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Oleksandr Husarov,
Head of Pechenizka ATC, doctoral student of Kharkiv National University of Internal Affairs, Candidate of Juridical Sciences 27 Lev Landau Avenue, Kharkiv, Ukraine, 61080
oleksandrhusarov@ukr.net
ORCID ID: *0000-0001-7493-1789*

THE IMPACT OF ATYPICAL FORMS OF EMPLOYMENT ON SOCIO-ECONOMIC DEVELOPMENT OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to reveal the impact of atypical forms of employment on the socio-economic development of Ukraine. ***Results.*** Relying on the analysis of scientific views of scholars and provisions of current legislation, the article focuses on the importance of using atypical forms of employment in the current conditions of social, economic and political development of Ukraine. The author identifies a number of objective factors that confirm the high level of relevance and efficiency of atypical forms of employment as a factor of social and economic development of Ukraine. It is established that the spread of atypical types of employment will help the country to overcome the economic crisis and achieve economic growth; it will contribute to a fuller use of the labour potential of society; and it will improve the living standards of the population. For citizens engaged in atypical types of employment, the flexibility of the labour market is manifested in the ability to maintain a higher standard of living, thereby improving the standard of living of their families. ***Conclusions.*** It is concluded that today a large number of objective factors confirm the high level of relevance and effectiveness of atypical forms of employment as a factor of socio-economic development of Ukraine: first, atypical forms of employment ensure flexibility of the labour process, for example, in terms of improving the dynamics of communication between the employee and the employer and reducing the "binding" to the workplace; second, the use of atypical forms of employment enables the employment of a much larger number of citizens representing all social groups, including "vulnerable" groups such as pensioners, people with disabilities, pregnant women, etc; third, atypical forms of employment are more effective in the context of the development of digital technologies and the IT sector, which is constantly changing the idea of models of building labour relations; fourth, the use of atypical forms of employment provides enterprises, institutions and organisations with a much more effective way to prepare for force majeure situations, such as the COVID-19 epidemic, and minimise the negative effects of their impact on the performance of the business entity in general and its employees in particular.

Key words: atypical employment, social development, economic development, employees, regulatory framework.

1. Introduction

In recent years, Ukraine has taken the path of profound reforms aimed at a complete transformation of our country to create an active and effective partner in the international arena for other countries and gradually move away from the stereotype of "post-Soviet Ukraine". This goal implies the need to reform many sectors, including legal, cultural, labour, etc. One of the most important sectors is socio-economic, which consolidates the creation of a fundamentally new model of economic development of the state, its complete transition to a market economy, as well as reorientation of the regulatory mechanism for social processes in the state, in particular, those related to employment. In this context, it should be noted that the existing system of organisation of labour relations between employers and employees is largely based on the Soviet model, which is gradually losing its effectiveness due to objective factors of reality, such as the development of new labour sectors where the application of standardised labour regulations is inappropriate and even destructive for the purposes of an enterprise, institution or organisation. For this reason, in recent years, more and more importance has been given to atypical forms of employment, which have a positive impact not only on labour relations at the local level of specific organisations, but also on the socio-economic development of Ukraine in general.

Some problematic issues of atypical forms of employment were considered in the 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 a considerable number of scientific achievements, the legal literature lacks comprehensive studies on the impact of atypical forms of employment on the socio-economic development of Ukraine.

Therefore, the purpose of the article is to reveal the impact of atypical forms of employment on the socio-economic development of Ukraine.

2. International regulatory framework for atypical forms of employment

Nowadays, several factors can be identified that demonstrate the importance and necessity of using atypical forms of employment, the first one is political. The concept of non-standard construction of labour relations between an employee and an employer has been known in the world for a long time, as evidenced by the International Labour Organization (hereinafter - ILO) Home Work Convention No. 177 of 20 June 1996. The document formulated the structure and content of such relations for the first time. For example, Article 1 of the Convention states: "a) the term 'home work' means work carried out by a person, to be referred to as a homeworker, (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions" (Convention on Homework, 1996).

The provisions of the Convention are advisory in Ukraine, as the document has not been ratified in accordance with the procedure established by law, however, the development of international standards has significantly influenced the national labour policy. In particular, in 2014, the Association Agreement with the European Union (EU) was signed, which provides for strengthening cooperation between Ukraine and the EU in many areas, including in the field of employment. According to Articles 419 and 420, the Parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination. Cooperation in the area shall pursue the following goals: a) improve the quality of human life; b) meet common challenges, such as globalisation and demographic change; c) aim at more and better jobs with decent working conditions; d) promote social fairness and justice, while reforming labour markets; e) promote conditions of labour markets that combine flexibility with security; f) promote active labour market measures and improve efficiency of employment services to match the needs of the labour market, etc. (Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, 2014). Therefore, the Agreement envisages positive activities of authorised entities to improve state regulatory framework for employment. The use of categories such as "reforming the labour market", " promoting the development of the labour market", as well as evidence of Ukraine's intensified adoption of the EU experience in the labour sector, proves that our country is on the way to developing the employment sector, which has long been functioning in Western countries with the active use of atypical forms of labour relations.

3. Regulatory and legal framework for atypical forms of employment in Ukraine

In the same aspect, the provisions of Decree of the President of Ukraine "On the Sustainable Development Goals of Ukraine for the period up to 2030" No. 722/2019 of September 30, 2019, which consolidates the current tasks of domestic evolution, namely 1) poverty eradication; 2) hunger eradication, food security, improved nutrition and promotion of sustainable agriculture; 3) healthy lifestyles and well-being for all at all ages; 4) inclusive and equitable quality education and the promotion of lifelong learning opportunities for all; 5) gender equality, empowerment of all women and girls; 6) access to and sustainable management of water resources and sanitation; 7) affordable, reliable, sustainable and modern energy for all; 8) sustainable, inclusive and broad-based economic growth, full and productive employment and decent work for all; 9) building sustainable infrastructure, promoting inclusive and sustainable industrialisation and innovation; 10) reduction of inequality; etc. (Decree of the President of Ukraine On the Sustainable Development Goals of Ukraine for the period until 2030, 2019).

The above goals provide a "field for creativity", that is, they stipulate the need to find and implement new, atypical formats of state influence in the process of economic and social development, which will be aimed not only at control and supervision, but also at stimulating the country's economic growth, development of new business areas, as well as employment. Atypical forms of employment fit quite positively into these goals, as they provide

for the simplification of labour relations to increase the efficiency of their final result.

The next factor that proves the positive impact of atypical forms of employment on the socio-economic development of our country is the legal one. The use of atypical forms of employment inevitably leads to the intensification of lawmaking processes aimed at modernising regulatory sources in the field of labour relations. Nowadays, the key document in the field of labour is the Labour Code of Ukraine No.322-VIII of 10 December 1971 (hereinafter - the Labour Code), Article 1 thereof states that this instrument regulates labour relations of all employees, contributing to the growth of labour productivity, improvement of the quality of work, increase of the efficiency of social production and, on this basis, raising the material and cultural standard of living of employees, strengthening labour discipline and gradual transformation of labour for the benefit of society into the first vital need of every able-bodied person (Code of Labour Laws of Ukraine, 1971). In addition, the provisions of the Code guarantee the protection and realisation of the right to work (Code of Labour Laws of Ukraine, 1971).

Implementation of these guarantees requires amending the provisions of the Labour Code to optimise its articles to the current realities in the labour field. In particular, the demand for and active use of remote, home-based work and flexible working hours have led to a rethinking of the text of the Labour Code. According to the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Regulation of Remote, Homework and Work Using Flexible Working Hours" No. 1313-IX of 04 February 2021, the Labour Code provides for the definition of the categories "remote work", "home work", "flexible working hours"; establishes new duties of the employer when concluding an employment contract for remote work, regarding familiarisation of employees with local documents of the organisation using electronic communication means; peculiarities of ensuring the right of employees to safe working conditions when using these atypical forms of employment, etc. (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Regulation of Remote, Homework and Work Using Flexible Working Hours, 2021).

Therefore, the use of atypical forms of employment inevitably leads to the development of labour legislation, rethinking its provisions, including new labour guarantees, and ensuring its extension to new fields of labour relations in order to protect the rights and interests of employees and employers. However, changes in regulatory material do not happen overnight. This is a comprehensive law-making process that involves: first, a study of current legislation and the degree of its relevance in regulating relations arising from the use of atypical forms of employment; second, highlighting problematic issues in the regulatory mechanism for atypical forms of employment and identifying ways to resolve them; third, advice with representatives of the economy, law, social protection and other fields to determine the guarantees and protection of the rights, freedoms and interests of employees and employers in the use of atypical forms of employment.

4. Promising areas for the development of atypical forms of employment

Therefore, atypical forms of employment, or rather, their emergence and use, trigger numerous rule-making processes that are closely related to various sectors of public life and lead to the formation of a modern regulatory framework. The last factors that indicate the importance of atypical forms of employment for the socio-economic development of Ukraine are objective, that is, the factors of the environment that determine the need for the development and use of this category. This situation was facilitated by various aspects of both purely economic and labour law nature. For example, a comprehensive study of the objective factors that determine the development of atypical forms of employment was conducted by M.M. Toporkova and O.O. Bilous. The scientists prove the following: "In our opinion, the spread of atypical types of employment will help the country to overcome the economic crisis and achieve economic growth; it will contribute to a fuller use of the labour potential of society; and it will improve the living standards of the population. For citizens engaged in atypical types of employment, the flexibility of the labour market is manifested in the ability to maintain a higher standard of living, thereby improving the standard of living of their families. Atypical employment can act as an adaptive tool to the negative trends in the Ukrainian labour market, which manifest themselves in the context of the economic crisis. Today, although the need for regulatory framework for non-standard (atypical) types of employment in Ukraine is long overdue, they have not been legislated or implemented in the relevant draft laws. Therefore, the rapid informatisation of society and the innovative development of the country's economy are leading to the emergence and spread of new atypical types of employment that differ from the standard ones. In accordance with the guaranteed right

to work under the Constitution of Ukraine, every citizen has the right to freely choose a job that provides an opportunity to earn a living" (Toporkova, Bilous, 2019).

Studying the relevance of atypical forms of employment, as well as the positive and negative aspects of this category, Yu.O. Ostapenko emphasises that modern life and socio-economic relations exist in a dynamic and interactive space due to the transition to a post-industrial model of development, which promotes social innovation and causes a breakdown of the already established understanding of the social and legal nature of labour, labour relations, as well as the role of the worker in the field of labour, and the labour and legal status of the employee. This tendency is substantially reinforced by the ideology of mercantilism, in the context of which, according to scholars, "everything" is understood to be important only when it is efficient and profitable or can become so by optimising it. Therefore, "everything that has no prospects" (is not efficient and profitable, cannot become so) is "of no interest and has no value or significance". The intention of employers to optimise the use of labour resources and take full advantage of scientific and technological progress causes, on the one hand, new exploitation of employees and, on the other hand, increased flexibility of employment. In this regard, the labour market is becoming increasingly 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 is becoming more and more noticeable and interesting for the parties to labour relations (Ostapenko, 2020).

When studying the objective factors of the importance of using atypical forms of employment in the context of the socio-economic development of the state, one cannot but note force majeure situations that have a rather severe impact on the labour market and the scope of labour relations in general. The best example of recent years is the COVID-19 epidemic, an acute respiratory infection that has changed many aspects of normal social life. The rapid spread of the disease and its lethal impact on certain segments of the population necessitated the introduction of quarantine restrictions throughout the country, some of which restricted the labour activities of citizens, as the activities of certain enterprises, institutions and organisations were completely banned. Other entities, the work of which was not prohibited, were provided with recommendations on the use of atypical forms of labour of employees. In particular, the Resolution of the Cabinet of Ministers of Ukraine (hereinafter - CMU) "On the establishment of quarantine and the introduction of restrictive anti-epidemic measures in order to prevent the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus on the territory of Ukraine" No. 1236 of 09 December 2020 provides for the following: "Recommend that executive authorities, other state bodies, local governments, enterprises, institutions, organisations, regardless of ownership, ensure that: for the period of quarantine in order to limit the number of people in transport and on the way to (from) work, applying, if possible, a flexible working time regime, which, in particular, provides for different start and end times for different categories of employees, shift work of employees, and, if technically possible, also real-time work via the Internet with the preservation of wages, remote (home) work" (Resolution of the Cabinet of Ministers of Ukraine On the establishment of quarantine and the introduction of restrictive anti-epidemic measures in order to prevent the spread of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus on the territory of Ukraine, 2020).

5. Conclusions

Therefore, today a large number of objective factors confirm the high level of relevance and effectiveness of atypical forms of employment as a factor of socio-economic development of Ukraine::

– First, atypical forms of employment ensure flexibility of the labour process, for example, in terms of improving the dynamics of communication between the employee and the employer and reducing the "binding" to the workplace;

– Second, the use of atypical forms of employment enables the employment of a much larger number of citizens representing all social groups, including "vulnerable" groups such as pensioners, people with disabilities, pregnant women, etc;

– Third, atypical forms of employment are more effective in the context of the development of digital technologies and the IT sector, which is constantly changing the idea of models of building labour relations;

– Fourth, the use of atypical forms of employment provides enterprises, institutions and organisations with a much more effective way to prepare for force majeure situations, such as the COVID-19 epidemic, and minimise the negative effects of their impact on the performance of the business entity in general and its employees in particular.

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Олександр Гусаров,
голова Печенізької ОТГ, докторант
Харківського національного університету внутрішніх справ,
кандидат юридичних наук
61080, Україна, м. Харків, пр. Льва Ландау, 27
oleksandr_husarov@ukr.net
***ORCID:** 0000-0001-7493-1789*

ВПЛИВ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ НА СОЦІАЛЬНО-ЕКОНОМІЧНИЙ РОЗВИТОК УКРАЇНИ

Анотація. ***Мета.*** Метою статті є розкрити вплив нетипових форм зайнятості на соціально-економічний розвиток України. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, акцентовано увагу на важливості використання нетипових форм зайнятості в сучасних умовах соціального, економічного та політичного розвитку України. Виділено низку об'єктивних факторів, які підтверджують високий рівень актуальності та ефективності нетипових форм зайнятості населення, як чинника соціального-економічного розвитку України. З'ясовно, що розповсюдження нетипових видів зайнятості сприятиме виходу країни з економічної кризи до економічного зростання; сприяє більш повному використанню трудового потенціалу суспільства; підвищує рівень життя населення. Для громадян, що зайняті нетиповими видами зайнятості, гнучкість ринку праці виявляється в можливостях підтримувати більш високий рівень життя, тим самим покращуючи рівень життя своєї родини. ***Висновки.*** Зроблено висновок, що на сьогоднішній день існує велике коло об'єктивних факторів, які підтверджують високий рівень актуальності та ефективності нетипових форм зайнятості населення, як чинника соціального-економічного розвитку України: по-перше, нетипові форми зайнятості дозволяють забезпечити гнучкість трудового процесу, наприклад, в розрізі поліпшення динаміки комунікації між працівником

та роботодавцем та зменшення «прив'язки» до робочого місця; по-друге, застосування нетипових форм зайнятості надає можливість залучати до праці значно більшу кількість громадян, що є представниками всіх соціальних груп, включаючи «уразливі» прошарки населення, як то пенсіонери, особи з інвалідністю, вагітні жінки тощо; по-третє, нетипові форми зайнятості виступають більш ефективними в розрізі розвитку цифрових технологій та IT-сфери, під тиском чого постійно змінюється уявлення про моделі побудови трудових відносин; по-четверте, застосування нетипових форм зайнятості дозволяє підприємствам, установам та організаціями значно ефективніше підготуватись до форс-мажорних ситуацій, як, наприклад, епідемія COVID-19, та мінімізувати негативні наслідки їх впливу на результати роботи суб'єкта господарювання взагалі та її працівників, зокрема.

Ключові слова: нетипова зайнятість, соціальний розвиток, економічний розвиток, працівники, правове регулювання.

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Anatolii Vykhrystiuk,
Candidate of Juridical Sciences, Senior Researcher Scientific Institute of Public Law
2a H. Kirpa Street, Kyiv, Ukraine, 03035
vykhrystiuk_anatolii@ukr.net
ORCID ID: *0000-0002-1377-3151*

TYPES OF ADMINISTRATIVE AND LEGAL INSTRUMENTS FOR FUNCTIONING OF STOCK EXCHANGES IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to characterise the types of administrative and legal instruments for the functioning of stock exchanges in Ukraine. ***Results.*** It is established that most of the administrative services provided by the National Securities and Stock Market Commission are free of charge and are provided within a specially established period (30 days). In general, the administrative services that are directly related to Ukrainian stock exchanges include: issuance, replacement or cancellation of title documents of stock market participants; issuance of duplicate documents related to stock exchange activities; approval of statutory documents in the manner prescribed by law; admission of securities to circulation in Ukraine (for foreign participants); approval of personnel decisions of stock market participants. Administrative and information services in the field of stock exchanges in Ukraine are special types of public services related to stock exchange activities and are provided by specialised information agencies and the National Securities and Stock Market Commission to stock market participants for the purpose of legitimate stock exchange activities, self-regulation of the professional activities of stock market participants, obtaining and dissemination of information about stock exchanges and general legal framework for the operation of stock exchanges. ***Conclusions.*** It is concluded that the main entity providing administrative and information services in the sphere of functioning of stock exchanges is the National Securities and Stock Market Commission as a power-regulatory entity of public administration, which ensures administrative and coordination relations of stock market participants, and news agencies as special public administrators. The administrative and legal instruments for the functioning of stock exchanges in Ukraine is a set, provided for by law, of legal and organisational forms, measures and methods of implementing administrative and regulatory framework for stock exchanges which is interdependently formed into a single effective mechanism to ensure optimal organisation and progressive functioning of stock exchanges.

Key words: charter, state registration, legal entity, physical person, commission.

1. Introduction

The effectiveness of the legal regulatory mechanism is a degree of achievement of the expected regulatory result, i.e. the correlation between the established goal of legal regulation of social relations and actual results (goal-result). The effectiveness of regulatory framework is one of the key indicators of its quality, along with value ("meeting the needs, interests, development of individuals, social groups, and society") and cost-efficiency ("adequacy of social costs to the results of legal framework for social relations"). The effectiveness of the legal regulatory mechanism means the optimal measure of the law's targeted impact on social relations, that is, achievement of the goal of obtaining the results of their implementation that are foreseeable and desirable for the creator of legal provisions. The purpose, if its content is legal consequences, is to best meet the two basic conflicting needs of the individual and society: justice (freedom) and security (order). A rulemaking body may have other goals (economic, environmental, political, social and cultural) in addition to legal ones. In this case, the effectiveness of legal regulation is determined by the achievement of all goals (Skakun, 2014, p. 215).

Undoubtedly, the effectiveness of the regulatory mechanism for stock exchanges depends on the "correctness" of application of administrative and legal instruments for the functioning of stock exchanges, which are components of their overall regulatory mechanism.

2. Principles for determining specific features of stock exchanges in Ukraine

The essence of an instrument in law is defined as an arsenal, the entire range of legal phenomena of different levels, which are distinguished and considered not only in the con-

text of the needs of legal practice, but also from the standpoint of their functional purpose, i.e. those features that characterise them as instruments for performing economic, political or social tasks (Paterylo, 2006).

In our opinion, the administrative and legal instruments for the functioning of stock exchanges in Ukraine is a set, provided for by law, of legal and organisational forms, measures and methods of implementing administrative and regulatory framework for stock exchanges which is interdependently formed into a single effective mechanism to ensure optimal organisation and progressive functioning of stock exchanges.

According to R. Melnyk and V. Bevzenko, the instruments of public administration include regulations of public administration, administrative act and administrative contract (Melnyk and Bevzenko, 2014, p. 58). According to V. Halunko, P. Dikhtiievskyi, O. Kuzmenko and S. Stetsenko, the instruments of public administration include: 1) regulations; 2) administrative acts; 3) administrative contracts as an instrument of public administration; 4) plans as instruments of public administration; 5) actions as instruments of public administration (Melnyk, Bevzenko, 2014, pp. 143-145). In addition, scholars argue that the choice of an appropriate public administration instrument in the activities of a public administrator is based on two main factors: first, adherence to the principle of legality (a public administrator shall act exclusively in the manner prescribed by the Constitution and laws of Ukraine), in other words, to choose competence among the instruments of public administration. Second, ensuring the effective restoration of the rights, freedoms and legitimate interests of individuals and the public interest of society. In this case, when choosing a public administration instrument, a public administrator should consider a number of factors with certain contradictions. In the second case, the public administrator should optimally combine the highest efficiency in restoring the violated values of the person in need with minimal inconvenience to other persons and minimal expenditure of human and material resources and time (Halunko, Dikhtiievskyi, Kuzmenko, Stetsenko, 2018).

Therefore, the following types of administrative and legal instruments for the functioning of stock exchanges in Ukraine can be distinguished: issuance of regulatory and individual acts; e-governance tools; control; prudential supervision as a special tool; administrative and information services in the field of stock exchange functioning; administrative enforcement for violation of the requirements of the legislation on the functioning of stock exchanges.

An important individual instrument for the functioning of stock exchanges in Ukraine is the Stock Exchange Rules, provided for by the Regulations on the Functioning of Stock Exchanges, approved by the National Securities and Stock Market Commission by its Decision No. 1688 of 22 November 2012. In accordance with the Regulations, the Stock Exchange Rules, as well as amendments thereto, shall be effective upon their registration with the Commission in accordance with the requirements of Ukrainian law. The stock exchange rules may be contained in one document or consist of separate stock exchange documents. Stock exchange rules must be transparent and non-discriminatory (By the decision of the National Securities and Stock Market Commission on the approval of the Regulation on the functioning of stock exchanges, 2012).

The Stock Exchange Rules consist of the following procedures: organising and conducting stock exchange trading; listing and delisting securities; admitting stock exchange members and other persons to stock exchange trading; quoting securities and other financial instruments, publishing the stock exchange rate; disclosing and publishing information on the stock exchange's activities; resolving disputes between stock exchange members and other persons entitled to participate in stock exchange trading in accordance with the law; control over compliance by members of the stock exchange and other persons entitled to participate in stock exchange trading in accordance with the law with the rules of the stock exchange; - sanctions for violation of the rules of the stock exchange, including cancellation (non-performance) of the stock exchange contract (agreement) on a security or other financial instrument (By the decision of the National Securities and Stock Market Commission on the approval of the Regulation on the functioning of stock exchanges, 2012).

The stock exchange may establish specifics of organisation and conduct of exchange trading in the relevant type of security or other financial instrument on different types of markets provided for by the stock exchange rules. The rules of the stock exchange for each market shall determine the procedure for submitting orders and specifying their types; specific features of entering into exchange contracts (agreements), the procedure for ensuring (if any) fulfilment of obligations under exchange contracts (agreements); the procedure for settlements. The rules of the stock exchange should determine: the procedure for acquiring the status of a stock exchange member, includ-

ing requirements for a stock exchange member, suspension and termination of the status of a stock exchange member; rights and duties of a stock exchange member; procedure for maintaining a list of stock exchange members, exchange traders and their authorised representatives; procedure for registering authorised representatives of exchange traders; procedure for providing information by stock exchange members and exchange traders (By the decision of the National Securities and Stock Market Commission on the approval of the Regulation on the functioning of stock exchanges, 2012).

Therefore, the main administrative instrument for the functioning of stock exchanges in Ukraine is the issuance of regulations and individual acts, which is mostly carried out by the National Securities and Stock Market Commission. A special role should be given to the Stock Exchange Rules, which transparently define the requirements and rules for the functioning of stock exchanges and establish the specifics of the relationship between stock market participants.

Stock exchanges are considered to be an integral part of the economy of any developed country. They are a product of the natural development of the economy. Stock exchanges were created and are created to enable firms to obtain the financial resources necessary for their development, i.e. to make the issued securities as viable as possible. Stock exchanges act as an economic barometer of the global financial system. Sharp fluctuations in stock prices and their fall cause shocks in the world market, rapid outflow of capital, which in turn leads to economic and financial instability, asset depreciation, crisis phenomena, etc. (Mitiukov, Aleksandrov, Vorona, Nedbaieva, 2001).

The study of administrative and information services in the field of stock exchanges, first of all, should focus on the legal category of "administrative services".

From the legislative definition, some scholars have identified the key features of an administrative service, such as: 1) an administrative service is provided only upon application of an individual or legal entity; 2) the application leads to a certain result aimed at acquiring, changing or terminating the rights and/or obligations of a person; 3) an administrative service is the result of the exercise of power by the administrative service provider; 4) an administrative service is provided in accordance with the law (Halunko, Dikhtiievskyi, Kuzmenko, Stetsenko, 2018). Based on these features, the following conclusions can be drawn: - an administrative service is provided by an administrative service provider only at the initiative of a person who needs such a service; - the result of consideration of an application by an applicant is: 1) a decision of individual action (administrative act), which is made in relation to a specific person and gives rise to, changes or terminates the rights and/or obligations of a person (for example, a marriage registration certificate, a licence for a certain type of economic activities, an entry in the Unified State Register of Legal Entities and Individual Entrepreneurs); 2) an administrative agreement under which a person's rights and/or duties are acquired, changed or terminated; - an administrative service is provided only by an administrative service provider; - the provision of an administrative service is the responsibility of a state or local authority; - the powers of public administration bodies and the procedure for providing administrative services should be enshrined exclusively in law (Halunko, Dikhtiievskyi, Kuzmenko, Stetsenko, 2018).

With regard to the issue of administrative and information services in the field of stock exchanges, we believe it is important to note that the main authority in this field is the National Securities and Stock Market Commission.

In accordance with the List of Administrative Services Provided by the National Securities and Stock Market Commission No. 112 of 18 July 2018, the administrative services directly related to Ukrainian stock exchanges include the following services: issuance of a certificate of registration of an association of professional stock market participants; issuance of a certificate of registration of an association as a self-regulatory organisation of professional stock market participants; replacement of the certificate of registration of the association of professional stock market participants; replacement of the certificate of registration of the association as a self-regulatory organisation of professional stock market participants; cancellation of the certificate of registration of the association of professional stock market participants; cancellation of the certificate of registration of the association as a self-regulatory organisation of professional stock market participants; issuance of a certificate for the right to perform actions related to the direct conduct of professional activities in the stock market; issuance of a duplicate certificate for the right to perform actions related to the direct conduct of professional activities in the stock market; cancellation of a certificate for the right to perform actions related to the direct conduct of professional activities in the stock market; issuance of a licence for professional activities in the stock market (securities market); cancellation of a licence to carry out professional activities in the stock market (securities market); approval of a draft charter of a corporate invest-

ment fund and registration of a share issue to form the initial authorised capital of a corporate investment fund with the issuance of a temporary certificate of registration of a share issue; admission of securities of foreign issuers to circulation in Ukraine; delegation of powers to a self-regulatory organisation of stock market participants; early termination (refusal to exercise) of delegated powers to a self-regulatory organisation of stock market participants; approval of internal documents of a self-regulatory organisation (amendments thereto) approved by a self-regulatory organisation of stock market participants; approval of rules and standards of professional activities in the stock market (amendments thereto) approved by the association of professional stock market participants; approval of candidates for the positions of stock exchange managers; approval of distribution of advertising (amendments to advertising) of securities and the stock market; registration of rules (amendments to rules) of the stock exchange; approval of the charter (amendments to the charter) of the stock exchange (Official website of the National Securities and Stock Market Commission, 2022).

3. Specific features of the regulatory and legal framework governing the powers of stock exchanges

In order to approve the charter (amendments to the charter) of a stock exchange, the documents required to provide such an administrative service are sent to the legal address by post or submitted directly in person. The administrative service is free of charge. For state registration of the charter (amendments to the charter) (unless the stock exchange is established and operates on the basis of a model charter), the stock exchange must submit the charter (amendments to the charter) and the following documents to the Commission for approval - an application for registration of the stock exchange's charter (amendments to the charter); - justification of the reasons for amending the charter; - a copy of the original decision to amend the charter; - the charter (amendments to the charter) in three copies, executed in accordance with the requirements of Article 15 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" in paper form and one copy in electronic form; - a comparative table of the old and new versions of the charter in paper and electronic forms. Within 30 calendar days from the date of receipt of the package of documents, the Commission has the right to decide to approve/refuse to approve the charter (amendments to the charter) of the stock exchange. In case of submission of an incomplete package of documents or documents that are executed in violation of the established requirements, they shall be returned without consideration within 10 business days from the date of receipt by the Commission. If the Commission has any comments on the content of the submitted documents, it has the right to send a notice to the applicant not later than 30 days from the date of receipt of the package of documents on the need to take such comments into account. The result of this service is the Commission's decision to approve/refuse to approve the charter (amendments to the charter) of the stock exchange. Two copies of the stock exchange's charter (amendments to the charter), with the Commission's stamp of registration indicating the date and number of the relevant Commission's decision. The grounds for refusal to approve the charter (amendments to the charter) of a stock exchange may be - non-compliance of the submitted documents with the requirements of the law; - presence of inaccurate data in the submitted documents (Official website of the National Securities and Stock Market Commission, 2022).

In order to approve candidates for the positions of stock exchange managers, the documents required for the provision of such an administrative service shall be sent to the legal address by post or submitted directly in person. The administrative service is free of charge. The Commission shall make a decision based on the overall assessment of all submitted documents and the results of the interview within 30 calendar days from the date of receipt of the application and relevant documents. If there are grounds provided for by law, the Commission may return them without consideration no later than 5 working days from the date of receipt of the application for approval of the candidate for the position of the head of the stock exchange and the relevant documents. To obtain approval for appointment to the position of the head of the stock exchange, the applicant's authorised body shall submit an application for approval of the candidate for the position of the head of the stock exchange and the following documents: 1) Copy of the decision of the relevant governing body of the stock exchange on dismissal from the position of the head and a copy of the decision of the relevant governing body of the stock exchange on the election of a candidate for the position of the head, certified by the signature of the authorised person; 2) Application form of the candidate for the position of the head of the stock exchange signed by the person of the candidate for the position of the head of the stock exchange, certified by the person dealing with personnel issues at such stock exchange, or notarised; 3) Copies of documents

on education issued by a higher educational institution of Ukraine and/or a foreign educational institution, certified by the signature of an authorised person or notarised (for a foreign individual); 4) Copy of the employment record book or other document (for a foreign individual) confirming the employment record of the candidate for the position for the last three years, certified at the last place of work or notarised (for a foreign individual); 5) Copies of all pages of the passport containing information about the person; 6) Copy of the Registration number of the taxpayer's registration card; 7) Information about the candidate for the position of the head of the stock exchange provided by the stock market supervisory authority of the relevant foreign country and/or information from stock market participants of the foreign country where the candidate for the position previously worked; 8) Information on the candidate for the position of the head of the stock exchange provided by professional stock market participants and/or their founders, where the candidate for the position previously worked, and/or information of the applicant's members, certified by the signatures of the members or the signature of the head of the legal entity that provided such information; 9) Notarised copy of the permit for the use of labour of foreigners and stateless persons in Ukraine; 10) For a foreign individual - a certificate from the relevant state authority of the foreign state in which the candidate for the position resides, stating that the candidate has no criminal record that has not been cancelled or expunged in accordance with the established procedure. The result of the service is the Commission's decision to approve/refuse to approve the candidacy of the stock exchange's head. The grounds for refusal are: - the candidate for the position of a head, according to the submitted documents, does not meet the requirements of the law; - the documents on the candidate for the position of a head contain inaccurate information; - the candidate has not confirmed the appropriate level of professional knowledge and skills, which, in particular, is assessed based on the results of the interview; - the candidate did not appear for the interview without valid reasons (Official website of the National Securities and Stock Market Commission, 2022).

To obtain a licence to carry out professional activities in the stock market, the applicant shall submit to the General Department of the Commission or send by mail (registered letter) an application for a licence drawn up in the state language and two copies of the list (description) of documents submitted for the issuance of a licence to carry out professional activities in the stock market, the applicant shall indicate which document submitted with the application for a licence is confidential information. The administrative service shall be free of charge. The Commission, in accordance with the procedure established by it, shall issue or refuse to issue a licence for a certain type of professional activities in the stock market within three months from the date of receipt of the documents referred to in part two of this Article. For verification of information on foreign legal entities or foreign individuals included in the ownership structure of a legal entity that intends to carry out professional activities in the stock market, the period for reviewing documents shall be six months. The decision of the NSSMC to issue or refuse to issue a licence is an entry in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations on the decision of the licensing authority to grant or deny a licence to a business entity to carry out the type of business activities it has determined. A written notification of the decision to issue or refuse to issue a licence (with a copy of the relevant decision attached) shall be sent (issued) to the applicant within five working days from the date of the relevant decision (signed by the head of the structural unit of the Commission that considers the application for a licence and relevant documents) (Official website of the National Securities and Stock Market Commission, 2022).

Therefore, most of the administrative services provided by the National Securities and Stock Market Commission are free of charge and are provided within a specially established period (30 days). In general, the administrative services that are directly related to Ukrainian stock exchanges include: issuance, replacement or cancellation of title documents of stock market participants; issuance of duplicate documents related to stock exchange activities; approval of statutory documents in the manner prescribed by law; admission of securities to circulation in Ukraine (for foreign participants); approval of personnel decisions of stock market participants.

With regard to information services in the field of stock exchanges, we note that pursuant to the provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplifying Business and Attracting Investments by Securities Issuers" No. 210-VIII of 16 November 2017, the National Securities and Stock Market Commission amends existing and develops new regulations regarding the provision of information services in the stock market (Official website of the National Securities and Stock Market Commission, 2022).

Legal regulations governing the activities of information agents will include: the proce-

dure for authorisation of legal entities intending to provide information services; the procedure for maintaining the Register of persons authorised to provide information services in the stock market and disclosure of information therefrom; requirements for information services agreements; requirements for a certificate of inclusion in the Register of persons authorised to provide information services; requirements for a person who intends to carry out information services activities; the procedure for notifying the Commission of changes in information and/or documents submitted for inclusion in the Register of persons authorised to provide information services and for obtaining a certificate of inclusion in the Register; the procedure for cancellation of the certificate of inclusion in the Register of persons authorised to provide information services; the procedure for approval by the Commission of internal rules and requirements for software and hardware systems used in the provision of information services: for the publication of regulated information on behalf of stock market participants, for the distribution of consolidated information on financial instruments and/or stock market participants in a continuously updated mode, for the submission of reports and/or administrative data to the Commission (Official website of the National Securities and Stock Market Commission, 2022).

