskyi, 2020, p. 108).

The review of the statistical data of the State Judicial Administration (on the composition of those convicted under Part 3 of Article 190 of the Criminal Code of Ukraine in general in the period from 2018 to 2022) (408 persons were convicted during the specified period) (Judicial power of Ukraine: official website, *court.gov.ua*) enables to obtain the following results of differentiation of convicts according to the relevant criteria related to the criminal law characteristics of a criminal offender:

1. The crime under Part 3 of Article 190 of the Criminal Code of Ukraine was committed by: 1) a single perpetrator – 312 people (76%); 2) a member of an organised group – 95 people (23%); 3) a member of a criminal organisation – 1 convict (less than 1%).

2. Criminal record in the past: 1) no criminal record – 341 people (84%); 2) at the time of the crime, the offender had an unexpunged and unspent criminal record – 67 people (16%).

The number of previous convictions among persons with a criminal record is as follows: 1) one – 32 persons (48%); 2) three or more (36%); 3) two (16%). Moreover, this category of convicts had convictions for: 1) criminal offences against property – 49 persons (73%);

2) criminal offences against life or health – 6 persons (9%); 3) crimes and misdemeanours related to drugs – 6 convicts (9%); 4) 'other criminal offences' (i.e. those not disclosed in the statistical data of the State Judicial Administration) – 4 persons (6%); 5) criminal offences against sexual freedom or sexual inviolability of a person – 1 perpetrator (1%); 6) crimes and misdemeanours against traffic safety and operation of transport – 1 convict (1%).

The social and role characteristics of the offender reveal the functions of the individual, determined by his or her position in the system of existing social relations, belonging to a particular social group, interaction with other people and organisations in various spheres of public life (worker or employee, ordinary performer or manager, able-bodied or disabled, unemployed, etc.) This information characterises and determines the place and significance of a person in society, which social roles they prefer and which they ignore, and reveals their social or anti-social orientation (Dzhuzha, Vasylevych, Cherniei, Cherniavskyi, 2020, p. 108).

An analysis of the statistical data of the State Judicial Administration (on the composition of those convicted under Part 3 of Article 190 of the Criminal Code of Ukraine in general in the period from 2018 to 2022) (408 persons were convicted during this period) (Judicial power of Ukraine: official website, *court.gov.ua*) has provided the following results of differentiation of convicts according to the relevant criteria related to the social and role characteristics of a criminal offender:

1. The occupation of the convicted person at the time of committing the criminal offence under Part 3 of Article 190 of the CC of Ukraine:

1) able-bodied persons who did not have an official place of employment and did not study in any educational institution – 285 persons (70 %)

2) workers – 33 convicts (8%);

3) persons classified by the State Judicial Administration as 'engaged in other occupations' – 23 perpetrators (6%);

4) private entrepreneurs – 14 convicts (3%);

5) pensioners (including persons with disabilities) – 13 perpetrators (3%);

6) persons held in penitentiary institutions or in custody – 11 convicts (3%);

7) persons classified by the State Judicial Administration as 'other employees' – 9 persons (2%);

8) unemployed – 6 convicts (1%);

9) civil servants – 4 persons (1%);

10) employees of economic companies – 4 persons (1%);

11) military personnel – 3 persons (less than 1%);

12) students of educational institutions – 2 convicts (less than 1 %);

13) teachers, academic staff – 1 perpetrator (less than 1%).

It should be noted that the overwhelming majority of the convicts committed the crime under part 3 of article 190 of the Criminal Code of Ukraine while sober – 394 persons (97% of the total number of convicts).

Based on the above, we can formulate the following criminological profile of a person committing fraud on a large scale or through illegal transactions using electronic computing equipment: a male citizen of Ukraine aged 30 to 50 years, who has a complete secondary education, has no previous convictions, is recognised as able-bodied at the time of the crime, and is not officially employed or enrolled in school. The act of delinquent conduct is committed alone, in a sober state.

It should be reminded that the results obtained enable to form a unified portrait of a criminal offender who commits one of the following socially dangerous acts:

1) fraud committed on a large scale;

2) fraud committed through illegal transactions with the use of electronic computers.

In order to identify the person who commits the latter act of delinquent behaviour, we have studied 110 court verdicts delivered between 2020 and 2022 against persons who committed fraud through illegal transactions using electronic computing equipment.

Obviously, based on statistical data, a person committing fraud through illegal transactions using electronic computing equipment is usually a priori a Ukrainian citizen aged 30 to 50 (these trends are clearly visible, as, for example, only 5 citizens of other states or stateless persons committed a criminal offence under part 3 of Article 190 of the Criminal Law out of 408).

With regard to gender, the results of the analysis of court verdicts reveal that in most cases, the perpetrators of fraud committed through illegal operations with the use of electronic computing equipment are men. Women commit this act of delinquent behaviour almost three times less frequently, which is generally in line with the results obtained from the analysis of official statistics on the commission of crimes under Part 3 of Article 190 of the Criminal Code of Ukraine.

The results of the analysis of court verdicts demonstrate that the majority of perpetrators of the crime under study had a basic secondary or specialised secondary education.

It should be noted that these results also fully coincide with the data provided in official statistical reports. As noted above, over the past five years, the majority of people who

committed fraud through illegal transactions using electronic computers had a complete secondary education, but since 2021 this trend has changed somewhat – most criminal offenders have a basic secondary education.

It should be emphasised that the analysis of court decisions also reveals a socio-demographic feature of the offender committing fraud through illegal transactions with the use of electronic computing equipment, such as the place of birth of the perpetrator. In particular, it has been established that most of those convicted of this act of tortious conduct were natives of cities.

3. **Criminal and legal characteristics of an offender committing fraud**

As for the criminal law characteristics of an offender who commits fraud through illegal transactions using electronic computers, we note that the results obtained from the analysis of court decisions also coincide with the statistical data analysed above. In particular, most of the perpetrators of criminal offences had no criminal record at the time of committing the offence and acted alone.

In order to commit fraud, the offender should have certain artistic abilities, since the success of the criminal intent depends on the ability of the offender to convince the victim of the correctness of his/her behaviour and to create trust.

According to L.V. Lefterov, cyber fraud is a special category of crime that has changed the concept and some principles of deception and breach of trust. For example, a modern cyber fraudster may lack acting skills, may not show his/her behaviour at all, and may not have developed verbal communication skills. Given that the leading place among the stable psychological characteristics of a personality belongs to motives, fraudsters, like cyber fraudsters, are characterised by the desire for self-affirmation at the socio-psychological level (associated with the need to achieve recognition from the immediate environment – family, friends, colleagues at work, friends, acquaintances, work colleagues) and at the individual level (related to the desire to increase self-esteem and self-respect by performing actions that, in the individual's opinion, contribute to overcoming any psychological weaknesses). No less typical for cybercriminals are gaming motives inherent in persons who commit crimes not only and not so much for material gain, but rather for the sake of play and risk, for the thrill of it. These motives are quite evident in situations involving intellectual confrontation and dexterity competitions, where ingenuity, the ability to make the most of favourable circumstances and to make quick decisions are required (Lefterov, 2018, p. 67).

We partially agree with the above statement. Indeed, as noted above, cyber fraudsters are often motivated by gaming. However, in our opinion, the presence of acting skills for persons committing fraud through illegal transactions using electronic computing equipment is as important in achieving a criminal result as for criminals committing other forms of fraud. For example, if the criminal offender does not have such qualities, it will be extremely difficult for him/her to convince the victim of the need to commit certain acts (the offender needs to convince the victim that it is he/she who is interested in their communication, and not vice versa) (Shablystii, 2016, p. 114).

In terms of the social role of a criminal who commits fraud through illegal operations with the use of electronic computers, the results of the analysis of court decisions show that most criminal offenders did not have an official place of employment at the time of committing this socially dangerous act, which, again, fully coincides with the trend obtained from the analysis of statistical data (as a rule, the offender under Part 3 of Art. 190 of the Criminal Code of Ukraine has no official place of employment or study at the time of the crime).

In the context of the study of the social role of the offender, we would also add that most of the persons convicted of committing a fraud offence through illegal transactions using electronic computing equipment were unmarried.

4. Conclusions

Therefore, relying on the analysis of the data of the State Judicial Administration (on the composition of those convicted under Part 3 of Article 190 of the Criminal Code of Ukraine for the period from 2018 to 2022), as well as materials of court decisions entered into the Unified State Register of Court Decisions (110 verdicts in cases related to the commission of fraud by a person through illegal transactions using electronic computing equipment in the period from 2020 to 2022), the following criminological portrait of a person committing fraud through illegal transactions using electronic computing equipment has been established: a male citizen of Ukraine born in the city, at the time of the criminal offence was in the age range of 30 to 50 years, unmarried, has a complete secondary education (since 2021, the trend has changed slightly to basic secondary education), has no previous convictions, is able-bodied, and does not have an official place of work or study.

We consider the analysis of the main trends in preventing fraud committed through illegal transactions with the use of electronic computing equipment to be a promising area for further research.

