8 2023 (330)

ENTREPRENEURSHIP, ECONOMY and LAW

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

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

HELVETICA PUBLISHING HOUSE

Monument to the Magdeburg Rights in Kyiv is on the cover

CRIMINAL LAW

FORENSICS

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

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

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

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

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

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

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

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

Passed for printing 09.12.2023. Format 70×108 1/16. Offset paper.
Offset printing. Conventional printed sheet 8,29. Published sheets 11,81.
Print run – 255 copies. Order No. 0225/168
Publisher: Publishing House "Helvetica"
6/1 Inglezi St., Odesa, 65101
Certificate of publishing business entity ДК № 7623 dated 22.06.2022

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

8 2023 (330)

ПІДПРИЄМНИЦТВО, ГОСПОДАРСТВО І ПРАВО

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

ГЕЛЬВЕТИКА
ВИДАВНИЧИЙ ДІМ

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

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

Журнал включено до міжнародної наукометричної бази Index Copernicus International (Республіка Польща)

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

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

Підписано до друку 09.12.2023. Формат 70x108 1/16. Папір офсетний.
Друк офсетний. Ум. друк. арк. 8,29. Обл.-вид. арк. 11,81.
Тираж – 255. Замовлення № 0225/168
Видавець: Видавничий дім «Гельветика»,
65101, м. Одеса, вул. Інглезі, 6/1
Свідоцтво суб'єкта видавничої справи ДК № 7623 від 22.06.2022 р.

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

UDC 347.235
DOI https://doi.org/10.32849/2663-5313/2023.8.01

Romaniuk Myroslav,
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*

PROBLEMS OF SECURITY IN THE FIELD OF ENVIRONMENTAL PROTECTION IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to identify the problems of ensuring security in the field of environmental protection. ***Results.*** The article considers the existing problems and the current state of the environment in Ukraine. The author emphasises the main principles of the state environmental policy in Ukraine. It has been determined that the root causes of environmental problems in Ukraine are the subordination of environmental priorities to economic expediency; failure to consider environmental impacts in legal regulations; predominance of resource- and energy-intensive industries in the economic structure with a mostly negative impact on the environment, which is significantly exacerbated by the lack of regulatory framework in the transition to market conditions; physical and moral depreciation of fixed assets in all sectors of the national economy; inefficient system of public administration in the field of environmental protection and regulating the use of natural resources, in particular, the lack of coordination between central and local executive authorities and local self-government bodies, the unsatisfactory state of the state environmental monitoring system, etc. The development of scientific and technological progress and, as a result, the increased anthropogenic pressure on the environment have led to a change in the focus and manner in which criminal offences against the environment are manifested. The current environmental situation in Ukraine is largely due to the existence of large-scale environmental crime. The article reveals that today, Ukraine is facing one of the largest environmental disasters as a result of the war, which has a devastating impact on the environment and health of the Ukrainian people. ***Conclusions.*** It is concluded that the goal of the state environmental policy is to achieve a good state of the environment by introducing an ecosystem approach to all areas of social and economic development of Ukraine in order to ensure the constitutional right of every citizen of Ukraine to a clean and safe environment, implementing balanced nature management and preserving and restoring natural ecosystems. The main principles of environmental policy include: preserving a state of the climate system that will prevent an increase in risks to human health and well-being and the environment; promoting balanced development by achieving a balance of development components, focusing on the priorities of balanced (sustainable) development; preventing natural and man-made emergencies, which involves analysing and forecasting environmental risks based on the results of strategic environmental assessment, environmental impact assessment, and comprehensive environmental monitoring; ensuring environmental safety and maintaining environmental balance in Ukraine, etc.

Key words: environment, war, state environmental policy, ecology, natural environment, counteraction.

1. Introduction

Assessing the existing problems and the current state of the environment in Ukraine, it should be noted that in the modern world there are a number of global issues that affect not only the interests of individual states but also the entire world and may even pose a threat to human existence. These include environmental issues, including pollution of the environment and all its components, including atmospheric air. For example, hazardous substances released into the Earth's atmosphere have a significant impact on people's lives, deteriorating their quality, causing various diseases and reducing overall life expectancy. In most cases, air pollution is anthropogenic in nature and, therefore, can be addressed to reduce its volume. For this reason, the most dangerous acts against the environment, including air pollution, are criminalised in many countries around the world. Preventing such acts requires a wide range of human actions. In this regard, one of the most important areas of state activities is the prevention of crime, including in the field of the environment. In order to increase the effectiveness of preventive activities, it is extremely important to conduct theoretical developments in the prevention of criminal

offences. Moreover, it is imperative to consider the provisions of existing legal regulations and law enforcement practice. Comprehensive studies of certain types of crime enable to examine the deterministic complex of relevant offences, conduct criminological analysis and, based on their results, develop new or improve existing means of preventing criminal offences.

The following scholars have made a significant contribution to the study of this issue: O.K. Halytska, O.O. Dudorov, L.H. Kozliuk, R.O. Movchan, H.S. Polishchuk, O.I. Revenko, O.V. Tkachenko, O.O. Cheremis, N.S. Shevchenko, A.M. Shulha and others.

2. Principles of environmental protection

The processes of globalisation and social transformation have increased the priority of environmental protection and, therefore, require Ukraine to take urgent measures. For a long time, the country's economic development has been accompanied by unbalanced exploitation of natural resources and low priority for environmental protection, which made it impossible to achieve balanced (sustainable) development (Shulha, 2023, p. 32).

According to the Law of Ukraine "On Basic Principles (Strategy) of the State Environmental Policy of Ukraine until 2030", it is possible to identify what has led to environmental problems in Ukraine at present, namely the subordination of environmental priorities to economic expediency; failure to consider environmental impacts in legal regulations in particular in decisions of the Cabinet of Ministers of Ukraine and other executive authorities; predominance of resource- and energy-intensive industries in the economic structure with a mostly negative impact on the environment, which is significantly exacerbated by the lack of regulatory framework in the transition to market conditions; physical and moral depreciation of fixed assets in all sectors of the national economy; inefficient system of public administration in the field of environmental protection and regulating the use of natural resources, in particular, the lack of coordination between central and local executive authorities and local self-government bodies, the unsatisfactory state of the state environmental monitoring system; low level of public understanding of environmental protection priorities and the benefits of balanced (sustainable) development, imperfect system of environmental education and awareness; unsatisfactory level of compliance with environmental legislation and environmental rights and obligations of citizens; inadequate control over compliance with environmental legislation and failure to ensure inevitable liability for its violation; insufficient funding from the state and local budgets for environmental protection measures, and funding of such measures on a residual basis (Shevchenko, 2023).