That is, the purpose of providing information services is to simplify the administrative and regulatory framework for stock exchanges for stock market participants, and their main feature is to expand the legal impact of information services provided by special entities - information agencies.

News agencies are special public administrators that are authorised by the National Securities and Stock Market Commission to provide information services in the stock market in accordance with the procedure established by law.

In general, information services in the field of stock exchange functioning consist of official publication of information on the activities of stock exchanges or submission of reporting data on the functioning of the stock exchange to the National Securities and Stock Market Commission.

4. Conclusions

Therefore, administrative and information services in the field of stock exchanges in Ukraine are special types of public services related to stock exchange activities and are provided by specialised information agencies and the National Securities and Stock Market Commission to stock market participants for the purpose of legitimate stock exchange activities, self-regulation of the professional activities of stock market participants, obtaining and dissemination of information about stock exchanges and general legal framework for the operation of stock exchanges.

The main entity providing administrative and information services in the sphere of functioning of stock exchanges is the National Securities and Stock Market Commission as a power-regulatory entity of public administration, which ensures administrative and coordination relations of stock market participants, and news agencies as special public administrators.

Therefore, administrative and legal instruments for the functioning of stock exchanges in Ukraine is a set, provided for by law, of legal and organisational forms, measures and methods of implementing administrative and regulatory framework for stock exchanges which is interdependently formed into a single effective mechanism to ensure optimal organisation and progressive functioning of stock exchanges.

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Анатолій Вихристюк,
кандидат юридичних наук, старший науковий співробітник
Науково-дослідного інституту публічного права
2а H. Kirpy Street, Kyiv, Ukraine, 03035
vykhrystiuk_anatolii@ukr.net
***ORCID ID:** 0000-0002-1377-3151*

ВИДИ АДМІНІСТРАТИВНО-ПРАВОВОГО ІНСТРУМЕНТАРІЮ ФУНКЦІОНУВАННЯ ФОНДОВИХ БІРЖ В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає у характеристиці видів адміністративно-правового інструментарію функціонування фондових бірж в Україні. ***Результати.*** З'ясовано, що більшість адміністративних послуг, які надаються Національна комісія з цінних паперів та фондового ринку є безоплатними та надаються у спеціально встановлений строк (30 днів). В цілому, до адміністративних послуг, які мають безпосереднє відношення до фондових бірж України можна віднести: видача, заміна або анулювання правовстановлюючих документів учасників фондового ринку; видача дублікатів документів, що пов'язані з біржовою діяльністю; погодження статутних документів у порядку, встановленому законом; допуск цінних паперів до обігу в Україні (для іноземних учасників); погодження кадрових рішень учасників фондового ринку. Адміністративні та інформаційні послуги у сфері функціонування фондових бірж в Україні є спеціальними видами публічних послуг, що стосуються провадження біржової діяльності та надаються спеціалізованими інформаційними агентствами та Національною комісією з цінних паперів та фондового ринку учасникам фондового ринку для законного здійснення біржової діяльності, саморегулювання професійної діяльності учасниками фондового ринку, отримання та розповсюдження інформації про фондові біржі та загально-правового регулювання питань функціонування фондових бірж. ***Висновки.*** Зроблено висновок, що основним суб'єктом надання адміністративних та інформаційних послуг у сфері функціонування фондових бірж є Національна комісія з цінних паперів та фондового ринку, як владно-регуляторний суб'єкт публічної адміністрації, що забезпечує адміністративно-координаційні взаємозв'язки учасників фондового ринку, та інформаційні агентства як спеціальні суб'єкти публічної адміністрації. Адміністративно-правовий інструментарій функціонування фондових бірж в Україні – це нормативно-забезпечена сукупність правових та організаційних форм, заходів та способів реалізації адміністративно-правового регулювання фондових бірж, що взаємозалежно формується в єдиний ефективний механізм задля забезпечення оптимальної організації та прогресивного функціонування фондових бірж.

Ключові слова: статут, державна реєстрація, юридична особа, фізично особа, комісія.

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Oleksii Kucher,
Head of the State Regulatory Service of Ukraine, Candidate of Juridical Science
9/11 Arsenalna Str., Kyiv, 01011
oleksii_kucher@ukr.net
ORCID ID: *0000-0003-3742-2154*

ADMINISTRATIVE AND LEGAL STATUS OF LOCAL STATE ADMINISTRATIONS AND COUNCILS IN THE FIELD OF LABOUR

Abstract. ***Purpose.*** The purpose of the article is to describe the administrative and legal status of state administrations and councils in the field of labour. ***Results.*** Relying on the analysis of scientific views of scholars and provisions of current legislation, the article describes the administrative and legal status of local state administrations and councils in the field of labour. It is noted that the tasks of local state administrations and councils in the field of labour are derived from their more general tasks. The author emphasises that today the powers of municipal authorities to exercise control in the field of labour and to impose sanctions for violations of legislation in this field need to be revised. It is found that powers are not a set of separate rights and duties, but a single holistic construction; powers are an expression not only of power capabilities, but also of what is required of the authorised entity. ***Conclusions***. It is concluded that the administrative and legal status of local state administrations and councils in the field of labour needs to be improved. In particular, we are convinced that the powers of municipal authorities to exercise control in the field of labour and to impose sanctions for violations of legislation in this field need to be revised. In our opinion, all control and jurisdictional powers in the field of labour should be transferred to executive authorities that have the necessary facilities and resources to exercise them effectively and efficiently. Instead, municipal authorities should retain supervisory powers that will enable them to monitor the state of labour law in the territories and facilities under their jurisdiction but will not involve interference by local government officials in the work of the entities under their supervision. In cases where, in the course of supervisory activities, local government officials have reasonable suspicions that a particular employer has violated labour legislation, they should apply to the relevant executive authorities with an initiative to conduct an inspection and bring the perpetrators to legal liability as provided by law.

Key words: administrative and legal status, local state administrations, legislation, labour.

1. Introduction

The organisational and legal mechanism for managing the labour sector is a complex multi-element formation, one of the key links of which is the entities that actually perform the relevant tasks and functions in the field (or sector) under study. Among the system of these entities, a special role is assigned to local state administrations and local self-government bodies (municipalities). In order to clearly understand their place and role in the field of labour, the administrative and legal status of these entities should be considered. The relevance of this issue is also enhanced by the fact that reforms of local self-government and the labour protection management system are still underway in our country, in the course of which some aspects of the legal status of the above-mentioned public authorities should change.

Some problematic issues related to supervision and control by local state administrations and councils in the field of labour have been considered in their scientific works by: S.I. Dvornyk, V.I. Zahumennyk, I.Yu. Kailo, A.V. Melnyk, Yu.O. Poliakova, Ye.M. Popovych, V.V. Protsenko, M.M. Sirant, H.V. Terela V.M. Shapoval and many others. However, despite the significant theoretical achievements, the legal literature lacks comprehensive studies on the administrative and legal status of local state administrations and councils in the field of labour.

Therefore, the purpose of the article is to describe the administrative and legal status of state administrations and councils in the field of labour.

2. Specific features of the administrative and legal status of local state administrations and councils

In the context of this research, it should be noted that the administrative and legal status of local state administrations and councils in the field of labour should be interpreted as a comprehensive social and legal phenomenon which

expresses the legal position of local state administrations and councils as entities implementing public policy on labour, determined by means of administrative law. The content of the legal status under study is the range of those properties of these entities that are important from the legal perspective and the set of which, in fact, determines which issues and tasks in the field of labour are entrusted to state administrations and councils, what they must (should) do in this regard, and what opportunities they have for this.

It should be noted that, unlike the legal status of a physical person, the legal status of a public authority or official has a more extensive structure, in particular, it means that in addition to the rights and duties that form the core or keystone of any legal status the indispensable elements of the legal status of a public authority are tasks, functions, and subject matter of jurisdiction, which together determine the social purpose and mission of this entity, indicate why such an entity exists and why it is vested with the appropriate range of powers and receives certain resources.

It is necessary to consider some elements of administrative and legal status of local state administrations and councils in the field of labour more detailed. First of all, a focus should be made on the purpose and tasks of these entities in the field of labour, since these elements of the legal status enable to understand the role of local state administrations and councils in the field of labour and their purpose in the mechanism of public administration of this sector of public life. A purpose is usually understood as something that someone strives for, something they want to achieve, a specific end result of certain activities (Busel, 2005).

Therefore, we believe that objectives, as an element of the administrative and legal status of local state administrations and councils in the field of labour, are a certain result of the managerial influence of these entities on relations and processes in the field of labour, for the achievement of which they (these entities) are actually vested with certain powers and provided with the appropriate range and number of resources. This results in a certain state of affairs in the labour sphere, which these entities strive to achieve and maintain as the most appropriate and necessary at a particular stage of development of social life. Unfortunately, the current legislation regulating the legal status of local state administrations and councils does not clearly define their goals in the field of labour. However, based on the content of the powers in the field of social protection, employment and labour vested in the entities under study, the purpose of their activities in the field of labour is to ensure timely and full implementation of public policy on labour at the regional and local levels, to maintain a high level of legality in this field, to promote the accumulation, development, and most efficient and appropriate use of labour potential in the respective area.

In order to achieve this goal, local state administrations and councils have to fulfil a number of tasks assigned to them. For example, the tasks of these administrations are generally enshrined in Article 2 of Law of Ukraine "On Local State Administrations" No. 586-XIV of 9 April 1999, which states that local state administrations within the relevant administrative-territorial unit shall ensure:

1) Implementation of the Constitution, laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other higher-level executive authorities;

2) Law and order, observance of the rights and freedoms of citizens;

3) Implementation of state and regional programmes of socio-economic and cultural development, environmental protection programmes, and, in areas where indigenous peoples and national minorities live compactly, programmes of their national and cultural development;

4) Preparation and approval of prognoses of the respective budgets, preparation and implementation of the respective budgets;

5) Report on the implementation of the respective budgets and programmes;

6) Interaction with local self-government bodies;

7) Exercise of other powers granted by the state and delegated by the respective councils (Law of Ukraine On Local State Administrations, 1999).

With regard to local councils, their tasks are not even generally defined in the Law of Ukraine "On Local Self-Government in Ukraine", but as a rule, the main tasks of municipal authorities include the following: strengthening the foundations of the constitutional order of Ukraine; ensuring the exercise of constitutional human and civil rights; creating conditions for meeting the vital needs and legitimate interests of the population; developing local democracy (Official site of the Pereyaslav-Khmelnytskyi City Council, 2022; The official website of the Veliko Aleksandriv District Council, 2022; Official website of Velikos Severinivska village council, 2022).

Obviously, the tasks of local state administrations and councils in the field of labour are derived from their more general tasks mentioned above, in particular, considering the content of the purpose of these entities' activities in the field of labour, we believe that the follow-

ing should be included in the scope of the tasks of these entities under study:

1. Administrations:

a) Ensuring proper implementation of labour legislation and monitoring its observance by employers;

b) Formulation and consolidation in the relevant documents of goals and priorities for strengthening and developing labour potential in the respective area, identification of ways and means, formation of a mutually agreed system of measures to achieve the declared goal and fulfil the planned tasks;

c) Ensuring coordination of activities of territorial subdivisions of specialised executive authorities on implementation of public policy on labour protection and labour, supervision and control over compliance with labour legislation, and employment of the population;

d) Interaction with municipal authorities on the implementation of public policy on labour;

e) Addressing other issues related to ensuring proper implementation of public policy on labour at the regional and local levels.

2. Councils.

a) Promoting the implementation of public policy on labour protection and hygiene, employment (in particular, promoting the employment of persons with disabilities) in the area under its jurisdiction;

b) Ensuring compliance with labour legislation by participants in labour and similar relations;

c) Interaction with local state administrations and other state authorities on labour issues;

d) Development and approval of targeted programmes for the efficient use of labour potential in the respective territories, improvement of working conditions and strengthening of labour safety.

In addition to the purpose and tasks, important elements of the legal status of a public authority, which reflect the competence component of this legal status, are functions, that is, the main areas of activities of the entity, in which the above-mentioned tasks are actually implemented. In our opinion, the key functions of local state administrations and councils in the field of labour include the following: rule-making, control and supervision, establishment, planning, social protection, communication, coordination, forecasting, resource provision, and jurisdictional one. In addition to the above functions, local state administrations and councils have a number of other areas of activities, but the above, in our opinion, most clearly reflect the key areas in which the entities under study operate to achieve their goals and fulfil their respective labour-related tasks.

3. Content of powers of public authorities

The core of the legal status of any public authority is its powers. Specialised literature provides many perspectives on what powers are, that is, whether they are a set of rights only, or rights and duties, or whether they are competence or a mandate (Solonar, 2014). In our opinion, it is more appropriate to understand powers as a duty, that is, powers are not a set of separate rights and duties, but a single holistic construction; powers are an expression not only of power capabilities, but also of what is required of the authorised entity. For example, the powers to control compliance with labour legislation, on the one hand, provide local state administrations and councils with the opportunity to take appropriate control measures, but on the other hand, the existence of these powers in these entities is a kind of requirement of the state and society to supervise the state of legality in the field of labour, to systematically check compliance by participants in labour and similar relations. Accordingly, local state administrations and councils, on the one hand, have rights in relation to those over whom they exercise this control, and on the other hand, they are obliged to those who have vested them with these powers and to those in whose interests they actually function and are provided with appropriate resources. Therefore, in this context, it can even be argued that the primary obligation in powers is the duty, for the proper fulfilment of which the entity is granted a certain amount of legal opportunities.

The list of powers of both local state administrations and councils is enshrined in the current legislation. In particular, the Law on Local State Administrations now in force stipulates that a local state administration 1) ensures the implementation of state guarantees in the field of labour, including the right to timely remuneration for work; 2) develops and organises the implementation of long-term and ongoing territorial employment programmes and measures for social protection of various groups of the population against unemployment; 3) ensures that public and temporary works are performed in accordance with the law for persons registered as unemployed; 4) ensures social protection of employees engaged in work with hazardous working conditions at enterprises, institutions and organisations of all forms of ownership, and quality certification of workplaces; 5) participates in collective bargaining and conclusion of territorial tariff agreements, and resolution of collective labour disputes (conflicts); 6) participates in the involvement of the production capacities of enterprises of penitentiary institutions for the socio-economic development of regions and the acquisition by convicts of professions in demand on the labour market; 7) develops and implements measures to implement public policy to promote employment at the regional level; 8) studies the processes in the labour market, in employment and vocational

training, assesses them, forecasts labour supply and demand, informs the population and executive authorities about the state of the labour market; 9) ensures the implementation of state guarantees in the field of labour; 10) takes measures to prevent mass unemployment in a timely manner; 11) determines trends in expanding the scope of labour application in the region by creating jobs in priority sectors of the economy, developing small businesses, entrepreneurship, peasant (farm) enterprises, etc.; 12) develops and implements measures to promote the employment of dismissed workers, including professional orientation and vocational training; 13) undertakes other work to promote employment (Law of Ukraine On Local State Administrations, 1999).

In general, we can state that the administrative and legal status of local state administrations and councils in the field of labour is very similar, which of course raises a number of concerns, especially in the context of the fact that each of these entities has controlling powers that enable them to interfere with the activities of the entities under their control. This situation is obviously not normal, because in addition to duplication of functions and powers, it also creates unjustified additional pressure on employers. In addition, it should be noted that, in general, labour control powers are not inherent in local self-government bodies, and effective and high-quality implementation of such control measures requires a high level of competence of officials (inspectors) who take such measures. The lack of proper training of local government labour inspectors leads to abuses and violations of legality by the inspectors themselves. This is also emphasised by the Federation of Employers of Ukraine, experts of which note that entrepreneurs often complain that local government inspectors have a low level of competence to conduct inspections, incorrectly determine the disposition for imposing penalties, the legal nature of the contract under which services are provided, and all civil law contracts are legally qualified as labour contracts, which is subject to fines of 30 times the minimum wage for each employee not registered under an employment contract. For minor violations of labour legislation, a fine of UAH 6,000 is imposed for each such offence, multiplied by the number of employees, and multi-million fines are imposed, whereas in case of minor offences, an official may be exempted from administrative liability with a verbal warning (Official website of the Ukrainian financial and accounting portal "Debit-Credit", 2021).

4. Conclusions

Therefore, the administrative and legal status of local state administrations and councils in the field of labour needs to be improved. In particular, we are convinced that the powers of municipal authorities to exercise control in the field of labour and to impose sanctions for violations of legislation in this field need to be revised. In our opinion, all control and jurisdictional powers in the field of labour should be transferred to executive authorities that have the necessary facilities and resources to exercise them effectively and efficiently. Instead, municipal authorities should retain supervisory powers that will enable them to monitor the state of labour law in the territories and facilities under their jurisdiction but will not involve interference by local government officials in the work of the entities under their supervision. In cases where, in the course of supervisory activities, local government officials have reasonable suspicions that a particular employer has violated labour legislation, they should apply to the relevant executive authorities with an initiative to conduct an inspection and bring the perpetrators to legal liability as provided by law.

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Олексій Кучер,
Голова Державної регуляторної служби України,
кандидат юридичних наук
01011, Київ, вул. Арсенальна, 9/11.
oleksii_kucher@ukr.net
***ORCID ID:** 0000-0003-3742-2154*

АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС МІСЦЕВИХ ДЕРЖАВНИХ АДМІНІСТРАЦІЙ ТА РАД У ГАЛУЗІ ПРАЦІ

Анотація. ***Мета.*** Метою статті є надати характеристику адміністративно-правовому статусу державних адміністрацій та рад у галузі праці. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, надано характеристику адміністративно-правовому статусу місцевих державних адміністрацій та рад у галузі праці. Відмічено, що завдання місцевих державних адміністрацій та рад у галузі праці є похідними від їх більш загальних завдань. Акцентовано увагу на тому, що на сьогодні потребують перегляду повноваження муніципальної влади щодо здійснення контролю у галузі праці та застосування санкцій за порушення законодавства у цій сфері. З'ясовано, що повноваження – це не сукупність окремих прав та обов'язків, а єдина цілісна конструкція, повноваження є виразом не лише владних можливостей, але й того, що вимагається від суб'єкта-владних повноважень. ***Висновки***. Зроблено висновок, що адміністративно-правовий статус місцевих державних адміністрацій і рад у галузі праці потребує вдосконалення. Зокрема, переконані, що потребують перегляду повноваження муніципальної влади щодо здійснення контролю у галузі праці та застосування санкцій за порушення законодавства у цій сфері. На нашу думку, всі контрольні та юрисдикційні повноваження у сфері праці слід передати органам виконавчої влади, які мають необхідні бази та ресурси для їх ефективного та якісного здійснення. Натомість муніципальній владі доцільно залишити наглядові повноваження, які дозволять їй здійснювати спостереження за станом законності у галузі праці на підвідомчих їм територіях та об'єктах, однак не передбачатимуть втручання посадових осіб місцевого самоврядування у роботу піднаглядних суб'єктів. У випадках же, коли у ході здійснення наглядових заходів у повноважених осіб органів місцевого самоврядування виникатимуть обґрунтовані підозри щодо порушення законодавства про працю тим чи іншим роботодавцем, вони мають звертатися до відповідних органів виконавчої влади з ініціативою про проведення перевірки та притягнення винних у порушенні осіб до юридичної відповідальності, що передбачена законом.

Ключові слова: адміністративно-правовий статус, місцеві державні адміністрації, законодавство, праця.

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Maksym Lohvynenko,
Postgraduate student of Police Law Department of National Academy of Internal Affairs Major of Police
Solomianska Square, 1, Kyiv, 03035
lohvynenko_maksym@ukr.net
ORCID ID: *0000-0002-8309-9012*

TOPICAL ISSUES OF INTEGRATING INTERNATIONAL STANDARDS AND PRACTICES OF ENSURING PERSONAL SECURITY OF POLICE OFFICERS INTO THE EDUCATIONAL PROCESS

Abstract. ***Purpose.*** The purpose of the article is to identify the topical issues of integrating international standards and practices of ensuring personal security of police officers into the educational process and to find potential solutions to them. ***Results.*** The article focuses on identifying the topical issues of integrating international standards and practices of ensuring personal security of police officers into the educational process in the system of higher education institutions with specific learning conditions and the system of initial professional training centres, as well as potential ways to address them. It is emphasised that the insufficient level of training of the personnel reserve directly affects the negative trend (dynamics) of deaths, injuries or various kinds of bodily injuries of police officers in the course of their professional duties. The author identifies the relevance of the issue under study in connection with the formation of new realities of law enforcement activities. It is specified that the present requires a modern level of police training. It is determined that the previously introduced international standards and practices for ensuring the personal security of the National Police officers did not significantly affect the quality of training of the personnel reserve within the educational process. The author emphasises that solving problematic issues of the educational process will directly affect the effectiveness of law enforcement training. ***Conclusions.*** It is concluded that the issue of ensuring personal security of the National Police officers cannot be resolved only by solving the problem of the educational process. The author identifies potential ways to integrate international standards and practices of ensuring personal security of police officers and improving the situation with the educational process. In order to change the negative dynamics (trends) and improve the overall situation with regard to death, injury, trauma, maiming, mental disorder, and suicide among the personnel of the National Police in the course of their professional duties, it is proposed to focus on the issue of introducing international standards and practices of ensuring the personal security of police officers within the educational process.

Key words: study sessions, personal security, official duties, law and order, optimisation, police officer, professional training, training system, psychological training, educational process.

1. Introduction

Nowadays, the National Police personnel perform their direct duties under conditions of increased physical and emotional stress, which is undoubtedly closely related to previously unknown negative phenomena and processes. It should be noted that the training of the personnel reserve for the National Police as an integral part of the security and defence sector of Ukraine has certain shortcomings that significantly affect the state of personal security. To solve complex problems, including in the context of martial law, it is necessary to introduce international experience and standards of personal security of the National Police employees. Moreover, today's realities create new conditions for law enforcement in the form of non-standard situational scenarios that require a police officer to have an appropriate level of proficiency in firearms, special equipment, tactical and hand-to-hand combat techniques. In these challenging conditions of the law enforcement system, there is a need to address the issue of high-quality training of the personnel reserve in accordance with international standards.

Some issues of personal security of law enforcement officers are presented in the works by scholars such as: V.B. Averianov, O.F. Andriiko, O.M. Bandurka, V.V. Boguslavskyi, V.V. Bondarenko, O.V. Dzhafarova, O.Yu. Drozd, A.T. Komziuk, O.H. Komisarov, O.V. Kuzmenko, S.O. Kuznichenko, V. P. Lipkan, M.I. Logvynenko, Ye.O. Leheza, O.I. Mykolenko, O.M. Muzychuk, O.V. Nehod-

chenko, O.Yu. Syniavska, S.O. Shatrava, D.V. Shvets, T.V. Shevchenko and many others.

Along with a wide range of scientific research, the problem of integrating international standards and practices of ensuring personal security of the National Police into the educational process, in particular, training police officers to perform their duties under emergency legal regimes and other circumstances that complicate the operational situation in the police service area, remains relevant. Accordingly, the previously unknown challenges faced by the National Police require a change in approaches and standards of training of the personnel reserve, which, in turn, involves borrowing international programmes aimed at ensuring the personal security of police officers.

The purpose of the article is to identify the topical issues of integrating international standards and practices of ensuring personal security of police officers into the educational process and to find potential solutions to them.

2. Principles of ensuring personal security of the National Police officers

Nowadays, new approaches are needed to ensure the protection of human rights and freedoms, fight crime, and maintain public safety and order. In the context of the economic crisis, uneven social development, a sharp decline in living standards, significant gaps in legislation and other negative factors, the number of people prone to commit crimes has been increasing (Tolok, Kriukovska, 2011). In terms of effective law enforcement, this applies to both measures to protect the life and health of citizens and the personal security of police officers.

Statistical data on the recent negative dynamics (trends) in ensuring the personal security of the National Police officers indicate that police officers are not sufficiently prepared to perform their professional duties. The imperfection of the police training system leads to the fact that, unfortunately, every year police officers are injured and killed during the course of their service (Vlasenko, Koteliukh, 2019).

Therefore, the problem of ensuring the personal security of the National Police officers requires a clear and timely solution.

The first promising step towards solving the above problem is to find "weaknesses" in the law enforcement training system. Given that scientific grounds are the basis for solving problematic issues, we believe it is quite acceptable to consider the positions of scholars on the above-mentioned negative phenomenon.

According to O.Yu. Koniev and O.T. Nikolaiev, the main reason for the increase in the number of cases when police officers are unable to use firearms and confront offenders in a certain situation of varying degrees of risk is the insufficient level of mastery of practical skills in the use of firearms, special and improvised means, as well as the insufficient level of physical and psychological preparedness of police officers to perform targeted actions, use service weapons and other methods of influence on offenders, which were studied in universities, in a particular situation (Koniev, Nikolaiev, 2017).

In addition, A.I. Chernykov's perspective is worth quoting: analysing cases of police officers receiving bodily injuries in the course of their duties, the scholar concluded that one third of emergency incidents, in most cases, occurred due to the inept application of measures to influence the offender during the stopping of a criminal offence or detention. Ignorance or disregard of tactical techniques to ensure personal security, improper use of self-defence techniques leads to law enforcement officers being injured as a result of aggressive influence (Chernykov, 2018).

Furthermore, O.O. Holovatskyi emphasises that in the context of confrontation with aggressive offenders, many police officers had a low level of skills in the use of police coercive measures (physical force, special means and firearms) (Holovatskyi, 2017).

Therefore, the analysis of the opinions presented by scholars enables to conclude that the "weaknesses" in the law enforcement training system are ignorance or inability to apply and use special means, including hand-to-hand combat techniques, as well as firearms in extreme situations. In other words, the process of training law enforcement officers requires significant changes.

Given that the aforementioned process lasts throughout the entire period of service, it can be divided into two phases. The first phase of police training is the educational process in the system of higher education institutions with specific learning conditions and the system of initial professional training centres. The second phase is the in-service training. At this point, it should be noted that the formation of the fundamentals of law enforcement officers' safe activities begins at the first phase of their training, as part of the educational process. The provision of theoretical knowledge and practical skills necessary to ensure personal security is entrusted to specialised departments, such as the Department of Tactical and Special Training; Firearms Training; Special Physical Training, as they have a direct impact on the further safe activities of both individual police officers and law enforcement bodies in general. Therefore, it is possible to contribute to solving the problem of ensuring personal security of police officers by introducing changes in the activities of the above-mentioned departments, having previously identified the negative factors and conditions that affect the quality of training of personnel.

It is appropriate in this context to quote the perspective of scholars on the quality of the educational process. For example, V.V. Bondarenko emphasises that the analysis of the educational process of future law enforcement officers revealed that the main problem of firearms training is the lack of practical knowledge regarding the decision-making process for using firearms in different situations. In addition, the scholar emphasises that there are numerous cases when officers had to chase and detain offenders while suppressing public order. However, the low level of physical fitness did not allow them to effectively use physical coercion techniques (Bondarenko, 2017).

According to D.V. Shvets, the existing methods of conducting firearms training classes are mostly hopelessly outdated and do not meet the requirements of the XXI century, and the scientific and pedagogical staff of the firearms training departments of departmental higher education institutions need to develop new methods of conducting classes as soon as possible. Such methods should be based on the carefully selected experience of law enforcement bodies of foreign countries and the latest developments of domestic scientists (Shvets, 2017).

Without further citing and thoroughly analysing the numerous views expressed in the legal literature on this issue, we believe that the following can be considered negative factors and conditions that affect the quality of training of human resources: 1) outdated methods of teaching practical disciplines; 2) lack of modern law enforcement training programmes; 3) ignoring international experience.

We strongly believe that the above-mentioned negative factors of the educational process can be eliminated by introducing international standards and practices. Moreover, a number of negative factors and conditions affect the successful implementation of international experience in the educational process.

The following is a list of them, which includes the lack of willingness of the academic staff of the specialised departments: 1) to change Soviet teaching methods; 2) to attend trainings and seminars on modern methods and techniques of conducting practical classes; 3) to work on existing international programmes to ensure personal safety of police officers.

In addition to a number of the above-mentioned negative factors and conditions that directly affect the state of personal security, we have to state the fact that today the educational process does not have proper material and technical support. The following example will substantiate this statement. At present, practical classes in the disciplines of Tactical and Special Training and Special Physical Training are conducted using rubber models of edged and firearms. Apparently, there is nothing unusual in the use of the above-mentioned equipment, as they are similar in size and standards to military weapons and can be used during practical training to simulate an attack on a police officer. However, we strongly believe that the use of the above-mentioned rubber products in the educational process is generally unacceptable, as it forms a certain principle of safety in future law enforcement officers, which is the misunderstanding that these items pose the greatest threat to their life and health in the practical work of a police officer. To support our own point of view, we would like to emphasise that another significant disadvantage of using a rubber firearm is that it does not allow for practical training in switching off the safety, feeding a cartridge into the chamber, firing and reloading the weapon. Meanwhile, the above-mentioned practical skills are an important part of the formation of motor actions that are so necessary in extreme situations. It should be noted that a significant disadvantage of using a rubber model of a cold steel weapon is the fact that when practising detention techniques, it does not leave a feeling of contact with a dangerous object, which in real situations leads to negative consequences. Failure to understand the danger of the situation makes it impossible for the future law enforcement officer to draw attention to other objects that pose a threat to his or her life and health, such as a blade, an awl, a sharpened coin, in the hands of criminal elements.

3. The role of the educational process in ensuring personal safety of National Police officers

In the context of the issues discussed in this article, the perspective of B.V. Lishchuk seems to be quite reasonable, the legal scholar notes that the application of foreign experience, primarily that of the USA, has significantly contributed to solving the problem of injuries and deaths of police officers, ensuring their personal safety while performing their duties. This included not only substantial financial support, but also the secondment to Ukraine of experienced instructors who participated in the training of police personnel under the US Department of Justice/ICITAP International Criminal Investigative Training Programme, primarily in tactical and firearms training. Today, police training in Ukraine is based on the American experience with its most effective approach to solving practical training problems (Lishchuk, 2016).

With regard to the above-quoted passage, we should note that a small percentage of the academic staff of specialised departments of higher education institutions with specific

training conditions and an even smaller percentage of teachers of initial professional training centres were involved in the training process under the above-mentioned International Training Programme. Therefore, in our opinion, the statement that police training is based on the American experience is not entirely appropriate.

Furthermore, it should be noted that borrowing international experience and introducing it into the educational process in law enforcement in other countries is a standard practice.

Therefore, in terms of the educational process in the context of gaining and implementing international experience, it should be noted that a large number of programmes and recommendations aimed at ensuring personal safety of police officers are developed and implemented in developed countries. For example, consider the experience of the United States of America, where the following programmes are in place to ensure the personal safety of police officers, namely: Officer Survival at the Incident Scene programme; Officer Survival during a Drug Seizure Raid programme; Officer Survival during Detention programme; Street Survival programme, etc. (Sobol, Kolomoitsev, 2012).

Therefore, we consider it a perfectly acceptable idea to consider, possibly refine (in accordance with the requirements of the current legislation) and introduce the above programmes into the educational process.

In this context, it is appropriate to emphasise that the above programmes require proper logistical support. By this requirement, we mean modern computer systems, special models of cold steel and firearms, as well as special equipment that can fully recreate real-life scenarios of law enforcement practice during practical training as part of the educational process.

Therefore, we see the following as ways to introduce international standards and practices to ensure the personal safety of police officers into the educational process: 1) forming the basis of the above-mentioned specialised departments with highly qualified scientific and pedagogical staff capable of changing the established standards of activity; 2) providing the educational process with modern equipment (inventory); 3) selecting and implementing the most optimal international programmes to ensure personal safety of police officers.

4. Conclusions

To sum up, it should be emphasised that today's realities require better training of the National Police. Moreover, the issue of ensuring personal security of the National Police officers remains relevant and requires modern approaches to address it. cannot be resolved only by solving the problem of the educational process. To a large extent, introduction of international standards and practices of ensuring the personal security of police officers in the educational process will facilitate changing the negative dynamics (trends), which has been observed recently. However, a comprehensive solution to the above problem is not possible only through changes in the educational process. Implementation of the proposed changes will improve the quality of law enforcement training in the educational process and create the basis for their safe operation.

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Максим Логвиненко,
ад'юнкт кафедри поліцейського права
Національної академії внутрішніх справ майор поліції
Солом'янська площа, 1, Київ, 03035
lohvynenko_maksym@ukr.net
***ORCID ID:** 0000-0002-8309-9012*

АКТУАЛЬНІ ПРОБЛЕМИ ЗАПРОВАДЖЕННЯ МІЖНАРОДНИХ СТАНДАРТІВ ТА ПРАКТИКИ ЗАБЕЗПЕЧЕННЯ ОСОБИСТОЇ БЕЗПЕКИ ПРАЦІВНИКІВ ПОЛІЦІЇ ДО ОСВІТНЬОГО ПРОЦЕСУ

Анотація. ***Мета.*** Мета статті полягає у визначенні актуальних проблем запровадження міжнародних стандартів та практики забезпечення особистої безпеки працівників поліції до освітнього процесу та пошуку перспективних шляхів їх вирішення. ***Результати.*** Статтю присвячено визначенню актуальних проблем запровадження міжнародних стандартів та практики забезпечення особистої безпеки працівників поліції до освітнього процесу у системі закладів вищої освіти із специфічними умовами навчання та системі центрів первинної професійної підготовки, а також можливих шляхів їх вирішення. Наголошено, що недостатній рівень підготовки кадрового резерву, безпосередньо, впливає на негативну тенденцію(динаміку) щодо загибелі, поранення або отримання різного роду тілесних ушкоджень працівниками поліції, під час виконання ними своїх професійних обов'язків. Зазначена актуальність досліджуваного питання у зв'язку із формуванням нових реалій діяльності правоохоронного органу. Вказано, що сьогодення вимагає сучасного рівня підготовки поліцейських. Визначено, що раніше запроваджені міжнародні стандарти та практики щодо забезпечення особистої безпеки працівників Національної поліції суттєво не вплинули на якість підготовки кадрового резерву в межах освітнього процесу. Акцентовано увагу, що вирішення проблемних питань освітнього процесу безпосередньо вплине на ефективність підготовки правоохоронців. ***Висновки.*** Зроблено висновок, що вирішення питання забезпечення особистої безпеки працівників Національної поліції неможливе лише за допомогою розв'язання проблеми освітнього процесу. Визначено перспективні шляхи щодо запровадження міжнародних стандартів та практики забезпечення особистої безпеки працівників поліції та покращення ситуації із забезпеченням освітнього процесу. З метою зміни негативної динаміки (тенденції), а також покращення ситуації в цілому щодо загибелі, поранення, травмування, каліцтва, психічного розладу, а також самогубства серед особового складу працівників Національної поліції під час виконання ними своїх професійних обов'язків запропоновано зупинитися на вирішенні питання запровадження міжнародних стандартів та практики забезпечення особистої безпеки працівників поліції в межах освітнього процесу.