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КРИМІНОЛОГІЧНИЙ ПОРТРЕТ ВИННОГО У ВЧИНЕННІ ШАХРАЙСТВА ШЛЯХОМ НЕЗАКОННИХ ОПЕРАЦІЙ З ВИКОРИСТАННЯМ ЕЛЕКТРОННО-ОБЧИСЛЮВАЛЬНОЇ ТЕХНІКИ

Анотація. Метою статті є дослідження кримінологічного портрету особи, яка вчиняє злочин у вигляді шахрайства шляхом незаконних операцій з використанням електронно-обчислювальної техніки. У статті розглядається особа кримінального правопорушника, який вчиняє акт деліктної поведінки у вигляді шахрайства шляхом незаконних операцій з використанням електронно-обчислювальної техніки. ***Результати.*** Будь-яке кримінальне правопорушення – це результат протиправного посягання злочинця на той чи інший спектр суспільних відносин. Ефективна робота із запобігання злочинам та кримінальним проступкам неможлива без дослідження особи кримінального правопорушника, адже саме врахування характерних ознак останнього дозволяє загальним та спеціальним суб'єктам кримінального правопорушення виробити ефективні заходи, спрямовані на протидію актам деліктної поведінки. ***Висновки.*** На підставі аналізу даних Державної судової адміністрації щодо складу засуджених за ч. 3 ст. 190 Кримінального кодексу України за період з 2018 по 2022 рр. (включно) а також судових вироків щодо справ, пов'язаних із вчиненням особою кримінального правопорушення у вигляді шахрайства шляхом незаконних операцій з використанням електронно-обчислювальної техніки, розкриваються соціально-демографічні, кримінально-правові та соціально-рольові ознаки винного у вчиненні даного делікту. Встановлено наступний кримінологічний портрет особи, яка вчиняє шахрайство шляхом незаконних операцій з використанням електронно-обчислювальної техніки: громадянин України чоловічої статі, що народився у місті, на момент вчинення кримінального правопорушення перебував у віковому діапазоні від 30 до 50 років, неодружений, має повну загальну середню освіту (з 2021 р. тенденція дещо змінилась – базову загальну середню освіту), раніше не судимий, працездатний, який не має офіційного місця роботи або навчання.

Ключові слова: електронно-обчислювальна техніка, закон, запобігання злочинності, Кримінальний кодекс України, кримінологічний портрет, шахрайство.

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THE FOLLOW-UP STAGE OF INVESTIGATION OF CRIMINAL OFFENCES RELATED TO USING INTERNET BANKING (PROBLEMATIC ISSUES)

Abstract. ***Purpose.*** The purpose of the article is to study the further stage of investigation of criminal offences related to using Internet banking. ***Results.*** The article focuses on certain aspects of investigation of criminal offences related to using Internet banking. The further stage of investigation of relevant unlawful acts is studied. According to most scientists in criminalistics, the follow-up stage of the investigation begins from the moment of serving a suspicion. We support this position, so accordingly, all investigative (search) actions, covert investigative (search) actions and other procedural actions, as well as search measures during the investigation of criminal offences related to using Internet banking, will be considered in accordance with this division. There are a number of undoubtedly important actions in the category of criminal proceedings under study that need to be implemented promptly and efficiently. These include interrogation of a suspect to establish the mechanism and circumstances of the offence, simultaneous interrogation of previously interrogated persons and a search. We have studied these procedural actions and obtained certain tactical recommendations for their implementation. In particular, the use of the following tactics: generating a suggestion of awareness of the authorised person; fast pace of interrogation; a factor of surprise; creating tension; presentation of material evidence; using video recording. It was also found that in 63 % of cases during simultaneous interrogation between the victim and the suspect, the latter fully or partially testified to the evidence he had previously denied. ***Conclusions.*** The author distinguishes tactical search techniques, such as: removal of the suspect from the place of search; involvement of the suspect in the procedural action; comparison of information from the suspect's answers; use of technical means. Tactical techniques also include the way in which information is exchanged between those conducting the search and the manner in which they behave. Since the person being searched and his/her family members are psychologically unprepared to resist the investigation, it is more difficult for them to hide their anxiety. Frequently, these persons do not have enough time to use certain means of disguise or destroy the search items.

Key words: criminal offences, Internet banking, cybercrime, follow-up stage of investigation, investigative (search) action, tactical technique.

1. Introduction

According to most scientists in criminalistics, the follow-up stage of the investigation begins from the moment of serving a suspicion. We support this position, so accordingly, all investigative (search) actions, covert investigative (search) actions and other procedural actions, as well as search measures during the investigation of criminal offences related to using Internet banking, will be considered in accordance with this division. There are a number of undoubtedly important actions in the category of criminal proceedings under study that need to be implemented promptly and efficiently. These include interrogation of a suspect to establish the mechanism and circumstances of the offence, simultaneous interrogation of previously interrogated persons and a search.

An important contribution to the development of the investigation of criminal offences has been made by scientists such as Yu.P. Alenin, V.P. Bakhin, V.K. Veselskyi, A.F. Volobuiev, A.V. Ishchenko, O.N. Kolesnichenko, V. O. Konovalova, V. S. Kuzmichev, B. Ye. Lukianchykov, Ye. D. Lukianchykov, M. V. Saltevskyi, R. L. Stepaniuk, V. V. Tishchenko, K. O. Chaplynskyi, Yu. M. Chornous, L. D. Udalova, V. Yu. Shepitko, and others. However, our study specifies certain positions of the follow-up stage of investigation in criminal proceedings of this

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category, with due regard to the current forensic practice and viewpoints of scholars.

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

2. Stages of investigation of criminal offences related to using Internet banking

According to O. M. Dufeniuk, the follow-up stage of the investigation begins when a set of primary and urgent investigative (search) actions is performed after the information is entered into the URPTI and the pre-trial investigation is commenced. Depending on the results obtained during urgent investigative (search) actions, two lines of investigation can be distinguished. With regard to the first line, when an unlawful act is detected and the offender is identified, the author argues that it covers the adoption of a procedural decision – notification of suspicion in accordance with Article 278 of the CPC, intensification of efforts to secure evidence of the person's guilt; establishment of the circumstances of the criminal offence, in particular those which mitigate or aggravate liability; application of measures to ensure criminal proceedings, in particular, the choice of preventive measures; CISA. Regarding the second line (in cases where the criminal offence is not detected), the researcher notes that it is characterised by intensified efforts to find forensically relevant information about the event and its participants, collecting and examining the evidence already found, verifying the versions put forward, etc. In conclusion, O.M. Dufeniuk emphasises that in this case it is typical to conduct repeated and additional investigative (search) actions, give instructions to operational units, send requests to enterprises, institutions and organisations, conduct CISA (Priakhin, 2016, p. 512).

With regard to the follow-up stage of the investigation, A.F. Volobuiev makes the following statements. In particular, the author argues that this stage begins from the moment a person is notified of suspicion of committing an unlawful act. Moreover, the main tasks of this stage of the investigation are as follows: "...1) formation of a system of evidence to accuse a person of committing a crime (to be reflected in the indictment); 2) identification of all accomplices to the crime and collection of evidence for their prosecution; 3) ensuring compensation for damages, collection of information about the identity of the suspect". In addition, the researcher argues that each individual investigation methodology at this stage considers typical investigative situations and sets of investigative and search actions that correspond to them. According to A.F. Volobuiev, typical investigative situations are determined by the position taken by a person who has been notified of suspicion of committing a criminal offence (Volobuiev, Stepaniuk, Maliarova, 2018).

With regard to the category of criminal proceedings under study, D.V. Pashnev and M.G. Shcherbakovskyi most accurately formulated the necessary procedural steps of the follow-up stage of investigation. The authors make the following list: "...searches for the purpose of seizure of computer equipment used to commit the offence (in case of indirect network access to a computer by the offender), as well as computer data storage devices obtained as a result of the offence: paper printouts, hard drives of system units, CDs, flash memory; appointment of a computer-technical examination after detection of the listed objects and their inspection; an important means of verifying and confirming the testimony of a suspect is to conduct an investigative experiment with his/her participation; the purpose thereof is to confirm that the person has professional skills in working with computer facilities, programming and the skill to make unauthorised access, to check the possibility of making unauthorised access in a certain way or with the help of certain means; investigative experiment at a certain place is conducted to confirm the presence of a person in a certain place related to the preparation and commission of a crime or concealment of its traces; interrogation of witnesses, in particular those indicated by the suspect to verify his testimony" (Volobuiev, Stepaniuk, Maliarova, 2018).

We will consider each of them individually. In particular, during the interrogation of a suspect, according to A. I. Kuntyi, the following circumstances should be established: "... 1) where and who he/she works for; 2) what computer information he/she has access to, what operations with information he/she is entitled to perform; 3) what is his/her level of training as a programmer, experience in creating programs, what programming languages he/she knows; 4) what identification codes and passwords are assigned to him/her; 5) what types of software he/she has access to; 6) what operations he/she performed during the investigated time; 7) from what source or from whom he/she learned about the information stored on the computer; 8) from whom information about computer information security measures was received, what methods were used to overcome them; 9) how the unlawful access was made, what means were used for this purpose; 10) to whom the information was transferred, for what purpose; 11) what was the purpose of the crime, what material benefit was received for it; 12) how traces of unlawful access to the computer were destroyed; 13) how often unlawful access

to computer information was committed; 14) who assisted the suspect in committing the crime and how" (Priakhin, 2016).

3. Tactical methods of interrogation of a suspect during the investigation of criminal offences related to using Internet banking

Regarding the tactical techniques of interrogating a suspect, we support the group of scholars who argue that they are chosen depending on the investigative situation: the authorised person may use the presentation of evidence, the announcement of the testimony of other persons, methods of persuasion, and the asking of detailed, reminiscent, controlling questions, etc. In addition, the authors note that in cases where a suspect gives truthful testimony, the investigator's task is to clarify this information, provide maximum detail, etc. If the suspect gives false testimony, the researchers emphasise the need to take measures to expose the lie: "... explain the provisions of the criminal procedure legislation on mitigating circumstances, detail that person's testimony, conduct repeated interrogations on the same circumstances, present written and material evidence: documents drawn up by him/her, expert opinions, acts of documentary audits, testimony of witnesses, other persons, etc." (Yefimov, Pavlova, Chuchko, 2022, p. 148).