Air pollution is one of the most pressing environmental issues in Ukraine. Despite a certain decline in production in Ukraine, the level of air pollution in large cities and industrial regions remains consistently high. Enterprises in the mining and processing industry, heat and power generation, and motor vehicles are the main air pollutants and sources of greenhouse gas emissions in Ukraine. It has been found that, in fact, two-thirds of the country's population live in areas where the state of the atmospheric air does not meet hygiene standards, which affects the overall morbidity of the population (Law of Ukraine On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030, 2019, pp. 73-74).

The main reasons for the unsatisfactory state of atmospheric air quality in settlements and the concentration of greenhouse gases in the atmosphere are non-compliance with environmental legislation by business entities and the slow pace of implementation of the latest technologies. In order to improve air quality and strengthen the response to the effects of climate change and achieve the goals of sustainable low-carbon development of all sectors of the economy, Ukraine shall ensure the implementation of ratified international instruments on combating climate change and improving air quality.

Ukraine is one of the least water-supplied countries in Europe, and its water use is largely unsustainable. 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 condition of the Black Sea estuaries, most of which belong to the nature reserve fund and are unique recreational resources, is particularly unsatisfactory. In many regions, Ukraine's groundwater does not meet the established requirements for water supply sources, primarily due to anthropogenic pollution, and its intensive use leads to the depletion of groundwater horizons (Movchan, Dudorov, 2020, pp. 127-128).

The main sources of water pollution include discharges from industrial facilities, inadequate water disposal infrastructure and treatment facilities, non-compliance with water protection zones, and the washing away and drainage of toxic substances from agricultural land. The main substances that cause pollution include heavy metal compounds, nitrogen and phosphorus compounds, oil products,

phenols, sulphates, and surfactants. Recently, pollution by medical waste and microplastics has been increasing and is currently uncontrolled. Water pollution leads to 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, including infectious and cancerous diseases (Polishchuk, 2006, pp. 132-133).

The main reasons for the problems in the forestry sector are the imperfection of the forestry management and development system, the lack of legal and economic mechanisms to encourage the introduction of environmentally friendly technologies, the imperfection of the tax base, and the unclear legal status of the land under shelterbelts.

Another environmental problem in Ukraine is the significant amount of waste accumulated in Ukraine and the lack of effective measures aimed at preventing its generation, recycling, utilisation, disposal and environmentally safe disposal, which deepen the environmental crisis and become a hindrance to the development of the national economy. Significant resource potential is lost, while the already unfavourable environmental situation is worsening. The lack of effective control leads to the massive creation of unauthorised landfills and numerous violations of the law in the management of hazardous waste. In the absence of separate collection of household waste, the problem of managing hazardous waste contained in household waste is practically not solved (Halytska, 2019, pp. 157-158).

The priorities of public policy on biological safety and biological protection are the implementation of systemic measures to create and effectively function the national system of biological safety and biological protection, counteract bioterrorism, and protect the population from uncontrolled and illegal spread of genetically modified organisms, The priorities of public policy on biological security and biological protection are to implement systemic measures to create and effectively function the national system of biological security and biological protection, counteract bioterrorism, protect the population from uncontrolled and illegal spread of genetically modified organisms, and preserve the environment safe for human health, create a system of early detection and rapid response to the spread of pathogens of particularly dangerous diseases and those of international importance, as well as improve the material and technical condition of laboratories, institutions and facilities that diagnose infectious diseases, monitor the circulation of infectious diseases in the human environment, involved in the system of indication of biological pathogenic agents, determine the quantitative and qualitative content of genetically modified organisms in plant and animal products working with pathogens of particularly dangerous infectious diseases, determining their impact on the environment, including biodiversity, in view of risks to human health; create a system of rapid response to bioterrorism (Shevchenko 2022, pp. 257-258).

Obviously, the fact that in 2022 the world is facing one of the biggest environmental disasters as a result of the ongoing war in Ukraine cannot be avoided. The conflict, which began in 2014, has had a devastating impact on the environment and the health of the Ukrainian people. In particular, air, water and soil pollution has become one of the most important environmental problems in Ukraine during the war. The constant bombardment and shelling of cities and towns has resulted in the release of large quantities of toxic chemicals into the environment. These chemicals have contaminated the soil, water sources and air, causing a number of health problems for the local population, including respiratory diseases, skin irritation and various types of cancer (Turlova, 2018, pp. 85-86).

It is emphasised that another serious environmental problem in Ukraine during the war is the destruction of forests and wildlife habitats. The constant bombardment and shelling of forests caused significant damage to the ecosystem, and many species of plants and animals have been forced to leave their homes. This has had a significant impact on the biodiversity of the region, as well as affected the livelihoods of local communities that depend on the forest for food, fuel and other resources.

3. State of security in the field of environmental protection

The war also caused significant damage to Ukraine's infrastructure, including factories, power plants and oil refineries. This has led to spills and leaks of hazardous materials such as oil, chemicals and radioactive substances into the environment. This has led to further air, water, and soil pollution, causing long-term health and environmental problems for the population of Ukraine (Shevchenko, 2023, pp. 179-180).

In addition to the damage caused by the war, the ongoing conflict has also hampered efforts to address environmental issues in the regions. The lack of stability and security has made it difficult for environmental organisations to access areas of concern, and the limited resources available for environmental protection have been redirected to other needs, such as health and food security.

Despite these challenges, Ukraine continues to make efforts to address environmental issues. International organisations, such as the United Nations Environment Programme, work to support the country in cleaning up contaminated areas and restoring damaged ecosystems. In addition, the Ukrainian government is taking steps to improve environmental protection, including adopting new laws and increasing funding for environmental initiatives (Kozliuk, 2019, p. 367).

Therefore, the war in Ukraine has had a devastating impact on the environment and the health of the Ukrainian people. Despite the challenges, efforts are being made to address the environmental problems caused by the conflict, and it is important that the international community continues to support these efforts to ensure a sustainable future for the country and its people (Cheremis, 2021, pp. 132-133).