Ключові слова: проведення занять, особиста безпека, службові обов'язки, правопорядок, оптимізація, поліцейський, професійна підготовка, система навчання, психологічна підготовка, освітній процес.

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Svitlana Maryshchuk,
postgraduate student at Scientific Institute of Public Law
2a H. Kirpa Street, Kyiv, Ukraine, 03035
maryshchuk_svitlana@ukr.net
ORCID ID: *0000-0002-2643-1302*

REGULATORY AND LEGAL FRAMEWORK FOR THE CONTENT OF ADMINISTRATIVE LIABILITY OF A NOTARY: ISSUES OF THE DAY

Abstract. ***Purpose.*** The purpose of the article is to determine the specific features of the regulatory and legal framework for the content of administrative liability of a notary. ***Results.*** Administrative offences are punishable even if they have not caused any material damage. Therefore, it is quite obvious that "administrative liability" has a completely different purpose and mission. This definition only confirms and demonstrates the absence of a regulatory position of Ukrainian lawmakers on this issue. Instead, administrative law scholars have developed a number of features inherent in "administrative liability" and by which it can be distinguished from other types of "legal liability". To some extent, this compensates for gaps in legislation and reduces some of its imperfections. ***Conclusions.*** In the course of the research, the following conclusions are made. First, the particularities of the main national legal regulation regarding the regulation of "administrative liability" do not allow the use of a formalised method of documentary analysis to determine the scope of "administrative liability" of notaries. The same flaw is found in the relevant law (Law of Ukraine "On Notaries") and other specialised regulations in this field of activities (in particular, the "Code of Professional Ethics for Notaries of Ukraine"). Second, the current national administrative legislation in general has a number of shortcomings that are not conducive to both the analysis of "administrative liability of notaries" and good law application practice in general. As of today, the shortcomings of the national legal and regulatory framework for this issue are: the lack of a clear legislative definition of the term "administrative liability"; the actual blocking of further development of regulating some types of "administrative liability" (in particular, in relation to legal entities) due to the substantive features of the term "administrative offence"; insufficient (non-exhaustive) codification of legal regulations, including those of different levels of legal force, on the issues of regulating "administrative liability", which has been inherent in the current CUAO for the entire period of its existence. Third, despite a large number of scientific developments relating to the specific features of "administrative liability", law application practice is characterised by difficulties in differentiating "administrative liability" from other types of "legal liability".

Key words: legal and regulatory framework, liability, administrative liability, notarial activities, notary.

1. Introduction

To begin our study, we should acknowledge the fact that the concept of " liability" is complex and multidimensional. This leads to a large number of perspectives on this phenomenon, as well as the existence of various classifications of " liability". For example, Shevchenko Prize winner V. Morenets emphasised this fact during an open meeting at the Kyiv Mohyla Business School. Both the status of the educational institution and the business orientation of the event itself indicate an extremely wide range of applications of the concept of "liability" to denote the relevant social phenomenon in society. However, the speaker focused on the so-called "external liability", which is "the response of society to our actions. ... All legal codes, courts of all jurisdictions are the sphere of external liability" (Morenets, 2017), according to the scholar.

For example, the Free Encyclopedia emphasises that in a broad general sense, "responsibility" is not a legal term, but primarily a sociological term that expresses a person's conscious attitude to the requirements of social necessity, duties, social tasks, norms and values. Responsibility means an awareness of the essence and significance of activities, their consequences for society and social development, and the actions of a person in terms of the interests of society or a certain group" (Wikipedia (the free encyclopedia), 2020). This interpretation, in our opinion, quite clearly shows the characteristics of "responsibility" as one of the signs of internal personality traits.

The professional literature now also contains references to approaches similar to the division of "responsibility" into internal and external. The latter are used, in particular, to analyse the "legal liability" of various actors (which, in turn, include notaries). For example, M. Veselov and L. Ladina argue that: "legal liability of a notary as a structural element of ... legal status consists not only in the application of appropriate coercive measures to a notary for an offence already committed (retrospective aspect), but also in the awareness of his/her responsibility for the proper performance of duties (prospective aspect)" (Ladina, Veselov, 2021).

Of course, one can debate the effectiveness of this approach in the field of legal sciences. However, all the above suggests that "responsibility" is not only an individual's internal attitude to his or her actions and decisions, but also external "feedback" from reality that should help the individual to understand the existing norms, requirements and rules. In this case, the formation of external mechanisms of influence (primarily formalised by the state) seems to be necessary and extremely important.

The problem of the concept and features of administrative liability is not new in administrative tort law. The following scholars have studied it: V. Averianov, V. Bevzenko, Y. Bytiak, V. Harashchuk, O. Dzhafarova, O. Drozd, E. Hetman, I. Holosnichenko, P. Dikhtievskyi, R. Kaliuzhnyi, L. Kovalenko, I. Koliushko, T. Kolomoiets, V. Kolpakov, A. Komziuk, S. Kuznichenko, O. Kuzmenko, V. Kuibida, E. Kurinnyi, D. Lukianets, P. Liutikov, O. Mykolenko, V. Moroz, Y. Onishchyk, S. Petkov, H. Pysapenko, D. Pryimachenko, V. Razvadovskyi, O. Riabchenko, A. Selivanov, S. Stetsenko, V. Tymoshchuk, A. Shkolyk, I. Shopina, and others.

Considerable attention to the study of legal liability of a notary in Ukraine has been paid by the following scholars: O. Vysiekantsev, I. Haievskyi, N. Denysiak, L. Ladina, O. Nelin, O. Popovchenko, I. Sviatetska, S. Khimchenko and others. Not to underestimate the importance of the scientific contribution of each scholar to the study of the problems of legal liability of a notary, we note that some issues have not yet received their proper thorough study.

2. Specificities of forming the content of an administrative offence

At present, the legislation in force, given the importance of the phenomenon of "liability", enshrines its content in a number of terms. For example, national regulations define: Tort liability; Disciplinary liability; Material liability, etc. A search of the national regulatory framework reveals more than two dozen terms containing the word "liability" (Verkhovna Rada Ukrainy – Ofitsiinyi webportal of the parliament of Ukrainy, 2020).

Moreover, the legislation reveals the meaning of the term "liability" as an independent category. According to the Agreement "On Cooperation on the Civil Global Navigation Satellite System (GNSS) between the European Community, its Member States and Ukraine", ratified by Law No. 553-V (553-16) of January 10, 2007, this term "means the legal accountability of a person or legal entity to *compensate for damage caused* to another person or legal entity in accordance with specific legal principles and rules" (On cooperation regarding the civil global navigation satellite system (GNSS) between the European Community, its member states and Ukraine, 2005).

It should be noted that the focus on "compensation" is atypical for administrative law. After all administrative offences are punishable even if they have not caused any material damage. Therefore, it is quite obvious that "administrative liability" has a completely different purpose and mission. This definition only confirms and demonstrates the absence of a regulatory position of Ukrainian lawmakers on this issue. Instead, administrative law scholars have developed a number of features inherent in "administrative liability" and by which it can be distinguished from other types of "legal liability". To some extent, this compensates for gaps in legislation and reduces some of its imperfections.

In 2013, Yu. Harust emphasised: "It should be noted that an attempt to give the concept of 'administrative liability' an official definition was made in the Draft Code of Ukraine on Administrative Offences of 2004. According to its Article 8, administrative liability is a means of protection and defence of public relations used by the state as administrative coercion and consists in applying administrative penalties and measures of influence established by this Code to the committer of an administrative offence. However, this document remained a Draft, and the definition of "administrative liability" is still absent in the legislation of Ukraine" (Harust, 2013).

Currently, various scientific definitions of the concept of "administrative liability" are contained in encyclopaedias, professional dictionaries, textbooks and research materials. For example, the Great Ukrainian Encyclopaedia (GUE) defines administrative liability as: "a type of legal liability that occurs as a result of administrative offences committed by persons" (Banchuk, 2021). However, scientific research is by no means complete. Despite the large number of definitions, many modern professional and educational materials empha-

sise the fact that: "the concept of administrative liability, its content and scope still remain one of the most controversial issues of Ukrainian administrative and legal science" (Multimedia training manual "Administrative responsibility", 2015). Moreover, "the constant discussions on this issue are primarily due to the rather widespread practice ... (of using this concept) in legal and law enforcement activities, (and) secondly, to the uncertainty on the part of the legislator ... (of the content of the relevant term)" (Drofych, 2022), as we have already described in some detail above.

In addition, the quoted remark on law application practice is reliable evidence of the existence of relevant, duly enshrined national legal provisions in the state. Therefore, despite the absence of the term "administrative liability" in the legislation, it is possible to identify the main legal instrument that regulates its content and scope. Such instrument is undoubtedly the Code of Ukraine on Administrative Offences (CUAO).

Currently, the CUAO contains about 330 articles (some provisions have been excluded from the original content of this instrument, while others have been added, resulting in the formation of new articles of the Code). Due to the volume of the document, its card is divided into two parts with identifiers 80731-X and 80732-X. On the basis of the information contained in the first card alone, it can be noted that the Code: has led to the adoption of 4 laws; currently refers to 100 other legal documents; national legislation refers to CUAO provisions 2,244 times (Verkhovna Rada Ukrainy – Ofitsiinyi webportal of the parliament of Ukrainy, 2020). Therefore, even without analysing the second card of this legal instrument, there is every reason to assert that this codified act is undoubtedly a very powerful and important one in the field of administrative law.

However, it should be emphasised that the current Code was adopted by the Verkhovna Rada of the Ukrainian Soviet Socialist Republic on 07 December 1984. In other words, it is definitely a legacy of the Soviet system with specific inherent flaws. This explains why it has been repeatedly edited and amended. Of course, since the adoption of the Code, the attitude of legal experts to the issue of "administrative liability" has gradually changed, transformed and improved. As a result, the CUAO has now undergone more than half a thousand changes and revisions.

A purely mechanistic study of the content of the CUAO reveals that notaries and notarial acts are directly mentioned 6 times. Of these, only 1 time is a notary mentioned to be subject to "administrative liability". Namely, in Article 163-9 "Illegal use of insider information". By the way, this article was added to the Code of Administrative Offences only in 2008 (by Law No. 801-VI of December 25, 2008), and the note to this article, which mentions the notary, was introduced by Law No. 3306-VI of April 22, 2011. The latest amendments to Article 163-9 were introduced by Law No. 738-IX of June 19, 2020, that is, only about three years ago.

Despite the above information, it is quite clear that the scope of "administrative liability" of notaries is primarily related to their professional activities and cannot be limited to the above article of the CUAO. Therefore, other articles of the Code can and should be applied to notaries, including in connection with the performance of their professional duties.

Therefore, the most obvious and logical solution to this problem (defining the scope of administrative liability of a notary) is to consistently study all (about three hundred) articles of the Code in order to identify those that may apply to notaries. However, we have good reason to believe that such a utilitarian approach is not only inconvenient but, unfortunately, will not provide one hundred per cent complete and reliable results.

The explanation for this statement is based on the content of Article 2 of the Code of Ukraine on Administrative Offences. This article is entitled "Legislation of Ukraine on Administrative Offences". In particular, it states that: "The legislation of Ukraine on administrative offences consists of this Code *and other laws of Ukraine. The laws of Ukraine on administrative offences shall be directly applicable until they are incorporated into this Code in accordance with the established procedure"* (Code of Ukraine on Administrative Offenses, 1984).

Therefore, despite all the power of the CUAO, this Code does not contain all the necessary information, and the list of its provisions on the definition of "administrative liability" is not exhaustive. And the same situation (with the "direct application" of provisions not included in the Code) has been observed from the very beginning of the publication of the CUAO.

In our opinion, this state of affairs does not indicate insufficient legislative elaboration, but rather demonstrates certain dynamics of administrative and legal issues and approaches to their solution. As an example of the transformation of "administrative liability", we can cite certain facts of regulating the application of "administrative liability" to legal entities.

The issue of "administrative liability of legal entities" was considered, for example: in 2008, in the textbook edited by T. Kolomoi-

ets "Administrative Law of Ukraine", clarifying that "in addition to the CUAO, proceedings on administrative offences are regulated by ... other regulations, usually by-laws, which regulate the issue of bringing legal entities to liability" (Kolomoiets, 2008); this problem was also analysed in 2017 in the scientific article by M. Kravets "Administrative Liability of Legal Entities" (Kravets, 2017); and in 2023, under the general editorship of S. Petkov, the publication *Administrative liability of legal entities. Legislation. Judicial practice* (Petkov, 2023); at the time of the study, the relevant materials were also posted on the reference and information platform of legal consultations of the Free Legal Aid system "WikiLegalAid", in particular, the source states that "the committer of administrative offences may be an individual who has reached the age of 16, and a legal entity regardless of its form of ownership" (WikiLegalAid website, 2020). However, in the CUAO itself, "administrative liability of a legal entity" is still not properly defined.

In the context of the above, it should be emphasised that Article 9 of the CUAO, revealing the essence of the concept of "administrative offence", suggests interpreting the latter as a guilty act or omission characterised by intentionality or negligence. Moreover, in Articles 10 and 11, the Code consistently describes the features of intent and recklessness. In defining these concepts, the legislation operates with categories such as: awareness; foresight of consequences; and recklessness. Nevertheless, all of these qualities are inherent exclusively to a person as a carrier of consciousness and cannot in any way be inherent in a legal entity in general. The term "legal entity" is defined by the Civil Code of Ukraine According to it: "a legal entity is an organisation established and registered in the manner prescribed by law..., (which) is endowed with civil legal passive and active legal capacity..." (Civil Code of Ukraine, 2003). Therefore, a legal entity a-priory does not have independent consciousness. And only its worker, official, or other person involved in its creation and functioning can be aware of something. Consequently, the very definition of the concept of "administrative offense" creates certain obstacles to the regulatory frame for "administrative liability of legal entities."

Moreover, the Law of Ukraine No. 596-VIII of 14 July 2015 added a number of articles to the CUAO. Among them, for example, Article 14-2, which provided for "administrative liability" not only of an individual but also of a legal entity for traffic violations that were recorded automatically. When creating this legal provision, the legislator obviously relied not on the current definition of an "administrative offense," but on the legal entity's passive and active legal capacity. The aforementioned legislative provision existed unchanged until December 21, 2017, when the Law of Ukraine No. 2262-VIII imposed liability under Article 14-2 of the Code of Administrative Offences on the head of a legal entity instead of the legal entity. In this regard, we would like to emphasise that probably any manager who has a private car fleet of at least a dozen cars understands that the previous version of the legislative provision was more favourable and, probably, fairer.

The above example demonstrates that the provisions of the Code of Administrative Offences depend on both the dynamics of law-making and the degree of development of scientific views in the field of law. In addition, Article 15 of the Code of Administrative Offences provides for "Liability of servicemen and other persons subject to disciplinary statutes for committing administrative offences". In addition, the Code of Ukraine on Administrative Offences itself uses other (besides the above) options for solving the problems of regulating "administrative liability". For example, Article 15 of the Code of Administrative Offences provides for "Liability of servicemen and other persons subject to disciplinary statutes for committing administrative offences". This article defines the cases and range of persons for whom "administrative liability" is replaced by disciplinary liability.

Therefore, the CUAO itself transforms administrative liability and transfers it to other legal regulations. This raises the problem of separating "administrative liability" from "disciplinary liability". The same issue (but on different grounds) was mentioned by O. Lytvyn back in 2010. In his research, the scholar noted: "the current legislation theoretically allows for the possibility of disciplinary and administrative penalties to be imposed on a civil servant for virtually the same offence. However, this state of affairs contradicts the general principle of fairness of legal liability and the impossibility of double penalties for the same offence" (Lytvyn, 2010).

In our opinion, it is worth summarising the above with I. Komarnytska's observations made in 2018 on the prospects for the development of the institution of "administrative liability". The scientist noted that: "today, the legislation in the field of administrative liability is characterised by unsystematic nature, even in the presence of a codified act. ... The current sources of administrative provisions are located outside the Code of Ukraine on Administrative Offences, which does not contribute to

the improvement of its practical application" (Komarnytska, 2018). Despite the fact that about half a decade has passed since this statement, we believe that it still applies to the current situation with the issue of "administrative liability".

Therefore, for a comprehensive study of the specific features of "administrative liability" of notaries, we have to turn to the legal regulations that have more sectoral focus on regulating the legal status and activities of the notary than the CUAO. Undoubtedly, the Law of Ukraine "On Notaries", issued at the end of 1993, is the main relevant piece of legislation.

3. Liability of notaries in the legislation of Ukraine

The issues of notaries' "liability" are particularly related to the following articles of the Law: Article 8 "Notarial Secrecy"; Article 21 "Liability of a Public Notary"; Article 27 "Liability of a Private Notary"; Article 28 "Insurance of Civil Liability of a Private Notary"; Article 29-1 "Grounds for Suspension of Notarial Activities of a Private Notary"; Article 30 "Grounds for Termination of Notarial Activities of a Private Notary"; Article 51 "Measures to be Taken by a Notary or an Official Performing Notarial Acts in the Event of Detection of a Violation of the Law".

The titles of the listed articles of the Law do not all relate to the notary's "liability". For example, Article 51 merely specifies the actions that a notary must take if he or she discovers a violation of the law in the course of his or her professional activities. It does not mention the " liability" to which the notary will be subjected. As for the other articles, we will look at their content further below. However, it should already be noted that none of them mentions "administrative liability" specifically. For the most part, they address the issue of compensation for damages caused by the notary's actions. Therefore, it is actually a different type of "legal liability".

Therefore, it can be argued that the current Law of Ukraine "On Notaries" also does not provide sufficiently complete information to identify the specific features of "administrative liability" of a notary. Furthermore, while continuing to search for regulations with relevant information, we should also pay attention to documents that are available, for example, on the relevant sections of the official web portal of the Ministry of Justice of Ukraine or the official website of the Notary Chamber of Ukraine (the NCU is an organisation that exercises professional self-government in the field of notary). The latter resource presents, for example, an internal regulatory document developed in the notary system, such as the Code of Rules of Professional Ethics for Notaries of Ukraine (the Code or the Code of Ethics).

"The Code of Ethics was approved on April 20, 2018 by the Meeting of Notaries of Ukraine (the Meeting of Notaries of Ukraine is a body of the NCU). Section V of this document defines "liability" for violations of this Code. In particular, the same section sets out the classification of relevant violations. This classification provides that; "violations may be minor, serious or particularly serious. ... The classification of violations as minor, serious or particularly serious is carried out by the NCU Council" (The Code of Professional Ethics of Notaries of Ukraine, approved by the Congress of Notaries of Ukraine, 2018).

It should be noted that the national classification is in line with international practices and recommendations in the field of notary activities. Moreover, the document under consideration is certainly important and useful. However, the types of violations of the rules of professional ethics by notaries listed in the Code of Ethics (as well as their classification) relate to different types of liability (criminal, disciplinary, etc.). Therefore, the analysed document (as well as the previously considered specialised law regulating the activities of notaries) does not solve the problem of differentiating the "administrative liability" of notaries, since it does not separately differentiate this type of "liability".

4. Conclusions

In conclusion, we should state the following. First, the particularities of the main national legal regulation regarding the regulation of "administrative liability" do not allow the use of a formalised method of documentary analysis to determine the scope of "administrative liability" of notaries. The same flaw is found in the relevant law (Law of Ukraine "On Notaries") and other specialised regulations in this field of activities (in particular, the "Code of Professional Ethics for Notaries of Ukraine"). Second, the current national administrative legislation in general has a number of shortcomings that are not conducive to both the analysis of "administrative liability of notaries" and good law application practice in general. As of today, the shortcomings of the national legal and regulatory framework for this issue are: the lack of a clear legislative definition of the term "administrative liability"; the actual blocking of further development of regulating some types of "administrative liability" (in particular, in relation to legal entities) due to the substantive features of the term "administrative offence"; insufficient (non-exhaustive) codification of legal regulations, including those of differ-

ent levels of legal force, on the issues of regulating "administrative liability", which has been inherent in the current CUAO for the entire period of its existence. Third, despite a large number of scientific developments relating to the specific features of "administrative liability" (namely, the definition of a detailed list of *features* of this type of "liability"; a meaningful scientific characterisation of *sanctions and methods of ensuring legality* used to enforce "administrative liability"; a large number of proposals for the introduction of *definitions* of the term "administrative liability"; *other characteristics*), law application practice is characterised by difficulties in differentiating "administrative liability" from other types of "legal liability".

Given these features, further scientific research should focus on an important characteristic of "administrative liability" such as the "grounds" for its application. Due to its construction by combining and streamlining the various elements which determine the occurrence of "administrative liability", this scientific category looks the most promising for further study of the phenomenon of "administrative liability of notaries".

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Світлана Марищук,
здобувач Науково-дослідного інституту публічного права
Київ, 03035, вул. Г. Кірпи, 2А
maryshchuk_svitlana@ukr.net
***ORCID ID:** 0000-0002-2643-1302*

НОРМАТИВНО-ПРАВОВЕ ЗАКРІПЛЕННЯ ЗМІСТУ АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ НОТАРІУСУ: ПИТАННЯ СЬОГОДЕННЯ

Анотація. ***Мета.*** Метою статті є визначення особливостей нормативно-правове закріплення змісту адміністративної відповідальності нотаріусу. ***Результати.*** Адміністративні правопорушення караються навіть якщо вони не завдали жодної матеріальної шкоди. Отже, цілком очевидно, що «адміністративна відповідальність» має зовсім іншу мету та призначення. А наведене визначення лише підтверджує та демонструє відсутність нормативно закріпленої позиції законотворців України щодо означеної проблеми. Натомість науковцями-адміністративістами вироблена ціла низка ознак, притаманних са́ме «адміністративній відповідальності» та за допомогою яких її можна відрізнити від інших видів «юридичної відповідальності». До певної міри це компенсує пробіли в законодавстві та зменшує деяку його недосконаліть. ***Висновки.*** В межах наукової праці зроблено наступні висновки. По-перше, особливості головного національного нормативно правового акту з врегулювання проблематики «адміністративної відповідальності» не дозволяють використати формалізований метод аналізу документації для окреслення кола «адміністративної відповідальності» нотаріусів. Такою самою вадою відрізняються: й відповідний профільний закон (Закон України «Про нотаріат») і інші спеціалізовані нормативні акти в цій сфері діяльності (зокрема «Кодекс правил професійної етики нотаріусів України»). По-друге, на сьогодні чинному національному адміністративному законодавству в цілому притаманна низка вад, які не сприяють як аналізу «адміністративної відповідальності нотаріусів», так і належній практиці правозастосування в цілому. Наразі до слабких сторін національного нормативно-правового врегулювання означеної проблеми варто віднести: відсутність чіткого законодавчого визначення терміну «адміністративна відповідальність»; фактичне блокування подальшого розвитку унормування деяких різновидів «адміністративної відповідальності» (зокрема в відношенні юридичних осіб), спричинене змістовними особливостями терміну «адміністративне правопорушення»; недостатня (невичерпна) кодифікація нормативно-правових актів законодавства, в тому числі різного рівня юридичної сили, що стосуються питань врегулювання «адміністративної відповідальності», яка притаманна чинному КУпАП протягом всього часу його існування. По-третє, не дивлячись на численну кількість наукових напрацювань, які стосуються особливостей «адміністративної відповідальності», правозастосовній практиці притаманне ускладнення із диференціюванням «адміністративної відповідальності» від інших видів «юридичної відповідальності».

Ключові слова: нормативно-правове закріплення, відповідальність, адміністративна відповідальність, нотаріальні діяльність, нотаріус.

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Oleksandr Moskvych,
Postgraduate student at Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
oleksandrmoskvych@ukr.net
ORCID ID: *0009-0006-6047-092X*

ON CHARACTERISTICS OF KEY FORMS OF TRAINING PERSONNEL FOR THE ARMED FORCES OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to describe the key forms of training personnel for the Armed Forces of Ukraine. ***Results.*** The article, relying on the analysis of scientific views of scholars on the interpretation of the concept of "form", offers the author's own approach to defining the category of "forms of training personnel for the Armed Forces of Ukraine". The author has formed his own approach to the list of relevant forms and provided their substantive characteristics. It is emphasised that nowadays, an important area of the State's activity is to improve not only the list of relevant forms, but also their content, which will be of great importance not only theoretically, but also practically. It is determined that the forms of personnel training for the Armed Forces of Ukraine should be understood as an external manifestation of the practical activities of specially authorised actors aimed at: a) creation of an environment conducive to the educational process of military personnel; b) direct personnel training (theoretical, practical, etc.). In view of the above, it is most appropriate to divide the forms of training for the AFU into two large groups: 1) administrative and legal forms aimed at creating the necessary conditions for the functioning of entities that provide training; 2) organisational forms aimed at direct training of personnel and are divided into: a) forms of collective; and b) individual training. It is determined that rulemaking as an administrative and legal form of personnel training for the Armed Forces of Ukraine enables to create an appropriate regulatory framework: first, for the activities of entities engaged in personnel support of the Armed Forces of Ukraine; second, for the work of educational institutions, their structural subdivisions, as well as commanders and teachers who train military personnel. ***Conclusions.*** The author concludes that the forms of collective training (military exercises; war games; conducting classes, including theoretical (in classroom), practical, tactical and specialised ones, etc.; training camps for reservists) and forms of individual training for the Armed Forces of Ukraine most meaningfully reflect the essence and content of activities related to training of personnel for the Armed Forces of Ukraine. Furthermore, in the present-day conditions, an important area of the State's activity is to improve not only the list of relevant forms, but also their content, which will be of great importance not only in theory, but also in practice.

Key words: forms, training of personnel, the Armed Forces of Ukraine, administrative forms, organisational forms.

1. Introduction

The effective functioning of the AFU requires proper training of personnel. The latter is the process of acquiring and forming a special set of professional theoretical knowledge and practical skills required for the effective performance of tasks and functions in the course of service, as defined by the current legislation. In view of the above, it would be fair to say that training of personnel is a crucial element of staffing, the purpose of which is to staff the AFU with specialists who can perform tasks aimed at ensuring the military security of the state at a high level. It should be noted that training of personnel for the AFU is a complex process that is reflected in a number of forms.

Some problematic issues related to the training of personnel for the AFU have been considered by the following scholars in their scientific works: V.B. Dobrovolskyi, Y.I. Medvid, S.V. Miroshnikov, N. Ye. Pankova, R.V. Pidleteichuk, A.B. Smorchkov, O.O. Tomilin, V.V. Shtuchnyi and many others. However, despite a considerable number of scientific achievements, the issue of forms of training for the Armed Forces of Ukraine is not well studied in the scientific literature.

That is why the purpose of the article is to describe the key forms of training for the Armed Forces of Ukraine.

2. Definition of forms of training for the Armed Forces of Ukraine

Starting the scientific research, it should be noted that in the scientific literature the concept of form is quite substantially studied from

the perspective of legal science. For example, N.M. Pakhomenko argues that legal form is, first of all, a scientific complex category that reflects various social phenomena that require regulation, and also serves as a framework within law, streamlines and combines all legal phenomena and law as such. According to the scholar, in the context of legal forms, law is referred to as a certain social phenomenon that differs from other phenomena (politics, religion, morality), which, together with law, are determined by the material and economic conditions of society. In other words, the concept of "legal form" is a general reflection of the objective relationship between law and the phenomena it affects, determining its place among other forms (Parkhomenko, Lehusha, 2008).

O.A. Movchan convincingly proves that the legal form is an instrument for optimal solution of practical tasks. It regulates relevant relations, allows comparing behaviour with established patterns, introduces regulatory principles into life, promotes organisation and order, and orientates parties to legal relations towards the most rational behaviour and actions. As a category of legal theory, legal form is characterised by generality and abstraction. According to the author, legal forms are personified groups of provisions that have regulatory expression as separate structures, legal regimes which in practice become stable and sustainable (Moldovan, Chulinda, 2010, p. 222). According to O. Movchan, legal forms are established by the legislator, because with their help the state has the opportunity to bring to life the most effective behaviour. The legal form ensures organisation and discipline in public sectors, introduces protective sanctions and determines the degree of liability for violators of recruitment, etc. (Moldovan, Chulinda, 2010, p. 86).

L.P. Hruzinova has identified the following essential features of forms from the legal perspective: 1) a legal form is an organisational form of activities that is always associated with consideration of a legal case: an offence, a dispute about law, a complaint. In this case, a legal case means a life circumstance directly provided for by law (or other regulatory act) that requires appropriate confirmation and legal support; 2) the legal form of activities is carried out exclusively by authorised state bodies, officials and other entities; 3) the legal form of activities is always expressed in transactions with legal provisions (associated with the use of substantive or procedural law as a derivative tool); 4) the results of the legal form of activities are always fixed in the relevant procedural documents, which are official in nature and have the form established by law; 5) the legal form of activities requires the establishment of a number of guarantees (relations that develop in the course of consideration of cases are regulated by the system of procedural law); 6) the legal form of activities is directly related to the need to use various methods and means of legal technique (Hruzinova, Korotkin, 2003).

Therefore, the forms of personnel training for the Armed Forces of Ukraine should be understood as an external manifestation of the practical activities of specially authorised actors aimed at: a) creation of an environment conducive to the educational process of military personnel; b) direct personnel training (theoretical, practical, etc.). In view of the above, it is most appropriate to divide the forms of training for the AFU into two large groups: 1) administrative and legal forms aimed at creating the necessary conditions for the functioning of entities that provide training; 2) organisational forms aimed at direct training of personnel and are divided into: a) forms of collective; and b) individual training.

V.V. Halunko argues that administrative forms are forms of activities of public administration - external expression of groups of administrative actions of public administrators which are homogeneous and legal in nature, carried out within the regime of legality and competence, to achieve the administrative and legal goal of public provision of human and civil rights and freedoms, normal functioning of civil society and the State (Halunko, Kurylo, Koroied, 2015).

V. Neviadovskyi argues that administrative and legal forms are: first, a special and rather complex expression of law. For example, its specificity is that the form is a set of legal instruments of influence, and not a separate rule. The latter, depending on their belonging to the relevant branch of law, are expressed in the relevant rules. The complexity of the forms is explained by the fact that they have an internal structure that combines a homogeneous methodology; second, the forms show a specific segment of legal reality to which the law is directed. For example, in the context of general legal or administrative and legal framework, legal influence is directed at the entirety of relations regulated by law or its separate branch, in particular, administrative law. On the other hand, forms of law outline legal influence, defining its specific goals and means of achieving them; third, forms are legally conditioned and determined by legislation (Nechyporenko, 2015).

V. Bashtannik and I. Shumliaieva argue that in administrative law, a form is an external practical expression of specific actions performed by public administration bodies. That is, it is a set of real, tangible actions of state bodies and their officials. According to scholars, the common

features of such forms are: 1) they are formed in the process of executive and administrative activity; 2) they are universal in relation to specific areas and branches of public administration; 3) the types of these forms depend on the type of administrative activity, etc. With regard to the classification of administrative and legal forms, scholars believe that the latter are divided into two groups: legal and non-legal. Legal activities are those that directly entail certain legal consequences and are performed on the basis of sufficiently complete legal registration. Non-legal forms have no direct legal significance and do not lead to specific legal consequences (Bashtatnnyk, Shumliaieva, 2018).

3. Administrative and legal forms of training of personnel for the Armed Forces of Ukraine

Therefore, considering the list of administrative and legal forms of training for the AFU, we should first of all highlight such a form as rulemaking. According to A.O. Nechyporenko, rulemaking is a complex scientific category characterised by the following: the initial stage of the legal regulation mechanism, an element of the legal system and legal culture of society, in the process of which needs and interests are transformed into mandatory, formally defined regulations and rules; a means of organising social management, but the process of rule-making is itself regulated by law and other social norms; purposeful activities that proceed in certain time intervals and contain internal elements - phases of the process of the legal norm's origin and entry into force, which change social life (Nechyporenko, 2015, p. 5).

T. Kurus argues convincingly that rulemaking is a special form of activity of competent rulemakers in the preparation, development, adoption and official promulgation of legal provisions based on the knowledge of objective social needs and interests of society (Kurus, 2013, p. 9). The key features of rule-making include the following: it is carried out by authorised actors: a) the State, its bodies (parliament, government, ministries, local administrations, etc.); b) civil society (people), its organisations; it is a form of power and volitional activity of authorised actors, which includes the study, generalisation and systematisation of typical specific legal relations arising in society; it is not a directive of the will of authorised actors, but a procedure for formulating norms that are inherent in social relations and have become typical actions of their participants; it is expressed in the authorisation of existing or establishment of new ones, amendment or suspension of existing and cancellation of outdated legal provisions on the grounds provided for by law; it is completed in a written act-document called a legal regulation (law) (Kurus, 2013, p. 10).

According to O. V. Petryshyn, rulemaking is the activity of authorised actors to develop, review, adopt and officially promulgate legal acts, which is carried out with due regard to a certain procedure (Petryshyn, 2014). The scientist proposed a fairly broad list of features of this scientific category: 1) rulemaking is a phase of law-making, and during rulemaking, normative legal acts should enshrine the rules of law that result from generalisation of the most important recurring social relations and are a means of eliminating harmful social practices; 2) rulemaking is a legal form of public authority activity along with law application, interpretation of law, control and supervision, and constitutional activities; 3) the result of rule-making activity is legal regulations, which formally enshrine the provisions of law; 4) rule-making is carried out by authorised actors, such as bodies and carriers of public authority; 5) rule-making is carried out according to a certain procedure regulated by law (Petryshyn, 2014).