With regard to the specifics of work in banking institutions, we support V.V. Kornienko and V.I. Strelianyi's perspective that an authorised person should consider the specifics of voluntary participation of bank employees in committing economic crimes related to banking operations. The authors emphasise that in this case it is inappropriate to involve persons suspected of involvement in a criminal offence in investigative (search) actions until all the necessary evidence of his or her guilt is collected and analysed. According to scholars, interrogation of a person as a suspect plays the most important role at this stage. Moreover, it is necessary to ensure comprehensive and thorough preparation for the interrogation, during which to collect complete information about the bank employee's involvement in the commission of a criminal offence (Korniienko, Strelianyi, 2015, p. 67).

The analysis of the respondents' survey reveals that during the investigation of criminal offences related to using Internet banking, they see the need and possibility of using the following tactics: generating a suggestion of the authorised person's awareness – 89%; fast pace of interrogation – 56%; a factor of surprise – 57%; creating tension – 69%; presentation of material evidence – 33%; use of video recording – 45%.

The study of criminal proceedings reveals that in order to eliminate discrepancies in the testimony of victims, witnesses and suspects in the studied category of criminal proceedings, in 23% of cases, two or more persons were interrogated simultaneously.

With regard to this procedural action, we support the position of the group of researchers who argue that it is advisable to conduct it in the following cases: "... 1) if a person who gives truthful testimony has influence on another and is able to facilitate a change in his/her position during the simultaneous interrogation; 2) between persons, one of whom gives truthful testimony and the other is honestly mistaken about it due to certain circumstances; 3) between a suspect who provides truthful testimony and a witness who, in the opinion of the authorised person, provides deliberately false testimony" (Yefimov, Pavlova, Chuchko, 2022, p. 151).

The analysis of forensic practice materials suggests that simultaneous interrogation of previously interrogated persons has been conducted: between the suspect and the victim – in 91% of cases; between the suspect and witnesses – in 2%; between suspects – in 7%.

A review of criminal proceedings reveals that in 63% of cases, during the procedural action between the victim and the suspect, the latter fully or partially testified to evidence that he had previously denied.

With regard to the search in the studied category of criminal proceedings, we support the perspective of I.O. Kovalenko, who highlights a number of specificities during the search. The author argues that, first of all, attention should be paid to the computer equipment located in the premises, as well as to the state of the Internet network, and that portable USB flash drives, including those that are disguised, should be searched for when inspecting the premises. The researcher emphasises that it is of great importance to find a mobile phone or tablet at the place of search, as they can usually contain very important information that will serve to quickly investigate an unlawful act. In addition, the scientist emphasises that the equipment must be properly packed and sealed before seizure, and it is also important to disconnect it from the power supply before entering the premises, which will make it impossible to quickly destroy the information stored on electronic media. As an example, I. O. Kovalenko observes that attackers can destroy any electronic medium in a matter of seconds using a microwave oven. The author concludes that the type of unlawful act under study differs significantly from others in that its main feature is the use of the World Wide Web with the involvement of electronic means (Kovalenko, 2019, p. 117).

A. I. Kuntii distinguishes the following characteristics of a search related to computer equipment: "...1) the use of the principle of suddenness when arriving and entering the premises where the search will be conducted or where the computer equipment to be searched is located; 2) the object of the search is not only a technical device or material medium of computer information, which may be a computer hard drive, floppy disk, optical disc, flash card, etc., but also the information stored on them, which is, in fact, the main object of search and seizure in order to establish the circumstances of the computer crime; 3) the place of the investigative action in this case will be not just the premises where the carrier of computer information is located, but the premises, technical means and information array of a particular computer object; 4) seizure of computer objects containing information data may be carried out in different ways. Data storage media or even the entire computer system or its individual parts may be seized if the data cannot be accessed for copying or studying on other equipment. Recovery of such data requires special software, sometimes additional equipment, and the recovery process can take a long time. In these cases, it is not advisable to actually examine the software product during the search or seizure. Under certain circumstances, it may be acceptable to seize data by copying it to separate storage media. In such cases, special measures should be taken to ensure the integrity and safety of the seized data, and the media used for copying should not contain any information. It is not advisable to copy the seized information onto media containing information relevant to the case, even if this information is identical or contains fragments of the information to be seized. Conditions and guarantees must be created to ensure that the copy is identical to the original at the time of the search or seizure and that it is securely stored throughout the investigation; 5) impossibility of using metal detectors or X-ray machines in the process of searching for caches with magnetic media, as their use may lead to the destruction of information on these media; 6) the need to promptly analyse a large amount of information found during the search in order to establish its value for the pre-trial investigation; 7) conducting a search only on one or more computers that are part of a local computer network" (Priakhin, 2016).

According to some scholars, after arriving at the place of search, the authorised person shall offer the person to hand over the items provided for by the investigating judge's decision, as well as other items that have been withdrawn from civilian circulation or illegally obtained. At the initial stage of the search, it is important to establish psychological contact, which is achieved through mutual perception of the parties and the exchange of both verbal and non-verbal information. Such contact can be initiated, for example, when the investigator offers to hand over the searched objects before the search, arguing that it is undesirable for children to see the search scene when they return from school. Even if the answer is negative, this step can be the basis for further contact. If the person being searched is stiff, arrogant or aggressive, you can try to ease their anxiety by talking about family relationships, health (Kazmirenko, 2007, p. 148).

In O. Musiienko's opinion, the effectiveness of a search increases in cases where the fact of criminal proceedings is unknown to the offenders. In this case, the conduct of searches is sudden for them. One of the tasks of a search is to find and seize stolen property: goods obtained in shops and commercial enterprises by criminal means under a sale and purchase agreement; agricultural products, cash, etc. A review of investigative practice reveals that timely searches to identify seized property enabled not only compensation for material damage but also new evidence. In addition to these objects, documents and items used to prepare and commit the crime are also subject to search. Such objects may include: documents that were used to commit fraudulent actions to obtain funds, items that were used to forge documents, forged or stolen seals and stamps; all other items and documents that can serve as means to establish the truth in the case (letters, photographs, private records, receipts) (Musiienko, 2009, p. 129).

With regard to tactical search techniques, we support the opinion of a group of authors who have identified the most effective ones, such as: removal of the suspect from the place of search; involvement of the suspect in the procedural action; comparison of information from the suspect's answers; use of technical means. Tactical techniques also include the way in which information is exchanged between those conducting the search and the manner in which they behave. Since the person being searched and his/her family members are psychologically unprepared to resist the investigation, it is more difficult for them to hide their anxiety. Frequently, these persons do not have enough time to use certain means of disguise or destroy the search items (Yefimov, Pavlova, Chuchko, 2022).

4. Conclusions

To sum up, the follow-up stage of the investigation begins from the moment of serving a suspicion. It is established that during the investigation of criminal offences related to using Internet banking, there are a number of undoubtedly important actions in the category of criminal proceedings under study that need to be implemented promptly and efficiently. These include interrogation of a suspect to establish the mechanism and circumstances of the offence, simultaneous interrogation

of previously interrogated persons and a search. We have studied these procedural actions and obtained certain tactical recommendations for their implementation. In particular, the use of the following tactics: generating a suggestion of awareness of the authorised person; fast pace of interrogation; a factor of surprise; creating tension; presentation of material evidence; using video recording. It was also found that in 63 % of cases during simultaneous interrogation between the victim and the suspect, the latter fully or partially testified to the evidence he had previously denied.

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ПОДАЛЬШИЙ ЕТАП РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ ІЗ ВИКОРИСТАННЯМ ІНТЕРНЕТ-БАНКІНГУ (ПРОБЛЕМНІ ПИТАННЯ)

Анотація. ***Метою*** статті є дослідження подальшого етапу розслідування кримінальних правопорушень, пов'язаних з використанням інтернет-банкінгу. ***Результати.*** Наукова стаття присвячена висвітленню окремих аспектів розслідування кримінальних правопорушень, пов'язаних з використанням Інтернет-банкінгу. Досліджується подальший етап розслідування визначеної категорії протиправних діянь. Зазначено, що подальший етап розслідування починається, як вважає більшість вчених-криміналістів, з моменту пред'явлення підозри. Ми підтримуємо цю позицію, тому відповідно всі слідчі (розшукові) дії, негласні слідчі (розшукові) дії та інші процесуальні дії, а також розшукові заходи при розслідуванні кримінальних правопорушень, пов'язаних з використанням інтернет-банкінгу, будемо розглядати відповідно до вказаного поділу. По досліджуваній категорії кримінальних проваджень є ряд беззаперечно важливих дій, які необхідно швидко та ефективно реалізовувати. Серед них необхідно виокремити допит підозрюваного для з'ясування механізму та обставин вчинення протиправного діяння, одночасний допит раніше допитаних осіб та обшук. Визначені процесуальні дії нами були опрацьовані та отримали певні тактичні рекомендації стосовно їх проведення. Зокрема, застосовуванні таких тактичних прийомів: створення уявлення про інформованість уповноваженої особи; швидкий темп допиту; використання фактора раптовості; створення напруги; пред'явлення речових доказів; застосування відеозапису. Також встановлено, що у 63 % випадках під час проведення одночасного допиту між потерпілим та підозрюваним останній повністю або частково засвідчив свідчення, які раніше заперечував. ***Висновки.*** Виокремлено тактичні прийоми обшуку, а саме: видалення підозрюваного з місця проведення обшуку; залучення підозрюваного до участі в процесуальній дії; зіставлення інформації, яка міститься у відповідях обшукуваного; застосування технічних засобів. До тактичних прийомів відноситься і спосіб обміну інформацією між тими, хто проводить обшук, і манера їхнього поводження. Оскільки обшукуваний, члени його сім'ї виявляються психологічно неготовими до протидії розслідуванню, їм важче приховати хвилювання. Часто в цих осіб немає достатньо часу для вжиття тих чи інших засобів маскування чи знищення предметів пошуку.