4. Conclusions

Therefore, the goal of the state environmental policy is to achieve a good state of the environment by introducing an ecosystem approach to all areas of social and economic development of Ukraine in order to ensure the constitutional right of every citizen of Ukraine to a clean and safe environment, implementing balanced nature management and preserving and restoring natural ecosystems. The main principles of environmental policy include: preserving a state of the climate system that will prevent an increase in risks to human health and well-being and the environment; promoting balanced development by achieving a balance of development components, focusing on the priorities of balanced (sustainable) development; preventing natural and man-made emergencies, which involves analysing and forecasting environmental risks based on the results of strategic environmental assessment, environmental impact assessment, and comprehensive environmental monitoring; ensuring environmental safety and maintaining environmental balance in Ukraine, etc. The implementation of the principles of the state environmental policy is based on the principles of openness, accountability, and publicity of public authorities; public participation in shaping state policy; observance of environmental rights of citizens; encouragement of environmentally responsible business and environmentally conscious behaviour of citizens; prevention of environmental damage; international cooperation and European integration.

The article reveals that today, Ukraine is facing one of the largest environmental disasters as a result of the war, which has a devastating impact on the environment and health of the Ukrainian people. In particular, one of the most important environmental problems in Ukraine during the war was air, water and soil pollution. The constant bombardment and shelling of cities and towns resulted in the release of large amounts of toxic chemicals into the environment. These chemicals have contaminated soil, water and air sources, causing a number of health problems for the local population, including respiratory diseases, skin irritation and various types of cancer.

References:

Cheremis, O.O. (2021). Zemelne pravoporushennia u sferi mistobuduvannia yak pidstava yurydychnoi vidpovidalnosti [Land offense in the field of urban planning as a basis for legal responsibility]. *Candidate's thesis.* Kyiv (in Ukrainian).

Halytska, O.K. (2019). Teoretychni osnovy kryminalistychnoi kharakterystyky zlochyniv, poviazanykh iz zabrudnenniam vodoim ta moria [Theoretical foundations of forensic characterization of crimes related to water and sea pollution]. Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Ser: Yurysprudentsiia. Odesa. no. 38. pp. 156-159. (in Ukrainian).

Kozliuk, L.H. (2019). Deiaki aspekty protydii ekolohichnii zlochynnosti v Ukraini [Some aspects of combating environmental crime in Ukraine]. Pravova derzhava. no. 30. pp. 361–368 (in Ukrainian).

Movchan, R.O., Dudorov, O.O. (2020). Zemelni zlochyny ekolohichnoi spriamovanosti: vid deliktiv stvorennia nebezpeky do optymalnoi zakonodavchoi modeli [Land crimes of ecological orientation: from torts of creating danger to the optimal legislative model]. Yurydychnyi naukovyi elektronnyi zhurnal. no. 1. pp. 120–130 (in Ukrainian).

Polishchuk, H.S. (2006). Kryminolohichna kharakterystyka ta zapobihannia zlochynam proty dovkillia (za materialamy Prychornomorskoho rehionu Ukrainy) [Criminological characteristics and prevention of crimes against the environment (based on the materials of the Black Sea region of Ukraine)]. *Candidate's thesis.* Kyiv (in Ukrainian).

Shevchenko N.S. (2022). Analiz stanu porushennia kryminalnykh provadzhen shchodo dovkillia z pochatku zbroinoi ahresii Rosiiskoi Federatsii [Analysis of the state of criminal proceedings against the environment since the beginning of the armed aggression of the Russian Federation]. Ekoloho-pravova bezpeka suverennoi derzhavy v umovakh voiennoho stanu: materialy nauk.-prakt. onlain-konferentsii. Kharkiv: Pravo, 2022. pp. 255–259. (in Ukrainian).

Shevchenko, N.S. (2023). Teoretychni zasady zahalnosotsialnoho zapobihannia kryminalnym pravoporushenniam, poviazanym iz zabrudnenniam atmosfernoho povitria [Theoretical principles of general social prevention of criminal offenses related to atmospheric air pollution]. Vcheni zapysky TNU imeni V.I. Vernadskoho. Seriia: yurydychni nauky. no. 1. pp. 71–76 (in Ukrainian).

Shevchenko, N.S. (2023). Zabrudnennia dovkillia vnaslidok udariv po obiektam krytychnoi infra-

struktury [Environmental pollution as a result of strikes on critical infrastructure facilities]. Bezpeka ta stalyi rozvytok krytychnoi infrastruktury v umovakh voiennoho stanu: tezy dop. nauk.-prakt. konf. Kharkiv: Natsionalnyi aerokosmichnyi universytet im. M.Ie. Zhukovskoho «Kharkivskyi aviatsiinyi instytut», pp. 177–180 (in Ukrainian).

Shulha, A.M. (2023). Zabrudnennia ta psuvannia zemelnykh resursiv Ukrainy, yak oznaka kryminalnykh pravoporushen proty myru, bezpeky liudstva ta mizhnarodnoho pravoporiadku v umovakh rosiiskoi voiennoi ahresii [Pollution and destruction of Ukraine's land resources as a sign of criminal offenses against peace, human security and international legal order in the conditions of Russian military aggression]. ScienceRise: Juridical Science. no. 2 (24).pp. 31–37 (in Ukrainian).

Turlova, Yu.A. (2018). Protydiia ekolohichnii zlochynnosti v Ukraini: kryminolohichni ta kryminalno-pravovi zasady [Combating environmental crime in Ukraine: criminological and criminal law principles]. *Doctor's thesis*. Kyiv (in Ukrainian).

Zakon Ukrainy Pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku: vid 28.02.2019 r. № 2697-VIII [Law of Ukraine On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030: dated February 28, 2019 No. 2697-VIII]. *rada.gov.ua*. URL: Retrieved from https://zakon.rada.gov.ua/laws/show/2697-19#Text (in Ukrainian).