Therefore, rulemaking as an administrative and legal form of personnel training for the Armed Forces of Ukraine enables to create an appropriate regulatory framework: first, for the activities of entities engaged in personnel support of the AFU; second, for the work of educational institutions, their structural subdivisions, as well as commanders and teachers who train military personnel.

The next administrative and legal forms of training are law application and law implementation. According to I.Yu. Khomyshyn, law application is an activity which ensures the continuity of the process of implementation of regulatory and legal provisions by granting subjective rights to some participants in legal relations and imposing relevant legal obligations on others, or by considering (resolving) issues of the consequences of legal disputes and offences, as well as bringing the perpetrators to legal liability (Khomyshyn, 2010). Y.L. Vlasov writes that law implementation is a managerial and organisational activities of competent state bodies and officials performed in a procedural manner, aimed at resolving specific cases by issuing individual legal prescriptions, that is, making a decision on the basis of law in a particular case. The main social purpose of the application of legal provisions is to create conditions and ensure the implementation of other forms of implementation of legal provisions. In many cases, the actual implementation of legal provisions in legal reality, conscious and volitional actions of people depends on the quality and efficiency of activities in the application of legal provisions (Vlasov, 2005, p. 25).

The next group of forms of training of personnel for the AFU is organisational, the content thereof actually follows from the forms of administrative and legal ones. It is most appropriate to group these forms into:

1) Forms of collective training, such as:

– military exercises. Military exercises are a specific pedagogical process, the essence of which is to acquire a system of knowledge, skills and abilities, to develop creative thinking, strengthen will and character, to form moral, psychological and combat qualities, and to be ready to perform a combat task. The content of training is the system of knowledge, skills and abilities that personnel acquire during their service. This system is determined by curricula and the combat training programme in all subjects (Lepeshynskyi, Hliebov, Listkov, Terekhov, 2011). Field training is the preparedness of servicemen, the cohesion of units, military units, command and control bodies and their ability to conduct combat operations in different conditions or perform other assigned tasks. The essence of field training of servicemen is their knowledge of weapons and military equipment, the ability to use them in combat, and to act confidently on the battlefield in different terrain, day and night, in all weather conditions. The essence of the field training of military units (subunits) is the ability to act in a coordinated manner in combat against a strong enemy using available means of destruction. The essence of field training of commanders and departments of military units (subunits) is the ability to plan combat actions in a short time and manage military units (subunits) in combat (during combat actions) in accordance with the current situation (Umanets, 2021).

– war games. Military (military-specialised, military-historical) games are conducted with students and cadets on the most important complex topics of the disciplines. Command and staff exercises are conducted after students and cadets have mastered the theoretical foundations of the relevant disciplines, learned the duties of officials and gained practical skills in their performance: preparation and planning of operations (combat actions), command and control of troops (forces) and their comprehensive support (Order of the Ministry of Defence of Ukraine on the approval of the Regulation on the peculiarities of the organization of educational activities in higher military educational institutions of the Ministry of Defence of Ukraine and military educational units of higher education institutions, 2020).

– conducting classes, including theoretical (in classroom), practical, tactical and specialised ones, etc.;

– training camps for reservists. Training camps are the main form of training for reservists and persons liable for military service, aimed at restoring (acquiring, improving) individual capabilities required for operations in positions within units. Depending on the purpose of the training, the training is divided into the following types: training of reservists - training of reservists in a military unit during their service in the military reserve to acquire the ability to perform duties in positions both individually and as part of a unit in accordance with the standards of training of the unit; training camps for reservists in military specialities (hereinafter referred to as ""MS") - training (retraining) of reservists in MS in training centres and military educational institutions in accordance with the positions to which they are appointed; training for persons liable for military service - training of persons liable for military service in military units (institutions) to which they are assigned for recruitment during a special period of mobilisation to acquire the capabilities to perform duties in positions both individually and as part of a unit in accordance with the standards of training of the unit; training camps for the training of specialists in shortage of military specialities - training of persons liable for military service in shortage of military specialities in the areas of manning military units (institutions); training camps for general military training - general military training of reservists and persons liable for military service who do not have military training in training centres, at general military training grounds or military units of territorial defence (Order of the Ministry of Defence of Ukraine on approval of the Instructions for organizing and holding meetings with reservists and conscripts in military administration bodies, units, military units, institutions and organizations of the Ministry of Defence of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service, 2022).

2) Forms of individual training for the AFU. Individual training is a purposeful and organised process of consistent training and education of all categories of servicemen aimed at developing the required level of knowledge, skills, professional competence, physical and psychological qualities to perform duties in their position (speciality) both in peacetime and in a special period (Instruction "On combat training in the armed forces of Ukraine", 2023). The most appropriate forms of training are course training, training camps, exercises defined by individual training programmes in the subjects of study (lectures, seminars, practical and group classes, group exercises, drills, training, etc.), internships, independent work, control measures, etc. (Ukrainian Military Pages website, 2016).

4. Conclusions

Therefore, the above forms most meaningfully reflect the essence and content of activities related to training of personnel for the Armed Forces of Ukraine. Furthermore, in the present-day conditions, an important area of the State's activity is to improve not only the list of relevant forms, but also their content, which will be of great importance not only in theory, but also in practice.

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Олександр Москвич,
здобувач
Науково-дослідного інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
oleksandrmoskvych@ukr.net
***ORCID ID:** 0009-0006-6047-092X*

ДО ХАРАКТЕРИСТИКИ КЛЮЧОВИХ ФОРМ ПІДГОТОВКИ КАДРІВ ДЛЯ ЗБРОЙНИХ СИЛ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є: надати характеристику ключовим формам підготовки кадрів для Збройних сил України. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених щодо тлумачення поняття «форма», запропоновано авторський підхід щодо визначення категорії «форм підготовки кадрів для Збройних сил України». Сформовано власний підхід щодо переліку відповідних форм, а також надано їх змістовну характеристику. Наголошено, що в умовах сьогодення, важливим напрямком діяльності держави є вдосконалення не тільки переліку відповідних форм, а й їх змісту, що матиме важливе не тільки теоретичне, а й практичне значення. Визначено, що формами підготовки кадрів для Збройних сил України слід розуміти зовнішній прояв практичної діяльності спеціально-уповноважених суб'єктів, яка спрямована на: а) створення належних умов для здійснення навчального процесу військовослужбовців; б) безпосередню підготовку (теоретичну, практичну, тощо) кадрів. З огляду на зазначене вище, форми підготовки кадрів для ЗСУ найбільш доцільно поділити на дві великі групи: 1) адміністративно-правові форми, які спрямовані на створення необхідних умов для функціонування суб'єктів, що здійснюють підготовку кадрів; 2) організаційні форми, що спрямовані на безпосередньо підготовку кадрів та поділяються на: а) форми колективної; та б) індивідуальної підготовки. З'ясовано, що нормотворчість, як адміністративно-правова форма підготовки кадрів для Збройних сил України дозволяє створити належне нормативно-правове підґрунтя: по-перше, для діяльності суб'єктів, що здійснюють кадрове забезпечення ЗСУ; по-друге, для роботи навчальних закладів, їх структурних підрозділів, а також командирів, викладачів, які здійснюють підготовку військовослужбовців. ***Висновки.*** Зроблено висновок, що форми колективної підготовки (військові навчання; воєнні ігри; проведення занять, зокрема теоретичних (аудиторних), практичних, тактико-спеціальних, тощо; навчальні збори резервістів) та форми індивідуальної підготовки кадрів для ЗСУ найбільш змістовно відображають сутність та зміст діяльності, пов'язаної із підготовкою кадрів для Збройних сил України. Разом із тим, в умовах сьогодення, важливим напрямком діяльності держави є вдосконалення не тільки переліку відповідних форм, а й їх змісту, що матиме важливе не тільки теоретичне, а й практичне значення.

Ключові слова: форми, підготовка кадрів, Збройні сили України, адміністративні форми, організаційні форми.

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Ruslan Oliinyk,
Postgraduate student at Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
oliinyk_ruslan@ukr.net
ORCID ID: *0000-0002-0087-9960*

STUDY OF THE SYSTEM OF ADMINISTRATIVE AND LEGAL FRAMEWORK FOR DETENTION OF PRISONERS OF WAR IN UKRAINE: CONCEPT AND CONTENT

Abstract. ***Purpose.*** The purpose of the study is an attempt to define the content of the concept of "administrative and legal framework"; to characterise the state of the "system of administrative and legal framework for the detention of prisoners of war". ***Results.*** The article proves that the system of administrative and legal framework for the detention of prisoners of war in Ukraine is a holistic and orderly, specialised organisational and legal structure designed to guarantee the regulatory, organisational and ideological components necessary for legal adjustment and practical managerial activities aimed at keeping captured representatives of the other party to a military conflict out of combat, in compliance with the provisions of international humanitarian law and the principles of humanism. It is substantiated that the system of administrative and legal framework for the detention of prisoners of war is characterised by dynamism of development, with its most active stage occurring in Ukraine after the beginning of the full-scale Russian military invasion. ***Conclusions.*** The development of the system derives from a combination of two aspects that determine its essence and development. These are the principles of humanism, primarily formed and enshrined in international legal treaties consented to be binding by the Verkhovna Rada of Ukraine, and the solution of functional tasks of practical orientation. In the national administrative law, this system is enshrined in laws and a set of bylaws. For proper practical implementation, the detention of prisoners of war also required the coordinated activities involving a large number of state bodies, and sometimes the creation of new entities whose competence is now defined in legislation. The main body in the system of central executive authorities responsible for formulating and implementing legal public policy on the detention of prisoners of war is currently the Ministry of Justice of Ukraine, the activities thereof are directed and coordinated by the highest body in the system of executive authorities – the Cabinet of Ministers of Ukraine.

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

1. Introduction

The system of administrative and legal framework for the detention of prisoners of war is characterised by dynamism of development, with its most active stage occurring in Ukraine after the beginning of the full-scale Russian military invasion. The development of the system derives from a combination of two aspects that determine its essence and development. These are the principles of humanism, primarily formed and enshrined in international legal treaties consented to be binding by the Verkhovna Rada of Ukraine, and the solution of functional tasks of practical orientation. In the national administrative law, this system is enshrined in laws and a set of bylaws. For proper practical implementation, the detention of prisoners of war also required the coordinated activities involving a large number of state bodies, and sometimes the creation of new entities whose competence is now defined in legislation. The main body in the system of central executive authorities responsible for formulating and implementing legal public policy on the detention of prisoners of war is currently the Ministry of Justice of Ukraine, the activities thereof are directed and coordinated by the highest body in the system of executive authorities – the Cabinet of Ministers of Ukraine.

The foregoing prompts a study of the system of administrative and legal framework for the detention of prisoners of war in the current context.

The importance of the issue under study has been highlighted by scholars, such as: V. Aloshyn, A. Amelin, Yu. Badiukov, P. Bohut-

skyi, M. Buromenskyi, Ya. Hodzek, A. Hryhoriev, M. Hrushko, O. Dzhafarova, A. Dmitriev, O. Drozd, S. Yehorov, O. Zhytnyi, J. Zhukorska, V. Zavhorodnii, V. Kaluhin, F. Kalskhoven, F. Kozhevnikov, F. Kryl, V. Lysyk, V. Lisovskyi, H. Melkov, V. Moroz, S. Nishchymna, A. Poltorak, V. Repetskyi, L. Savynskyi, L. Tymchenko, O. Tiunov, M. Khavroniuk, P. Khriapinskyi, M. Tsiurupa, S. Shatrava, and others.

The purpose of the study is an attempt to define the content of the concept of "administrative and legal framework"; to characterise the state of the "system of administrative and legal framework for the detention of prisoners of war".

2. The essence and main elements of military captivity

Firstly, it should be noted that the essence of military captivity as a social and historical phenomenon is quite obvious. The purpose of military captivity is to ensure that persons participating in hostilities on the side of the enemy are held by the other party to a military conflict outside of combat without their physical destruction. However, as life shows, there are actually many options for implementing such detention: from quite humane to completely inhumane. Thus, the question arises: what standards, rules, and approaches should be used to regulate the detention of prisoners of war? After all, such actions certainly cannot be spontaneous and uncontrolled by each of the warring parties. Therefore, we should talk about a certain regulatory and legal system for their settlement, ordering and provision. The study of such a system should begin with clarifying the essence of the main terms.

When we define the concepts relevant to our study, we immediately encounter various interpretations of the main categories and phenomena. For example, the word "framework" is used in the legal terms of national legislation quite widely – more than 350 times (Official website of the Parliament of Ukraine – Legislation of Ukraine, 2023). Of these, the term "framework" is defined 11 times in specific legal regulations (mostly national regulations and international legal agreements related to financing, settlements and accounting) [2]. For example, the Rules for Accounting for Income and Expenses of Banks of Ukraine define "framework" as: "an obligation with an indefinite term or amount" (Resolution of the Board of the National Bank of Ukraine On the Approval of the Rules for Accounting of Income and Expenses of Banks of Ukraine, 2018). Therefore, the existing official terminological explanations do not fully meet the needs of our search, and we should turn to a more generalised, interdisciplinary interpretation of this concept.

The *Ukrainian Language Dictionary* (ULD) explains the word "framework" as an action with the meaning of "to support" or "to ensure". The latter, in turn, can be interpreted in several ways: "1. To supply something in sufficient quantity to satisfy someone or something in some need; 2. To create reliable conditions for the implementation of something; to guarantee something; 3. To protect, to guard someone or something from danger" (Bilodid, 1972). Therefore, "framework" implies the creation of the necessary conditions, including legal ones, to guarantee the expected result.

However, less generalised and closer to the field of law is the definition proposed, for example, by DCAF (Geneva Centre for the Democratic Control of Armed Forces, established in 2000 at the initiative of the Swiss government. DCAF is a foundation that aims to improve security sector governance through reforms) (Geneva Center for security sector governance (integrity of the security sector), 2023). The Centre actively operates, for example, with the concept of "regulatory framework", suggesting what it means: “Regulatory frameworks are legal mechanisms that exist on national and international levels” (Geneva Centre for security sector governance (integrity of the security sector), 2023).

Therefore, the semantic content and structure of the concept of "framework" varies significantly depending on the scope of application and the clarifications added to it. For this reason, we should review more closely the content of the entire conceptual construct – "system of administrative and legal framework".

This formulation is widely used in the professional literature but is rarely explained in detail. However, the most common explanations relate to the first part of the above construction which is the category of "administrative law system". First of all, it is contained in textbooks and manuals (Melnyk, Bevzenko, 2014; Pysarenko, 2018; Bytiak, Balakarieva, Bielikova, 2023). Describing the content of this entity, scholars mostly list the structural parts of the branch of law – general, specific, sometimes special parts, as well as the relevant individual sub-branches. Or, on the contrary, they use a different approach to classification and identify certain important constituent elements of this category, such as provisions, principles, institutions, procedures, etc. These features clearly demonstrate that different classification options may be used to characterise the construction of the "system" as such. In addition, it can be stated that in the above cases it refers to the entire branch of "administrative law" in general. We are only interested in a specific line of work (namely, the detention of prisoners of war).

In this regard, it should be noted that in articles and studies referring to a specific subject matter, the wording "administrative and legal system" is mostly used (quite similar to the above). In combination with certain clarifications regarding the issues under study, this wording is used as a more specific (specialised or focused) one. However, its content is less clearly defined in the professional literature. Therefore, the concept of "administrative and legal system" should be further analysed.

To begin with, we should clarify the meaning of the word "system". The Free Encyclopedia reports the origin of this word from the ancient Greek "σύστημα" – a combination, whole or connection (Wikipedia (Free Encyclopedia), 2023). The Dictionary of Foreign Words confirms the Greek origin of the word "system" and suggests translating it as "formation" or "composition". The dictionary provides several interpretations of this concept and describes the content of this category as: "an order caused by the correct arrangement of parts, an orderly series, a connected whole; or as a set of parts connected by a common function..." (Lukianiuka, 2023).

The Encyclopaedia of Literature also associates the word "system" with the Greek "systêma", that is, "formation". This source emphasises that this concept refers to a unity caused by the orderliness of its components. Moreover, the integrity of the system is not reduced to the sum of its components, each of which has a specific place and function in the structure that determines their hierarchy and the operation of the entire system (Kovaliv, 2007).

Therefore, a "system" is characterised by its specific function or purpose. Proceeding from the above, it can also be argued that a "system" is a general scientific concept that denotes a set of ordered elements united into a single structure that acquires qualities different from its individual parts.

As a matter of fact, the concept of "legal system" has also been repeatedly studied by scholars and is widely used in scientific practice. In this regard, it would be appropriate to quote the description given to this legal construct by the Centre for Legal Reform and Legislative Work at the Ministry of Justice of Ukraine. According to the definition of the Centre: the concept of "legal system" expresses a specific historical, actually existing complex of interdependent legal means and phenomena of the state, including regulatory, organisational, social and cultural aspects... (Ministry of Justice of Ukraine (official website), 2023).

The Liga 360 platform provides the following background information on the content of the category "legal system": "1) the entirety of legal means (phenomena) through which the regulatory, organisational and stabilising influence of the state on social relations is exercised. The legal system is a complex, integrative category that *reflects the entire legal reality*, which is considered in static and dynamic aspects. *The static aspect of the legal system* is formed by: a) legal provisions, legal institutions and legal principles (the regulatory dimension of the legal system); b) law-making, law application and law enforcement bodies and organisations (the organisational dimension of the legal system); c) legal views, ideas, concepts (the ideological dimension of the legal system). *The dynamic aspect of the legal system* is formed by law-making, law application and law enforcement activities of competent actors; ..." (Liga 360 (IT platform), 2023).

3. Legal and regulatory framework for the detention of prisoners of war in Ukraine

The "legal reality" referred to above is an overly broad category. Therefore, we have to clarify the meaning of the part of the terminological construction that narrows it. Specifically, it is necessary to characterise what is meant by the "administrative and legal" orientation.

In this regard, this article will address the meaning of the terms "administration" and "administrative". "They originate from the Latin word *administratio*, which literally means 'management', 'activities to manage something'. Hence, administrative law is an independent branch of law that regulates homogeneous social relations, mainly in the field of public administration. Public administration is understood as organising activities of executive authorities and local self-government bodies, which are aimed at ensuring the implementation of laws and other legal regulations by all state actors" (Ostapenko, Kovaliv, Yesimov, 2021).

To sum up, there are grounds to assert that the "administrative and legal system" is a complex, purposefully formed entity which may relate to administrative law in general or be considered only as part of it when it comes to ensuring a specific focus of work or regulating the solution of a particular social problem. However, in any case, this "system" provides a regulatory, organisational and ideological basis for the proper regulatory framework for a specific type of relationship and creates a regulatory basis for the work of state actors that are supposed to support and perform the relevant activities.

Therefore, the "system of administrative and legal framework" includes not only a set of legal regulations, but also a range of specific state actors that support and ensure the actual effect of legal requirements, rules and provisions in practice.

Therefore, we have outlined the list of components that currently require further research (legal regulations and participants or implementers). Before that we have proven that this "system" in our country is in the process of being formed. Some of its elements are being improved, and some are being created for the first time. However, compliance with generally recognised international requirements, that is, their practical implementation (filling the system with content), depends on the real capabilities of the state (that is, available resources and goals). For example, transportation, feeding, medical care, accommodation and other activities carried out during the detention of prisoners of war require costs. Different countries have different resources, so there is a natural variation in implementation. Some activities require the creation of new state actors. These include, for example, the "Coordination Headquarters for the Treatment of Prisoners of War" mentioned above. Therefore, given its inherent dynamism, it is impossible to assess the real state of the "system of administrative and legal framework for the detention of prisoners of war" by relying only on the analysis of the structure outlined above. For this purpose, it is necessary to at least clarify the "essence" of the said "system". After all, only its understanding will provide a proper criterion for an adequate assessment of the current state of affairs.

It should be noted in this regard that, for example, the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949 (which revised the Convention concluded in Geneva on July 27, 1929) in Article 3 requires that “persons ... shall in all circumstances be treated humanely...” (Geneva Convention relative to the Treatment of Prisoners of War, 1949). Further, this Article of the Convention lists the actions that are prohibited.

Therefore, international law insists on adherence to the principles of humanism and indicates activities that are inhumane, while providing a specific list of such actions. In other words, the Convention states certain human rights that shall remain inviolable. Moreover, the international legal instrument does not clearly (in detail and in full) establish and, for obvious reasons, cannot establish how the relevant national "system" of its «framework" should be built (by which state actors, in what scope and budgets it should be implemented, on what features it should be emphasised, etc.) Therefore, international law establishes the conceptual and ideological basis, but the very construction of the "system" and its "essence" must still be formed in national legislation, and primarily at the level of law.

The search for national legal provisions that can denote the "essence" of the relevant "system" opens up the provisions of the Criminal Code of Ukraine (CCU), adopted in 2001. For example, Chapter XIX of the Criminal Code of Ukraine "Criminal Offences against the Established Order of Military Service (Military Criminal Offences)" contains Article 434 "Ill-treatment of Prisoners of War". The following is its content: "Ill-treatment of prisoners of war that has *occurred repeatedly, or is associated with particular cruelty*, or is against the sick and wounded, as well as negligent performance of duties towards the sick and wounded by persons entrusted with their treatment and care, in the absence of signs of a more serious crime, shall be punishable by imprisonment for up to three years" (Criminal Code of Ukraine, 2001).

However, this Code provides for punishment not only for "repeated ill-treatment or cruelty". In this context, the content of Article 438 of the Criminal Code of Ukraine, which we have already mentioned, is also important. It is included in Section XX of the Code "Criminal Offences Against Peace, Human Security and International Law and Order". This Section contains a total of 14 articles.

According to Article 438 of the Criminal Code of Ukraine "Violation of the Laws and Customs of War": "1. Ill-treatment of prisoners of war ... other violations of the laws and customs of war provided for in international treaties consented to as binding by the Verkhovna Rada of Ukraine, as well as the ordering of such actions, shall be punishable by imprisonment for a term of eight to twelve years. 2. The same acts, if combined with premeditated murder, shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment" (Criminal Code of Ukraine, 2001).

The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 was signed on behalf of Ukraine on 12 December 1949 and ratified by Ukraine on 03 July 1954. The Convention entered into force for Ukraine on 03 January 1955. Then, on February 08, 2006, the modern independent State of Ukraine issued the Law "On Withdrawal of Reservations of Ukraine to the Geneva Conventions for the Protection of War Victims of 12 August 1949". In particular, the Law states: Ukraine declares that the provisions of Articles 10, 12, 85 of the Geneva Convention relative to the Treatment of Prisoners of War (995_153) ... shall apply to cases that may arise from the date of receipt by the Depositary of the notification of the withdrawal of Ukraine's reservations (Law of Ukraine On the withdrawal of Ukraine's reservations to the Geneva Conventions for the Protection of War Victims of August 12, 1949, 2006).

The context of the above quote suggests consideration of Article 12 of the relevant

Convention, which states: "Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them" (Geneva Convention relative to the Treatment of Prisoners of War, 1949).

Therefore, our state, assuming responsibility for the humane treatment of persons in its captivity, established that inhumane treatment is a criminal offence at the very first step of building the relevant "system of framework". This established the proper ideological basis for further legal, regulatory, structural and organisational development at the national level. Therefore, the "essence" of the entire "administrative and legal framework for the detention of prisoners of war" is reduced to building a "system" that should prevent specific criminal offences and guarantee humane conditions of detention.

However, the above-mentioned national legal provisions are not without their drawbacks. After all, the very definition of the relevant criminal offences in national legislation is not clear enough and requires mandatory reference to numerous provisions of international humanitarian law. It should be emphasised that attempts to correct this imperfection are being made by lawmakers with varying degrees of success. By this we mean, for example, the Draft Laws of Ukraine: "On Amendments to Some Regulations of Ukraine on the Implementation of International Criminal and Humanitarian Law" (Registry No. 2689 of December 27, 2019; on June 07, 2021, the Law was sent to the President of Ukraine for approval) (Draft Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law, 2019) and "On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine" (Registry No. 7290 of April 15, 2022; Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine, Draft Law No: 3562-IX of 06 February 2024) (Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine, 2022). In both cases, the initiatives of these draft laws relate, inter alia, to amendments to Articles 434 and 438 of the CC of Ukraine, which we have discussed above.

Conclusions

The system of administrative and legal framework for the detention of prisoners of war in Ukraine is a holistic and orderly, specialised organisational and legal structure designed to guarantee the regulatory, organisational and ideological components necessary for legal adjustment and practical managerial activities aimed at keeping captured representatives of the other party to a military conflict out of combat, in compliance with the provisions of international humanitarian law and the principles of humanism.

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Руслан Олійник,
здобувач
Науково-дослідного інституту публічного права
Київ, 03035, вул. Г. Кірпи, 2А
oliinyk_ruslan@ukr.net
ORCID ID: *0000-0002-0087-9960*

ДОСЛІДЖЕННЯ СИСТЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ТРИМАННЯ ВІЙСЬКОВОПОЛОНЕНИХ В УКРАЇНІ: ПОНЯТТЯ ТА ЗМІСТ

Анотація. ***Мета.*** Метою дослідження є спроба окреслити зміст поняття «систем адміністративно-правового забезпечення»; охарактеризувати стан «системи адміністративно-правового забезпечення тримання військовополонених». ***Результати.*** В науковій статті доведено, що система адміністративно-правового забезпечення тримання військовополонених в Україні представляє з себе – цілісне й упорядковане, спеціалізоване організаційно-правове утворення, призначене гарантувати нормативну, організаційну та ідеологічну складові, які необхідні для правового впорядкування і здійснення практичної управлінської діяльності, спрямованої на утримування захоплених представників іншої сторони військового конфлікту поза боєм, із дотриманням при цьому положень міжнародного гуманітарного права і засад гуманізму. Обґрунтовано, що система адміністративно-правового забезпечення тримання військовополонених характеризується динамічністю розвитку, найбільш активний етап якого відбувся в Україні після початку повномасштабного російського військового вторгнення. ***Висновки.*** Розбудова системи витікає з поєднання двох аспектів, які визначають її сутність та розвиток. А саме, із засад гуманізму передусім сформованих та закріплених в міжнародних правових договорах, згода на обов'язковість яких надана Верховною Радою України, та вирішення функціональних задач практичної спрямованості. В національному адміністративному праві означена система знайшла своє закріплення на рівні законів та сукупності підзаконних нормативно-правових актів. Тримання військовополонених для належної практичної реалізації також потребувало злагодженої діяльності численної кількості державних органів, а подекуди й створення нових суб'єктів, компетенція яких наразі визначна в законодавстві. Головним органом у системі центральних органів виконавчої влади, що забезпечує формування та реалізує державну правову політику з питань утримання військовополонених наразі є Міністерство юстиції України, діяльність якого спрямовується і координується вищим органом у системі органів виконавчої влади – Кабінетом Міністрів України.

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

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Serhii Cherviak,
Applicant for the degree of Candidate of Juridical Science at Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
serhiicherviak@ukr.net
ORCID ID: *0000-0001-6212-9905*

PAEDIATRIC PALLIATIVE CARE AS VECTOR OF PUBLIC HEALTH POLICY IN UKRAINE

Анотація. ***Purpose.*** The purpose of the article is to reveal paediatric palliative care as a direction of public health policy in Ukraine based on a systematic analysis of the integration of administrative and medical law. ***Results.*** The article reveals that paediatric palliative care is an integrated system of medical and psychological care and social support for children with serious or incurable diseases aimed at improving the quality of their lives and the lives of their families, provided from the moment of diagnosis and covering all aspects of the child's development, education, socialisation and emotional support. It has been established that the specific features of the provision and management of paediatric palliative care in Ukraine are as follows: 1) integration into the medical and social spheres. Paediatric palliative care in Ukraine requires the active involvement of various medical specialties, as well as integration with educational, social and psychological services to provide comprehensive support to children and their families; 2) accessibility, individuality and child-centredness. Palliative care should be available wherever the child is. The age-related peculiarities of children, their physical, emotional and cognitive development require special approaches to palliative care. ***Conclusions.*** Palliative care is provided from the moment of diagnosis until the end of the child's life, taking into account individual needs and characteristics; 3) planning and coordination of services. An important component of palliative care is the development and regular review of a follow-up plan for each child, which ensures ongoing monitoring of the child's condition and appropriate adaptation of medical and social interventions; 4) the special role of the family. Parents or legal representatives are actively involved in decision-making regarding the treatment and care of the child; in addition, training parents in home care skills is an important aspect of providing quality palliative care; 5) social effects. A child's long-term illness affects the social life of the whole family, so palliative care should help to preserve and support the social roles and functions of the child and his or her family in the context of illness.

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

1. Introduction

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).

Palliative care is undoubtedly important, as for a large proportion of incurably ill patients, this support is the only source of medical treatment. That is why it is necessary to ensure that palliative care services are available to every patient. However, Ukraine cannot yet be proud of such achievements in the field of palliative care. Volunteer organisations play an important role in providing palliative care, organising mass events, campaigns, and cooperating with the media, thus helping patients to receive palliative care (Development problems of palliative and hospice care services, 2016; Kolenichenko, Kuzmenko, 2016).

Ukraine has not yet developed a national policy for the development of the palliative care system. Although certain progress and successes have been achieved in the palliative care system over the last period, initiatives, policy priorities for the development of this system, and their lobbying in political circles are usually formed and implemented from the "bottom up". Often, the efforts of initiative groups consisting of progressive doctors, scientists, and NGOs to resolve urgent issues in this system at the state level are met with indifference from politicians and political parties and are levelled by them (Danyliuk, 2017, pp. 218-229).

Modern research emphasises the need to develop and implement public policy that would meet the needs of society and take into account 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 such scholars as: V. Averianov, I. Buriak, Z. Hladun, D. Homon, H. Muliar, A. Kuchur, A. Manzhula, A. Markina, S. Sabluk, O. Sidelkovskyi, E. 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 paediatric palliative care as a direction of public health policy in Ukraine based on a systematic analysis of the integration of administrative and medical law.

2. **Public health policy in Ukraine**

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 face problems related to life-threatening diseases. This complex includes measures to prevent and alleviate patient suffering through early identification and assessment of symptoms, pain relief and overcoming 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 divided 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 responsible for the formation and implementation of public health policy (Law of Ukraine Fundamentals of Ukrainian legislation on health care, 1992).

The Procedure for Palliative Care, approved by 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).

Paediatric palliative care, on the one hand, is a separate area of medical and psychological care, and on the other hand, it requires such a broad service that it should be integrated not only into various medical specialties but also into other areas of human life. Palliative care should be provided to children with incurable diseases from the moment of diagnosis; be available in any city, regardless of the institution (providing an adequate service in an adequate place at the right time for the child, for as long as necessary); be child and family-centred; all measures should take into account age-specific features and be aimed at improving the quality of life of the child and his/her family, but not at giving up the fight. The age-related peculiarities of childhood cause certain difficulties in providing medical support to palliative care patients and require numerous additional interventions to ensure the development, education, socialisation and other needs of the child and his/her family (Kurilina, 2019, pp. 40-48).

In Ukraine, palliative care as a separate type of care has begun to develop only in the last few years, first as care for children with onco-haematological diseases, and later, with the emergence of models based on children's homes, as care for children with congenital and hereditary pathology and other conditions (Cherny, Radbruch, 2009; Moiseienko, 2015, p. 36).

According to the Procedure for Palliative Care, approved by Order of the Ministry of Health of Ukraine No. 1308 of 04 June 2020, palliative care for patients aged from birth to 18 years (hereinafter referred to as paediatric patients) is provided in accordance with the provisions of general legislation, taking into account certain specifics. Planning of palliative care for a paediatric patient provides for the development and review of the Plan of care for a paediatric patient in need of palliative care.

Palliative care services for children are created in accordance with the needs of the child population, morbidity, demographic, geographical, infrastructural and other features of the region, as well as the needs of local governments (amalgamated territorial communities). When organising palliative care for paediatric patients, preference shall be given to organisational forms that allow for the provision of palliative care at home with the involvement of family members or legal representatives of the child, subject to the informed consent of the paediatric patient or his/her legal representative and taking into account changes in the condition and needs of the paediatric patient. During the stay of a Paediatric Patient in a healthcare facility providing palliative care, the child's right to stay with his/her family members, regardless of the Paediatric Patient's condition, until the end of his/her life is ensured. In case of changes in the condition of the Paediatric Patient and the need for examinations, treatment of acute conditions and surgical interventions, the Paediatric Patient shall be referred to specialised healthcare facilities with his/her consent and/or consent of his/her legal representative. A healthcare facility, regardless of its form of ownership and individual entrepreneur, providing palliative care to a Paediatric Patient may provide his/her family members/legal representatives with medicines and medical devices for use by the child at home, organise training for parents or legal representatives of the child to work with equipment used at home and skills of caring for the Paediatric Patient (if the Paediatric Patient and/or family members/legal representatives wish to continue treatment at home). After the Patient reaches the age of 18, for the purpose of continuity of palliative care, the Patient is referred to a health care facility that provides palliative care to the adult population. Palliative care for the Patient after reaching the age of 18 may be provided in children's health care facilities, taking into account the Patient's condition, mobility, availability of palliative care services for the adult population in the administrative-territorial unit (hospital district) and by the decision of the head of the health care facility (Order of the Ministry of Health of Ukraine On improving the organization of palliative care in Ukraine, 2020).