Ключові слова: кримінальні правопорушення, інтернет-банкінг, кіберзлочинність, подальший етап розслідування, слідча (розшукова) дія, тактичний прийом.

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DESCRIPTION OF THE TARGET OF ILLEGAL ENCROACHMENT IN THE COURSE OF INVESTIGATION OF CRIMINAL OFFENCES UNDER PART 5 OF ARTICLE 191 OF THE CRIMINAL CODE OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to study the specifics of the target of illegal encroachment in the course of investigation of criminal offences under Part 5 of Article 191 of the Criminal Code of Ukraine. ***Results.*** The article studies the specifics of the subject matter of criminal offences related to misappropriation, embezzlement or acquisition of property by abuse of office committed by an organised group. A comprehensive study of the national and international legal framework ratified by Ukraine enables to analyse the conceptual framework regarding the target of illegal encroachment, property, funds, electronic money, etc. On the basis of the scientific achievements of prominent criminologists and experienced practitioners, the author characterises the target of the illegal encroachments as property of economic entities of all forms of ownership, where a significant part is made up of cash and non-cash funds in large and especially large amounts. It is proved that in criminal proceedings on the facts of misappropriation, embezzlement or acquisition of property by abuse of office committed by an organised group, a significant part of the budgetary funds is made up of budgetary funds, which have been covered depending on the actor and purpose. The list of property which is nowadays more often the target of illegal encroachments is provided, including: food, fuel, grain, timber products, construction materials and equipment (sand, bricks, insulation, crane beams, etc.), printing equipment, precious metal products, other movable and immovable property. Special attention is paid to military property that is the target of illegal encroachment. ***Conclusions.*** It is concluded that in the course of pre-trial investigation of misappropriation, embezzlement or acquisition of property by abuse of office committed by an organised group, one of the key elements of forensic characterisation as the target of illegal encroachments is characterised by the property of economic entities of all forms of ownership, where a significant part is made up of cash and non-cash funds in large and especially large amounts.

Key words: criminal offences, misappropriation, embezzlement, abuse of office, organised group, forensic characteristics, the target of the illegal encroachment, property, funds.

1. Introduction

Investigations into the misappropriation, embezzlement or acquisition of property through abuse of office committed by an organised group are especially grave crimes, mostly causing damage on a particularly large scale and being difficult to prove. In order to obtain forensically significant information about the criminal offence committed, it is important to have complete information on the forensic characteristics, an essential element of which is the target of the illegal encroachment.

Significant contributions and important scientific achievements in the methodology of criminal offences investigation have been made by prominent scholars, such as V.P. Bakhin, V.D. Bernaz, V.K. Veselskyi, A.F. Volobuiev, V.H. Honcharenko, A. V. Ishchenko, N.S. Karpov, V.O. Konovalova, V.S. Kuzmichov, V.K. Lysychenko, Ye.D. Lukianchykov, V.H. Lukashevych, L.M. Loboiko, Ye.I. Makarenko, H.A. Matusovskyi, M.V. Saltevskyi, V.M. Tertyshnyk, V.Yu. Shepitko, K.O. Chaplynskyi, and many others. However, the specifics of the target of illegal encroachments on the facts of misappropriation, embezzlement or acquisition of property through abuse of office committed by an organised group require fur-

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ther study to meet the current needs of forensic practice.

The purpose of the article is to study the specifics of the target of the illegal encroachment in the course of investigation of criminal offences under Part 5 of Article 191 of the Criminal Code of Ukraine.

2. The content of unlawful encroachment in the course of investigation of criminal offences under Part 5 of Article 191 of the Criminal Code of Ukraine

As is known, in the forensic sense, the target has a broader characteristic than in the criminal law sense. Therefore, we will analyse this issue in more detail.

From the criminal law perspective, the target in Article 191 of the Criminal Code of Ukraine is only such property that was entrusted to the perpetrator or was in his/her legal custody, i.e., that which was legally owned and in respect of which he/she exercised the authority to dispose of, manage, deliver, use or store, etc. Therefore, when committing a crime under Article 191 of the CC of Ukraine, the perpetrator uses the powers (authorities) available to him/her in relation to the target object. It is this feature that distinguishes the analysed crime from other property offences (in particular, theft), in which the perpetrator is not involved in the property at all or has only access to it by the nature of work, or is entrusted with the protection of this property, or it is transferred to him/her for use in the production process (Azarov, Hryshchuk, Savchenko, 2016).

In addition, scholars clarify this concept and define the target as someone else's property that was entrusted to the perpetrator or was in his/her control, or in respect of which the person had certain powers, the value of which should exceed 0.2 tax-free minimum incomes (tax social benefit) (Marmura, 2019). Otherwise, the theft of another's property is considered small-scale if the value of such property at the time of the offence does not exceed 0.2 times the tax-free minimum income, as regulated by Article 51 of the Code of Administrative Offences (Code of Ukraine on Administrative Offenses, 1984).

Analysing the criminological literature, we agree with the scientific perspective of A.F. Volobuiev. The scholar emphasises that the definition of the target of criminal offences in the theory of criminal law includes any thing of the material world, with certain features of which the criminal law associates the presence of a specific criminal offence in the actions of a person, and applies only to cases where the target of criminal offences is indicated directly in the disposition of the article of the Criminal Code of Ukraine. The target of embezzlement is property, including money, material assets and other things. From the forensic point of view, information about the characteristics of the target of theft is of fundamental importance for the investigation of offences. This is due to the fact that the specific features of the object of theft are naturally related to the specifics of the conditions of committing unlawful acts and other elements of their mechanism (Volobuiev, 2000).

Therefore, the Dictionary of the Ukrainian language defines property as things that belong to someone on the basis of property rights (Dictionary of the Ukrainian language, 2005). The Legal Encyclopedia defines it as objects of the material world owned by a party to the legal relations (individual, legal entity, state, territorial community, Ukrainian people), including: a single thing, a set of things, property rights and obligations, money and securities, as well as property rights to them (Shemshuchenko, 2001).

According to Article 190 of the Civil Code: "1. Property as a special object is a separate thing, a set of things, as well as property rights and obligations. 2. Property rights are a non-consumable thing. Property rights are recognised as real rights" (Civil Code of Ukraine, 2003).

Furthermore, international law, in particular, the United Nations Convention against Transnational Organised Crime, regulates a broader concept and defines property as any assets, tangible or intangible, movable or immovable, whether embodied in things or in rights, and legal documents or assets evidencing ownership of or interest in such assets (United Nations Convention against Transnational Organized Crime, 2004).

Following the results of the survey of practitioners and the analysis of forensic practice, the following are more often the targets of illegal encroachments: food, fuel, grain, timber products, construction materials and equipment (sand, bricks, insulation, crane beams, etc.), printing equipment, precious metal products, other movable and immovable property. Unfortunately, there are cases when the subject of unlawful encroachment is the property of the Ministry of Defence of Ukraine, in particular, components for air defence missile systems and artillery systems, tank engines, engines for armoured vehicles, etc.

Summarising the materials of the Unified State Register of Court Decisions, we found that in 42.4% of cases the target of unlawful encroachment is property; in 67.6% – funds, of which about 88.1% are in non-cash form.

The current legislation, such as the Law of Ukraine "On Banks and Banking" and the Civil Code of Ukraine, defines funds as money in

national or foreign currency or its equivalent (Law of Ukraine On Banks and Banking Activity, 2000). The Law of Ukraine "On currency and currency transactions" regulates the value of the national currency (hryvnia) and foreign currency (On currency and currency transactions: Law of Ukraine, 2018) in the form of banknotes, coins, and electronic money.

3. The target of illegal encroachment in the course of investigation of criminal offences under Part 5 of Article 191 of the Criminal Code of Ukraine

Undoubtedly, the most common form of payment is non-cash. Based on the analysis of the concept of "electronic money in the banking sector", V. D. Nykyforchuk identifies the necessary elements from which the terminological component is built, namely: 1) have a monetary value, which is a claim to the issuer; 2) are stored electronically on a technical device, in particular, a magnetic device; 3) information and telecommunication networks, in particular the Internet, are used to transmit electronic code signals of electronic payments between banks; 4) they are used to receive funds for the purpose of payment transactions; 5) they are issued after receiving funds in the amount not less than the electronic monetary value; 6) they are accepted by an individual or legal entity that is not an institution that issues electronic money. Therefore, the term "electronic money in the banking sector" should be interpreted as monetary value stored in electronic form for the purpose of payment transactions and accepted by an individual or legal entity that is not an institution that issues electronic money. Electronic money is a certain sequence of numbers that symbolise banknotes and coins, and this is the only information content. They can be used to make payments, settlements, and purchase goods and services in real time using remote bank account management tools – a computer, telephone, mobile radio, bank and plastic cards, etc. connected to the Internet (Nykyforchuk, 2018).