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

ПРОБЛЕМИ ЗАБЕЗПЕЧЕННЯ БЕЗПЕКИ У СФЕРІ ОХОРОНИ ДОВКІЛЛЯ В УКРАЇНІ

Анотація. ***Мета.*** Метою статті є з'ясувати проблеми забезпечення безпеки у сфері охорони довкілля**.** ***Результати.*** У статті розглядаються існуючі проблеми та сучасний стан довкілля в Україні. Наголошується на основних засадах державної екологічної політики України. Визначено, що першопричинами екологічних проблем в Україні є підпорядкованість екологічних пріоритетів економічній доцільності; неврахування наслідків для довкілля у законодавчих та нормативно-правових актах; переважання ресурсо- та енергоємних галузей у структурі економіки із здебільшого негативним впливом на довкілля, що значно посилюється через неврегульованість законодавства при переході до ринкових умов господарювання; фізичне та моральне зношення основних фондів у всіх галузях національної економіки; неефективна система державного управління у сфері охорони навколишнього природного середовища та регулювання використання природних ресурсів, зокрема неузгодженість дій центральних і місцевих органів виконавчої влади та органів місцевого самоврядування, незадовільний стан системи державного моніторингу навколишнього природного середовища та інше. Розвиток науково-технічного прогресу та, як наслідок, посилення антропогенного навантаження на навколишнє природне середовище призвели до зміни спрямування та якісного прояву кримінальних правопорушень проти довкілля. Наявна екологічна ситуація в Україні суттєвим чином обумовлена існуванням масштабної екологічної злочинності. Досліджено, що в умовах сьогодення, Україна зіткнулася з однією з найбільших екологічних катастроф внаслідок війни, яка має руйнівний вплив на навколишнє середовище та здоров'я українського народу. ***Висновки.*** Зроблено висновок, що довкілля шляхом запровадження екосистемного підходу до всіх напрямів соціально-економічного розвитку України з метою забезпечення конституційного права кожного громадянина України на чисте та безпечне довкілля, впровадження збалансованого природокористування і збереження та відновлення природних екосистем. До основних засад екологічної політики слід віднести: збереження такого стану кліматичної системи, який унеможливить підвищення ризиків для здоров'я та благополуччя людей і навколишнього природного середовища; сприяння збалансованому розвитку шляхом досягнення збалансованості складових розвитку, орієнтування на пріоритети збалансованого (сталого) розвитку; запобігання виникненню надзвичайних ситуацій природного і техногенного характеру, що передбачає аналіз і прогнозування екологічних ризиків, які ґрунтуються на результатах стратегічної екологічної оцінки, оцінки впливу на довкілля, а також комплексного моніторингу стану навколишнього природного середовища; забезпечення екологічної безпеки і підтримання екологічної рівноваги на території України та інші.

Ключові слова: довкілля, війна, державна екологічна політика, екологія, навколишнє природнє середовище, протидія.

UDC 349.2
DOI https://doi.org/10.32849/2663-5313/2023.8.02

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 CONCEPT AND CLASSIFICATION OF GUARANTEES PROTECTING LABOUR RIGHTS OF EMPLOYEES IN ATYPICAL FORMS OF EMPLOYMENT

Abstract. ***Purpose.*** The purpose of the article is to define the concept and classify the guarantees protecting labour rights of employees when using atypical forms of employment. ***Results.*** Relying on the analysis of scientific views of scholars on the essence of the concept of "guarantees", the article offers the author's definition of "guarantees protecting labour rights of employees when using atypical forms of employment". An emphasis is placed on the diversity of the relevant guarantees, and on this basis, it is proposed to divide the latter into: legal (juridical); economic; social; procedural and political guarantees. It is noted that legal guarantees in labour law should be classified according to the following criteria: a) legal force – constitutional, international and sectoral; b) the degree of specificity – universal (covering all labour rights) and special (covering the implementation of a specific labour right); c) the scope – general (ensuring labour rights of all employees regardless of legal status) and additional (provided for a certain category of employees by gender, age, health status, etc.); d) the form of expression of legal guarantees – guarantees-permissions, guarantees-obligations, guarantees-prohibitions, guarantees-restrictions; e) the nature of the impact – guarantees-sanctions, guarantees-recommendations, alternative guarantees. ***Conclusions***. It is concluded that guarantees protecting labour rights of employees when using atypical forms of employment should be most appropriately classified into: a) legal (juridical) guarantees, which are a set of legal conditions and means by which social relations in the field under study are regulated and ordered; b) economic guarantees are activities aimed at ensuring economic and financial rights and interests of employees; c) social guarantees aimed at implementing social measures in relation to this category of employees; d) procedural guarantees are activities aimed at protecting the rights of employees in court or out of court; e) political guarantees are state activities aimed at ensuring the rights and freedoms of citizens in general and in the field of labour in particular; and f) organisational guarantees.

Key words: guarantees, classification, protection, labour rights, employees, atypical forms of employment.

1. Introduction

The active use of atypical forms of employment in recent years necessitates the construction of a system of guarantees protecting the labour rights of the relevant category of employees. In general, guarantees are the main goal of the state, and the state is the guarantor of human rights and freedoms. The law secures the rights and freedoms of every individual and, by regulating human relations, prevents their violation. However, it defines the role of the law as a guarantor only through the prism of the use or application of the force of punishment. To date, the legislator has developed a broad system of guarantees to protect the rights of employees, including those who work in atypical employment. However, the fact that there are a number of theoretical problems in this field should be noted as a drawback, in particular, the concept of guarantees protecting labour rights of employees when using atypical forms of employment, as well as their classification, is not defined.

The problem of protection of labour rights of employees when using atypical forms of employment has been considered in the scientific works by Yu.Yu. Ivchuk, T.M. Zavorotchenko, I.V. Zub, V.V. Pavchuk, V.H. Rotan, V.M. Sloma, O.Ye. Sonin, I.M. Shopina, I.I. Yatskevych and many others. However, despite a considerable number of scientific achievements, comprehensive scientific research on the definition

and classification of guarantees is not available in the scientific literature protecting labour rights of employees when using atypical forms of employment.

That is why the purpose of the article is to define the concept and classify the guarantees protecting labour rights of employees when using atypical forms of employment.

2. The content of the concept of "guarantees" in determining the rights of employees when using atypical forms of employment

The concept of guarantees is actively used in many sectors of public life, which has led to a large number of approaches to its interpretation, in particular, in the legal literature. According to O.P. Rudnytska, guarantees are a socio-political and legal phenomenon characterised by three components: 1) cognitive, enabling to reveal substantive theoretical knowledge about the object of their influence, to obtain practical knowledge about the social and legal policy of the state; 2) ideological, used by the political authorities as a means of promoting democratic ideas within the country and abroad; 3) practical, which is recognised as an instrument of jurisprudence, a prerequisite for satisfaction of social benefits of an individual. Therefore, the author defines guarantees as: a system of socio-economic, political, legal, organisational prerequisites, conditions, means and methods which create opportunities for an individual to exercise his/her rights, freedoms and interests (Rudnytska, 2011).