3. Paediatric palliative care in Ukraine

Palliative care for children is a new area of medical and psychosocial care. In order to properly develop approaches to palliative care for children in Ukraine, it is necessary to study the differences in its provision to this category of patients. Distinctive features of paediatric palliative care: 1. Few patients (compared to palliative care for the adult population). 2. A variety of pathologies (neurological, metabolic, chromosomal, cardiac, respiratory, infectious, oncological, traumatic, neonatal, etc.) with unpredictable duration of illness; many diseases are familial, some remain unverified. 3. Official age restrictions on the use of medicines for children, resulting in many medicines being prescribed by paediatricians in the "off label" mode (i.e., without mentioning them in the instructions for use). 4. Developmental factors: children are in the process of constant physical, emotional and cognitive development, which affects all aspects of palliative care - from medication dosage to communication, education and support. 5. Significant role of the family: the patient's parents are deeply involved in the process of making decisions related to palliative care - clinical, ethical, social. 6. Paediatric palliative care is a relatively new field of medicine, which at this stage of its development results in an insufficient number of experts and specialists who have undergone special training in palliative care. 7. High level of emotional involvement: when a child dies, it can be extremely difficult for family members and staff to accept the failure of therapy, the incurability of the disease and death. 8. Loss and grieving: after the death of a child, these processes are often difficult, prolonged and complicated for parents and relatives, which determines the nature of long-term professional support for parents after the loss of a child. 9. Legal and ethical aspects of palliative care for children: as a rule, these aspects are addressed to parents or official representatives of the child's interests. The child's wishes and participation in the decision-making process are often not considered, which can lead to great moral and legal difficulties in providing care. 10. Social consequences: it is difficult for the child and his/her family members to maintain their social roles in the context of the disease (school, work, family support, etc.) (Cherny, Radbruch, 2009; Moiseienko, 2015).

The diversity of conditions in children in palliative care requires the creation of integrative links in general paediatric care, both at the outpatient and inpatient levels. The model of optimal paediatric palliative care is based on three interconnected levels of service provision in the healthcare system for synergistic functioning and for the earliest possible start of care. This determines the rapid development of a wide network of palliative care in the world, with primary care providing educational and policy initiatives to ensure the basic elements of paediatric palliative care from the moment of diagnosis of a life-limiting illness. At the secondary level, specific groups of children at the end of life are identified in order to obtain standardised

approaches to the management of individual conditions and to determine the location of services. This frees up specialised palliative care as a tertiary level to address the most complex issues: complex symptom management, complex issues and complex decision-making (Friedrichsdor, Bruera, 2018; Kurilina, 2019). Specialised care is provided by a team of trained professionals, including doctors, nurses, psychologists, social workers, priests and other specialists who can be called upon to provide specific medical interventions, treatment and counselling. In addition to providing the right amount of care in the right place, such integration ensures adequate parental and healthcare provider relationships, family adaptation to the child's illness, communication and decision-making (Mack, Wolfe, 2016; Kurilina, 2019).

4. Conclusions

Therefore, paediatric palliative care is an integrated system of medical and psychological care and social support for children with serious or incurable diseases aimed at improving the quality of their lives and the lives of their families, provided from the moment of diagnosis and covering all aspects of the child's development, education, socialisation and emotional support.

The specific features of the provision and management of paediatric palliative care in Ukraine are as follows:

1) Integration into the medical and social spheres. Paediatric palliative care in Ukraine requires the active involvement of various medical specialties, as well as integration with educational, social and psychological services to provide comprehensive support to children and their families;

2) Accessibility, individuality and child-centredness. Palliative care should be available wherever the child is. The age-related peculiarities of children, their physical, emotional and cognitive development require special approaches to palliative care. Palliative care is provided from the moment of diagnosis until the end of the child's life, taking into account individual needs and characteristics;

3) Planning and coordination of services. An important component of palliative care is the development and regular review of a follow-up plan for each child, which ensures ongoing monitoring of the child's condition and appropriate adaptation of medical and social interventions;

4) Special role of the family. Parents or legal representatives are actively involved in decision-making regarding the treatment and care of the child; in addition, training parents in home care skills is an important aspect of providing quality palliative care;

5) Social effects. A child's long-term illness affects the social life of the whole family, so palliative care should help to preserve and support the social roles and functions of the child and his or her family in the context of illness.

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Сергій Червяк,
здобувач наукового ступеня кандидата юридичних наук
Науково-дослідного інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
serhiicherviak@ukr.net
ORCID ID: *0000-0001-6212-9905*

ПЕДІАТРИЧНА ПАЛІАТИВНА ДОПОМОГА ЯК НАПРЯМ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я В УКРАЇНІ

Анотація. ***Мета.*** Мета статті полягає в тому, щоб на основі системного аналізу інтеграції адміністративного та медичного права, розкрити педіатричну паліативну допомогу як напрям державної політики у сфері охорони здоров'я в Україні. ***Результати.*** У статті розкрито, що педіатрична паліативна допомога – це інтегрована система медико-психологічної допомоги та соціальної підтримки дітей з важкими або невиліковними захворюваннями, спрямована на покращення якості їхнього життя та життя їхніх сімей, що надається з моменту встановлення діагнозу та охоплює всі аспекти розвитку, навчання, соціалізації та емоційної підтримки дитини. Сформовано, що особливості надання та управління педіатричної паліативної допомоги в Україні полягають у наступних аспектах: 1) інтеграція в медичну та соціальну сфери. Педіатрична паліативна допомога в Україні передбачає широке залучення різних медичних спеціальностей, а також інтеграцію з освітніми, соціальними та психологічними службами для забезпечення комплексної підтримки дітей та їхніх сімей; 2) доступність, індивідуальність та орієнтованість на дитину. Паліативна допомога повинна бути доступною у будь-якому місці перебування дитини. Особливості розвитку дітей, їх фізичний, емоційний та когнітивний розвиток потребують спеціальних підходів у наданні паліативної допомоги. ***Висновки.*** Паліативна допомога надається з моменту встановлення діагнозу і до кінця життя дитини, з урахуванням індивідуальних потреб та особливостей; 3) планування та координація послуг. Важливою складовою паліативної допомоги є розробка та регулярний перегляд плану спостереження для кожної дитини, що забезпечує постійний моніторинг стану дитини та відповідну адаптацію медичних та соціальних втручань; 4) особлива роль сім'ї. Батьки або законні представники активно залучені у прийняття рішень, що стосуються лікування та догляду за дитиною; окрім того, навчання батьків навичкам догляду за пацієнтом вдома є важливим аспектом надання якісної паліативної допомоги; 5) соціальні наслідки. Довготривала хвороба дитини впливає на соціальне життя всієї сім'ї, тому паліативна допомога повинна сприяти збереженню та підтримці соціальних ролей та функцій дитини і її сім'ї в умовах хвороби.

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

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Oleksandr Sharuk,
Postgraduate student at Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
OleksandrSharuk@ukr.net
ORCID ID: *0009-0000-6330-7015*

"CRITICAL INFRASTRUCTURE OF THE FINANCIAL SECTOR OF UKRAINE": IDENTIFICATION OF CONTENT AND ESSENCE OF THIS LEGAL CONCEPT

Abstract. ***Purpose.*** The purpose of the article is to reveal the content and essence of the legal concept of "critical infrastructure of the financial sector of Ukraine" in order to confirm or refute the statement that it is possible or not to define this phenomenon from the perspective of the object of administrative and legal protection. ***Results.*** The article reveals the content and essence of the legal concept of "critical infrastructure of the financial sector of Ukraine" in order to confirm or refute the statement that it is possible or not to define this phenomenon from the perspective of the object of administrative and legal protection. The term "critical infrastructure" is defined as the main element in this phrase, and the term "financial sector" is defined as the dependent element. The author specifies that from the economic perspective, the financial sector of Ukraine's economy is characterised by a set of financial transactions of state or commercial entities in the form of intermediary activities that objectify the distribution of financial capital in the economy. In legal discourse, it is defined by the existence of certain institutions (participants in legal relations) that, through compliance with the established rules of economic or regulatory activities, meet the public demand for the provision of quality financial and related services. It is found that according to the legislative provisions in the context of critical infrastructure of the financial sector, there are two types of objects of protection within it: 1) those determined by the National Bank; 2) those determined by the Ministry of Finance of Ukraine. ***Conclusions.*** It is concluded that the legal concept of "critical infrastructure of the financial sector of Ukraine" refers to the range of social relations which arise due to the need to ensure the smooth functioning of certain components of the financial sector which are critical in terms of the State's ability to meet its needs and develop towards autonomy and self-sufficiency, as well as to assert itself as a legal, democratic, sovereign state that properly fulfils its social purpose in the discourse of guaranteeing everyone the inviolability of their rights and legitimate interests. This interpretation does not give rise to any doubt or discussion that the state should create all conditions necessary to ensure that all critical components of the financial sector are protected, that is, provided with the ability to make an adequate, appropriate, permissible, necessary and effective response to factors, causes, circumstances, events, etc. that are potentially or actually capable of or have a negative impact on the functionality of their work.

Key words: administrative and legal protection, banking sector, critical infrastructure, legal concept, financial sector, financial services.

1. Introduction

The statement by L. Soroka that the term "concept" is not yet very widespread in legal science is worthy of note (Soroka, 2020). It is used mainly in philosophy, linguistics (here, most of all) and cultural studies (Kharytonov, Kharytonova, 2014), and any attempt to comprehend its essence leads to the realisation that a number of related concepts and their designations exist (Sadovnikova, 2014).

It is interesting to note H. Sadovnikov's suggestion that one of the options for interpreting the concept is to understand it as a global unit of mental activity that belongs to the world of consciousness and serves as a means of storing and exchanging information. They arise in the process of building information about objects and their properties, and this information may include both objective data about objects and assumptions about their qualities and properties. By contrast to a notion, a concept has no clear boundaries; it is dynamic and in constant motion. Moreover, it reflects not just the essential features of an object or phenomenon sufficient to understand its essence, but all those features that in a particular language group are filled with knowledge about the world around us (Sadovnikova, 2014).

Candidate of Philological Sciences V. Litiaha also notes that a critical analysis of mod-

ern approaches to the definition and analysis of the concept has revealed the complexity of this concept and the ambiguity of its interpretation (Litiaha, 2019), because in addition to identifying them with notions (which is logical, since the term "concept" itself comes from the Latin conceptus - "thought", " idea"), scientists correlate them with the meanings that a person operates with in the process of intellectual development of the world, which characterise our consciousness and our memory. Moreover, only some of the concepts are related to linguistic structures (Litiaha, 2019), which indicates the need for a balanced and accurate use of it by scientists to describe a particular phenomenon.

We agree with L. Soroka that a concept is formed by elements that generate a qualitatively new semantic load of a separate structure, explaining the essence of its independent units, and in an abstract form provides an idea of it, describing not only the essential features and all possible factors that affect its content without directly changing the form (i.e., the name of the phenomenon). This means that a notion or term denotes phenomena, processes or actions of one semantic dimension, the essence of which is based on one stable characteristic that forms the core of its understanding. A concept, on the other hand, combines several different features by nature and direction, but denotes one specific reality that is directly described. Accordingly, the concept (as a category of administrative law science) should be understood as a number of independent categories which have their own characteristics, but together form a qualitatively new legal construct (Soroka, 2020).

With this in mind, it seems logical to conclude that the phrase "critical infrastructure of the financial sector of Ukraine" can be justifiably defined through the conceptual expression of its essence, that is, presented in the form of a legal concept explaining the specifics of independent categories united by common content and describing the phenomenon which is likely to be the object of administrative and legal protection.

Therefore, the purpose of the article is to reveal the content and essence of the legal concept of "critical infrastructure of the financial sector of Ukraine" in order to confirm or refute the statement that it is possible or not to define this phenomenon from the perspective of the object of administrative and legal protection.

The issue of identifying the content and essence of critical infrastructure as an object of administrative and legal protection is of considerable scientific interest due to the existing risks and threats both under normal conditions of national security and in the period of exacerbation or emergence of new crises. Therefore, the relevance of these and related issues is obvious and especially noticeable in the context of the ongoing hostilities on the territory of Ukraine. For example, in this context, the works by the following scholars are thorough and reveal important aspects of critical infrastructure protection in Ukraine: D. Biriukov, S. Kondratov, V. Kosynskyi, V. Krykun, L. Soroka, O. Sukhodolia, S. Telenyk.

However, it should be noted that the issue of studying the critical infrastructure of the financial sector of Ukraine is a rather narrow area for research, which has been addressed by domestic scholars only indirectly.

2. Regulatory and legal framework for the operation of critical infrastructure of the financial sector of Ukraine

As a follow-up to the issues raised, we believe that it is appropriate to consider the legal concept of "critical infrastructure of the financial sector of Ukraine" through the prism of syntactic analysis.

In this context, the term "critical infrastructure" is, in our opinion, the main element in this phrase, and the term "financial sector" is the dependent element. The first, respectively, is also formed by combining the meaning of two words: "critical" and "infrastructure". But there is an important clarification: the formation of the term "critical infrastructure" is not a mechanical combination of two known elements, but a kind of inseparable formula borrowed from other languages in its inherent fusion (Telenyk, 2019).

According to Kosynskyi, traditionally, the notion of infrastructure primarily includes major motorways, roads, bridges, public transport networks, airports, water supply networks, waste treatment and disposal, hazardous waste management, electricity generation and supply, and telecommunications. However, this list should not be limited to this. In a situation where states are ready to wage hybrid and proxy wars, asymmetric wars and wars that are now called "conflict" on land and at sea, in the air, space and cyberspace, the very notion of "infrastructure" and "critical infrastructure" is changing, or rather, being filled with new content. Therefore, when classifying infrastructures, it is now customary to divide them into two types: "hard infrastructure" - the physical networks necessary for the functioning of a modern nation; and "soft infrastructure" - the institutions necessary to support the socio-economic system, such as the health, cultural and social standards of the country, as well as the financial system, education, healthcare, public administration and law enforcement, and emergency services (Kosynskyi, 2020).

In general, the meaning of the term "critical infrastructure" differs somewhat from country to country, but these differences are not significant (Biriukov and Kondratov, 2011). Most often, it refers to: "systems and facilities, physical or virtual, so vital to the state that the incapacitation or destruction of such systems or facilities undermines national security, the economy, public health or safety, or results in any combination of the above" (Biriukov, Kondratov, 2012; Sukhodolia, 2015). Moreover, the World Bank defines the term "critical infrastructure" in terms of areas that require enhanced protection, namely energy, transport, water, information and communication technologies, healthcare and finance. Some economies include education, economic and manufacturing sectors as critical areas (Financial Protection of Critical Infrastructure Services, 2021). In general, the issue of classifying certain objects as critical is considered by many authors, both domestic and foreign, in different variations, and at the same time, they have much in common, which is probably related to the target content of such objects (Kosynskyi, 2020).

An important aspect is that the definition of critical infrastructure should not be static, and its revision can be a response to the dynamic national and international landscape of risks. For example, Switzerland is currently reviewing and simplifying its definition of critical infrastructure as a process, system and assets that are essential to the functioning of the economy and the well-being of the population, respectively. This simplification enables the scope of its critical infrastructure programme to be more easily adapted to changing conditions than before, when the definition was more prescriptive. Similarly, in the UK, the definition has evolved to include an impact on national security, national defence or the functioning of the state among the criteria for defining critical national infrastructure (Kosynskyi, 2020).

In the domestic discourse, the Law of Ukraine "On Critical Infrastructure" describes the sectors of critical infrastructure by referring to their content as "vital functions and/or services". Moreover, the national legislator does not name any specific list of critical infrastructure facilities, and most references to them are contained in the provisions of bylaws. For example, in order to determine the mechanism for compiling the list of information and telecommunication systems of the state's critical infrastructure, the Cabinet of Ministers of Ukraine adopted the On approval of the Procedure for forming the list of information and telecommunication systems of critical state infrastructure objects by Resolution No. 563 of 23 August 2016. The regulation defines critical infrastructure as a set of state facilities that are most important for the economy and industry, the functioning of society and public safety, and the failure or destruction thereof may affect national security and defence, the environment, and lead to significant financial losses and human casualties. This attempts to define critical infrastructure objects through their approximate list: enterprises and institutions (regardless of ownership) in such sectors as energy, chemical industry, transport, banking and finance, information technology and telecommunications (electronic communications), food, healthcare, utilities, which are strategically important for the functioning of the economy and security of the state, society and population (Resolution of the Cabinet of Ministers of Ukraine On approval of the Procedure for forming the list of information and telecommunication systems of critical state infrastructure objects, 2016). Due to the adoption of the Resolution of the Cabinet of Ministers of Ukraine "Some issues of critical information infrastructure objects" No. 943 of 9 October 2020 (Resolution of the Cabinet of Ministers of Ukraine Some issues of critical information infrastructure objects, 2020), the above legal instrument was declared invalid. Although this Resolution of the Cabinet of Ministers of Ukraine approved the Procedure for the formation of critical information infrastructure objects to determine the mechanism for the formation of national and sectoral lists of such objects (Resolution of the Cabinet of Ministers of Ukraine Some issues of critical information infrastructure objects, 2020), the essence of the latter is not disclosed (Krykun, 2021).

The Resolution of the Cabinet of Ministers of Ukraine No. 1109 "Some Issues of Critical Infrastructure Objects" of 9 October 2020 is more informative, as it contains a list of critical infrastructure sectors, including the financial sector.

It should be noted that domestic legislation lacks a clear definition of the legal category "financial sector of Ukraine". For example, the Comprehensive Programme for the Development of the Financial Sector of Ukraine until 2020, approved by Resolution of the Board of the National Bank of Ukraine No. 391 dated 18 June 2015 (Resolution of the Board of the National Bank of Ukraine on the approval of the Comprehensive Programme for the Development of the Financial Sector of Ukraine until 2020, 2015), refers to the segments of the financial sector: banking sector, non-banking financial institutions, stock market and capital market.

3. European experience in regulating critical infrastructure of the financial sector

It should be noted that under the European instruments, the financial sector means a sector consisting of one or more of the following entities: (a) a credit institution, a financial institution or a company providing ancillary services within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC (the so-called "banking sector"); (b) an insurance company, a reinsurance company or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or Article 212(1)(f) of Directive 2009/138/EC (i.e. the "insurance sector"); (c) an investment firm as defined in Article 3(1) (b) of Directive 2006/49/EC (the "investment services sector") (Directive 2002/87/EC of the European Parliament and of the Council, 2002).

Furthermore, the draft Strategy for the Development of the Financial Sector of Ukraine until 2015 (prepared by a working group composed of representatives of the State Commission for Regulation of Financial Services Markets of Ukraine, the National Bank of Ukraine, and the State Commission on Securities and Stock Market (Kremen, Semenoh, 2013)) provided for the financial sector to be the financial market that ensures the accumulation and distribution of investment resources, and the interaction of producers and consumers of financial services under the rules established by the state and its regulatory authorities. The components of the financial market are the monetary market, the insurance market, the stock market, the market of collective investment services, private pension services and other financial services markets (Strategy for the development of the financial sector of Ukraine until 2015, 2008). This definition has been criticised by the national scientific community, as the authors of the document identify it with the financial market, which is not entirely legitimate (Shkolnyk, Semenoh, 2013).

According to the English-language sources, the financial sector consists of banks, investment organisations, insurance companies, real estate brokers, credit companies, mortgage lenders, and real estate investment funds (Financial Sector, 2020). The term is defined as a segment of the economy composed of companies and institutions that provide financial services (Financial Sector, 2020).

Some domestic scholars are inclined to believe that the term "financial sector" is a generalised term for the totality of all organisations whose main purpose is financial intermediation (the banking system, which includes monetary authorities, depository banks and other financial institutions, including pension funds, insurance companies, mutual funds, credit unions) (Mishchenko, 2009). According to some of them, in the context of market restructuring of the national economy, the financial sector not only performs the functions of cash and settlement support, but also mobilises and transforms free savings into investment resources for expanded economic reproduction, meets the needs of entities for financial services and thereby ensures economic growth (Shkolnyk, Semenoh, 2013).

The definition according to which the financial sector is a purposeful self-organising subsystem of the financial system and is a set of financial institutions that provide financial services and are connected with other sectors of the economy is considered more reliable (Diachenko, 2010). Such institutions perform the functions of mobilising savings, managing risks and debt obligations, providing a transparent information field, monitoring financial transactions, exercising corporate control, and ensuring specialisation of financial services (Shkolnyk, Semenoh, 2013).

Therefore, from the economic perspective, the financial sector of Ukraine's economy is characterised by a set of financial transactions of state or commercial entities in the form of intermediary activities that objectify the distribution of financial capital in the economy.

However, the legal discourse on these issues requires determination of this phenomenon from a different perspective. It should be noted that any legitimate social relations from the moment of their emergence, existence and until their termination are influenced by a significant number of legal provisions which may belong to a wide variety of branches of law. Moreover, one of the most numerous among them will be the rules of administrative law, which have a regulatory (Krykun, 2021), supporting, protective or defensive effect on almost every sphere of public relations or affect it in one way or another. Specifically, in the course of studying the specific features of the classification of administrative and legal regimes, V. Bielievtseva reasonably notes that "the current blurring of the boundaries of regulatory framework of administrative law does not mean that it is dissolved in other branches, on the contrary, a careful analysis reveals that many new complex branches which are still being formed are in fact a large-scale administrative and legal regime, and in fact should be characterised from the perspective of administrative law as its structural and functional integral part. (Bielievtseva, 2009). Due to the influence of administrative law, the relevant social relations can already be considered as an object of law, that is, an object subject to administrative and legal regulation (Krykun, 2021), provision, protection or defence.

Accordingly, in this discourse, financial sector can be considered by the existence of certain institutions (participants in legal relations) that, through compliance with the established rules of economic or regulatory activities, meet the public demand for the provision of quality financial and related services.

Noteworthy are the provisions of the Law of Ukraine "On Critical Infrastructure", which provide that: “infrastructure objects, systems, their parts and their aggregate essential for the economy, national security, and defence, the disruption of which would cause damage to the vital national interests” shall be protected (Law of Ukraine On Critical Infrastructure, 2021). It is found that according to the legislative provisions in the context of critical infrastructure of the financial sector, there are two types of objects of protection within it: 1) those determined by the National Bank; 2) those determined by the Ministry of Finance of Ukraine.

In the case of the former, these are: a) the banking system (provision of banking services, storage of cash reserves of the NBU by banks and transactions with them); b) the market for non-bank financial services, except for capital markets and organised commodity markets (provision of electronic trust services in the banking system, provision of non-bank financial services); c) the market for payment services (provision of payment services) (Resolution of the Cabinet of Ministers of Ukraine Some issues of critical infrastructure objects, 2020).

As for the latter, these are: "planning, implementation and monitoring of budget execution; cash and settlement services for managers and recipients of budget funds; control over the receipt of taxes, fees and payments to budgets and state trust funds; prevention and counteraction to legalisation (laundering) of proceeds of crime, terrorist financing and financing of the proliferation of weapons of mass destruction; ensuring the functioning of the system of guaranteeing deposits of individuals and withdrawal of banks from the market; control over the receipt of customs payments to the state budget, currency control, and the passage of goods and vehicles across the customs border of Ukraine" (Resolution of the Cabinet of Ministers of Ukraine Some issues of critical infrastructure objects, 2020).

4. Conclusions

To sum up, the legal concept of "critical infrastructure of the financial sector of Ukraine" refers to the range of social relations which arise due to the need to ensure the smooth functioning of certain components of the financial sector which are critical in terms of the State's ability to meet its needs and develop towards autonomy and self-sufficiency, as well as to assert itself as a legal, democratic, sovereign state that properly fulfils its social purpose in the discourse of guaranteeing everyone the inviolability of their rights and legitimate interests.

This interpretation does not give rise to any doubt or discussion that the state should create all conditions necessary to ensure that all critical components of the financial sector are protected, that is, provided with the ability to make an adequate, appropriate, permissible, necessary and effective response to factors, causes, circumstances, events, etc. that are potentially or actually capable of or have a negative impact on the functionality of their work.

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Олександр Шарук,
здобувач Науково-дослідного інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
OleksandrSharuk@ukr.net
***ORCID ID:** 0009-0000-6330-7015*

«КРИТИЧНА ІНФРАСТРУКТУРА ФІНАНСОВОГО СЕКТОРУ УКРАЇНИ»: ІДЕНТИФІКАЦІЯ ЗМІСТУ ТА СУТНОСТІ ЯК ПРАВОВОГО КОНЦЕПТУ

Анотація. ***Мета.*** Метою статті є розкриття змісту та сутності правового концепту «критична інфраструктура фінансового сектору України» задля підтвердження чи спростування тезису про можливість чи відсутність такої щодо визначення цього явища з позиції об'єкта адміністративно-правового захисту. ***Результати.*** Стаття присвячена розкриттю змісту та сутності правового концепту «критична інфраструктура фінансового сектору України» задля підтвердження чи спростування тезису про можливість чи відсутність такої щодо визначення цього явища з позиції об'єкта адміністративно-правового захисту. Опорним елементом у цьому словосполученні визначено термін «критична інфраструктура», залежним – «фінансовий сектор». Уточнено, що з економічної точки зору фінансовий сектор, власне економіки України, характеризується через сукупність операцій фінансового характеру державних чи комерційних суб'єктів у вияві посередницької діяльності, яка об'єктивує розподіл фінансового капіталу в економіці. З правового дискурсу його визначено з боку наявності певних інституцій (суб'єктів правових відносин), які у спосіб дотримання встановлених правил здійснення господарської чи регулятивної діяльності забезпечують суспільний запит на надання якісних фінансових та пов'язаних з ними послуг. Виявлено, що згідно законодавчих положень у контексті критичної інфраструктури фінансового сектору йдеться про два різновиди об'єктів захисту у його межах: 1) ті, що визначаються Національним банком; 2) ті, що визначаються Міністерством фінансів України. ***Висновки.*** Узагальнено, що правовий концепт «критична інфраструктура фінансового сектору України» позначає коло суспільних відносин виникнення яких обумовлено необхідністю забезпечення безперебійного функціонування окремих складових фінансового сектору, які є критично важливими в аспекті спроможності держави обслуговувати свої потреби і розвиватись у руслі автономності та самодостатності, а також утвердження як правової, демократичної, суверенної держави, яка належним чином виконує своє соціальне призначення з дискурсу гарантування кожному непорушності його прав та законних інтересів. Така інтерпретація не зумовлює виникнення сумнівів чи дискусій щодо того, що держава має створити усі необхідні умови задля того, щоб усі критично важливі складові фінансового сектору перебували у стані захисту, тобто були забезпеченими можливістю здійснення адекватної, належної, допустимої, необхідної та ефективної реакції на фактори, чинники, обставини, події тощо, які потенційно чи реально здатні або завдають негативного впливу на функціональність їхньої роботи.

Ключові слова: адміністративно-правовий захист, банківський сектор, критична інфраструктура, правовий концепт, фінансовий сектор, фінансові послуги.

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Anastasiia Kozin,
Doctor of Philosophy in Law, Senior Researcher at the Department of Topical Issues of Philosophy of Law and Legal Linguistics (Scientific Institute of Public Law)
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
kozinanastasiia@ukr.net
ORCID ID: *0009-0000-5793-6852*

PROBLEMS OF NON-COMPLIANCE WITH THE PRINCIPLE OF DECENTRALISATION OF POWER IN INTERACTION BETWEEN LOCAL SELF-GOVERNMENT BODIES AND EXECUTIVE AUTHORITIES

Abstract. ***Purpose.*** The purpose of the article is to study the interaction of local self-government bodies with executive bodies, to highlight the problems of non-compliance with the principle of decentralisation of power in the course of such interaction, and to propose ways to improve this process in Ukraine and mechanisms to ensure compliance with the basic principles of local self-government by the designated bodies. ***Results.*** The scientific article studies the observance by executive authorities of one of the main principles of local self-government - decentralisation of power in the course of interaction with local self-government bodies. The author identifies the areas of interaction and powers which provide for the need for interaction between local self-government bodies and executive authorities; and lists possible issues which are the subject of the interaction between these bodies which is not regulated by law. The problems faced by local self-government bodies in the course of or as a result of interaction with executive authorities are analysed. The article identifies the problem and highlights the issues that often lead to non-compliance by executive authorities with the principle of decentralisation of power in their interaction with local self-government bodies and suggests ways to eliminate this problem. ***Conclusions.*** It is concluded that the following solutions for interaction between local self-government bodies and executive authorities are appropriate, in order to, inter alia, comply with the principle of decentralisation of power and other general principles of local self-government: adoption of relevant legislation and establishment of criteria for cooperation by the powers of central (state/regional) authorities; Relevant legislation should be adopted and criteria for cooperation by the powers of central (state/regional) authorities should be established; Provision of funding is in most cases the responsibility of the central government, although municipalities also have the right to increase taxes on their territory, as well as the institution of co-financing for some issues is provided; Monitoring of legality is the responsibility of central (state/regional) authorities; In addition, mechanisms for monitoring budget compliance exist; The joint responsibility provides for centralised mechanisms for monitoring performance; The duty to hold regular consultations with municipal associations on the approval of local charters, budgets and other important issues related to local self-government shall be enshrined in the law; Special agreements shall be concluded between local self-government bodies and executive authorities to increase the efficiency and productivity of cooperation or to determine ways to finance powers, etc.

Key words: decentralisation of power, principles of local self-government, interaction of local self-government bodies with executive authorities, local self-government bodies, delegated powers.

1. Introduction

Decentralisation has been implemented in all European countries, for economic, political and other reasons (depending on the country). For example, in some countries, it can be seen as a historical reaction to previous strong centralisation of power and even existing autocratic tendencies, i.e. it was a way to ensure that democratic processes would not be reversed. Despite numerous benefits of decentralisation, there are always potential risks in such reforms that may arise from partial or unbalanced implementation. The outcome of administrative reform depends to a large extent on how decentralisation is planned.

One of the most common problems is the inconsistency between the responsibilities assigned to local authorities and the resources

available to them to fulfil them, as funding is often a "weak link" in decentralisation. Despite the principle of "finance follows functions" (also called the "linkage principle" or "matching principle"), in practice there is often an imbalance between the level of responsibility and the amount of revenue, which leads to the failure to provide or underfund certain powers.

The second problem of decentralisation is the lack of financial autonomy of local authorities to perform their duties. At the same time, such financial autonomy is necessary for these authorities to be able to effectively use public resources to meet local needs. Fiscal autonomy is about giving subnational governments a certain degree of autonomy in resource mobilisation and management.

Without concrete measures to strengthen the capacity of the regions, only the most developed and prosperous communities will benefit from decentralisation, which will increase regional disparities, and existing differences in financial capacity and administration will only jeopardise their development opportunities (Ezcurra, Rodríguez-Pose, 2012).

The implementation of the principle of decentralisation of power in the work of local self-government and executive authorities has been studied by the following scholars: O. Batanov, N. Fedina, N. Melnyk, N. Shevtsiv, M. Kliutsevskyi, V. Yatsuba, V. Yatsiuk, O. Matviishyn, Y. Karpinskyi, V. Kuibida, V. Nehoda, P. Panchyshyn, I. Mishchuk, L. Bondarchuk, V. Urbanovych and others. The issue of decentralisation of power has been studied by the foreign scholars such as R. Ezcurra, A. Rodriguez-Pose, D. Allain-Dupre, V. Tselios, A. Fiszbein and others.

The purpose of the article is to study the interaction of local self-government bodies with executive bodies, to highlight the problems of non-compliance with the principle of decentralisation of power in the course of such interaction, and to propose ways to improve this process in Ukraine and mechanisms to ensure compliance with the basic principles of local self-government by the designated bodies.

2. Specific features of power decentralisation

The political dimension of decentralisation is to promote local democracy, improve the quality of governance, involve citizens in local issues, and demonstrate accountability and transparency; however, this aspect has been left in the background in favour of a more effective economic approach aimed at achieving politically relevant results in areas such as education, healthcare or financial stability. This is partly due to the fact that in some countries the decentralisation process has been "hijacked" by local and national elites who see it as a means of mobilising and supporting regional authorities.

A significant challenge to decentralisation is the overlap of tasks between different levels of government. This problem has been repeatedly mentioned as critical in OECD Economic Surveys, as well as in studies by the International Monetary Fund (IMF) and the World Bank. The problem is relevant for both unitary and some federal countries, such as Australia or Germany. Lack of clarity in the distribution of responsibilities makes service provision and policy making more costly. It also contributes to a democratic deficit by creating confusion regarding which body is responsible for a particular service, activity or decision. Without a clear distribution of responsibilities, it becomes almost impossible to hold those accountable for policy shortcomings or failures, which also hinders efforts at transparency and citizen engagement (Allain-Dupre, 2018).

This problem can arise especially in a multi-level system of governance with multiple levels of government and a large number of subnational governments. For example, in Brazil, the distribution of responsibilities is unclear in a number of areas, including health, education, social security, agriculture and food, environmental protection, etc. In Chile, municipalities have several exclusive powers, and there are 13 joint national/municipal powers with unclear or incorrectly defined responsibilities. In France, it has been proposed to clarify the competence of departments and interim governments and to intensify efforts to share functions between municipalities (Multi-level Governance Reforms: Overview of OECD Country Experiences, 2018).

The unclear assignment of responsibilities and functions is particularly pronounced in sectors that are most often distributed among different levels of government, such as infrastructure (transport), education, land management, healthcare and the labour market. For example, in most OECD countries, lower tiers of government are responsible for managing and financing the lower levels of schooling (mainly pre-primary, primary and sometimes lower secondary education), while responsibility for secondary and upper secondary education is most often at the provincial/regional or central level. Such distribution, in which different levels of schooling operate under different political and administrative jurisdictions, can pose significant challenges in terms of efficient use of resources (risk of competition, duplication and overlap) and coordination of policies and activities of actors. The lack of sufficient administrative, technical or strategic capacity is probably one of the biggest challenges in decen-

tralisation, which can limit or hinder its implementation.

In addition to insufficient financial capacity, the lack of staff, experience, and qualifications required to deal with complex tasks such as strategic planning, procurement, infrastructure investment, supervision of local public services, performance monitoring, etc. The institutional capacity of local authorities varies widely across the country, even in the most developed ones (Tselios, 2012).

Sometimes local authorities may lack the human resources to plan, implement and manage public services. Therefore, the professionalism of civil servants (their level of education, work experience, etc.) working in such bodies is key. If the latter cannot attract highly qualified personnel to provide the relevant services to the population for some reason, then the decentralisation process may be at risk. In such cases, central government can support local capacity development through training and financial resources. Meanwhile, local leadership, community engagement, and local accountability for service provision programmes are equally important factors for successful capacity building (Fiszbein, 1997). Without sufficient support at the local level, public resources invested in capacity building may be wasted.