It should be noted that the target of illegal encroachment is the funds of enterprises and organisations of all forms of ownership, with a significant part being budgetary funds. Due to the existing specific features in the distribution and use of budget funds of different levels, M.A. Hohoretskyi, O.O. Vakulik and D.B. Serhieieva, depending on the actor and purpose, divide them into the following groups:

1) Distributive funds:

a) funds intended for further distribution among different levels of budgets, budget managers and recipients;

b) credit funds intended for the allocation of financial assistance or compensation from the budget;

2) Internal funds intended for direct expenditure for the needs of a state body, enterprise, institution or organisation whose main activity is carried out at the expense of the state and/or local budget;

3) Reserve funds, i.e. funds of the reserve fund of the respective budget created to finance unforeseen expenses;

4) Free budget funds (free balance of funds formed at the beginning of the budget year; budget revenues additionally received in the course of its implementation; amounts of excess of revenues over expenditures);

5) Component earmarked funds allocated from the state or local budget to state non-budgetary institutions, as well as enterprises, institutions and organisations of non-state ownership in the form of targeted financial assistance, budgetary compensation or to finance certain programmes (Pohoretskyi, Vakulik, Serhieieva, 2014).

The following example of criminal proceedings under Part 5 of Article 191 of the Criminal Code and Part 2 of Article 366 of the Criminal Code demonstrates the misappropriation of funds from the local budget. Thus, PERSON_10 , being from 31.08.2016 to 06.02.2018 in the position of director of LLC "IC FLAGMAN", constantly holding a position at the enterprise related to the performance of organisational, administrative and economic functions, that is, according to Part 3 of Article 18 of the Criminal Code of Ukraine, as an official, he took possession of another's property of the Horky Village Council by abusing his official position in a particularly large scale, namely, funds totalling UAH 3,056,244.92.

On 19.06.2017, the Horky Village Council (the Customer), represented by the village head PERSON_11, and LLC " IC FLAGMAN" (the Contractor), represented by the director PERSON_10, entered into a contract No. 1, the subject matter of which is the reconstruction of the kindergarten building with the installation of an autonomous boiler room. Subsequently, in the period from 06.12.2017 to 22.12.2017, the exact time has not been established, the director of LLC " IC FLAGMAN" PERSON_10 had a criminal intent aimed at issuing knowingly false official documents – acts of acceptance of completed construction works (form KB-2v) and certificates of the cost of completed construction works and expenses (form KB-3), which contained knowingly false information about the amount of construction work actually performed, with the aim of further illegal conversion of other people's property in favour of other persons using the official's official position contrary to the interests of the service, namely: money from the local budget of the territorial community

of Horky village, Dniprovskyi district, represented by the Horky Village Council (Verdict of the Industrial District Court of Dnipropetrovsk, 2019).

4. Conclusions.

Therefore, in the course of pre-trial investigation of misappropriation, embezzlement or acquisition of property by abuse of office committed by an organised group, one of the key elements of forensic characterisation as the target of illegal encroachments is characterised by the property of economic entities of all forms of ownership, where a significant part is made up of cash and non-cash funds in large and especially large amounts.

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ХАРАКТЕРИСТИКА ПРЕДМЕТА ПРОТИПРАВНОГО ПОСЯГАННЯ ПІД ЧАС РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, КВАЛІФІКОВАНИХ ЗА Ч. 5 СТ. 191 КК УКРАЇНИ

Анотація. ***Метою*** статті є дослідити специфіку предмета протиправного посягання під час розслідування кримінальних правопорушень, кваліфікованих за ч. 5 ст. 191 КК України. ***Результати.*** У науковій статті досліджено специфіку предмета кримінальних правопорушень, пов'язаних із привласненням, розтратою майна або заволодіння ним шляхом зловживання службовим становищем, учиненого організованою групою. Грунтовним вивченням вітчизняної та міжнародної нормативно-правової бази, ратифікованої Україною, було проаналізовано понятійний апарат щодо

предмету протиправного посягання, майна, коштів, електронних грошей тощо. Враховуючи наукові надбання видатних криміналістів та досвідчених практичних співробітників охарактеризовано предмет протиправних посягань як майно суб'єктів господарювання всіх форм власності, де значну частину складають кошти в готівковій та безготівковій формах, в великих та особливо великих розмірах. Доведено, що у кримінальних провадженнях за фактами привласнення, розтрати майна або заволодіння ним шляхом зловживання службовим становищем, учиненого організованою групою, вагому частину складають бюджетні кошти, які було висвітлено залежно від суб'єкта і призначення. Надано перелік майна, яке в умовах сьогодення частіше становить предмет протиправних посягань, серед якого: продукти харчування, паливо, зерно, лісопродукція, будівничі матеріали та обладнання (пісок, цегла, утеплювач, підкранові балки тощо), типографське обладнання, вироби із дорогоцінних металів, інше рухоме та нерухоме майно. Окрему увагу приділено майну військового призначення, яке становить предмет протиправного посягання. ***Висновки.*** Зроблено висновок, що під час досудового розслідування привласнення, розтрати майна або заволодіння ним шляхом зловживання службовим становищем, учиненого організованою групою, один із ключових елементів криміналістичної характеристики як предмет протиправних посягань характеризується майном суб'єктів господарювання всіх форм власності, де значну частину складають кошти в готівковій та безготівковій формах, в великих та особливо великих розмірах.

Ключові слова: кримінальні правопорушення, привласнення, розтрата майна, зловживання службовим становищем, організована група, криміналістична характеристика, предмет протиправного посягання, майно, кошти.

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THE ROLE AND PLACE OF ATTORNEYS AMONG ACTORS OF GENERAL SOCIAL CRIME PREVENTION

Abstract. ***Purpose.*** The purpose of the article is to prove the need for more efficient use of the potential legal capabilities of attorneys-at-law in the context of general social crime prevention. ***Results.*** Relying on the content of general social crime prevention, the article identifies the potential legal capabilities of an attorney-at-law in counteracting criminal offences among the relevant actors of this type of criminological activity. It is established that, acting as a defender of the rights, freedoms and legitimate interests of individuals in criminal proceedings, an attorney-at-law is objectively forced to take a set of measures aimed at identifying and eliminating the deterministic set of causes and conditions which contribute to the commission of specific crimes which are subject to criminal proceedings and which are ultimately assessed in a court decision regarding the guilt, degree of public danger, existence of mitigating or aggravating circumstances of a person whose interests are at stake. Moreover, in the context of general social prevention of criminal offences, it is established that an attorney-at-law, primarily as a participant to criminal proceedings, should focus on the determinants of crime which have a socio-economic, cultural, educational and other similar social origin, and take appropriate actions to block, neutralise, eliminate, etc., using the measures provided for by the criminal procedure legislation of Ukraine. In addition, as the results of this study have shown, the effectiveness of criminological activities of attorneys-at-law in this area of crime prevention is affected by a number of circumstances, which in this work include the following 1) the absence in the Law of Ukraine 'On the Bar and Practice of Law' of a direct and clear legal obligation for these participants in criminal proceedings to identify the determinants which have contributed to the commission of a criminal offence by suspects and other defendants; 2) conflict between the provisions of this legislative instrument and the Criminal Procedure Code of Ukraine, which define the principles of criminal proceedings and the activities of advocates; 3) legal insecurity and gaps related to the implementation by advocates in practice of the principles of equality and competitiveness of the parties in criminal proceedings; etc. ***Conclusions.*** The review of regulatory and doctrinal sources, this article states that without improving the legal framework for the activities of an attorney-at-law, it is exceptionally problematic to enhance his/her role and place among the actors of general social prevention of criminal offences and, in general, the effectiveness of the criminological component in the criminal procedure of Ukraine.

Key words: attorney-at-law; criminal offence prevention actor; general social prevention; criminal proceedings; subject matter of proving; principles of criminal proceedings; determinants of crime.

1. Introduction

Following the scientific approaches, it should be noted that general social prevention includes general social and special criminological components. Given that the subject matter of this study is general social crime prevention performed by attorneys-at-law, it is undoubtedly worthwhile to base their activities on the content of this type of criminological crime prevention.

Scientific research defines general social crime prevention as a complex of promising socio-economic, cultural and educational measures aimed at further development and improvement of social relations and at the same time elimination or neutralisation of the determinants of this socially dangerous phenomenon (Danshyn, 2003, pp. 95-96).

For its part, practice suggests that general social crime prevention in general (without determining the impact of individual crime prevention actors) realises the anti-crime potential of society and its institutions. Moreover, the specifics of the transitional period, includ-

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ing martial law, currently underway in Ukraine, are such that crises, disproportions and other negative phenomena that determine crime are more noticeable in various sectors of public life than circumstances that constantly counteract it (Kalman, 2010).

According to some researchers analysing the definition and content of legal socialisation of an individual, it can be stated that this activity is a special process of not unidirectional influence of society on an individual but interaction between them, as well as all structural elements of human nature (Dzoban, Manuilov, 2009).

Therefore, in O.M. Dzhuzha's opinion, it is impossible to interpret general social crime prevention within the same concepts and dimensions in the current conditions, especially given the current determinants of crime in Ukraine (Kolb, Novosad, 2017: pp. 169-178).

Obviously, this does not mean that the relevant type of general crime prevention has become impossible or incorrect due to the fact that crime is a direct and very serious threat to national security (Lytvak, 1997), so the importance and role of prevention under consideration for attorneys-at-law is crucial.

By relying on the above, it can be stated that general social crime prevention should be the basis for the criminological activities of attorneys-at-law in Ukraine.

Given the above and the current criminologically significant crime rates in Ukraine (Batyrhareieva, Babenko, 2020, pp. 39-54), the purpose of the article is to prove the need for more efficient use of the potential legal capabilities of attorneys-at-law in the context of general social crime prevention.

On the other hand, the main objective of this work is to clarify the role and place of an attorney-at-law among the actors of general social crime prevention, with due regard for his/her legal status as a participant to criminal proceedings.