In the theory of law, according to O. Chernetska, guarantees are understood as a system of conditions and means by which the full and effective functioning of a particular institution is ensured due to the specific features of social development. The purpose of these guarantees is precisely to create the most favourable conditions for the actual implementation and unhindered exercise of their powers by public authorities and local self-government bodies, as well as their officials. Guarantees are also aimed at eliminating possible causes and obstacles to incomplete or improper performance of their functions and powers (Chernetska, 2006). V. Sirenko defines guarantees as a set of objective and subjective factors aimed at ensuring the exercise of human rights, freedoms and obligations, eliminating possible causes and conditions for their incomplete or improper exercise, and protecting them from all violations. In the socio-legal mechanism for the exercise of rights and obligations, they play a supporting role and thus differ from the actual implementation. He divides all guarantees into general and special (legal) ones (Sirenko, 1983). The legal guarantees V. Sirenko proposes to include the following: a) constitutional control and supervision; b) means of protection and defence; c) liability of persons guilty of committing violations of rights and freedoms; d) procedural forms of their protection; e) prevention of violations and prevention of violations of rights and freedoms (Sirenko, 1983).

In a broad sense, according to B.I. Stakhura, guarantees are best understood as the entirety of objective and subjective factors aimed at full realisation and comprehensive protection of the rights and freedoms of citizens, elimination of causes and conditions for their improper exercise and protection against violations. By establishing the content and scope of human rights and freedoms, the state assumes the guarantee of compliance with these guidelines. Moreover, given that the exercise of the rights and freedoms of citizens is inevitably associated with the need to apply measures of procedural coercion, the state is forced to develop an effective mechanism that limits the claims of public authorities to undivided dominance in the field of regulation of relations with the population. In this regard, guarantees can be seen as a system of conditions, means and methods that ensure equal opportunities for the identification, acquisition and exercise of rights and freedoms (Stakhura, 2016).

Therefore, the guarantees protecting labour rights of employees when using atypical forms of employment are a set of legally defined conditions, tools and means used by the state, employer and employees themselves to ensure the actual exercise of their rights, freedoms and interests in the relevant field. These guarantees are broad in nature and content, and therefore it is advisable to classify them. A logically correct, scientifically sound classification allows to reflect the regularities of development of the classified objects, to find out their interrelationships and gives grounds for generalising conclusions and proposals. Since any classification is not only a means of systematisation, but also a prerequisite for scientific analysis of the object under study, it should be based on the most essential features - classification criteria of an objective nature that help to organise the material in accordance with its internal relations (Shtanko, 2009).

3. Classification of guarantees in determining the rights of employees when using atypical forms of employment

In her research, H.V. Tolhachova came to the conclusion that the most common classification of guarantees in the legal literature is based on their practical application, namely, on: general, which cover the entirety of objective and subjective factors aimed at ensuring the realisation of human rights

and freedoms, their protection and restoration in case of violation; special, which are defined as a system of legal means that facilitate the process of realisation, protection and restoration of rights and freedoms of participants in the legal relations, their content is to make both human rights and their protection mandatory in the state power context (Tolkachova, 2015). Consequently, the author believes that general guarantees are classified by the scope of social relations into: a) political - the basic principles of the state system, which include the principle of democracy; the principle of state sovereignty, which provides for the supremacy, autonomy, independence, completeness and indivisibility of state power; distribution of power between independent and interrelated branches of state power – legislative, executive and judicial; political pluralism, etc; b) socio-economic – a set of relations and interconnections of a free civil society and the unity of socio-economic space; c) organisational and legal – organisational activities of state bodies and non-governmental organisations to ensure, protect and defend human rights and freedoms as provided for by law; d) ideological (spiritual and moral) – manifested in the general recognition and perception of universal humanistic values, ideas of a democratic, law-based social state and civil society, the rule of law and social justice (Tolkachova, 2015).

P.M. Rabinovych and M.I. Khavroniuk classify guarantees of the implementation of constitutional rights and freedoms into general social guarantees and legal guarantees (Rabinovych, Khavroniuk, 2004). General social guarantees are classified into ideological, political, economic, social, and organisational. Legal guarantees are classified according to the following criteria: 1) depending on the content: a) material; b) procedural; c) organisational; 2) depending on the legal status: a) international and national; b) constitutional and sectoral guarantees; c) other legal guarantees; 3) by the criterion of the main guarantor: a) state guarantees; b) international guarantees; c) guarantees provided by the state with the participation of relevant associations of citizens; d) guarantees provided by the state with the participation of citizens themselves. The special (protective) rights-guarantees include constitutional guarantees provided for in Articles 55-63 of the Constitution of Ukraine (Rabinovych, Khavroniuk, 2004).

In general, legal guarantees can be classified according to the following criteria: 1) by actors: parliamentary; presidential; judicial; administrative; 2) by the nature of legal activities: law-making guarantees, the main content thereof being the constitutional consolidation of the legal status of actors and the determination of means of influence on violators; law-explanatory guarantees provide access to information to actors on the content of their rights and freedoms; law application guarantees create conditions for the exercise of rights, observance of prohibitions and fulfilment of obligations as a means of guaranteeing rights; 3) by areas: constitutional guarantees, which have the highest legal force, are the basis of legal guarantees aimed at protecting the Constitution of Ukraine and the institutions provided for by it; procedural guarantees that ensure the process of exercising the rights of parties and protect their interests in the process of performing legally significant actions; 4) by content: regulatory guarantees, which are defined as provisions and principles regarding the inalienability, inviolability, inexhaustibility, and equality of human rights and freedoms; organisational guarantees, which are characterised as the status of special entities that facilitate the exercise of rights; 5) by status: preventive guarantees, facilitating the prevention of violations of subjective rights and failure to fulfil legal obligations; protective guarantees, providing for the possibility of fixing measures of influence in case of violations of rights guaranteed by the state; punitive guarantees, that is, the real possibility of applying coercive measures to violators on behalf of the state; 6) by the nature in general: development and consistency of the provisions enshrining human rights; an effective system of supervision over the observance of human rights and freedoms; availability of measures to ensure the restoration of the violated right. The purpose of the above guarantees is to ensure the conditions most favourable to the exercise of the rights and freedoms granted by the Constitution, as well as their effective protection (Bobrovnyk, 1999; Kuzmenko, 2014).