It should be noted, however, that capacity building takes time and therefore requires a long-term commitment from both central and local governments. Even in developed countries, the capacity gap remains significant, despite all efforts to close the gap. For example, two-thirds of subnational governments (65%) reported that their cities lacked the capacity to develop quality infrastructure strategies. More than half (56%) said they lacked adequate experience in infrastructure (Infrastructure Planning and Investment across Levels of Government: Current Challenges and Possible Solutions, 2015).

Therefore, we have examined the problems faced by countries in the course of decentralisation. Now the focus will be on the developments of domestic scholars and the issues they have addressed in their research of this process in our country.

3. Local self-government in Ukraine

Having studied the problems of reforming the constitutional model of local self-government in Ukraine, O. Batanov states that the existing regulatory framework of local self-government in Ukraine and the projects implemented in the field of formation and development of territorial communities have been fragmentary and aimed only at solving certain issues of constitutionalising their status. Therefore, a comprehensive solution to the main problem of the organisation and functioning of local self-government in modern Ukraine is relevant - the creation of constitutional and legal conditions for the establishment of territorial communities as primary entities of local self-government, the main bearers of its functions and powers (Batanov, 2016).

According to N. Fedina, N. Melnyk, and M. Shevtsiv, the current constitutional provisions do not contribute to the further development of local self-government, but rather hold it back to a certain extent. The reasons for the inefficiency of local self-government are partially reflected in its constitutional model. Therefore, the Constitution of Ukraine contains a basic provision that local self-government is the right of a village, settlement or city community to manage local affairs. This formulation enables the community to effectively refuse or incompletely or incorrectly implement public self-government in the event of a low level of legal awareness and legal culture of the population of the territorial unit. According to the Law of Ukraine "On Local Self-Government", executive bodies of rayon and oblast radas do not perform administrative functions, and their activities are limited to organising, legal, informational, analytical and logistical support of the activities of the radas (Article 58, part 2). Therefore, the powers of local state administrative bodies are too broad, and the law requires regional representative self-government bodies to delegate administrative functions to local self-government (Fedina, Melnyk, Shevtsiv, 2023).

In addition, the scientists emphasise that the state structure of power relations at the state and local levels needs to be changed. All levels of local self-government bodies need clearly defined powers and competences at the regulatory level (Fedina, Melnyk, Shevtsiv, 2023).

According to V. Kliutsevskyi, "the Verkhovna Rada has not yet made the necessary amendments to the current Constitution of Ukraine, has not adopted laws on the administrative-territorial structure, on all-Ukrainian and local referendums, on general meetings of citizens at the place of residence, on communal property, on the territorial community, a new version of the Law “On Local Self-Government in Ukraine,” etc. Furthermore, it is now urgent to take some concrete measures to strengthen and develop local self-government in Ukraine, as the Council of Europe, of which our country is a member, constantly reminds us. By ratifying the European Charter of Local Self-Government in 1997, Ukraine undertook a number of commitments in this area that have not yet been fully implemented. Local self-gov-

ernment at the rayon and oblast levels remains imperfect; rayon and oblast radas do not have their own effective executive structures; there is overlap between the powers and competences of representative bodies and executive bodies of local self-government; the management of communal property needs to be regulated, and the legal status of jointly owned objects of territorial communities needs to be defined by law; autonomy in land matters is needed; local budgets should retain more fees and taxes, and a smaller percentage to the state budget. The list of still unsolved problems can be continued" (Kliutsevskyi, 2019).

We agree with the opinion of other researchers who believe that among the urgent problems of interaction between local governments and executive authorities, an important place belongs to the creation of effective mechanisms for the distribution of powers between different levels of local governments (Iatsuba, Yatsiuk, Matvishyn, Karpinskyi, Kuibida, Nehoda, 2007).

R. Panchyshyn shares their position and concludes that the main areas of interaction between local self-government bodies and local state executive authorities are: interaction in the field of formation and implementation of the state regional policy; interaction in the field of land management and improvement of settlements; interaction in the field of education, public health, environmental protection, natural resources management, subsoil use, mining, public security, etc. However, in practice, in the process of cooperation between these bodies, some problematic issues arise regarding the distribution of their competence (Panchyshyn, 2018).

According to I. Mishchuk, the main reason for the problems that arise in the relations between local self-government bodies and executive authorities is the imperfection of the current legislation of Ukraine, which aims to regulate their joint activities, which is clearly illustrated by the analysis of the Laws of Ukraine "On Local Self-Government in Ukraine" and "On Local State Administrations" in the part where legislators define the list of delegated powers (Mishchuk, 2023).

L. Bondarchuk and V. Urbanovych believe that the problems of distribution of powers and issues of interaction between local self-government bodies and local state administrations in the Ukrainian system of local government have existed since the establishment of this system, that is, since 1992.

In their opinion, the division of powers between local self-government bodies, which have their own, self-governing and delegated powers, and local state administrations, which have the relevant administrative and executive powers, is due to the following reasons: 1) the need to establish competitive political and legal responsibility of these bodies for the areas of work defined by the Constitution and laws; 2) violation of the balance of interests between these bodies established by the Constitution and laws; 3) gaps in regulating or duplication of certain powers of these bodies, etc. (Bondarchuk, Urbanovych, 2015).

Therefore, Ukraine has faced certain challenges in implementing decentralisation, the most common of which are the lack of adequate autonomous funding, unallocated responsibilities in terms of exercising delegated powers, and unclear areas of competence between local governments and executive authorities, etc.

4. Conclusions

Based on the results of the study, we propose the following solutions for interaction between local self-government bodies and executive authorities are appropriate, in order to, inter alia, comply with the principle of decentralisation of power and other general principles of local self-government: Relevant legislation should be adopted and criteria for cooperation by the powers of central (state/regional) authorities should be established; Provision of funding is in most cases the responsibility of the central government, although municipalities also have the right to increase taxes on their territory, as well as the institution of co-financing for some issues is provided; Monitoring of legality is the responsibility of central (state/regional) authorities; In addition, mechanisms for monitoring budget compliance exist; The joint responsibility provides for centralised mechanisms for monitoring performance; The duty to hold regular consultations with municipal associations on the approval of local charters, budgets and other important issues related to local self-government shall be enshrined in the law; Special agreements shall be concluded between local self-government bodies and executive authorities to increase the efficiency and productivity of cooperation or to determine ways to finance powers, etc.

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Анастасія Козін,
доктор філософії в галузі права, старший науковий співробітник відділу актуальних питань філософії права та юридичної лінгвістики (Науково-дослідний інститут публічного права)
вулиця Георгія Кірпи 2 а, Київ, 03055
kozinanastasiia@ukr.net
ORCID ID: *0009-0000-5793-6852*

ПРОБЛЕМИ НЕВІДПОВІДНОСТІ ПРИНЦИПУ ДЕЦЕНТРАЛІЗАЦІЇ ВЛАДИ ПІД ЧАС ВЗАЄМОДІЇ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ ТА ОРГАНІВ ВИКОНАВЧОЇ ВЛАДИ

Анотація. ***Мета.*** Метою статті є дослідження взаємодії органів місцевого самоврядування з виконавчими органами, виокремлення проблем недотримання принципу децентралізації влади під час такої взаємодії, запропоновано способи удосконалення визначеного процесу в Україні та механізми забезпечення дотримання основних засад місцевого самоврядування визначеними органами. ***Результати.*** Наукова стаття присвячена дослідженню дотримання органами виконавчої влади однієї із основних засад місцевого самоврядування – децентралізації влади під час взаємодії з органами місцевого самоврядування. Визначено сфери взаємодії та повноваження, які нормативно передбачають необхідність взаємодії органів місцевого самоврядування з органами виконавчої влади; зазначено перелік можливих питань, що є предметом неврегульованої нормативно взаємодії між визначеними органами. Проаналізовано проблеми, з якими стикаються органи місцевого самоврядування під час або за результатом взаємодії з органами виконавчої влади. Визначено проблему та виокремлено питання, що часто стають підставою недотримання органами виконавчої влади принципу децентралізації влади під час взаємодії з органами місцевого самовря-

дування, та запропоновано шляхи ліквідації такої проблеми. ***Висновки.*** Зроблено висновок, що доцільними є наступні рішення для взаємодії між органами місцевого самоврядування та органами виконавчої влади, з метою, у тому числі, дотримання принципу децентралізації влади та інших загальних засад місцевого самоврядування: прийняття відповідного законодавство та встановлення критеріїв співробітництва повноваженнями центральних (державних/регіональних) органів влади; забезпечення фінансування у більшості випадків є завданням центральних органів влади, хоча муніципалітети також вправі збільшувати податки на своїй території, а також передбачений інститут спільного фінансування з деяких питань; нагляд за законністю є повноваженням центральних (державних/регіональних) органів влади; крім того, існують механізми контролю за дотриманням бюджету; у рамках спільної відповідальності передбачені централізовані механізми контролю за результатами роботи; нормативно закріплено обов'язок проведення регулярних консультацій з муніципальними асоціаціями щодо затвердження місцевих статутів, бюджетів та інших важливих питань, що стосуються місцевого самоврядування; укладення спеціальних угод між органами місцевого самоврядування та органами виконавчої влади для підвищення ефективності та продуктивності співпраці або визначення шляхів фінансування повноважень тощо.

Ключові слова: децентралізація влади, принципи місцевого самоврядування, взаємодія органів місцевого самоврядування з органами виконавчої влади, органи місцевого самоврядування, делеговані повноваження.

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Ihor Hrytsiuk,
Acting Deputy Director for Research of Educational and Scientific Institute of Law of State Tax University, Candidate of Juridical Sciences, Associate Professor
31, Universytetska str. Irpin, 08205, Kyiv region
hrytsiukihor@ukr.net
ORCID ID: *0000-00003-2253-4057*

Taras Huk,
Postgraduate student at Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
guktaras@ukr.net
ORCID ID: *0009-0000-3147-424X*

SOME PROBLEMATIC ISSUES OF USING RESULTS OF CONTROL OVER COMMISSION OF CRIME

Abstract. ***Purpose.*** The purpose of the article is to study and analyse the legal and practical aspects of using the results of covert investigative (search) actions in criminal proceedings. The purpose of the study is to identify and analyse the existing problems and contradictions related to the use of the results of covert investigative (search) actions, to assess their impact on the fairness of the trial and the rights of suspects, and to develop recommendations for improving the legislation and law enforcement practice with a view to ensuring an appropriate balance between the effectiveness of combating crime and protection of human rights. ***Results.*** The article considers topical issues related to the use of the results of control over the commission of a crime in criminal proceedings. The author analyses the main problems that arise when collecting, preserving and using evidence obtained during controlled deliveries, operational purchases and other methods of such control. A special emphasis is placed on the legal aspects of the admissibility of evidence obtained as a result of relevant covert investigative (search) actions in court proceedings, as well as their impact on the rights and freedoms of suspects and accused persons. Recommendations are made to improve the legislation and practice of law enforcement bodies. Based on the analysis of international experience, the author suggests ways to increase the effectiveness and legality of the use of control measures in combating crime, emphasising the need to respect the principles of justice and human rights. ***Conclusions.*** The legal basis for the use of the results of control over the commission of a crime is determined by criminal procedure legislation and special regulations. This framework regulates the procedures for collecting, recording, preserving and using evidence obtained as a result of operational and investigative measures. The main provisions are focused on ensuring the legality and observance of the rights and freedoms of persons subject to such measures. To improve the legislation, the legal limits and conditions of control over the commission of a crime, as well as procedural guarantees for the protection of individual rights, should be more clearly defined. Recommendations include strengthening supervision of law enforcement officers, improving mechanisms for judicial control over the use of collected evidence, and ensuring that law enforcement officers are properly trained and educated on ethics and human rights.

Key words: covert investigative (search) actions, control over commission of crime, admissibility of evidence, human rights.

1. Introduction

The use of the results of control over the commission of a crime raises a number of complex issues that require in-depth analysis and informed decisions. One of the key issues is the legality and admissibility of evidence obtained as a result of such covert investigative (search) actions. In many cases, doubts arise as to the observance of the rights and freedoms of persons engaged in controlled actions, which may cast doubt on the legality of the evidence obtained.

The second significant problem is the ethical aspects of using provocation as a method of combating crime. Provocation can lead to the artificial creation of conditions for committing a crime that would not have been committed under normal circumstances. This raises the question of the limits of admissible interference by law enforcement bodies in the private life of citizens and the possibility of abuse of power.

An additional difficulty is the procedural aspects of documenting and using the results

of control measures in court proceedings. There are often difficulties with recording and submitting evidence obtained as a result of controlled deliveries or other covert investigative (search) actions. This may lead to problems with their interpretation in court and affect the fairness of the trial.

Therefore, the issue of using the results of control over the commission of a crime requires a comprehensive approach that includes legal, ethical, procedural and international aspects. Solving these problems can improve the effectiveness of law enforcement and ensure the observance of the rights and freedoms of citizens.

The purpose of the article is to study and analyse the legal and practical aspects of using the results of covert investigative (search) actions in criminal proceedings. The purpose of the study is to identify and analyse the existing problems and contradictions related to the use of the results of covert investigative (search) actions, to assess their impact on the fairness of the trial and the rights of suspects, and to develop recommendations for improving the legislation and law enforcement practice with a view to ensuring an appropriate balance between the effectiveness of combating crime and protection of human rights.

The purposes of the article are to analyse the legal framework for the use of the results of control over the commission of a crime; to assess the practical implications of the use of the results of control over the commission of a crime; and to provide recommendations for improving the legislation and practice of using the results of control over the commission of a crime.

2. Regulatory framework for covert actions

The introduction of the institution of covert investigative (search) actions (hereinafter - CISA) into the national criminal procedure legislation has necessitated the consolidation of a scientifically sound mechanism for implementing their results in criminal proceedings and, in particular, in criminal procedural proving (Teliichuk, Fedchenko, Moroz, Kozar, 2016, p. 5). However, a number of problematic aspects arise when conducting these covert investigative (search) actions. A significant percentage of information obtained in the course of covert investigative (search) actions is recognised by the court as inadmissible evidence due to the inconsistency of the recorded results with the requirements set out in the CPC of Ukraine (Kostyuk, 2021, p. 267). M. Pohoretskyi emphasises that, in contrast to the Ukrainian judicial system, the US case law shows that more than 95% of the materials provided under the CISA are admissible as a result of provocation of a crime and other violations (Pohoretskyi, 2016, p. 33). Instead, the analysis of the practice of national judicial authorities indicates that it is the results of control over the commission of, for example, crimes related to drug trafficking that are used as evidence in criminal proceedings when prosecuting a perpetrator (Holovin, 2021).

Moreover, in our opinion, M. Pogoretskyi fails to focus on the judicial system, leaving without assessment the correctness of obtaining these materials, as well as the doctrinal and practical level of development and use of relevant investigative methods.

The legal category of provocation of a crime has been studied in sufficient detail in international court practice, in particular, by the European Court of Human Rights, and is reflected in its legal positions set out in judgments on the relevant category of cases (Kononenko, 2011).

Legislation currently distinguishes between two procedures for conducting covert actions: the one defined by the criminal procedure legislation (covert investigative (search) actions) and the Law of Ukraine "On Operative and Search Activities" (operative and search actions). Moreover, in some respects, they compete, which indicates the need for legislative harmonisation of existing conflicts. There are opinions that the use of the CPC institutions to combat crime is more effective than conducting the OSA. According to D. Holovin, one can agree with this thesis to a certain extent. Therefore, when it comes to documenting individual episodes of criminal offences committed by single criminals or groups of persons in a simple form of complicity, limiting the arsenal of law enforcement bodies to the possibilities of the CPC is justified (Holovin, 2021). However, if the goal of law enforcement is to expose criminal networks with transnational ties, organised criminal groups with a hierarchical structure, a significant degree of secrecy, corruption, etc., the development of an operative investigation case is more effective. For example, according to the CPC of Ukraine, Article 99, part 2, the materials of the OSA collected by the operational units in compliance with the Law of Ukraine "On Operative and Search Activities", provided they meet the requirements of this article, may be used as evidence in criminal proceedings. Failure to comply with these requirements under Part 1 of Article 88 of the CPC of Ukraine is grounds for inadmissibility of evidence, which leads to the impossibility of its use in making procedural decisions. Moreover, it cannot be relied upon by the court when making a judgement. Therefore, compliance with the procedural rules governing the procedure for obtaining and recording data

in the course of conducting investigative operations and the competence of persons authorised to make decisions on their conduct is essential for achieving the goal of criminal proceedings (Babikov, Sokolkin, 2014).

These legal regulations are important in terms of ensuring the evidentiary nature of the results obtained in the process of controlling the commission of criminal offences involving psychotropic and narcotic substances. D. Holovin emphasises that in accordance with the CPC of Ukraine, Article 99, Part 2, para. 6, materials containing factual data on unlawful acts of individuals and groups of individuals collected by operational units in compliance with the requirements of the Law of Ukraine "On Operative and Search Activities", subject to compliance with the requirements of this article, are documents and may be used in criminal proceedings as evidence (Criminal Procedure Code of Ukraine, 2012). He makes the following conclusions. First, the materials obtained by specially authorised actors in the course of conducting operative and search activities are referred to as procedural sources of evidence as documents containing duly recorded information that can be used to confirm/refute facts and/or circumstances that need to be clarified in the course of criminal proceedings.

Second, to acquire the "quality" of evidence, such materials must meet the requirements of Article 99 of the CPC of Ukraine. In this context, part 7 of Article 99 of the CPC of Ukraine should be emphasised, as it provides that a party is obliged to enable the other party to inspect or copy the original documents, the content of which was proved in the manner prescribed by this Article (Holovin, 2021).

Third, in order to acquire the "quality" of evidence, such materials shall be collected by operational units in compliance with the requirements contained in the Law of Ukraine "On Operative and Search Activities" (Holovin, 2021).

3. Case law of the European Court of Human Rights

It should be noted that according to parts 11 and 12 of Article 290 of the CPC of Ukraine, the parties to criminal proceedings shall disclose to each other additional materials received before or during the trial. If a party to the criminal proceedings fails to disclose such materials in accordance with the provisions of this article, the court is not entitled to admit the information contained therein as evidence (Criminal Procedure Code of Ukraine, 2012). It is evident that these legal provisions are imperative, and therefore their non-compliance entails relevant procedural consequences, in particular, non-recognition of materials obtained in the course of control over the commission of crimes as evidence, which negates the work of law enforcement officers and in most cases leads to the non-conviction of a person actually due to improper procedural activities of state bodies. For example, in its Resolution of 29 April 2020 in case No. 428/8931/15-к, the Supreme Court composed of the panel of judges of the Third Judicial Chamber of the Criminal Court of Cassation stated the following: "The court regards as inadmissible the protocol on the results of the covert investigative (search) action - removal of information from transport telecommunication networks of 09 June 2015 and a copy of CD-R disc No. 373 of 10 May 2015, as the investigator's request for permission to conduct covert investigative (search) actions of 06 May 2015 and the ruling of the investigating judge of the Court of Appeal of Kharkiv region of 07 May 2015 on granting permission to interfere with private communication, namely the removal of information from transport telecommunication networks, were not disclosed to the defence during the pre-trial investigation in accordance with the provisions of Article 290 of the Criminal Procedure Code of Ukraine. In this regard, the court also declared inadmissible derivative evidence, namely the inspection report of 23 June 2018, the report on the results of the covert investigative (search) action of 09 June 2015 with transcripts of telephone conversations and the inspection report of 23 June 2015 of a copy of CD-R disc No. 373 of 10 May 2015" (Resolution of the Criminal Court of Cassation of the Supreme Court, 2020).

The court declared inadmissible not only the protocol based on the results of the covert investigative (detective) action, but also the derived evidence, which is quite logical given the doctrine of "fruit of the poisonous tree": a poisonous tree produces the same fruit, so evidence obtained from an improper evidence cannot be considered as evidence.

This doctrine was formulated by the European Court of Human Rights, which considers cases of violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (which is part of national legislation) (Kononenko, 2004, p. 97) in a number of cases, among which it is worth mentioning the cases against Ukraine - Balytskyi v. Ukraine (Balitskiy v. Ukraine) (Case of Balitskiy v. Ukraine. Application no. 12793/03, 2011), "Nechiporuk and Yonkalo v. Ukraine (Case of Nechiporuk and Yonkalo v. Ukraine. Application no. 42310/04, 2011), "Shabelnik v. Ukraine" (Case of Shabelnik v. Ukraine. Application no. 16404/03, 2009), "Yaremenko v. Ukraine" (Yaremenko v. Ukraine) (Case of Yaremenko v. Ukraine. Application no. 32092/02, 2008).

According to Yu. Tsyhaniuk, "the doctrine of 'fruit of the poisonous tree' is of great procedural importance due to the absence of one of the properties of evidence in criminal proceedings (Tsyhaniuk, 2019, p. 64).

It should also be noted that there is a positive practice of national courts regarding the use of the results of crime control as evidence in criminal proceedings. For example, the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Criminal Court of Cassation in its decision of 9 September 2021 (case No. 467/1476/19) noted the following: "the criminal proceedings show that the accusation against PERSON_1 of illegal acquisition, storage, transportation with intent to sell and illegal sale of particularly dangerous drugs, as well as repeated illegal acquisition, storage, and transportation with intent to sell and illegal sale of drugs to the alleged person "PERSON_2" was based, in particular, on the data of the prosecutor's resolutions on control over the crimes, transportation with intent to sell and illegal sale of narcotic drugs to the alleged person "PERSON_2" were based, in particular, on the data of the prosecutor's decisions on control over the commission of crimes and the data of the protocols on the results of this CISA, which recorded in detail the course of operational purchases ... " (Resolution of the Criminal Court of Cassation of the Supreme Court, 2021).

4. Conclusions

The legal basis for the use of the results of control over the commission of a crime is determined by criminal procedure legislation and special regulations. This framework regulates the procedures for collecting, recording, preserving and using evidence obtained as a result of operational and investigative measures. The main provisions are focused on ensuring the legality and observance of the rights and freedoms of persons subject to such measures.

The practical effects of the control over the commission of a crime include both positive and negative aspects. On the one hand, the results of the control often allow for the successful detection of crimes and the prosecution of perpetrators. On the other hand, improper use of these results can lead to violations of human rights.

To improve the legislation, the legal limits and conditions of control over the commission of a crime, as well as procedural guarantees for the protection of individual rights, should be more clearly defined. Recommendations include strengthening supervision of law enforcement officers, improving mechanisms for judicial control over the use of collected evidence, and ensuring that law enforcement officers are properly trained and educated on ethics and human rights.

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Ігор Грицюк,
в.о. заступника директора з наукової роботи навчально-наукового інституту права
Державного податкового університету,
кандидат юридичних наук, доцент
ул. Університетська, 31, м. Ірпінь, 08205, Київська область
hrytsiukihor@ukr.net
ORCID ID: *0000-00003-2253-4057*

Тарас Гук,
здобувач Науково-дослідного інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
guktaras@ukr.net
ORCID ID: *0009-0000-3147-424X*

ДЕЯКІ ПРОБЛЕМИ ВИКОРИСТАННЯ РЕЗУЛЬТАТІВ ПРОВЕДЕННЯ КОНТРОЛЮ ЗА ВЧИНЕННЯМ ЗЛОЧИНУ

Анотація. ***Мета.*** Метою статті є дослідження і аналіз правових та практичних аспектів застосування результатів негласних слідчих (розшукових) дій у кримінальному провадженні. Виявлення та аналіз існуючих проблем та суперечностей, пов'язаних з використанням результатів негласних слідчих (розшукових) дій, оцінку їх впливу на справедливість судового розгляду та права підозрюваних, а також на розробку рекомендацій для вдосконалення законодавства і практики правоохоронної діяльності з метою забезпечення належного балансу між ефективністю боротьби зі злочинністю та захистом прав людини. ***Результати.*** У статті розглядаються актуальні питання, пов'язані з використанням результатів контролю за вчиненням злочину у кримінальному провадженні. Автор аналізує основні проблеми, що виникають при збиранні, збереженні та використанні доказів, отриманих під час проведення контрольованих поставок, оперативних закупок та інших методів такого контролю. Особлива увага приділяється правовим аспектам допустимості доказів, отриманих у результаті здійснення відповідних негласних слідчих (розшукових) дій у судовому процесі, а також їх впливу на права і свободи підозрюваних та обвинувачених. Пропонуються рекомендації щодо вдосконалення законодавства і практики правоохоронних органів. На основі аналізу міжнародного досвіду автор пропонує шляхи підвищення ефективності та законності застосування контрольних заходів у боротьбі зі злочинністю, підкреслюючи необхідність дотримання принципів справедливості і прав людини. ***Висновки.*** Правові основи використання результатів контролю за вчиненням злочину визначаються кримінально-процесуальним законодавством та спеціальними нормативно-правовими актами. Ці основи регулюють процедури збору, фіксації, збереження та використання доказів, отриманих внаслідок проведення оперативно-розшукових заходів. Основні положення зосереджені на забезпеченні законності та дотриманні прав і свобод осіб, щодо яких проводяться такі заходи. Для вдосконалення законодавства слід чіткіше визначити правові межі та умови проведення контролю за вчиненням злочину, а також процедурні гарантії захисту прав особи. Рекомендації включають посилення нагляду за діями правоохоронців, удосконалення механізмів судового контролю за використанням зібраних доказів, а також забезпечення належної підготовки та підвищення кваліфікації співробітників правоохоронних органів з питань етики та прав людини.

Ключові слова: негласні слідчі (розшукової) дії, контроль за вчиненням злочину, допустимість доказів, права людини.

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Yevhenii Dudko,
Candidate of Judicial Sciences, Attorney-at-law
dudkoyevhenii@ukr.net
ORCID ID: *0009-0008-4213-971X*

VICTIMOLOGICAL ASPECTS OF CRIMINOLOGICAL ACTIVITIES OF ATTORNEYS AS ACTORS IN PREVENTING CRIMINAL OFFENCES

Abstract. ***Purpose.*** The purpose of the article is to prove the need to improve the legal mechanism for ensuring the safety of attorneys-at-law in criminal proceedings. ***Results.*** The article clarifies the content of victimological crime prevention, implemented by attorneys-at-law, identifies the problems which exist in this regard and develops some ways of their substantive solution. In particular, it is established that attorneys-at-law, along with other participants to criminal proceedings, often become victims of criminal attacks, and therefore this victimological aspect should be considered by all actors involved in preventive activities. In addition, the study of practice has revealed that it is the objects of protection (suspects, accused and defendants) who are subject to socially dangerous acts related to the unlawful release (or prosecution) of them from criminal liability who are most likely to be victimised in this regard. Other victimisation issues include those related to the choice by the court of an appropriate preventive measure against the perpetrator; inadequate conditions of detention of prisoners; their transfer from one pre-trial detention facility to another; replacement of preventive measures, etc., which determine in practice the cases of inhuman or degrading treatment of these persons; provocation of bribery; creation of artificial evidence, etc., and determine the commission of unlawful attacks by participants in criminal proceedings against attorneys. ***Conclusions.*** It is concluded that the level of victimisation of all participants in criminal proceedings is influenced by the following determinants and conditions: low legal awareness and legal culture of attorneys-at-law and other participants in criminal proceedings; distrust in law enforcement bodies and the court; unsatisfactory organisation of interaction of attorneys-at-law with other participants in criminal proceedings on issues related to the organisation of victimisation prevention measures for criminal offences, etc. Given the findings of the study, it is also concluded that without improving the overall legal mechanism of criminological activities of attorneys-at-law and prevention of criminal offences, it is quite difficult and problematic to qualitatively modify its victimological component, especially in the context of criminal proceedings and their consideration in court within the time limits set by law.

Key words: victimisation; attorney-at-law; participants in criminal proceedings; criminological activity; prevention of criminal offences; victim of crime; criminal proceedings; victim of crime.

1. Introduction

According to the review of the practice of attorneys-at-law, including its criminological component, they frequently become targets of criminal attacks, both by the objects of their defence (in the form of fraud, extortion, bodily harm, etc.) and by other persons, including participants in criminal proceedings (Yedynyi zvit pro kryminalni pravoporushennia za sichen-hruden 2022 roku). Moreover, in many cases, the victims of crime have created a situation that facilitated the commission of unlawful attacks against them. Moreover, along with other elements of the situation, the injured advocates in the process of interaction with the future criminal contributed to the emergence of the latter's motive for committing a criminal offence, as well as to the decision to implement it. It should be noted that the analysis of the legal regulations of Ukraine governing the practice of law and defining the status of attorneys-at-law in our country shows that the legal nature of these legal professionals as actors in crime prevention is defined in the following legal regulations, namely:

a) Article 59 of the Constitution of Ukraine;

б) The Law of Ukraine 'On the Bar and Practice of Law';

c) Articles 45-54 of the Criminal Procedure Code (CPC) of Ukraine.

That is why, it seems, when analysing each case of a crime against attorneys and establishing its determinants, it is necessary to establish which legal regulations contributed to such socially dangerous activities, as well as through what actions of the victims and in what direction the specific life situation influenced the offender, such as creation of favourable conditions for the implementation of his/

her unlawful conduct. Moreover, the following issues of the mechanism of criminal manifestation related to the conduct of attorneys who are victims of crime seem to be of great criminological importance, namely

1) Personal traits of the victim attorney, which makes him or her more vulnerable to the offender (Surdukova, 2005);

2) The totality and level of dependence on the qualities of the process of creating a deterministic complex of causes and conditions that influenced the formation of the criminological orientation and motivation of the perpetrator (Holovkin, 2016, pp. 126-127);

3) The presence of other signs and features of the victim that contributed to the formation of the motive for committing a particular crime in such a way that the victim attorney became the object and victim of a criminal offence (Holovkin, 2017, pp. 161-162);

4) Actions (deeds) of the victim attorney, or actions that resulted from the idea of a person intending to commit a crime, or testified to the active assistance of the victim in the commission and implementation of such an unlawful decision (Dzhuzha, Tychyna, 2019, p. 111).

Therefore, based on the review of scientific literature and other empirical materials, we can state that a complex theoretical and applied problem exists which should be solved by intensifying comprehensive research at the doctrinal level.

Therefore, the purpose of the article is to prove the need to improve the legal mechanism for ensuring the safety of attorneys-at-law in criminal proceedings, and its main task is to clarify the content and role of victimological aspects of the criminological activities of these participants in the criminal procedure as actors in crime prevention.

The review of scientific sources has revealed that the following scholars consider the issues of victimological prevention of criminal offences quite actively and substantively: A.M. Babenko, V.S. Batyrhareieva, V.V. Vasylevych, A.A. Vozniuk, V.V. Holina, B.M. Holovkin, O.M. Dzhuzha, O.O. Kvasha, O. H. Kolb, I. M. Kopotun, S.A. Mozol, Ye.S. Nazymko, V.F. Obolentsev, T.I. Titochka, V.O. Tuliakov, D.M. Tychyna, V.I. Shakun, M.V. Shepitko, etc.

However, in the context of identifying the victimological aspects of the criminological activities of attorneys, this issue has not yet been actively discussed among scholars, and this has become decisive in choosing the topic of this work, and thus determined its relevance, theoretical and practical significance.

2. The system of victimological prevention of criminal offences

The literature review reveals that, traditionally, scholars understand victimological crime prevention as a specific activity of social institutions, including lawyers, aimed at identifying, eliminating or neutralising the determinants (circumstances, situations, etc.) that shape victim behaviour and lead to the commission of crimes, as well as identifying risk groups and specific individuals with an increased degree of victimisation, in order to restore and activate protective properties, as well as to develop or improve the means available to ensure victimological protection of citizens (Dzhuzha, 2010, pp. 266-267).

Moreover, with due regard to the functions, goals and objectives of the system of victimological prevention of criminal offences, scholars also distinguish its general social, special and individual levels (Danshyna, 2003, pp. 172-173). As established in the course of this research, other criteria and methodological principles for determining the content of this type of crime prevention can be found in modern scientific sources.

It seems that the conclusion of A.P. Zakaliuk on the role and place of the victim in the mechanism of criminal behaviour is sound in this regard, namely, the creation of a criminological situation that contributed to the commission of a criminal offence against, in particular, attorneys-at-law or the objects of their defence, often depended not only on the person who committed it and on external conditions, but also on the behaviour of the victims of the crime, their careless, immoral or unlawful actions (Zakaliuk, 2007, p. 313).

Practice shows that, depending on the behaviour of the attorneys-at-law who became victims of crimes, the victimological situation that preceded the commission of a criminal offence against them was manifested in three types, namely

a) The actions of the victims provoked the criminal behaviour of the perpetrator and contained a pretext for the latter (in particular, actions of aggressive and offensive nature on the part of advocates towards the objects of protection);

b) The actions of the victims were negligent, which created a situation that facilitated the commission of criminal offences against them (for example, the legal position, tactics and strategy of defence in criminal proceedings chosen by the lawyer was incorrect);

c) The actions of the victims were legitimate and were related to the failure to satisfy the needs (desires) of those persons who had criminal intent, which caused them to commit a crime (in particular, the refusal of the advocate to bribe the investigator on behalf of the client).

However, it should be considered that in most cases, the commission of unlawful acts against attorneys who have been victims

of criminal attacks (both lawful, unlawful and immoral, as well as out of negligence) did not affect the motive and commission of criminal attacks by their clients and other participants in criminal proceedings.

In addition, based on the results of this study, it can be stated that a number of attorneys become victims of criminal attacks only because they are persons with so-called increased criminogenicity (victimisation). Moreover, this feature was largely related to the social or other qualities of these victims of crime (inclination to homosexuality, drug addiction, greed, etc.). (Dzhuzha, 2002, pp. 30-31).

At the scientific level, it has been concluded that any person is a victim because he or she is in a certain life situation and, being involved in a whirlwind of various social situations, may become a victim of a criminal offence. In other words, an individual does not become victimised, on the contrary, he or she simply cannot be non-victimised, as he or she is a member of a society in which crime exists, and therefore this is an objective possibility of becoming a victim of a criminal offence (Dzhuzha, 2002, p. 82).

Therefore, the victimisation of advocates is a set of stable typical social and socio-psychological properties of their personality that increase their ability to become a victim of crime. It also includes victimisation situations, events and actions.

3. The criminological role of victim behaviour of attorneys-at-law

As the study of doctrinal sources has shown, scholars also distinguish between culpable and innocent victimisation (Zakaliuk, 2007, p. 315).