The literature review has determined that the following scholars are quite actively and substantively deal with the issues of preventive activities of the relevant actors: V.S. Batyrgareieva, Yu.V. Baulin, V.V. Vasylevych, A.A. Vozniuk, V.V. Holina, B.M. Holovkin, O.M. Dzhuzha, V.M. Dremin, O.H. Kolb, O.M. Kostenko, V.Ya. Konopelskyi, V.A. Myslyvyi, D.M. Tychyna, V.O. Tuliakov, V.I. Shakun, and others.

However, it should be noted that in the context of the subject matter of the present scientific article, this issue has been poorly studied at the doctrinal level that is decisive in choosing the topic of this work, and thus determines its relevance and theoretical and practical significance.

2. General social crime prevention with the participation of attorneys-at-law

The results of the present study suggest that the content of general social crime prevention, including the legal capabilities of attorneys-at-law in criminal proceedings, is that its implementation reduces social contradictions and criminal confrontation between different segments of the population, as well as reduces unemployment and improves living standards, and also generally allows for an effective impact on the process of eliminating, blocking, neutralising, etc. the determinants which contributed to the commission of a particular criminal offence.

Moreover, practice proves that the general social crime prevention with the participation of attorneys-at-law covers a wide range of spheres of life of Ukrainian society. For example, in the economic sector, it encourages the development of production on the basis of modern technologies, the implementation of a well-thought-out structural and investment strategy for each redistribution of property, the strengthening of the national currency and the entire financial system, as well as the reduction of inflation and the improvement of many other areas of economic relations (Vozniuk, 2016).

Meanwhile, in the political sector, this type of criminal offence prevention by advocates is closely related to the processes of formation and development of the new Ukrainian statehood, as well as strengthening of democracy and all branches of state power, implementation of political will in confronting socially negative phenomena and processes in a multi-party system (Liubchenko, 2008) and the presence of potential threats to the national security of Ukraine (Kolb, Pyrozhyk, 2020).

On the other hand, in the social sector, this is the criminological activities of lawyers aimed at eliminating various social stratifications of society; supporting poor citizens, strengthening family values; ensuring proper conditions for socialisation of alienation and limiting the negative effects of unemployment, as well as reducing the level of forced migration, etc. (Maksymov, 2009).

3. Legal measures to prevent crimes committed by attorneys at law

Finally, in the legal field, the measures of general social crime prevention performed by attorneys at law determine the content of activities on improvement of legislation which is not directly aimed at crime prevention, considering various social relations arising in the course of criminal proceedings (labour, family, civil, etc.) to be subject to legal regulation. Although these legal relations are disordered (not systematised),

they undoubtedly play a criminogenic role in the mechanism of criminal conduct of the perpetrator (Kolb, Prysiazhniuk, 2018, pp. 71-73).

Therefore, general social crime prevention is a positive effect of well-thought-out social policy, implemented by attorneys at law, not only and not so much for the purpose of direct prevention of socially dangerous acts, since the relevant social measures are aimed at establishing the rule of law, respect for constitutional human rights and freedoms, as well as at strengthening public order and solving problems of combining social, industrial, family and household interests of a person and his or her family in general, which arise in the course of criminal proceedings (Dzhuzhy, 2011).

As established in the course of this study, the main focus of the general social crime prevention with the participation of attorneys-at-law in criminal proceedings is to identify, neutralise, block, etc. the determinants of crime. That is why the measures of this type of crime prevention have an extremely wide range for the criminological activities of attorneys-at-law, since they affect almost all types, groups and other determinants of crime related to the activities of other participants to criminal proceedings. In addition, in practice, the multidimensional, comprehensive nature of the crime prevention by attorneys-at-law is most clearly manifested at the general social level. Furthermore, its content and practical value are due to interrelated measures, including victimisation, which have an impact on various fields of activities of society and the State (economic, social, legal, etc.) (Holovkin, 2020).

4. Conclusions

Thus, if we summarise the current scientific approaches to this issue and allow for the organisational forms and types of the Practice of Law (Articles 13, 14, 15, 19 of the Law of Ukraine 'On the Bar and Practice of Law'), then 'general social crime prevention by attorneys-at-law' should be understood as a set of measures of a legal, economic, social and other nature, performed by the attorneys-at-law on a voluntary basis in the course of criminal proceedings and in accordance with the law, both individually and jointly with other attorneys-at-law, aimed at identifying the determinants of crime in Ukraine and taking actions to eliminate, block, neutralise, etc. in cooperation with other actors of criminological practice.

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РОЛЬ І МІСЦЕ АДВОКАТА СЕРЕД СУБ'ЄКТІВ ЗАГАЛЬНОСОЦІАЛЬНОГО ЗАПОБІГАННЯ ЗЛОЧИНАМ

Анотація. ***Метою*** статті є обґрунтування необхідності більш ефективного використання потенційних правових можливостей адвокатів у змісті загальносоціального запобігання злочинам. ***Результати.*** У науковій статті, виходячи зі змісту загальносоціального запобігання злочинності, визначено потенційні правові можливості адвоката у протидії вчиненню кримінальних правопорушень серед відповідних суб'єктів даного виду кримінологічної діяльності. Зокрема, встановлено, що виступаючи захисником прав, свобод і законних інтересів фізичних осіб у ході кримінального провадження, адвокат об'єктивно вимушений здійснювати у зв'язку з цим комплекс заходів, спрямованих на виявлення та усунення в подальшому детермінаційного комплексу причин і умов, які сприяють вчиненню конкретних злочинів, що стають предметом кримінального процесу та, в кінцевому підсумку, отримують оцінку у рішенні суду щодо вини, ступеня суспільної небезпеки, наявності пом'якшуючих або обтяжуючих обставин особи, інтереси якої пред'являє адвокат. При цьому констатовано, що при здійсненні загальносоціального запобігання кримінальним правопорушенням адвокат, у першу чергу, як учасник кримінального провадження, звертає на увагу на ті детермінанти злочинності, які мають соціально-економічну, культурно-виховну та іншу тому подібну суспільну природу походження, та вчиняє відповідні дії щодо їх блокування, нейтралізацію, ліквідацію тощо, використовуючи передбачені кримінально-процесуальним законодавством України заходи. Поряд з цим, як показали результати даного дослідження, на ефективність кримінологічної діяльності адвокатів з означеного напряму запобігання злочинам впливає низка обставин, до яких у вказаній роботі віднесені наступні із них: 1) відсутність у Законі України «Про адвокатуру та адвокатську діяльність» прямого та чіткого обов'язку для цих учасників кримінального провадження юридичного обов'язку щодо виявлення детермінант, які сприяли вчиненню кримінального правопорушення з боку підозрюваних та інших підзахисних осіб; 2) колізійність норм зазначеного законодавчого акту та Кримінального процесуального кодексу України, що визначають принципи кримінального провадження і діяльності адвокатів; 3) правова незабезпеченість та прогалини, що пов'язані з реалізацією адвокатами на практиці принципів рівності та змагальності сторін у кримінальному провадженні; ін. ***Висновки.*** Виходячи з проведеного аналізу нормативно-правових і доктринальних джерело, у цій науковій статті констатовано, що без удосконалення правових засад діяльності адвоката вкрай проблематично підвищити його роль і місце серед суб'єктів загальносоціального запобігання кримінальним правопорушенням та у цілому ефективність кримінологічної складової у кримінальному процесі України.

Ключові слова: адвокат; суб'єкт запобігання кримінальним правопорушенням; загальносоціальне запобігання; кримінальне провадження; предмет доказування; принципи кримінального провадження; детермінанти злочинності.

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LEGAL UNDERSTANDING OF FUNCTIONS OF THE BAR IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to define the differences between the concepts of "tasks" and "functions" of an attorney-at-law in administrative proceedings and identify and analyse the main ones. ***Results.*** The article examines the concepts of "task" and "function" of an attorney-at-law in administrative proceedings which are interrelated. In other words, the function arises when specifying the task and is a qualitative characteristic of a particular phenomenon. In addition, the article analyses the essence and determines the role and place of the Bar in the system of existing law enforcement bodies of Ukraine. It is determined that the main social mission and the main goal of the Bar is to protect human rights. This statement should be fundamental in solving the problem of the full functioning of this very important legal institution. Unlike other human rights bodies of civil society, attorneys-at-law are necessarily involved in the performance of the functions of the state and state institutions. It is necessary to regard the specific features of this field as a fundamentally important and, of course, necessary condition, since without the participation of an attorney, the investigation and justice process will be ineffective. In addition, the main functions of an attorney include restorative, preventive and protective. ***Conclusions.*** It is concluded that the attorney-at-law as a representative of the administrative procedure is a procedural person who performs legal actions on his or her own behalf and in the interests of the person who has concluded a legal services agreement with him or her, within the limits of the powers granted to him or her, in order to protect the rights, freedoms and legitimate interests of the person he or she represents. The term "task of an attorney-at-law in administrative proceedings" should be understood as a specific, clearly planned scope of work performed by lawyers in the course of administrative proceedings to protect clients, represent their interests or provide other legal services necessary for resolving administrative cases. It is determined that the concepts of "tasks" and "functions" of an attorney-at-law in administrative proceedings are interrelated. In other words, the function arises in the process of specifying the task and is a qualitative characteristic of a particular phenomenon. For the purpose of professional problem solving in administrative proceedings, the attorney-at-law is vested with the relevant functions, which are the main areas of his or her activities in defence, representation and provision of other legal support to the client in administrative cases. The list of functions of the attorney-at-law is not exhaustive. The restorative, preventive and protective functions are the basis of the attorney's activity in the field of administrative proceedings.