In his research, S.M. Bortnyk proposes to classify legal guarantees of police activities as follows: 1) by the presence of a direct connection with the principles of the National Police: (a) a police officer is a representative of the state; (b) legality of activities; (c) restriction of access to information on certain aspects of police activities; 2) depending on their scope: (a) general legal (legality; improvement of legislation, its completeness and indisputability, etc.); (b) intersectoral (protection of police officers from interference with their professional activities; protection against unlawful attacks on life and health of police officers (their family members, persons dismissed from service) in connection with the performance of professional duties; establishment of special measures of state

protection; legislative consolidation of specifics of legal liability for offences against police officers (their family members) (c) sectoral (establishment of powers exclusively by law; special procedure for purchasing means of self-defence; restrictions on subordination of police officers); 3) labour guarantees (specific working hours and rest periods of police officers, their financial and pension provision) (Bortnyk, 2017).

Researchers of the scientific issue of legal guarantees in labour law classify the latter according to the following criteria: a) legal force – constitutional, international and sectoral; b) degree of specificity – universal (relating to all labour rights) and special (relating to ensuring the implementation of a specific labour right); в) the scope of action – general (ensuring labour rights of all employees regardless of their legal status) and additional (provided for a certain category of employees by gender, age, health status, etc.); d) the form of expression of legal guarantees – guarantees-permissions, guarantees-obligations, guarantees-prohibitions, guarantees-restrictions; e) the nature of influence – guarantees-sanctions, guarantees-recommendations, alternative guarantees (Sytnytska, 2009).

4. Conclusions

Therefore, the scientific research enables us to state that guarantees protecting labour rights of employees when using atypical forms of employment should be most appropriately classified into: a) legal (juridical) guarantees, which are a set of legal conditions and means by which social relations in the field under study are regulated and ordered; b) economic guarantees are activities aimed at ensuring economic and financial rights and interests of employees; c) social guarantees aimed at implementing social measures in relation to this category of employees; d) procedural guarantees are activities aimed at protecting the rights of employees in court or out of court; e) political guarantees are state activities aimed at ensuring the rights and freedoms of citizens in general and in the field of labour in particular; and f) organisational guarantees.

References:

Bobrovnyk, S. (1999). Pravovi harantii zakhystu prav liudyny v suchasnomu sviti. Prava i svobody liudyny ta suchasnyi suspilnyi prohres [Legal guarantees of human rights protection in the modern world]. Uzhhorod: Snina (in Ukrainian).

Bortnyk, S.N. (2017). Sviaz yurydycheskykh harantyi s pryntsypamy deiatelnosty polytseiskykh [The relationship between legal guarantees and the principles of police activity]. Pravo y Zakon. № 4. pp. 39-44 (in Ukrainian).

Chernetska, O.V. (2006). Konstytutsiino-pravovyi status deputativ mistsevykh rad v Ukraini [Constitutional and legal status of deputies of local councils in Ukraine]. *Candidate's thesis.* Kyiv (in Ukrainian).

Kuzmenko, Ya.P. (2014). Zahalna kharakterystyka yurydychnykh harantii prava liudyny na zhyttia [General characteristics of legal guarantees of the human right to life]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. no. 29(1). pp. 27-32 (in Ukrainian).

Rabinovych, P.M., Khavroniuk, M.I. (2004). Prava liudyny i hromadianyna [Human and citizen rights: a study guide]. Kyiv : Atika (in Ukrainian).

Rudnytska, O.P. (2011). Poniattia ta klasyfikatsiia harantiinykh vyplat [Concept and classification of guarantee payments]. Aktualni problemy derzhavy i prava. no. 57. pp. 175–182 (in Ukrainian).

Shtanko, A.O. (2009). Pravoporushennia yak vyd pravovoi povedinky [Crime as a type of legal behavior]. *Candidate's thesis.* (in Ukrainian).

Stakhura, B.I. (2016). Rol orhaniv derzhavnoi vlady u zabezpechenni prav liudyny i hromadianyna v demokratychnomu suspilstvi: teoretyko-pravovyi vymir [The role of state authorities in ensuring human and citizen rights in a democratic society: theoretical and legal dimension]. *Candidate's thesis.* Lviv: Lvivskyi derzhavnyi universytet vnutrishnikh sprav (in Ukrainian).

Sirenko, V.F. (1983). Realnost prav sovetskykh hrazhdan [The reality of the rights of Soviet citizens]. Kyev: Naukova dumka (in Ukrainian).

Sytnytska, O.A. (2009). Yurydychni harantii prava na pratsiu ta prava na vidpochynok za trudovym zakonodavstvom Ukrainy [Legal guarantees of the right to work and the right to rest under the labor legislation of Ukraine]. *Extended abstract of candidate's thesis.* Lviv (in Ukrainian).

Tolkachova, H.V. (2015). Harantii prav ta svobod dytyny: poniattia, pravova pryroda ta yikh klasyfikatsiia [Guarantees of the rights and freedoms of the child: concepts, legal nature and their classification]. Chasopys Kyivskoho universytetu prava. no. 1. pp. 65-68 (in Ukrainian).