For example, in the first group (culpable victimisation), researchers include people who abuse alcohol, as well as people who are adventurous or who are distinguished by impudent, unrestrained behaviour, which puts them in a position that can provoke a criminal offence, often violent. Similar victim characteristics, as established in the course of this research, are also shared by attorneys-at-law.

In its turn, innocent victimisation is associated with certain circumstances of work or professions (attorney, taxi driver, cashier, cash collector, mentally ill person), as well as with victimising phenomena and processes (Zakaliuk, 2007, p. 315).

It is this innocent victimisation that, according to the results of this study, causes increased victimisation in the activities of attorneys, including its criminological component.

In addition, it was found that among the many forms of victim behaviour of advocates, the criminological role was most often played by a negligent victimisation situation, and the least common was a provoking victimisation situation.

In addition, based on the review of legal regulations and scientific literature, it can be stated that, while defending certain participants in criminal proceedings (primarily suspects and victims of crime) in accordance with the law, advocates are objectively forced by their legal status to engage in criminological activities both as part of the tasks of the criminal process (Article 1 of the CPC), and with regard to the potential and real threats that arise in this case and are of a socially dangerous nature (encroachment on the objects of justice (section XVIII of the CC); the sphere of official activity (section XVII of the CC); the authority of the state power (section XV of the CC); etc., which is why they often become victims of criminal attacks, including provocative unlawful acts by other participants in criminal proceedings.

4. Conclusions

Therefore, the review of scientific sources and other materials collected in the course of this research enables to state that when studying attorneys-at-law as actors involved in the prevention of criminal offences, special attention should be paid to the victimological aspects of their criminological activities, since this determines the effectiveness of solving not only the tasks of criminal proceedings (Article 1 of the Criminal Procedure Code), but also substantive law (Article 1 of the Criminal Code) in terms of ensuring the safety of all participants in the criminal process and preventing them from committing criminal offences, including through the use of potential legal opportunities for victimisation prevention.

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Євгеній Дудко,
кандидат юридичних наук, адвокат
dudkoyevhenii@ukr.net
ORCID ID: *0009-0008-4213-971X*

ВІКТИМОЛОГІЧНІ АСПЕКТИ КРИМІНОЛОГІЧНОЇ ДІЯЛЬНОСТІ АДВОКАТІВ ЯК СУБ'ЄКТІВ ЗАПОБІГАННЯ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ

Анотація. ***Мета.*** Метою статті є обґрунтування необхідності удосконалення правового механізму забезпечення безпеки адвокатів у ході кримінального провадження. ***Результати.*** У науковій статті з'ясовано зміст віктимологічного запобігання злочинам, суб'єктами реалізації якого є адвокати, визначені існуючі у зв'язку з цим проблеми та розроблені деякі шляхи їх вирішення по суті. Зокрема, встановлено, що адвокати, поряд з іншими учасниками кримінального провадження, нерідко стають жертвами злочинних посягань, а тому цей віктимологічний аспект мають враховувати всі суб'єкти запобіжної діяльності. Крім цього, у ході вивчення практики виявлено, що підвищену віктимність з цього приводу мають саме об'єкти захисту (підозрювані, обвинувачені та підсудні), які та щодо яких вчиняються суспільно небезпечні діяння, пов'язані з незаконним звільненням (або притягненням) їх від кримінальної відповідальності. Серед інших проблем віктимологічного характеру звертають на себе увагу й ті із них, що стосуються вибору судом відповідного запобіжного заходу відносно винної особи; неналежних умов тримання ув'язнених під варту; їх переміщення з однієї установи попереднього ув'язнення до іншої; заміни запобіжного заходу, т. ін., які детермінують на практиці випадки нелюдського або такого, що принижує гідність, поводження з цими особами; провокації отримання (дачі) хабаря; створення штучних доказів тощо, та детермінують вчинення протиправних посягань учасників кримінального провадження на адвокатів. ***Висновки.*** Зроблено висновок, що на рівень віктимності всіх учасників кримінального провадження впливають такі детермінуючі її причини та умови, як: низька правосвідомість і правова культура адвокатів та інших суб'єктів кримінального процесу; недовіра до правоохоронних органів та суду; незадовільна організація взаємодії адвокатів з іншими суб'єктами кримінального процесу з питань, які пов'язані з організацією заходів віктимологічного запобігання кримінальним правопорушенням, тощо. Враховуючи отримані результати дослідження, зроблено також висновок про те, що без удосконалення у цілому правового механізму кримінологічної діяльності адвокатів та запобігання кримінальним правопорушенням, досить складно та проблематично загалом якісно видозмінити й віктимологічну його складову, особливо в умовах реалізації у визначені в законі строки кримінального провадження та розгляду його в суді.

Ключові слова: віктимність; адвокат; учасники кримінального провадження; кримінологічна діяльність; запобігання кримінальним правопорушенням; жертва злочину; кримінальне провадження; потерпілий від злочину.

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Viktor Luhovyi,
Doctoral Student at
National Academy of Internal Affairs,
Candidate of Juridical Science
1 Solomianska Square, Kyiv, Ukraine, 03035
luhovyiviktor@ukr.net
ORCID ID: *0009-0007-7276-2994*

PREPARATORY STAGE OF SEARCH DURING INVESTIGATION OF CRIMES COMMITTED BY TRANSNATIONAL ORGANISED CRIMINAL GROUPS: PROBLEMATIC ISSUES

Abstract. Purpose. The purpose of the article is to formulate the organisational and preparatory measures for a search during investigation of crimes committed by transnational organised criminal groups. **Results.** The article focuses on some aspects of investigation of crimes committed by transnational organised criminal groups. Based on the literature review, the organisational and preparatory measures of the search are formulated and characterised. The author emphasises that the preparatory stage of a search plays an important role for its effective conduct. After all, successfully implemented organisational and preparatory measures will provide a range of conditions necessary for this. Among these measures, the following are identified and described: to complete and comprehensively study the criminal proceedings, to establish accurate information about the target of the search, to collect orientation information about members of the criminal group and its leader, to prepare scientific, technical and forensic means, to identify members of the investigative search team, to draw up a search plan. ***Conclusions.*** It is concluded that the following groups of objects should be seized during a search, namely: a) ones indicating the commission of criminal acts: objects used by the offender to commit illegal acts; the offender's clothing with traces of biological origin (blood, sperm, saliva); objects belonging to the victim; tools used to inflict bodily harm on the victim; b) ones evidencing possible locations of accomplices: locations of criminal groups in electronic computing equipment (tablets, smartphones, laptops, computers); information about public places where they mostly meet (restaurants, bars); personal letters; addresses of relatives and friends; c) ones describing the personality of the offender and the circle of his or her accomplices: information in electronic computing equipment (tablets, smartphones, laptops, computers); medical certificates; certificates of release from prison; workplace characteristics; d) evidencing the commission of other illegal acts by the offender: explosives; narcotic substances and precursors; cold steel and firearms.

Key words: transnational organised criminal group, criminal offences, investigation, investigative (detective) actions, investigation planning, search, preparatory stage.

1. Introduction

The preparatory stage of a search plays an important role for its effective conduct. After all, successfully implemented organisational and preparatory measures will provide a range of conditions necessary for this. For example, they are: determining the exact location of the search, forming an investigative team, providing the necessary specialists with all the necessary technical, forensic and other means to identify and seize evidence as fully as possible. Therefore, it has become necessary to investigate this issue.

The following national and foreign scholars who have focused their research on the development of certain aspects of the search should be noted: R.I. Blahuta, P.D. Bilenchuk, M.B. Holovko, M.M. Yefimov, L. I. Kazmirenko, L. P. Kovtunenko, O. I. Motliakh, P. Ya. Minka, Ye.M. Moiseiev, I.P. Osypenko, Ye.V. Priakhin, J.R. Richards, Yu.I. Rusnak, R.I. Sybirna, O.V. Tsyhanenko, K.O. Chaplynskyi, O.V. Shvydkyi, V.Yu. Shepitko et al. In addition, our study is based on a comprehensive approach to formulating the general principles of implementation of this procedural action, considering international practice and current trends.

The purpose of the article is to formulate the organisational and preparatory measures for a search during investigation of crimes committed by transnational organised criminal groups.

2. General features of the search

Article 234(1) of the CPC of Ukraine provides that "...a search is conducted to identify

and record information about the circumstances of a criminal offence, to find the instrument of a criminal offence or property obtained as a result of its commission, and to establish the location of wanted persons" (Criminal Procedure Code of Ukraine, 2012).

We believe that the statement of M.Y. Minka and K.O. Chaplynskyi, who noted that they should be understood as "...information contained in the testimony of witnesses, victims, suspects, accused, in the records of investigative actions, statements of citizens, as well as obtained in the course of operative search activities" is the most correct. (Minka, Chaplynskyi, 2009). According to V.M. Pletenets, '... a search contributes to the identification of signs that shed light on the events that took place. This may include the emergence of new suspects and witnesses in the case, the construction of versions, the identification of new lines of search activities and the investigation of a criminal case, etc.' (Pletenets, 2012). In sum, all scientists in the field of criminalistics focus on both the information necessary for conducting a search and the data that can be obtained during the search.

In this context, the opinion of a group of scholars should be cited that "...each search is unique and individual, as it is determined by the specific circumstances of the case, the nature of the objects searched, the characteristics of the person searched, the specifics of the object to be searched and other circumstances of the criminal case. However, a number of general recommendations apply, compliance therewith helps the investigator obtain optimal search results" (Bilenchuka, 2001). That is, preparation for a search is manifested in the implementation of organisational and procedural measures.

Other researchers correctly emphasise that "...in general, a search involves the search for items that may be material evidence, which can be formed into certain typical groups of such items: tools and means of committing a crime: (firearms and cold steel weapons; items specially manufactured for committing crimes; items prohibited for possession or use or requiring a special permit (gas weapons, radioactive substances, drugs, etc.); items used in everyday life, production or other legal activities; vehicles); items that have retained traces of the crime (clothing or footwear of the person searched that has traces of blood, soil particles, grease stains, etc.); items obtained as a result of the crime (money or valuables that are the subject of a bribe; property belonging to the victim, etc.); other items that serve as a means of establishing the truth in the case (photographs, notebooks, computer floppy disks, etc.)" (Holovko, Osypenko, 2015).

According to D.A. Bondarenko, the measures of the preparatory stage of the search include, for example, the following: "...collection and analysis of the necessary information characterising the person being searched; place of search: address, floor plan, size and condition; arrangement of furniture (desks, stationery, safes); features of the searched documents or items; development of tactical plans: choosing the time of the search and the method of entering the searched premises; determining the circle and selection of search participants, distribution of responsibilities, briefing; ensuring the protection of the search site and the documents and items found, preparation of vehicles; providing the group with scientific and technical means, with due regard for the specifics of the search object, the searched subjects and other circumstances" (Bondarenko, 2009).

The most comprehensive list of measures of the preparatory stage for the search is provided by K.O. Chaplynskyi, which includes the following: "...study of criminal case files; collection of orientation information about: - the identity of the offender, as well as his family members, relatives and acquaintances; - all episodes of criminal activity; - places (objects) of searches; - tools (means) of crime and items obtained by criminal means and subject to search, etc.; analysis and assessment of the collected information and the investigative situation at a certain stage of the investigation before making a decision to conduct a search; making (adopting) a decision to conduct a search; planning and determining the time of the search; creating optimal conditions for conducting this investigative action; identification and preparation of the necessary scientific, technical and transport means; decision on the use of a detection dog; selection of the necessary participants for the search; determination of the method of recording the course and results of the search; development of measures providing for the actions of the search participants in case of unforeseen situations or complications; ensuring the safety of the participants in the investigative action; drawing up a search plan; holding an instructional meeting (briefing) among all participants in the investigative action" (Chaplynskyi, 2004).

In addition, it should be noted that transnational organised criminal groups currently overwhelmingly use e-banking to carry out all necessary transfers of funds. Therefore, we believe that it would be appropriate to refer to the thesis of J.R. Richards that new cyber payment systems offer the best qualities of traditional currency - ease of use, wide acceptance and anonymity - with additional features such as unlimited amounts, security, multinational

movement and what is known as 'transfer speed'. In other words, e-banking enables anyone to move billions of dollars anywhere in the world as quickly as bank transfers and computerised banking systems allow. A critical issue is whether e-banking should be completely anonymous and thus immune to traditional banking regulations and law enforcement (Richards, 1999). That is, the author raises the issue of anonymity of e-banking, which is a problem for law enforcement agencies in any country.

Moreover, we agree with the opinion of M.M. Yefimov regarding certain specific features of the search in criminal proceedings initiated on the basis of crimes against morality. In particular, the author stated that "...unlawful acts in the field of morality are characterised by specific trace characteristics. For example, unlike criminal offences against life and health, the range of traces at the scene in many cases may not be as extensive as, in particular, at the suspect's place of residence. In addition, according to our research, the ways of committing the investigated category of acts, in most cases, are full-structured, that is, they consist of preparation, direct commission of the act and concealment. The last component, concealment, determines the possibility of destroying or concealing the tools of the offence, items obtained by criminal means, items with traces of a criminal offence, etc. Therefore, the investigative measures of the subsequent stage of investigation of unlawful acts of this category are important for the effective conduct of the proceedings. In particular, a search should be singled out among them. The correct and appropriate use of appropriate tactical techniques during its conduct can significantly increase the evidence base and expose the perpetrators, since the search allows to identify material traces of a criminal offence. In view of this, conducting a search if there are grounds for it is not only the right, but also the duty of the investigator" (Yefimov, 2017).

In the context of the above, K.O. Chaplynskyi's position on simultaneous searches during the investigation of crimes committed by criminal groups should be considered. For example, the scholar states that in most cases they are performed "...during the investigation of crimes committed by a group of persons and especially by an organised criminal group or criminal organisation. However, according to investigative practice, simultaneous searches can also be conducted for crimes committed by one person. In order to hide the traces of the crime, a person often uses the services of relatives or acquaintances, friends, work colleagues, which leads to simultaneous searches in different places. Therefore, the decision to conduct simultaneous searches cannot be linked in any way to the circle of persons involved in the commission of the crime. To sum up, it should be noted that a simultaneous search should be understood as a time-coordinated conduct of several searches in different places or persons by investigative teams interacting with each other as part of a single criminal case. Investigators use all types of searches when investigating organised criminal activity. However, simultaneous searches of several members of a criminal group cause certain difficulties due to the presence of several accomplices, the need to involve a significant number of properly trained and equipped law enforcement officers" (Chaplynskyi, 2009). Thus, the researcher outlines the difficulties associated with conducting searches of several members of a criminal group, which, accordingly, requires the creation of several investigative teams, and in our case, in different countries.

3. Measures at the preparatory stage of the search

Next, some preparatory measures will be described. The most important of the above measures is to study the criminal proceedings fully and comprehensively. This is due to various factors: first, it provides information on the tools and means of committing the offence; second, it provides information on the identity of the offender and previously conducted investigative (search) actions. Based on the information studied and analysed, the following preparatory measures can be taken: processing information about the identity of the offender, determining the place and time of the search, and forming the investigative team. After all, only after the above, the authorised person can decide to conduct a search and determine the possibility of using appropriate tactics. However, the respondents' questionnaire analysis revealed that only 28% of them consider it worthy of attention.

Regarding the next preparatory measure (to establish accurate information about the target of the search), V. Shepitko argues that for this purpose "...it is possible to ask the searched person a series of clarifying questions about the time, place, nature and purpose of acquiring these objects; the nature of their use; place of storage, etc. Such questions enable to understand the relationship between the subject of the search and other circumstances, to identify certain contradictions and inaccuracies" (Shepitko, 2007). With regard to the objects that can be found during a search, a group of criminologists from the Kharkiv school, for example, based on the analysis of questionnaires and interviews with respondents, identifies the following: "...

weapons and means of committing a crime (indicated by 86% of respondents); objects with traces of a crime (62%); stolen objects (56%); documents (44%); traces of a crime (32%); corpses and their parts (8%); living persons (2%)" (Denysiuk, Shepitko, 1999).

The review of the materials of the studied category of criminal proceedings reveales the following groups of objects that should be seized during a search, namely:

a) ones indicating the commission of criminal acts: objects used by the offender to commit illegal acts; the offender's clothing with traces of biological origin (blood, sperm, saliva); objects belonging to the victim; tools used to inflict bodily harm on the victim;

b) ones evidencing possible locations of accomplices: locations of criminal groups in electronic computing equipment (tablets, smartphones, laptops, computers); information about public places where they mostly meet (restaurants, bars); personal letters; addresses of relatives and friends;

c) ones describing the personality of the offender and the circle of his or her accomplices: information in electronic computing equipment (tablets, smartphones, laptops, computers); medical certificates; certificates of release from prison; workplace characteristics;

d) evidencing the commission of other illegal acts by the offender: explosives; narcotic substances and precursors; cold steel and firearms.

With regard to the collection of orientation information, O. Antoniuk argues that "... it is necessary to identify and investigate all possible sources containing information about the age, level of culture, lifestyle, interests, work schedule, professional skills, special knowledge, hobbies, acquaintances and connections (not necessarily criminal), criminal capabilities, criminal record, family composition, relations with neighbours, work colleagues, etc. The authorised person can obtain this information individually or with the help of operational units. It should be noted that the profession of the person being searched, his or her habits, intellectual qualities and lifestyle inevitably affect the choice of a hiding place, the design of the cache, and the methods of disguise. The offender, as a rule, resorts to those techniques and methods that he or she is best at. Often, the profession of such a person indicates his or her physical ability to create caches, hard-to-reach places with the help of certain tools, instruments, raw materials, materials that he or she uses most often" (Antoniuk, 2020).

In this context, we advocate the opinion of K.O. Chaplynskyi that in terms of collecting orientation information about members of a criminal group and the leader, "...for this purpose, information is collected on age, lifestyle, emotional and volitional qualities, level of culture, interests, special knowledge and skills, work schedule, acquaintances and connections (not necessarily criminal), criminal record, place in the structure of the criminal group, as well as family composition, relations with neighbours, work colleagues, availability of weapons or special means, etc. Investigative practice shows that criminals sometimes use their professional knowledge and skills to equip caches. In particular, during the study of criminal cases, it has been found that in 10% of cases, the concealment of stolen objects was carried out using the special professional skills of the persons concerned (for example, a tiler set up a cache in the bathroom under the tiles). In addition, the study of the offender's identity also helps to establish psychological contact, which allows for its effective use during searches" (Chaplynskyi, 2009). In other words, the study of the offender's identity provides the authorised person with a number of advantages, such as the possibility of establishing psychological contact with him/her, information about the probable location of the wanted objects.

Another obligation of the preparatory stage of the search will be to collect the necessary scientific, technical and forensic means. According to a separate group of scholars, "...a special set of scientific and technical means (investigative suitcase) provides significant assistance to the investigator in the search activity. During the preparation for a search, in some cases, it is necessary to provide lighting devices, tools for excavation and opening of caches, metal detectors, body detectors, ultraviolet illuminators, portable X-ray machines, bugs, etc." (Bilenchuk, Hel, Saltevskyi, Semakov, 2001). Obviously, the investigator or other authorised person alone will not be able to use these scientific and technical means, so the investigative team must include relevant specialists.

4. Conclusions

To sum up, it should be noted that the formulation of organisational and preparatory measures for a search during the investigation of crimes committed by transnational organised criminal groups is important for obtaining evidential information in criminal proceedings. Among these measures, the following are identified and described: to complete and comprehensively study the criminal proceedings, to establish accurate information about the target of the search, to collect orientation information about members of the criminal group and its leader, to prepare scientific, technical and forensic means, to identify members of the investigative search team. For example,

the analysis of the materials of the criminal proceedings under study enables to conclude that the following groups of objects should be seized during a search, namely: a) ones indicating the commission of criminal acts: objects used by the offender to commit illegal acts; the offender's clothing with traces of biological origin (blood, sperm, saliva); objects belonging to the victim; tools used to inflict bodily harm on the victim; b) ones evidencing possible locations of accomplices: locations of criminal groups in electronic computing equipment (tablets, smartphones, laptops, computers); information about public places where they mostly meet (restaurants, bars); personal letters; addresses of relatives and friends; c) ones describing the personality of the offender and the circle of his or her accomplices: information in electronic computing equipment (tablets, smartphones, laptops, computers); medical certificates; certificates of release from prison; workplace characteristics; d) evidencing the commission of other illegal acts by the offender: explosives; narcotic substances and precursors; cold steel and firearms.

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Віктор Луговий,
докторант
Національної академії внутрішніх справ,
кандидат юридичних наук
Солом'янська площа, 1, Київ, 03035
luhovyiviktor@ukr.net
ORCID ID: 0009-0007-7276-2994

ПІДГОТОВЧИЙ ЕТАП ОБШУКУ ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПУВАННЯМИ: ПРОБЛЕМНІ ПИТАННЯ

Анотація. ***Мета.*** Метою статті є формулювання організаційно-підготовчих заходів обшуку під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупуваннями. ***Результати.*** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі опрацювання наукової літератури сформульовані та охарактеризовані організаційно-підготовчі заходи обшуку. Автор акцентує увагу на тому, що підготовчий етап обшуку відіграє важливе місце для його ефективного проведення. Адже вдало здійснені організаційно-підготовчі заходи забезпечать ряд умов, необхідних для цього. Серед вказаних заходів було виокремлено й охарактеризовано такі як повне та всебічне опрацювання матеріалів кримінального провадження, встановлення точної інформації стосовно предмету пошуку, збір орієнтуючої інформації про членів злочинного угруповання та її лідера, підготовка науково-технічних та техніко-криміналістичних засобів, визначення учасників слідчо-пошукової групи, складання плану обшуку. ***Висновки.*** Зроблено висновок про наявність наступних груп об'єктів, що варто вилучати під час проведення обшуку, а саме: а) що свідчать про вчинення злочинних дій: предмети, якими злочинець скоював протиправні дії; одяг злочинця, на якому лишилися сліди біологічного походження (кров, сперма, слина); предмети, що належать потерпілому; знаряддя, якими потерпілому були завдані тілесні пошкодження; б) що свідчать про можливі місця перебування співучасників: локації злочинних груп в електронно-обчислювальній техніці (планшетах, смартфонах, ноутбуках, комп'ютерах); відомості про місця загального користування, де вони переважно зустрічаються (ресторани, бари); особисті листи; адреси родичів та знайомих; в) що надають характеристику особі злочинця та колу його співучасників: відомості в електронно-обчислювальній техніці (планшетах, смартфонах, ноутбуках, комп'ютерах); медичні довідки; довідки про звільнення з місць позбавлення волі; характеристики з місця роботи; г) що свідчать про скоєння злочинцем інших протиправних діянь: вибухові речовини; наркотичні речовини та прекурсори; холодна та вогнепальна зброя.

Ключові слова: транснаціональне організоване злочинне угруповання, кримінальні правопорушення, розслідування, слідчі (розшукові) дії, планування розслідування, обшук, підготовчий етап.

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Myroslav Romaniuk,
Candidate of Juridical Sciences, Associate Professor at
Department of Law Enforcement and Anti-Corruption Activities
of Interregional Academy of Personnel Management
2 Frometivska Street, Kyiv, 03039
romaniuk_myroslav@ukr.net
***ORCID ID:** 0009-0001-3157-0036*

SCIENTIFIC SUPPORT AGAINST CRIMINAL OFFENCES IN THE FIELD OF WATER USE

Abstract. ***Purpose.*** The purpose of the article is to determine the problem of scientific development of counteraction to criminal offences in the field of water use. ***Results.*** The article discusses one of the most important challenges facing humanity in the context of increased anthropogenic impact on natural objects, namely the problem of clean water. In Ukraine, this problem is exacerbated by the fact that the country, compared to European countries, is one of the least water-supplied, where water use is mostly irrational. It is emphasised that the unsatisfactory state of water resources, their pollution, negatively affect public health, increase the level of general morbidity, in particular, infectious and cancerous diseases. Therefore, the protection of water resources from pollution is dictated by the requirements of Ukraine's national security. The Strategy of State Environmental Policy of Ukraine for the period up to 2030 prioritises improving water quality and water resources management, preventing groundwater pollution, and completely stopping the discharge of untreated and insufficiently treated wastewater into water bodies and ensuring that the degree of wastewater treatment meets the established norms and standards. It is noted that the current methods of investigating criminal offences related to water pollution cannot be considered as fully meeting the requirements of the practice against crime in this field. Therefore, today, special law enforcement protection is required in the water use sector, where criminal encroachments have recently become widespread. ***Conclusions.*** It is concluded that one of the priority areas of activity of the operational units of the criminal police is the ongoing counteraction to criminal offences in the field of water use. However, an analysis of the operational situation in the field of compliance with water legislation in the course of water use reveals that this sector of the economy is still one of the most attractive for criminal enrichment of officials and other persons. This is primarily due to the high level of corruption, the critical scale of water misuse and non-compliance with water legislation.

Key words: counteraction, criminal offence, water use, water resources, pollution, water bodies.

1. Introduction

It should be noted that all water bodies throughout Ukraine are the national heritage of its people and the natural basis for economic development and social well-being. Moreover, water bodies, together with the adjacent territories, have health, recreational and aesthetic value, and are an important element of the natural landscape and an environment for the habitat, reproduction and development of aquatic bioresources.

Nowadays, the population of Ukraine is facing a threat in the form of criminal encroachment on water protection, rational use, reproduction and rehabilitation. The high level of water crime is holding back the pace of overall economic growth. In addition, the tendencies of qualitative changes in water-related crime towards intellectualisation, organisation, technical equipment, corruption and protection continue to grow. The exceptional social and economic significance of water supply and sewerage services for the vital activity of the population, as well as the economic specificities of the formation and development of the water use sector, limit the possibility of applying market mechanisms for its regulation.

The problem of scientific development of operative-search counteraction to criminal offences in the field of water use has not been left without attention of researchers. The issues of criminal offences in the field of water use have been studied by: V.K. Barvenko, I.V. Berdnik, S.M. Bortnyk, O.K. Halytska, O.I. Holysh, A.S. Yevstihnieiev, L.H. Kozliuk, S.V. Murykhin, V.O. Oderii, A.V. Pastukh, H.S. Polishchuk, M.V. Stashchak, Yu.A. Turlova, N.S. Shevchenko, V.V. Shenderyk, A.M. Shulha, and others.

2. Development of legal and regulatory framework for environmental protection

The problem of environmental protection has been evolving for many decades. It is driven

by the rapid development of scientific and technological progress, as well as the overall growth of the world's population. At all stages of its development, man has been closely connected with the world around him – the environment. In recent years, due to the formation of a highly industrialised society, the negative impact of humans on the environment has increased dramatically, and the volume of such interference has grown significantly. It has become more diverse in its forms and is already threatening to become a global danger to humans themselves [14].

The Constitution of Ukraine enshrines the state's obligation to ensure environmental safety and maintain ecological balance in Ukraine, overcome the the aftermath of the Chornobyl catastrophe, the catastrophe of global scale, and preserve the gene pool of the Ukrainian people. However, successful implementation of these constitutional provisions is possible only if adequate efforts are made by both individuals and the entire society. Legal protection of the environment plays a significant role in ensuring a safe environment for people. The problem of protecting the environment from deterioration, including legal liability for pollution or damage to land as the most important component of the environment, became much more acute and widespread in the mid-twentieth century. It was at this time that, on the basis of scientific and technological progress, the intensity of land use increased immeasurably and man-made impacts began to reveal the negative environmental consequences (Shulha, 2004).

Nowadays, the population of Ukraine is facing a threat expressed in the form of criminal encroachment on the protection, rational use, reproduction and rehabilitation of water bodies. In particular, the ongoing deep systemic crisis in the water and wastewater sector is holding back the pace of overall economic growth that has been observed in Ukraine in recent years. The exceptional social and economic significance of water supply and sewerage services for the vital activity of the region, as well as the economic specificities of the formation and development of the sub-sector, limit the possibility of applying market mechanisms to regulate their activities (Halytska, 2019, pp. 156-157).

One of the priority areas of activity of the operational units of the criminal police is the ongoing counteraction to criminal offences in the field of water use. However, the analysis of the operational situation in the field of compliance with water legislation in the course of water use shows that this sector of the economy is still one of the most attractive for criminal enrichment of officials and other persons. This is primarily due to the high level of corruption, the critical scale of water misuse, and non-compliance with water legislation (Ievstihnieiev, 2019, pp. 134-135.

It should be noted that, due to its general characteristics, the issue of combating criminal offences in the field of water use by operational units of the criminal police has been fragmentarily considered in scientific works that dealt with the detection, prevention and investigation of offences in various sectors of the economy.

The concept of "water use" is a part of the state's economy and this industry functions in the sphere of interests of the entire population and affects the vital activities of citizens (Halytska, 2021, pp. 101-102).

The development of Ukraine's water sector shall meet modern socio-economic and environmental requirements. Environmental requirements for the development of the water sector in Ukraine should ensure the protection of water sources, rational use of water resources, preservation of biodiversity; improve safety in the use of toxic chemicals and address the problem of waste. The economic requirements include not only the implementation of measures aimed at improving the territorial and sectoral structure and technologies of water use; providing quality drinking water and preserving public health; promotion of regional development on the basis of sustainability; development of international cooperation in the field of water use and protection, but also high-quality and effective activities by operational units of the criminal police against criminal offences in the field of water use (Turlova, 2018, pp. 185-187).

According to the Strategy of State Environmental Policy of Ukraine, our country is one of the least water-supplied countries in Europe, and water use in the country is mostly irrational. Toxic, microbiological and biogenic pollution is causing a deterioration in the ecological state of river basins, as well as coastal waters and territorial waters of the Black and Azov Seas. It should be noted that the Black Sea estuaries, most of which belong to the nature reserve fund and are unique recreational resources, are in the unsatisfactory condition. In many regions, groundwater in Ukraine does not meet the established requirements for water supply sources in terms of quality, which is primarily due to anthropogenic pollution, and its intensive use leads to the depletion of groundwater horizons (Law of Ukraine On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030, 2019).

3. The state of scientific support against criminal offences in the field of water use

The main sources of water pollution are discharges from industrial facilities, inadequate water disposal infrastructure and treatment

facilities, non-compliance with water protection zones, and the washing and drainage of toxic substances from agricultural land. The main substances that cause pollution are heavy metal, nitrogen and phosphorus compounds, oil products, phenols, sulphates, and surfactants. Recently, pollution by medical waste and microplastics has been increasing, which is currently uncontrolled (Halytska, 2020, pp. 220-221).

Water pollution leads to the emergence of various diseases of the population, a decrease in the overall resistance of the body and, as a result, an increase in the overall morbidity rate, in particular, infectious and cancerous diseases. The system of public administration in the field of water protection requires urgent reform and transition to integrated water resources management based on the basin principle.

In the context of our topic, the literature review on the issues of detecting and documenting the facts of obtaining illegal benefits and corruption by operational units of the criminal police, in particular at water facilities, reveal that A.V. Pastukh, studies the investigation of crimes related to violations of environmental safety rules (Pastukh, 2023); S.V. Murykhin studies the punishment for environmental crimes in Ukraine (Murykhin, 2020). However, they focus only fragmentary on detecting, preventing and investigating the receipt of unlawful benefits by an official in the field of water use.

Despite the existence of a large number of scientific papers, none of them addresses the issue of misuse of new technologies to document criminal schemes in the field of water use, as well as the counteraction of criminal police operational units to criminal offences in the field of water use (Berdnik, 2020, p. 27).

With regard to the dissertation studies that are most relevant to the issue we have chosen, V.K. Barvenko should be underlined with his focus on the initial stage of investigation of violations of water protection rules and marine pollution, which reveals only the general information model of this issue, but does not concern the counteraction to crimes in the field of water use (Barvenko, 2019).

In his scientific work, H.S. Polishchuk studies the criminological characteristics and prevention of crimes against the environment (Polishchuk, 2006).

Considering monographs that are of great importance for operational units of the criminal police in combating criminal offences in the field of water use, it is worth paying attention to the monograph by V.O. Oderii *Theory and practice of investigation of crimes against the environment*, in which the author analyses the essence, tasks, legal grounds and other key issues of operative-search activities, their place and role in the system of branched state legal means, prevention, detection and investigation of criminal offences (Oderii, 2015).

In the monograph *Theory and practice of operational and investigative counteraction to crimes in the field of water us*e by O.I. Holysh, S.M. Bortnyk, M.V. Stashchak, V.V. Shendryk, the authors highlight the main problems of operative-search characteristics of organised economic crime: concepts and features of economic and organised crime and their impact on the organisation of counteraction to this type of crime by means of operative-search activities; operationally significant elements of the structure and infrastructure of organised economic crime (Holysh, Bortnyk, Stashchak, Shendryk, 2016).

4. Conclusions

To sum up, one of the priority areas of activity of the operational units of the criminal police is the ongoing counteraction to criminal offences in the field of water use. However, an analysis of the operational situation in the field of compliance with water legislation in the course of water use reveals that this sector of the economy is still one of the most attractive for criminal enrichment of officials and other persons. This is primarily due to the high level of corruption, the critical scale of water misuse and non-compliance with water legislation.

The article shows that the Strategy of State Environmental Policy of Ukraine for the period up to 2030 prioritises improving water quality and water resources management, preventing groundwater pollution, and completely stopping the discharge of untreated and insufficiently treated wastewater into water bodies and ensuring that the degree of wastewater treatment meets the established norms and standards.

Therefore, one of the most important challenges facing humanity in the context of increased anthropogenic impact on natural objects, namely the problem of clean water. In Ukraine, this problem is exacerbated by the fact that the country, compared to European countries, is one of the least water-supplied, where water use is mostly irrational. Nowadays, the water use requires special law enforcement protection, as criminal encroachments in this field have recently become widespread.