Key words: attorney-at-law; legal support; the bar; practice of law.

1. Introduction

The formation of civil society in Ukraine and the development of the rule of law is impossible without raising the level of legal culture and legal awareness of the population of our country, but in any civilised society that is at the peak of its economic, political, social and legal development, the issue of obtaining qualified legal support is always relevant.

Legal actors participating in various types of legal relations often have a real or potential need for qualified legal support. In this regard, the current stage of development of civil society and the rule of law requires the state to establish both legal and practical guarantees of state protection of human rights and freedoms at the regulatory and legal level. The Constitution of Ukraine guarantees everyone the right to legal support and the right to free choice of human rights defenders. The Bar of Ukraine can ensure the actual implementation of the content of this provision at the current stage of development of the Ukrainian state.

The Bar of Ukraine is an autonomous body separated from the system of state institutions, whose main purpose is to provide qualified legal services to citizens and organisations. The fact that this profession in our country is separated from the system of state institutions shows the relative autonomy and independence

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of such an entity, considering its professional characteristics. Based on this, the possibility of counteracting public structures and officials in the judicial proceedings is obvious. The exclusion of the Bar from the system of state bodies deprives officials and civil servants of the opportunity to influence the professional activities of attorneys, which is one of the factors that ensure the effective performance of their functions and tasks by the Bar and attorneys in administrative proceedings.

A number of scholars have studied the specific features of the Bar organisation in Ukraine, the tasks and functions of an attorney-at-law in the administrative process, namely: Baimuratov M., Bandurka S., Buromenskyi M., Vilchyk T., Halunko V., Holubieva N., Hordieiev V., Husarev S., Karpachova N., Kyivets O., Komziuk A., Nazarov I., Nikitchenko V., Podoliak A., Safulko S., Sviatotska V., Siomina V., Tatsii L., Khotynets P., and others. However, their research is fragmentary, without an exhaustive and holistic description of the essence and content of such elements.

The purpose of the article is to define the differences between the concepts of "tasks" and "functions" of an attorney-at-law in administrative proceedings, and also to identify and analyse the main ones.

2. The concept and functions of the Bar in Ukraine

To protect the rights, freedoms and legitimate interests of the population, the state has created many ways and means, the main of which is judicial protection. However, even in such cases, citizens do not have sufficient knowledge of jurisprudence to go to court to protect their violated rights, and therefore the legislator, through representatives and lawyers, ensures the right of all persons to represent and defend their interests in court.

According to Art. 59 of the Basic Law, “Everyone shall have the right to legal services. Such services shall be rendered free of charge in cases stipulated by law. Everyone shall be free to choose the defender of his rights” (Constitution of Ukraine, 1996). A similar provision is enshrined in parts 1, 2, 3 of the Code of Administrative Procedure of Ukraine (hereinafter - the CAP of Ukraine), which stipulates that "1. Participants in a case have the right to legal services. 2. Representation in court, as a type of legal services, shall be carried out exclusively by an attorney-at-law (professional legal services), except in cases established by law. 3. Submissions and procedures for the provision of free legal services are determined by the law governing the provision of free legal services” (The Code of Ukraine on Administrative Offences, 1984). However, today there are still many questions regarding the functions of attorneys in administrative courts.

Following the definition of its etymology, the term "advocate" from the Latin "advocatus" is translated as "legal adviser", "court defender" (Zaborovskyi, 2017). In our subjective opinion, an "advocate (attorney)" is a kind of legal consultant who provides professional legal services, which can be explained in two aspects - his/her legal status and functional purpose. In other words, the involvement of an attorney in a court proceeding as a full participant and the provision of legal services determines his or her functional affiliation. Moreover, the volitional legal action of an attorney-at-law, which provokes his or her active procedural activity, depending on specific legal relations, is the main prerequisite for the attorney-at-law's involvement in legal practice.

In his dissertation research, P. Khotynets concludes that the concept of "attorney-at-law status" covers: a) rights and duties of an attorney-at-law; b) liability of an attorney-at-law; c) guarantees of the attorney-at-law's activities (Khotenets, 2002). On the other hand, the "legal status" should also include the requirements that entitle a person to practice law.

In general, the institute of procedural representation by attorneys-at-law is of great importance, since it ensures the effective exercise of procedural rights and obligations of the parties concerned. Therefore, we will examine in detail the concept of tasks and functions of a representative attorney-at-law in administrative proceedings and identify their specific features.

Pursuant to the provisions of part 1 of Article 56 of the Code of Administrative Offences of Ukraine, the legislator provides an exhaustive list of participants in administrative proceedings through representatives (The Code of Ukraine on Administrative Offences, 1984). According to Article 57 of the Code of Administrative Procedure of Ukraine, a court representative may be a lawyer or a legal representative (The Code of Ukraine on Administrative Offences, 1984).

The attorney-at-law representing the interests of his or her client in administrative proceedings takes an active part in the court proceedings, the purpose of which is to achieve the best legal result for his or her client. The attorney as a representative is entitled to apply to the court on behalf of the person whom he or she represents and to defend his or her interests. However, a person who enjoys the right to legal services of an attorney shall not be deprived of the right to defend his or her rights, freedoms and legitimate interests independently.

Representation in court requires an attorney-

at-law to be professional and have the appropriate qualifications to provide legal services. This is defined in Article 7 of the Rules of Professional Conduct: "In his or her professional activity an attorney (law office or law firm) must use all knowledge and professional skills for the proper defense and representation of the rights and lawful interests of individuals and legal entities, comply with the applicable legislation of Ukraine and promote the strengthening and practical implementation of the principles of the rule of law and legality. An attorney shall not give advice to a client, which is knowingly aimed at facilitating the commission of offenses, or otherwise intentionally facilitate their commission by his or her client or other persons. In his or her professional activity an attorney shall not resort to the means and methods that contradict the applicable legislation or these Rules" (Rules of Professional Conduct, 2017).

This suggests that the understanding of the institute of representation is set out in two approaches: legal relations in which a person performs procedural actions on behalf of another person within the limits of his/her authority; performance of procedural actions by a person who is vested with certain powers on behalf of another person in order to realise the latter's interests.

It should be noted that the powers of an attorney are certified by a warrant, an order of a body or organisation authorised by law to provide free legal services, or a legal services agreement. An excerpt from the agreement shall be attached to the warrant, which shall specify the powers of the attorney as a representative or restrictions on the right to perform certain procedural actions with the certification of the excerpt by the signatures of the parties in accordance with the Law of Ukraine "On the Bar and Practice of Law" (Law of Ukraine On The Bar and Practice of Law, 2012).

It should be noted that until the attorney applies to the court or is involved in the proceedings by the administrative court, his or her responsibility is not subject to the provisions of the Code of Administrative Procedure of Ukraine and is transferred to the level of the Qualification and Disciplinary Commission of the Bar. The participation of attorneys-at-law in administrative proceedings is determined by the mutual will of the attorney-at-law and the parties, third parties or other representative (attorney) who has the right to delegate the case, which is implemented by concluding an oral or written agreement on the provision of legal services. The latter is concluded in duplicate and certified by both parties. An excerpt from such an agreement, which clearly sets out the rights of attorneys, is a mandatory appendix to the warrant in court proceedings. The application may also contain recommendations on restricting the rights of representatives to perform certain procedural actions in administrative proceedings. To sum up, it should be noted that an attorney-at-law, as a representative in administrative proceedings, is a procedural person who, on behalf and in the interests of a person, performs legal actions to protect the rights, freedoms and legitimate interests of the person he or she represents, who has previously concluded a legal services agreement with him or her. As a result, after the conclusion of the relevant agreement, an attorney is authorised to provide the following legal services: providing legal information; providing explanations and advice; drafting complaints and applications, as well as other documents related to the administrative procedure (Rules of Professional Conduct, 2017).

3. Tasks of the Bar in Ukraine

According to the explanatory dictionary of the modern Ukrainian language, the definition of "task" should be understood as "a certain amount of work, business, etc. planned for execution; an instruction, order to perform a certain task; a goal to be pursued; something that is to be done" (Busel, 2005). Therefore, the definition of " attorney's task in administrative proceedings" should be understood as a specific, clearly planned scope of work performed by an attorney in the course of administrative proceedings to protect the client, represent the interests or provide other legal services necessary for the resolution of administrative proceedings. The tasks set out in the provisions of the Code of Administrative Court Procedure of Ukraine are generally important for both legal representatives and attorneys. In addition, a large explanatory dictionary of the modern Ukrainian language defines the concept of "function" as: "a phenomenon that depends on another phenomenon, is a form of its manifestation and changes in accordance with its changes; the work of someone, something, duty, range of activity of someone, something" (Busel, 2005). The definition of the functions of an attorney in administrative proceedings should be understood as the main activity of an attorney to provide defence, representation and other legal services to clients in administrative cases.

This means that lawyers are provided with the appropriate functions to professionally solve tasks in administrative proceedings. In addition, the concepts of "task" and "functions" of an attorney-at-law in administrative proceedings which are interrelated. In other words, the function arises in the process of specifying the task and is a qualitative characteristic of a particular phenomenon.

We believe that in practice, the main functions of attorneys in administrative proceedings include the following: representative, restorative and advisory.

We propose to consider and analyse each of them in more detail. L. Tatsii believes that the function of an attorney as a representative in administrative proceedings is aimed at establishing relations between the client and state authorities or other persons. Based on her research, the author argues that the functions of an attorney should include representative and advisory ones. However, other scholars propose to expand this list to include restorative, preventive and protective functions. (Tatsii, 2008).