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 ID:** 0000-0001-7493-1789*

ПОНЯТТЯ ТА КЛАСИФІКАЦІЯ ГАРАНТІЙ ЗАХИСТУ ТРУДОВИХ ПРАВ НАЙМАНИХ ПРАЦІВНИКІВ ПРИ ВИКОРИСТАННІ НЕТИПОВИХ ФОРМ ЗАЙНЯТОСТІ

Анотація. ***Мета.*** Метою статті є визначити поняття та здійснити класифікацію гарантій захисту трудових прав найманих працівників при використанні нетипових форм зайнятості. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених стосовно сутності поняття «гарантії», запропоновано авторське визначення «гарантій захисту трудових прав найманих працівників при використанні нетипових форм зайнятості». Акцентовано увагу на багатоманітності відповідних гарантій, на основі чого останні запропоновано поділити на: правові (юридичні); економічні; соціальні; процесуальні та політичні гарантії. Наголошено, що юридичні гарантії у трудовому праві доцільно класифікувати за такими критеріями: а) юридична сила – конституційні, міжнародні та галузеві; б) ступінь конкретизації – універсальні (стосуються усіх трудових прав) та спеціальні (стосуються забезпечення реалізації конкретного трудового права); в) сфера дії – загальні (забезпечення трудових прав усіх працівників незалежно від правового статусу) та додаткові (передбачені для певної категорії працівників за статтю, віком, станом здоров'я тощо); г) форма вираження юридичних гарантій – гарантії-дозволи, гарантії-обов'язки, гарантії-заборони, гарантії-обмеження; д) характер впливу – гарантії-санкції, гарантії-рекомендації, альтернативні гарантії. ***Висновки.*** Зроблено висновок, що гарантії захисту трудових прав найманих працівників при використанні нетипових форм зайнятості найбільш доцільно поділити на: а) правові (юридичні) гарантії, які представляють собою сукупність правових умов та засобів за допомогою яких регулюються та упорядковуються суспільні відносини у досліджуваній сфері; б) гарантії економічні – це діяльність спрямована на забезпечення економічних та фінансових прав та інтересів працівників; в) соціальні гарантії, що спрямовані на реалізацію заходів соціального характеру по відношенню до вказаної категорії працівників; г) процесуальні гарантії – діяльність щодо захисту прав працівників у судовому чи позасудовому порядку; ґ) політичні – гарантії, які полягають у діяльності держави щодо забезпечення прав і свобод громадян взагалі та у сфері праці, зокрема; та д) організаційні.

Ключові слова: гарантії, класифікація, захист, трудові права, наймані працівники, нетипові форми зайнятості.

UDC 342.9: 336.761
DOI https://doi.org/10.32849/2663-5313/2023.8.03

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*

SPECIFIC FEATURES OF ADMINISTRATIVE LIABILITY FOR VIOLATING REQUIREMENTS OF LEGISLATION ON FUNCTIONING OF STOCK EXCHANGES IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to determine the specific features of administrative liability for violating the requirements of legislation on the functioning of stock exchanges in Ukraine. ***Results.*** The author formulates the elements of an administrative offence in the field of stock exchanges: 1) an object – public relations in the stock market; 2) an objective party – violation of requirements, procedures and rules of stock exchanges and financial reporting rules; 3) an actor – a stock market participant; 4) a subjective party – intentional or negligent actions that caused violation of legislation on the functioning of stock exchanges or intentional violations of financial reporting requirements. The specific features of administrative cases for violations of the legislation on the functioning of stock exchanges in Ukraine are as follows: – the National Securities and Stock Market Commission is the entity that makes the administrative offence record; – the administrative record is standard and includes information about stock market participants, the essence of the administrative offence, explanations of stock market participants, and other circumstances of the case; – the law establishes a special time limit for consideration of these categories of administrative cases (15 days); – the case is considered in the presence of a stock market participant; – based on the results of consideration of the case materials, the authorised actor may make two types of decisions in the form of a resolution: 1) closure of the case (in case of absence of an offence); 2) conviction of the offender and imposition of an administrative penalty. ***Conclusions.*** Administrative liability for violating the requirements of the legislation on the functioning of stock exchanges in Ukraine is a type of legal liability that is imposed on stock market participants in the manner prescribed by law for committing administrative offences related to violations of the requirements of the stock market legislation and the financial reporting procedure, which may result in financially negative consequences for stock market participants. The main specific feature of administrative liability in the field of stock exchanges in Ukraine is the offenders in this field, as the law provides for administrative liability of stock market participants for violating the requirements of the law and administrative liability of officials of the National Securities and Stock Market Commission in case of violation of the law in the exercise of their official powers. The object of an administrative offence by officials of the National Securities and Stock Market Commission is the management procedure in the field of stock exchanges.

Key words: administrative penalty, administrative coercion, offence, offender.

1. Introduction

Nowadays, the most common type of legal liability in the Ukrainian legal system is administrative liability. Moreover, administrative liability is one of the most effective legal instruments in combating the most widespread unlawful acts, such as administrative offences. Their main feature is that they are part of a wide range of relations regulated by administrative law. These legal relations arise in the field of public administration, economics, socio-cultural and administrative-political construction, entrepreneurial activity, as well as control and supervision, both in the internal organisational activities of the state mechanism and in extra-departmental activities. Therefore, the study of the institution of administrative liability is one of the main areas of administrative and legal research. Developing a definition of this concept is one of the main problems of the future administrative legislation. This definition, which is not enshrined in the current law, can only reflect the subjective opinion of scholars (Zaiats, 2012).

The importance of administrative liability is primarily explained by the fact that administra-

tive offences are among the most common of all types of offences. And although the public danger (harmfulness) of each individual administrative offence is small, the total number of administrative offences poses a significant threat to the state and society and requires an adequate response. Administrative liability also plays an important preventive role. Administrative liability has a number of specific features that distinguish it from other types of legal liability. For example, it is applied for torts that do not pose a great public danger, that is, administrative offences, and in some cases its measures may also be applied in case of exemption from criminal liability, that is, for acts that contain signs of crimes that do not pose a great public danger (Shchukin, 2014).

The purpose of the article is to determine the specific features of administrative liability for violating the requirements of legislation on the functioning of stock exchanges in Ukraine.

2. Regulatory framework for the functioning of stock exchanges in Ukraine

The first special law to define the terms and procedure for issuing securities and to regulate intermediary activities in the organisation of securities circulation was the Law of Ukraine "On Securities and the Stock Exchange" of 18 June 2001. This Law did not contain the concept of liability for securities market violations, and it does not mention the concept of liability for such violations or any of the grounds for such liability. The Law of Ukraine "On Securities and Stock Exchange" provides for only the issuer's liability for compensation of losses caused by inaccurate information about securities (Article 37 of the Law) (Law of Ukraine On Securities and Stock Exchange, 1991). Based on the analysis of the activities of the state body that directly performed the control function at that time – the Securities and Stock Market Commission (now the NSSMC), the researchers determined that the most common violations of the requirements of the current legislation by stock market participants were: non-registration or untimely registration of information on the issue of shares; lack of public disclosure of information about their activities; violation of the terms and procedure for open subscription to shares; failure to sell and cancel shares repurchased from shareholders. It was proposed to solve these problems by introducing a system of financial responsibility. Although the SSMSC had already had experience of collecting fines at that time, they were too small compared to the profits of the offenders (Kuznietsova, 2021).