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Мирослав Романюк,
кандидат юридичних наук, доцент кафедри правоохоронної та антикорупційної діяльності Міжрегіональної Академії управління персоналом
вулиця Фрометівська, 2, Київ, 03039
romaniuk_myroslav@ukr.net
ORCID ID: *0009-0001-3157-0036*

НАУКОВЕ ЗАБЕЗПЕЧЕННЯ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ У СФЕРІ ВОДОКОРИСТУВАННЯ

Анотація. ***Мета.*** Метою статті є визначення проблеми генезису наукової розробленості забезпечення протидії кримінальним правопорушенням у сфері водокористування. ***Результати.*** В статті розглядається одна з найважливіших проблем, що стоїть перед людством в умовах посиленого антропогенного впливу на природні об'єкти, а саме проблема чистої води. В Україні ця проблема посилюється тим, що країна, порівняно з європейськими державами, є однією з найменш водозабезпечених, де водокористування здійснюється здебільшого нераціонально. Наголошено, що незадовільнений стан водних ресурсів, їх забруднення, негативно впливають на здоров'я населення, підвищують рівень загальної захворюваності, зокрема на інфекційні та онкологічні захворювання. Тому охорона водних ресурсів від забруднення диктується вимогами національної безпеки України. У Стратегії державної екологічної політики України на період до 2030 року до її першочергових завдань віднесено покращення якості води та управління водними ресурсами, запобігання забрудненню підземних вод, а також повне припинення скидання у водні об'єкти неочищених та недостатньо очищених стічних вод і забезпечення відповідності ступеня очищення стічних вод установле-

ним нормативам та стандартам. Зазначено, що зараз існуючі методики розслідування кримінальних правопорушень, пов'язаних із забрудненням водних об'єктів, не можуть розглядатися як такі, що повною мірою відповідають вимогам практики протидії злочинності у цій сфері. Отже, нині особливого правоохоронного захисту потребує сфера водокористування, злочинні посягання щодо якої останнім часом набули значного поширення. ***Висновки.*** Зроблено висновок, що одним із пріоритетних напрямків діяльності оперативних підрозділів кримінальної поліції є постійна протидія кримінальним правопорушенням у сфері водокористування. Проте аналіз оперативної обстановки у сфері дотримання водного законодавства під час водокористування свідчить про те, що даний сектор економіки все ще залишається одним із найпривабливіших для кримінального збагачення службових та інших осіб. Це, насамперед, пов'язано з високим рівнем корупції, критичними масштабами нецільового забору води та недотриманням законодавства у сфері водокористування.

Ключові слова: протидія, кримінальне правопорушення, водокористування, водні ресурси, забруднення, водні об'єкти.

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Viacheslav Chornei,
Postgraduate student at Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
viacheslavchornei@ukr.net
ORCID ID: *0000-0002-2124-1237*

ESSENCE AND IMPORTANCE OF FORMING A PERSONNEL RESERVE OF THE PUBLIC PROSECUTION SERVICE

Abstract. ***Purpose.*** The purpose of the article is to clarify the essence and reveal the importance of forming the personnel reserve of the prosecution authorities relying on the analysis of scientific views of scholars and the provisions of current legislation. To achieve this, it is necessary to solve the following tasks: to reveal the general purpose of forming the personnel reserve of the prosecution authorities; to analyse the provisions of current Ukrainian legislation, and on this basis to reveal the list and content of the tasks of forming the personnel reserve of the prosecution authorities. ***Results.*** It is established that the purpose of forming the personnel reserve of the prosecution authorities is to ensure legal, organisational and economic conditions for the smooth functioning of this institution with a view to promptly and efficiently filling vacant positions in the institution under study. In accordance with the above goal, the tasks of the relevant activities are formulated. The key tasks of forming the staffing of the prosecution bodies are the following: to ensure stability and continuity of the work of the prosecution and its bodies; to quickly close gaps in the system of staffing of the prosecution; to increase the level of competitiveness of prosecutors; to create conditions under which employees will have the opportunity for career growth; to encourage prosecutors to perform their duties more efficiently and effectively; to ensure effective strategic planning in shaping and implementing the personnel policy of the prosecution authorities. ***Conclusions.*** To sum up, it is the tasks outlined in the article that most meaningfully characterise the practical aspects of the activities aimed at forming the personnel reserve of the prosecution authorities. However, a significant drawback at the theoretical and practical level is the fact that the relevant tasks and functions have not found their legislative consolidation. It is well-reasoned that the significance of forming a personnel reserve of the prosecution authorities is that it makes the following possible: first, to ensure the smooth operation of this institution; second, to create conditions under which the prosecution will not experience a shortage of personnel, which in turn will allow it to respond more quickly to difficult situations; third, to provide incentives for the continuous professional development of prosecutors.

Key words: personnel, personnel reserve, prosecutor's office, goal, tasks, essence.

1. Introduction

One of the most important tools for ensuring proper functioning of the prosecution authorities is the creation of a stable staff of this agency. This is because the effectiveness of the performance of tasks by each individual prosecutor directly affects the protection of human and civil rights and freedoms in our country. Moreover, it should be noted that the formation of the personnel reserve of the prosecution authorities is a complex activity, the essence of which is revealed in a clearly defined goal, the achievement of which should be preceded by the solution of specific tasks. In our opinion, these categories most meaningfully characterise the practical content of the activity under study.

Some problematic issues related to the formation of the personnel reserve of the prosecution authorities have been considered in the scientific works by: I.L. Bulyk, O.O. Harmatiuk, V.V. Dzhyba, T.D. Dobrovolskyi, M.V. Kosiuta, A.F. Kryzhanovskyi, V.V. Shtuchnyi, M.K. Yakymchuk and many others. However, despite the significant theoretical contribution, the issue of clarifying the essence of forming the personnel reserve of the prosecution bodies remains insufficiently studied in the scientific literature.

The purpose of the article is to clarify the essence and reveal the importance of forming the personnel reserve of the prosecution authorities relying on the analysis of scientific views of scholars and the provisions of current legislation. To achieve this, it is necessary to solve the following tasks: to reveal the general purpose of forming the personnel reserve of the prosecution authorities; to analyse the provisions of current Ukrainian legislation,

and on this basis to reveal the list and content of the tasks of forming the personnel reserve of the prosecution authorities.

The scientific novelty of the article is that it further elaborates the theoretical approach to determining the essence of forming the personnel reserve of the prosecution bodies.

2. The goal of forming a personnel reserve for the prosecution bodies

To begin our research, we note that in the most general and simplified sense, a goal is the ultimate, desired result that subjects seek to achieve in the process of implementing an activity. From the perspective of philosophy, the category "goal" is also defined ambiguously. For example, a goal is defined as an ideal reflection of the desired future result of human actions (Borzenko, 1982, p. 8). O.M. Bandurka believes that "the goal, purpose is the desired state of the object of influence or the final desired result of the management process, and the desired result depends on the reality, legality and correctness of its definition" (Bandurka, 1998, p. 16). According to T.M. Kravtsova, the goal of management should be understood as the occurrence of such a desired state or level of development of the social system, which should be achieved as a result of implementation of management decisions. Consequently, the author continues that without a defined goal, the management process has no meaning and significance (Kravtsova, 2004, p. 327). Z.Ye. Shershniova argues that "a goal is one of the elements of human behaviour and conscious activity, characterised by foresight, imagination of the consequences of activity, ways to achieve the desired and necessary results with the help of a certain list of means. The category of "goal" has many interpretations, for example, as a motive, desire, direction, method. In management, a goal also has many definitions, most commonly understood as a forward-looking idea that is assessed as possible to be realised. The practical aspect of goal setting is to focus on the integration of efforts and, with its help, combine the diverse actions of both an individual and the organisation in general into a certain orderly system or process. The goal is the initial position determined by the system of relations between the subject and the object of management, since their interrelations are characterised by the dialectic of the goal, means and result" (Shershnova, 2004, p. 205).

Accordingly, the goal of forming the personnel reserve of the prosecution authorities should be understood as the final, desirable, and at the same time specific result sought to be achieved by the actors authorised to perform the relevant activities. Therefore, the goal of forming the personnel reserve of the prosecution authorities is to ensure legal, organisational and economic conditions for the smooth functioning of this institution with a view to promptly and efficiently filling vacant positions in the institution under study. The achievement of this goal should be preceded by the solution of specific tasks.

According to *New Explanatory Dictionary of the Ukrainian Language*, a "task" is: "1) a defined, planned scope of work; 2) a purpose, intention" (Iaremenko, Slipushko, 1986). From a philosophical perspective, a task is not just a task, but a "social task", which makes it closer to the area under consideration, and it is interpreted in this sense "as a need for a subject (society, social community, individual) to perform certain activities in the future", and a goal is "an ideal, primarily determined result of human activities aimed at transforming reality in accordance with a person's conscious need. The goal is a direct internal motive for human activities" (Philosophical dictionary, 1986, p. 756). V.O. Klymkov comes to the conclusion that "a task is a goal, the achievement of which is desirable by the appropriate time within the period for which the management decision is designed. The task indicates the immediate goal of the organisation, which can be quantified. Moreover, according to the scientist, tasks are a set of requirements for decision-making in a particular situation" (Klymkov, 2010, p. 99). According to V.V. Shylov, "tasks are also goals, but they are much smaller in scope and more clearly defined. For example, while the aim (goals) are strategic in nature, the tasks are tactical, since it is the tasks that influence the choice of forms, ways and methods of action (behaviour) of the actors performing them. Following this logic, it can be stated that each individual task can serve as an intermediate goal, for the achievement of which its own system of tasks is built. That is, tasks are always derived from the goal, and the goal is set subjectively, based on social needs. In other words, in order to achieve the goal, it is necessary to solve a number of tasks." (Shylov, 2014, p. 98).

Therefore, the tasks are specific micro-goals, the solution of which precedes the achievement of the overall ultimate goal. The literature review does not reveal a unified approach to the list of tasks for the formation of the personnel reserve in the prosecution service. However, there are quite different approaches to the general list of relevant tasks, regardless of the sector of public life in question. For example, V.A. Savchenko argues that the main tasks of forming a personnel reserve are: "identification of persons among the employees of the organisation who have the potential for appointment to a managerial or key position; training of persons

enrolled in the managerial reserve for managerial positions; ensuring timely filling of vacant managerial positions from competent and capable employees; attracting younger employees to key positions; creating appropriate conditions for the continuity and sustainability of management of the organisation and its units". (Savchenko, 2015). According to O.O. Harmatiuk and O.M. Chura, the main tasks of forming and managing the bank's personnel reserve are: timely replacement of vacant positions with new employees; ensuring the stability of the bank's management and all its divisions; appointment of competent employees (Chura, Harmatiuk, 2016).

3. Key tasks of forming the staff of the prosecutor's office

In accordance with the Regulations on the personnel reserve of Sumy State Pedagogical University named after A.S. Makarenko, the main tasks of forming the university's personnel reserve are as follows: to identify professionally trained and promising administrative, managerial, teaching, pedagogical, scientific and other employees who can perform professional activities in managerial positions in the future; to organise effective professional training of employees included in the personnel reserve; to create conditions for stimulating employees to move up the career ladder and develop; to ensure systematic filling of vacancies while maintaining the continuity of management (Regulations on the personnel reserve of Sumy State Pedagogical University named after A.S. Makarenko, adopted by the decision of the academic council of the university, 2020).

Therefore, relying on the analysis of scientific views of scientists and the provisions of the current legislation, we believe that the key tasks of forming the staffing of the prosecution bodies are the following:

– Ensure stability and continuity of the work of the prosecution and its bodies. The solution to this task is of great importance, especially given the important tasks performed by this institution in the course of its activities. In addition, it is the formation of a personnel reserve that allows for the rapid recruitment of the necessary specialists to ensure an effective response to crisis situations, such as serious offences, terrorist threats, military aggression, etc. Therefore, it is undeniable that having qualified prosecutors ready to act contributes to stability and control of the situation;

– Close gaps in the system of staffing of the prosecution quickly. The issue of staffing of the prosecutor's office is perhaps the main factor for the most effective implementation of its functions to guarantee all human and civil rights, ensure strict observance of the fundamental principle of the rule of law and further participation in the development of a democratic state, and therefore it is necessary to optimise the process of selection of prosecutors, take measures to simplify and speed up the competition procedures, and to actualise the issue of returning the institution of training for the prosecutor's office (Adamiv, 2023).

– Increase the level of competitiveness of prosecutors. Competitiveness of an employee is a concept that reflects the degree of attractiveness, advantages, ability to meet the high requirements of a competitive market, ability to withstand comparison, opposition to competitors in a clearly defined field of activities by specific features and properties. And a competitive specialist is an employee who has certain advantages over other specialists performing similar work in identifying qualities, properties, results of personal productive activity to ensure maximum efficiency of the organisation, enterprise, firm (Dubko, 2004, p. 6);

– Create conditions under which employees will have the opportunity for career growth. In general, a career is understood as an employee's subjectively conscious judgements about his or her labour future, expected ways of self-expression and job satisfaction. In other words, according to V.Y. Malynovskyi, a career is a gradual advancement of an employee up the career ladder, a change in qualification opportunities, skills, abilities and the amount of remuneration associated with his or her activities. The concept of career does not imply a mandatory and constant progression up the organisational hierarchy. In other words, a career is an individually perceived position and behaviour related to work experience and activities during a person's working life (Malynovskyi, 2000, p. 258). The scientific perspective of O.S. Prodaievych is interesting, as he concludes: "an official career is a purposeful promotion of a person in the civil service regulated by law to realise public interests and meet personal interests by filling a higher position or assigning a higher rank (Prodaievych, 2008, p. 12). The importance of the career development of prosecutors is due to the following factors: firstly, it reflects the growth of the level of professional skills, knowledge and abilities, which makes them more effective in solving complex tasks; secondly, it implies an increase in the level of responsibility, as well as more thorough performance of their duties and greater attention to detail; Third, career promotion is not only a motivator for the quality performance of duties, but also ensures stability in the work of prosecutors; fourth, it allows retaining valuable staff and using their experience in the future.

– Encourage prosecutors to perform their duties more efficiently and effectively. L.V. Mohilevskyi argues that incentives are public recognition of merit, rewarding, and granting of public honour to persons holding the rank of private or commander of the internal affairs bodies of the prosecutor's office in connection with their success in performing work and official tasks in the form of incentives, benefits and advantages established by the current special legislation (Mohilevskyi, 2008). In the context of the study, incentives are also provided by the fact that being in the personnel reserve, prosecutors feel important and have prospects of receiving various kinds of rewards;

– Ensure effective strategic planning in shaping and implementing the personnel policy of the prosecution authorities. Strategic planning is an adaptive process that ensures regular development and adjustment of a system of rather formalised plans, revision of the content of measures for their implementation based on continuous monitoring and evaluation of changes occurring outside and inside the system. Strategic planning covers a system of long-term, medium-term and short-term plans, projects and programmes (Zbukar, 2010). Therefore, strategic planning in formulating and implementing personnel policy of the prosecution offices is an important stage in the management of human resources aimed at achieving the strategic goals and objectives of this institution. The initial stage of strategic planning is the analysis of the prosecution bodies' staffing needs. This is important to determine what kind of specialists are needed, their qualification level and number.

These goals may include staff development, leadership development, motivation and performance improvement for prosecutors. To achieve these goals, a strategy is developed that includes specific measures and methods.

Implementing the HR strategy involves a number of steps. For example, it may include the selection and recruitment of new staff in accordance with the needs of the prosecution service, the organisation of training programmes to improve skills, the improvement of the performance evaluation system, and the creation of a system of motivation and career development. Once the strategy is implemented, it is necessary to monitor and evaluate the implementation of the tasks and achievement of the goals.

One of the important aspects of strategic planning is adaptation to changes. HR policy should be flexible and adaptive to changes in legislation.

4. Conclusions

To sum up, it is the tasks outlined in the article that most meaningfully characterise the practical aspects of the activities aimed at forming the personnel reserve of the prosecution authorities. However, a significant drawback at the theoretical and practical level is the fact that the relevant tasks and functions have not found their legislative consolidation.

Therefore, the significance of forming a personnel reserve of the prosecution authorities is that it makes the following possible: first, to ensure the smooth operation of this institution; second, to create conditions under which the prosecution will not experience a shortage of personnel, which in turn will allow it to respond more quickly to difficult situations; third, to provide incentives for the continuous professional development of prosecutors.

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Вячеслав Чорней,
здобувач Науково-дослідного інституту публічного права
Київ, 03035, вул. Г. Кірпи, 2А
viacheslavchornei@ukr.net
ORCID ID: *0000-0002-2124-1237*

СУТНІСТЬ ТА ЗНАЧЕННЯ ФОРМУВАННЯ КАДРОВОГО РЕЗЕРВУ ОРГАНІВ ПРОКУРАТУРИ

Анотація. ***Мета.*** Мета статті полягає у тому, щоб спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, з'ясувати сутність та розкрити значення формування кадрового резерву органів прокуратури. Для досягнення вказаної мети необхідно вирішити наступні завдання: розкрити загальну мету формування кадрового резерву органів прокуратури; здійснити аналіз норм чинного законодавства України, на основі чого розкрити перелік та зміст завдань формування кадрового резерву органів прокуратури. ***Результати.*** Встановлено, що метою формування кадрового резерву органів прокуратури є забезпечення правових, організаційних та економічних умов для безперебійного функціонування даної інституції задля шляхом оперативного та якісного заміщення вакантних посад у досліджуваній інституції. Відповідно до вказаної вище мети сформульовано завдання здійснення відповідної діяльності. Ключовими завдання формування кадрового складу органів прокуратури є наступні: забезпечити стабільність та безперервність роботи прокуратури та її органів; швидко перекривати прогалини у системі кадрового забезпечення прокуратури; збільшити рівень конкурентоспроможності працівників прокуратури; створити умови, за яких працівники матимуть можливість кар'єрного росту; заохоти працівників прокуратури до більш якісного та ефективного виконання своїх посадових обов'язків; забезпечити ефективне стратегічне планування у сфері формування та реалізації кадрової політики органів прокуратури. ***Висновки.*** Узагальнено, саме окреслені у статті завдання найбільш змістовно характеризують практичні бік діяльності спрямованої на формування кадрового резерву органів прокуратури. Втім, як суттєвий недолік на теоретичному та практичному рівні відзначено той факт, що відповідні завдання та функції не віднайшли свого законодавчого закріплення. Аргументовано, що значення формування кадрового резерву органів прокуратури полягає у тому, що за його допомогою вбачається можливим: по-перше, забезпечити безперебійну роботи цієї інституції; по-друге, створити умови, за яких прокуратура не буде відчувати кадрового дефіциту, що в свою чергу дасть можливість швидше реагувати на складні ситуації; по-третє, забезпечити стимулювання до постійного професійного зростання прокурорів.

Ключові слова: кадри, кадровий резерв, органи прокуратури, мета, завдання, сутність.

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Alina Chorna,
Doctor of Juridical Science, Professor
Professor of the Department of Legal Support of Entrepreneurial Activity and Financial Security of Kharkiv National University of Internal Affairs
27 Lev Landau Ave, Kharkiv, Ukraine
chornaalina@ukr.net
ORCID ID: *0000-0003-0519-7300*

LIABILITY OF AN ATTORNEY FOR DISSEMINATION OF FALSE INFORMATION

Abstract. ***Purpose.*** The purpose of the article is to establish the specific features of an attorney's liability for dissemination of false information. ***Results.*** The article focuses on the specific features of application of liability to an attorney-at-law for dissemination of false information. It is determined that if an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information. It is proved that the essence of the practice of law is to provide professional legal services to clients with a view to achieving justice exclusively on the basis of legal and morally justified means. It is determined that the practice of law in accordance with the requirements of the law contributes to: increasing the level of trust in the practice of law; a positive impact on the level of legal awareness; and promotes the achievement of justice exclusively through legal and morally justified methods. It is emphasised that Article 19 of the Rules of Professional Conduct for Attorneys expressly provides that an attorney shall not accept the instructions, if the result desired by a client, or the methods for achieving it, on which the client insists, are unlawful, or if the client's instruction goes beyond the scope of the attorney's professional rights and duties. In cases, if the said circumstances are not obvious, the attorney shall give appropriate clarifications to the client. If under such circumstances it is still impossible to agree with the client the modifications in the contents of the instruction, the attorney shall decline the conclusion of the agreement with the client. The advocate shall not, in the course of his or her practice, resort to means and methods contrary to the applicable law or these Rules. **Conclusions.** It is concluded that the essence of the practice of law is to provide professional legal services to clients with a view to achieving justice exclusively on the basis of legal and morally justified means. The practice of law in accordance with the requirements of the law contributes to: increasing the level of trust in the practice of law; a positive impact on the level of legal awareness; and promotes the achievement of justice exclusively through legal and morally justified methods. If an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information.

Key words: practice of law, attorney-at-law, rule of law, liability, agreement, client, rights, obligations.

1. Introduction

The full existence and functioning of any society is impossible without the legal order. The legal order is a legitimate regulatory chain, which is achieved by issuing laws and other regulations, improving legislation, and taking measures to strengthen the legality. According to Article 4 of the Law of Ukraine On the Bar and Practice of Law (Law of Ukraine On The Bar and Practice of Law, 2012), the main principles of the practice of law are compliance with the rule of law, legality, independence, confidentiality and avoidance of conflicts of interest. Legal responsibility is central to ensuring and maintaining orderly social relations. It is the institution of legal liability as one of the optional elements of the operation of law that to a certain extent implements the requirements of legal provisions. One of the most pressing issues of legal liability remains liability for violations in the information field, in particular, the liability of an attorney-at-law for dissemination of false information. Therefore, the question of the attorney's liability in case of dissemination of false information in the course of performing his or her duties arises.

The purpose of the article is to establish the specific features of an attorney's liability for dissemination of false information.

2. Control over the practice of law

The provision of qualified practice of law is impossible without ensuring appropriate control over such activities. Such control is primarily ensured by the rules of the institu-

tion of legal liability of the attorney-at-law. The activities of the attorney-at-law cannot be based solely on the desire to provide qualified legal services, they must also be ensured by legal liability for the non-performance or improper performance of the duties assigned to him or her The main task of such liability is to ensure that the attorney performs his or her duties in providing legal services properly. This increases the level of trust in the legal profession and has a positive impact on the level of legal awareness of citizens. The rights and obligations are emphasised by scholars who consider responsibility as a specific institution of social control that defines the rights and obligations of a subject in connection with the task entrusted to him/her and the legal or moral - positive or negative - consequences in case of fulfilment or, respectively, non-fulfilment of these rights and obligations (Oliinyk, 2016). This definition of liability, in our opinion, should be supported, especially when it comes to the liability of attorneys. It includes not only retrospective but also prospective aspects of responsibility, since it contains an indication of behaviour aimed primarily at the proper performance of the duties assigned. Therefore, legal liability of the attorney may be characterised as a special legal status of the participant in legal relations, which implies the rights and obligations enshrined in the regulations and contracts, understanding of the need to comply with the relevant provisions, as well as the possibility of adverse consequences in case of violation of these provisions on the basis and in accordance with the procedure specified in the law or contract.

The regulatory system of relations in the information field is aimed at ensuring the effectiveness of relations and strengthening guarantees of observance of the rights of the participants in legal relations (Lohinova, Drobozhur, 2015). The Constitution of Ukraine (1996) guarantees everyone the right to freedom of thought, speech, and free expression of their views and beliefs (Article 34). Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way of their choice. However, the main condition for this is that the information must be disseminated in compliance with the legislation on its reliability and not tarnish the honour, dignity and business reputation of other persons. Article 32 of the Constitution of Ukraine provides for a number of guarantees in the field of personal data protection: no one shall be subjected to interference in his private life and family matters; the collection, storage, use, and dissemination of confidential information about a person without his consent shall not be permitted, except for the cases determined by law and only in the interests of national security, economic welfare, and human rights; every citizen shall have the right to have access to the information about himself/herself possessed by public authorities and bodies of local self-government, institutions, and organisations unless such information is considered a state or other secret protected by law; everyone shall be guaranteed judicial protection of the right to rectify unauthentic information about himself/herself and members of his family, the right to demand the expungement of any type of information, as well as the right to compensation for material and moral damages caused by the collection, storage, use, and dissemination of such unauthentic information. According to court practice, the right to freedom of thought and speech, to the free expression of one's views and beliefs is supported by the obligation not to disseminate false information about a person or information that discredits his or her dignity, honour or business reputation (Resolution of the Plenum of the Supreme Court of Ukraine On refutation of false information and recovery of moral damages, 2019).

According to the provisions of Article 29 of the Law of Ukraine On Information (1992), society has the right to receive socially necessary information and information of public interest is considered to be information that indicates a threat to state sovereignty, territorial integrity of Ukraine; ensures the exercise of constitutional rights, freedoms and obligations; indicates the possibility of human rights violations, misleading the public, harmful environmental and other negative consequences of activities (inactivity) of individuals or legal entities, etc. Moreover, the society has the right to receive information that corresponds to reality and enables the society to independently assess it on the basis of all the facts and diversity of opinions on the assessment of such information and its importance for the society, so it is important that the information disseminated by anyone, especially by the media or opinion leaders, officials, civil servants, on the one hand, consistent with reality, and on the other hand, socially significant and satisfying the public demand for control over the activities of state bodies and their officials. Thus, no matter how socially necessary the information is, it must always be reliable if it is presented in the form of factual statements (Resolution of the Plenum of the Supreme Court of Ukraine On protection of business reputation and the obligation to refute false information, 2021).

The party to relations in the information sphere may demand elimination of violations of its right and compensation for property and moral damage caused by such offences

(part 2 of Article 200 of the Civil Code of Ukraine (hereinafter - the "Civil Code")) (Civil Code of Ukraine: dated January, 2003). According to Article 275 of the Civil Code the protection of a personal non-property right is carried out in the manner prescribed by Chapter 3 of this Code, as well as in other ways in accordance with the content of this right, the manner of its dissemination and the consequences caused by this violation. Dissemination of information should be understood as: publication in the press, broadcasting on radio, television or other mass media; dissemination on the Internet or using other means of telecommunication; presentation in statements, letters addressed to other persons; messages in electronic networks, as well as in other forms to at least one person (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009). In addition, information that is untrue or falsely stated, i.e. contains information about events and phenomena that did not exist at all or that existed, but the information about them is not true (incomplete or distorted), is considered unreliable. Information that is disseminated in violation of this requirement shall be deemed unreliable (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009). The concept of "reliability" is a highly evaluative concept, as what is right for one person may be wrong for another. In addition, the current legislation of Ukraine does not define the concept of "reliability". However, scholars interpret and understand this concept in different ways. For example, some scientists define "reliability" as a property of information that determines the degree of objective, accurate reflection of events and facts that have taken place; the absence of errors and biased judgements (Mykytenko, 2016); correspondence to reality; correspondence, adequacy and identity of the data obtained to the actual conditions or the property of information that determines the degree of objective, accurate reflection of events and facts that have taken place (Politanskyi, 2013). Therefore, reliability can be understood as a truthful reflection of reality both on material carriers and in the oral transmission of information. Reliability should be an objective category and not depend on the person's perception of the information, as well as on the way it is transmitted. Analysing the Supreme Court's ruling, it can be concluded that information that is untrue or falsely presented, that is, contains information about events and phenomena that did not exist at all or that existed but the information about them is not true (incomplete or distorted), is considered unreliable (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009).

3. Regulatory framework for the protection of disputed, unrecognised or violated rights

The Civil Code provides a list of ways to protect a disputed, unrecognised or violated right, this list is not exhaustive, and the court may apply other remedies. With regard to protection against false information that has been communicated to other people in one way or another, Article 277 of the Civil Code should be noted. An individual whose personal non-property rights have been violated as a result of the dissemination of false information about him or her and/or his or her family members has the right to respond and to refute such information. The defendants in a case for the protection of dignity, honour or business reputation are the individual or legal entity that disseminated the false information, as well as the author of the information. Refutation of false information means that the person who disseminated such information at the request of the person about whom such information was disseminated must recognise such information as false in a form identical to the form or adequate to the form of dissemination of false information (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009).

Another special remedy is the right to reply to the person who disseminated false information. Nowadays, the Civil Code does not regulate the issue of the right to reply to a person, since more attention is paid to the right to refute. According to R. Stefanchuk, the right to reply should be understood as the right to present one's own point of view regarding the disseminated information and the circumstances of the violated personal non-property right (Stefanchuk, 2008). The main difference between the right to refute false information and the right to reply is that when exercising the right to reply, a person has the right to present his or her own point of view on the disseminated information and the circumstances of the violation of a personal non-property right without recognising it as false, and that false information is refuted by the person who dis-

seminated it, and the reply is given by the person in respect of whom the information was disseminated.

The analysis of the current legislation, in particular Articles 4, 20 of the Law of Ukraine "On the Bar and Practice of Law", Article 13 of the Civil Code gives grounds to assert that an attorney shall not commit acts prohibited by law, the rules of conduct, the legal services agreement, or violate the rights of other persons. The attorney may use only those means and methods of work that are not prohibited by law. Therefore, if the attorney, while representing the client, commits a criminal, administrative or civil offence, the status of an attorney does not exempt him or her from liability for such violation. If an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information (Resolution of the Plenum of the Supreme Court of Ukraine On judicial practice in cases of protection of the dignity and honor of an individual, as well as the business reputation of an individual and a legal entity, 2009). According to Article 20 of the Law "On the Bar and Practice of Law", during the practice of law, a lawyer has the right to perform any actions not prohibited by law, the Rules of Professional Conduct (2019) and the legal aid agreement necessary for the proper performance of the legal services agreement. According to para. 15 of Part 1 of Article 23 of the Law "On the Bar and Practice of Law", the attorney's statements in the case, including those reflecting the client's position, statements in the media, cannot be the basis for the attorney's liability, if they do not violate the professional duties of the attorney. In addition, Article 13 of the Civil Code of Ukraine, Articles 4 and 20 of the Law "On the Bar and Practice of Law", and Article 7 of the Rules of Professional Conduct stipulate that, in the course of representation, an attorney shall not commit acts prohibited by law, the rules of professional conduct, or a legal services agreement, nor violate the rights of other persons. Article 19 of the Rules of Professional Conduct for Attorneys expressly provides that an attorney shall not accept the instructions, if the result desired by a client, or the methods for achieving it, on which the client insists, are unlawful, or if the client's instruction goes beyond the scope of the attorney's professional rights and duties. In cases, if the said circumstances are not obvious, the attorney shall give appropriate clarifications to the client. If under such circumstances it is still impossible to agree with the client the modifications in the contents of the instruction, the attorney shall decline the conclusion of the agreement with the client. The advocate shall not, in the course of his or her practice, resort to means and methods contrary to the applicable law or these Rules.

According to Article 25 of the Rules of Professional Conduct, in the performance of a client's instruction an attorney is categorically prohibited to use unlawful and unethical means, in particular, to encourage witnesses to give false testimony, to resort to unlawful methods of pressure on the opposing party or witnesses (threats, blackmailing, etc.), to use his or her personal connections (or, in some cases, special status) in order to influence directly or indirectly the court or another body before which he or she represents or defends the clients' interests, to use information which was obtained from a former client and the confidentiality of which is protected by law, and to use other means contrary to the applicable laws or these Rules. This suggests that an advocate may use only those means and methods of work that are not prohibited by law.

4. Conclusions

Therefore, the essence of the practice of law is to provide professional legal services to clients with a view to achieving justice exclusively on the basis of legal and morally justified means. The practice of law in accordance with the requirements of the law contributes to: increasing the level of trust in the practice of law; a positive impact on the level of legal awareness; and promotes the achievement of justice exclusively through legal and morally justified methods. If an attorney-at-law disseminates false information in the course of his/her practice of law, even on behalf of the client, he/she shall be liable under civil law in accordance with the applicable provisions of law. A lawsuit may be filed against him/her to refute such information.

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Аліна Чорна,
доктор юридичних наук, професор,
професор кафедри правового забезпечення підприємницької діяльності та фінансової безпеки Харківського національного університету внутрішніх справ
Україна, м. Харків, пр. Льва Ландау, 27
chornaalina@ukr.net
***ORCID ID:** 0000-0003-0519-7300*

ВІДПОВІДАЛЬНІСТЬ АДВОКАТА ЗА ПОШИРЕННЯ НЕПРАВДИВОЇ ІНФОРМАЦІЇ

Анотація. ***Мета.*** Метою статті є визначення особливості відповідальності адвоката за поширення неправдивої інформації. ***Результати.*** У статті розглянуто особливості застосування відповідальності до адвоката за поширення неправдивої інформації. Визначено, що якщо адвокат при здійсненні адвокатської діяльності навіть за дорученням довірителя поширив недостовірну інформацію, то він має нести цивільно-правову відповідальність відповідно до норм чинного законодавства. До нього може бути пред'явлений позов про спростування такої інформації. Обґрунтовано, що суть адвокатської діяльності полягає у наданні професійної правової допомоги клієнтам із метою досягнення справедливості виключно на основі законних та морально виправданих засобів. Визначено, що здійснення професійної адвокатської діяльності відповідно до вимог закону сприяє: підвищенню рівня довіри до адвокатської діяльності; позитивному впливу на рівень правосвідомості; сприяє досягненню справедливості виключно на основі законних та морально виправданих методів. Наголошено, що в ст. 19 Правил адвокатської етики прямо передбачено, що адвокату забороняється приймати доручення, якщо результат, якого бажає клієнт, або засоби його досягнення, на яких клієнт наполягає, є протиправними, або якщо доручення клієнта виходить за межі професійних прав і обов`язків адвоката. У випадках, якщо зазначені обставини не є очевидними, адвокат має надати відповідні роз`яснення клієнту. Якщо з таких обставин не вдається узгодити з клієнтом зміну змісту доручення, адвокат зобов'язаний відмовитись від укладення договору з клієнтом. Адвокат не має права в своїй професійній діяльності вдаватися до засобів та методів, які суперечать чинному законодавству або вказаним Правилам. ***Висновки.*** Зроблено висновок, що адвокатська діяльність

полягає у наданні професійної правової допомоги клієнтам із метою досягнення справедливості виключно на основі законних та морально виправданих засобів. Здійснення професійної адвокатської діяльності відповідно до вимог закону має підвищувати рівень довіри до адвокатської діяльності, сприяти позитивному впливу на рівень правосвідомості, досягненню справедливості виключно на основі законних та морально виправданих методів. Якщо адвокат при здійсненні адвокатської діяльності, навіть за дорученням довірителя, здійснив поширення недостовірної інформації, то він має нести цивільно-правову відповідальність відповідно до норм чинного законодавства. До нього може бути пред'явлений позов про спростування такої інформації.

Ключові слова: адвокатська діяльність, адвокат, верховенство права, відповідальність, договір, клієнт, права, обов'язки.