The representative function of the attorney-at-law is defined by parts 1, 2 of Article 56 of the CAP of Ukraine, which provides for the possibility of the parties to engage an attorney-at-law to participate in administrative proceedings (The Code of Ukraine on Administrative Offences, 1984). First, this provision stipulates that an attorney may be a natural person with administrative and procedural competence, and second, an attorney is a person who represents the interests of others in an administrative court on the basis of a warrant and provides legal services in accordance with the law.

It seems that it is impossible to distinguish between the representative and defence functions of attorneys, since the latter is a special subject of civil, commercial, criminal and administrative proceedings, which performs its only function in court and, by providing legal support, contributes to the protection of legitimate human rights and freedoms. In the course of administrative proceedings, an advocate, on the one hand, provides legal assistance to his or her client, and, on the other hand, contributes to the protection of legitimate human rights and interests.

The following are the characteristics of an attorney as a representative in administrative proceedings: an attorney always represents a person with whom he or she has entered into an agreement for the provision of legal services; an attorney may represent a person in administrative proceedings for a fee or free of charge; an attorney, in the course of his or her activities in administrative proceedings, is governed by the provisions of the Law of Ukraine "On the Bar and Practice of Law", the Code of Administrative Procedure of Ukraine, and the Rules of Professional Conduct; an attorney is vested with the powers of the person whose interests he or she represents in an administrative case; legal consequences for the person represented by the attorney arise as a result of the legal guidance and procedural actions of the attorney within the scope of his or her powers; the attorney may enter into the administrative proceedings at any stage of the case consideration; the participation of the attorney in the administrative proceedings does not deprive the interested person of the possibility to replace his or her defender at any stage of the administrative case consideration.

The main legal regulations governing the administrative and procedural status of attorneys are the Code of Administrative Procedure of Ukraine and the Law of Ukraine "On the Bar and Practice of Law". However, the CAP of Ukraine defines only a list of general tasks of administrative procedures (part 1 of Article 2), the provisions of which clearly reveal the content of the restorative function, namely: protection of rights, freedoms and interests of individuals, rights and interests of legal entities in the field of public relations from violations by public authorities (state authorities, local self-government bodies, their officials and employees, other entities in the exercise of their administrative functions on the basis of legislation, including in the exercise of delegated, including the exercise of delegated powers) through fair, impartial and timely consideration of administrative cases (The Code of Ukraine on Administrative Offences, 1984). With this in mind, we agree with the opinion of T. Vilchyk, who argues that "the restorative function is the dominant function of the legal profession, which is to restore the violated rights and legitimate interests of citizens" (Vilchyk, 2019).

There is no consensus among the authors on the definition of the concept of advisory activity. The opinion of S. Husariev, who defines advisory activities as professional activities of lawyers who are specialists in various branches of law, whose main function is legal support of various forms and methods of activity of organisational structures that use legal services of legal advisers, is quite accurate (Husariev, Tykhomyrov, 2005). Other scholars define the concept of advisory activity by stating that it includes oral explanations and expert preparation of various written materials at the request of law enforcement bodies, legal entities or individuals. However, despite the different approaches to the definition of the concept of advisory activity, all scholars agree that it is one of the types of professional activities.

According to A. Podoliak, the Bar is a unique legal phenomenon that has a single organisation performing a state (public law) function, and is not a state body, but, on the contrary, maintains independence from the state (Nikitchenko, 2011).

It seems that the Bar should strive to become a general bar, i.e. a bar that is not focused on anything other than the performance of general func-

tions. According to V. Nikitchenko, this can only really exist if the following conditions are met:

1) existence of the subject matter of judicial protection - private interests that are so broad that they conflict with other private interests or with the public interest;

2) the existence of the bearers of these interests, persons who are ready to defend their interests and can only defend them in court (Podoliak, 2009).

The Bar should become one of the most powerful institutions of self-regulation in civil society. By granting freedom to professional attorneys and encouraging their activities, the state "unties its hands", as most of the state's affairs are transferred to this independent institution. Just as an attorney provides assistance to a person in case of an emergency, the state should use the power granted to it only in case of an emergency when the whole society is in serious danger. The independence of professional lawyers from the state is an important principle of this human rights institution and should be a prerequisite for a person to trust in the protection of his or her rights. It is from this perspective that the Bar as a legal institution is not the property of the state and its individual bodies. The profession of attorney-at-law is not a carrier of authority, but the power of thought, the power of knowledge about relevant socially significant actions of individuals, groups, organisations and even the state.

In addition to private interests, the interests of the entire society are protected when attorneys provide qualified legal services, which are mainly expressed in the establishment of the rule of law, timely cessation of human rights violations, restoration and prevention of such violations in the future. Therefore, legal services provided by attorneys-at-law are recognised as one of the most important guarantees of human rights protection, and their implementation is ensured by the mechanism of cooperation between the state and civil society.

As the Bar is an institution of civil society, its status implies not only a certain distance from the state authorities, but also the recognition of the need to consolidate the bar to provide effective and socially necessary influence on state law enforcement bodies and, most importantly, on national legal policy. With regard to the issue of a court representative, it should be emphasised that the participation of attorneys should be provided not only in court, but also at the stage of protecting the client's interests, for example, in correspondence aimed at resolving the dispute out of court.

Since the judgement enforcement procedure is important, it is necessary to focus on establishing cooperation with the enforcement services entrusted by the state with the function of enforcing judgements and other executive documents. In the current situation of a transparent market economy and fierce competition, it is becoming increasingly difficult for business entities to comply with the rules of anti-competitive cooperative behaviour, including the prevention or restriction of monopoly, the development of reasonable and legal methods of fair and competitive struggle, and the prevention of signs of unfairness. Therefore, the provision of quality services in certain fields, such as antitrust and competition, requires a high level of attorneys' expertise. This suggests that the list of functions of an attorney is not exhaustive. The restorative, preventive and protective functions are the basis of the attorney's activity in the field of administrative proceedings.

4. Conclusions

Therefore, the attorney-at-law as a representative of the administrative procedure is a procedural person who performs legal actions on his or her own behalf and in the interests of the person who has concluded a legal services agreement with him or her, within the limits of the powers granted to him or her, in order to protect the rights, freedoms and legitimate interests of the person he or she represents. The term "task of an attorney-at-law in administrative proceedings" should be understood as a specific, clearly planned scope of work performed by lawyers in the course of administrative proceedings to protect clients, represent their interests or provide other legal services necessary for resolving administrative cases. It is determined that the concepts of "tasks" and "functions" of an attorney-at-law in administrative proceedings are interrelated. In other words, the function arises in the process of specifying the task and is a qualitative characteristic of a particular phenomenon.

For the purpose of professional problem solving in administrative proceedings, the attorney-at-law is vested with the relevant functions, which are the main areas of their activities in defence, representation and provision of other legal support to the client in administrative cases. The list of functions of the attorney-at-law is not exhaustive. The restorative, preventive and protective functions are the basis of the attorney's activity in the field of administrative proceedings.

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ПРАВОВЕ РОЗУМІННЯ ФУНКЦІЙ ІНСТИТУТУ АДВОКАТУРИ В УКРАЇНІ

Анотація. ***Метою*** статті є визначення відмінностей між поняттями «завдання» і «функції» адвоката в адміністративному судочинстві, а також виокремити та проаналізувати основні з них. ***Результати.*** У статті розглянуто поняття «завдання» і «функції» адвоката в адміністративному судочинстві, які є взаємопов'язаними. Іншими словами, функція виникає в процесі конкретизації завдання і є якісною характеристикою конкретного явища. Окрім цього у статті проаналізовано суть, визначено роль і місце інститут адвокатури в системі діючих правоохоронних органів України. Визначено, що головною соціальною місією, основною метою адвокатури є захист прав людини. Це твердження має бути основоположним у вирішенні проблеми повноцінного функціонування цього дуже важливого правового інституту. На відміну від інших правозахисних органів громадянського суспільства, адвокати обов'язково беруть участь у здійсненні функцій держави і державних інститутів. Необхідно враховувати особливості цієї сфери як принципово важливу і, безумовно, необхідну умову, оскільки без участі адвоката процес розслідування і правосуддя буде не дієвим. Окрім цього, до основних функцій адвоката слід віднести відновлювальну, превентивну та охоронну. ***Висновки.*** Зроблено висновок, що адвокат як представник адміністративного процесу - це процесуальна особа, яка здійснює юридичні дії від свого імені і в інтересах особи, яка уклала з ним угоду про правову допомогу, в рамках наданих йому повноважень, з метою для захисту прав, свобод і законних інтересів особи, яку він представляє. Під терміном «завдання адвоката в адміністративному судочинстві» слід розуміти конкретний, чітко спланований обсяг роботи, виконуваної юристами в ході адміністративного провадження для захисту клієнтів, представлення інтересів або надання іншої юридичної допомоги, необхідної для вирішення адміністративних справ. Визначено, що поняття «завдання» і «функції» адвоката в адміністративному судочинстві взаємопов'язані. Іншими словами, функція виникає в процесі конкретизації завдання і є якісною характеристикою конкретного явища. Для професійного вирішення проблем в адміністративному судочинстві адвокат наділяється відповідними функціями, які є основними напрямками здійснюваної ним діяльності щодо захисту, представництва та надання іншої юридичної допомоги клієнту в адміністративних справах. Перелік функцій адвоката не є вичерпним. Відновлювальна, превентивна та охоронна функції становлять основу діяльності адвоката у сфері адміністративного судочинства.

Ключові слова: адвокат; правнича допомога; адвокатура; адвокатська діяльність.

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