For example, the liability of legal entities for securities market offences was first envisaged by the special Law of Ukraine "On State Regulation of the Securities Market in Ukraine". Article 11 of the Law provides for financial sanctions to be imposed on legal entities by the NSSMC for stock market offences (Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996). Adopted in 2006, the Law of Ukraine "On Securities and Stock Market", aimed at regulating relations arising from the placement, circulation of securities and professional activities in the stock market, in order to ensure the openness and efficiency of the stock market, does not contain any detailed characteristics of liability for offences in the securities market (Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996).

The Law of Ukraine "On State Regulation of Capital Markets and Organised Commodity Markets" defines liability for offences in the capital markets and/or organised commodity markets, in particular, the National Securities and Stock Market Commission imposes financial sanctions on legal entities for: 1) placement of securities without registration of their issue in accordance with the procedure established by law; 2) performance by a legal entity of a transaction (transactions) related to the direct conduct of professional activities in the capital markets and organised commodity markets, for which a relevant licence is required, without a licence to conduct the relevant type of activity within the framework of such professional activities; 3) failure to provide an investor in securities (including a shareholder) with information on the issuer's activities within the limits provided by law, or providing him/her with false information upon his/her written request; 4) untimely provision of information to investors in financial instruments at their written request; 5) failure to publish, publish incomplete information and/or publish false information; 6) failure to publish, publish incomplete information and/or publish false information in the publicly available information database of the National Securities and Stock Market Commission on the securities market; 7) failure to submit, submit incomplete information and/or submit false information to the National Securities and Stock Market Commission; 7-1) failure to submit, submit incomplete information or submit false information by the bond issuer or the person providing collateral, whose obligation to submit is established by law; 8) failure to comply with or untimely execution of decisions of the National Securities and Stock Market Commission; 9) violation by the Central Securities Depository or a depository institution of the procedure for conducting depository activities; 9-1) violation by the bondholder administrator or a person responsible for holding a meeting of bondholders of their duties

under the law; 9-2) violation by the bond issuer of its obligation to appoint a bondholder administrator; 11) intentional actions that have signs of manipulation in organised markets; etc. (Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996).

The list of administrative offences that may be committed by stock exchange entities is contained in a large number of laws and regulations issued by various public authorities. Moreover, in some cases, certain elements are repeated 3 times in different acts, which is not a sign of the effectiveness of the regulatory framework in this field of social relations. Exchange activities, and, accordingly, offences committed in the course of their implementation, are a rather monolithic and indivisible concept. This, in turn, requires systematisation of the legislation regulating administrative liability for offences committed in the field of exchange activities (Myniuk, 2011).

In addition to imposing financial penalties for offences, the National Securities and Stock Market Commission (the "NSSMC") may terminate or revoke a licence. In addition to imposing financial sanctions for violations, the NSSMC may revoke the certificate of registration of an association as a self-regulatory organisation of capital markets issued to such association. The decision of the National Securities and Stock Market Commission to impose a penalty in the form of a fine shall become effective on the business day following the day of such decision. If the decision of the National Securities and Stock Market Commission to impose a penalty in the form of a fine is not executed or challenged in court within one month from the date of its entry into force, such decision shall acquire the status of an enforcement document, be executed by the National Securities and Stock Market Commission in accordance with the requirements of the Law of Ukraine "On Enforcement Proceedings" and be submitted to the state enforcement service for enforcement in accordance with the law (Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996).

The securities market has established a number of sanctions that may be imposed on legal entities, but the law does not define their affiliation with certain forms of economic and legal liability of legal entities or the type of legal liability in general. For example, this is clearly stipulated in Article 20 of the Law of Ukraine "On the Basis of Social Protection of Disabled Persons in Ukraine", which states that "... enterprises, institutions, organisations where the average number of employees with disabilities is less than the standard, shall pay administrative and economic sanctions annually". There is no such certainty regarding the forms of economic and legal liability in the securities market (Chasovnykov, 2019).

The law application practice shows the absence of a unified approach to classifying sanctions imposed on the securities market as administrative and economic sanctions. In one case, the courts, in upholding administrative claims, referred to the fact that financial sanctions were imposed not for conducting business activities, but for violations on the securities market in accordance with the Law of Ukraine "On State Regulation of the Securities Market in Ukraine", therefore, the reference to Article 250 of the Commercial Code of Ukraine (the "CCU") in terms of the time limits for bringing a legal entity to liability is unlawful; the disputed legal relations are not the subject matter of the CCU in accordance with its Articles 1-42. In other cases, the courts satisfied claims on similar grounds, concluding that the sanctions provided for by the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" are administrative and economic sanctions (Chasovnykov, 2019).

According to D. Chasovnykov, administrative and economic sanctions for offences in the securities market are a system of organisational, legal or property measures defined by law and applied by an authorised state body to business entities with a special status for violation of the rules and conditions of activities in the securities market during the placement, circulation and accounting of securities, and are aimed at punishing offenders, stopping the offence or eliminating its consequences (Chasovnykov, 2019).

The objects of offences in stock exchange activities are mostly social relations directly related to the organised circulation of securities within the framework of stock exchange activities (in particular, maintaining a register of holders of registered securities; disclosure of information on the stock market; conducting transactions with securities, etc.) Only stock exchanges and universal exchanges are entitled to carry out such activities (Myniuk, 2011).

The Law of Ukraine "On State Regulation of Capital Markets and Organised Commodity Markets" also defines the principles of liability of the National Securities and Stock Market Commission and its officials (Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996). Administrative liability of legal entities is always liability to the state represented by its authorised jurisdictional bodies. In its relations with legal entities, a state body is a public authority vested by the state with the relevant competence and per-

forming a state power function. In this case, the state body is interested only in the implementation and proper execution of regulatory provisions by the legal entity; it does not act in relation to the legal entity as a customer or consumer of its services, works and goods. By their status, public jurisdictional bodies often also have the rights of a legal entity, but these are relations of unequal entities in terms of differentiation of powers. The parties involved in legal relations of administrative responsibility are legally unequal. Neither is there equality of status of the subject of liability and the state body, nor is there a relationship of direct subordination between them (Slubskyi, 2011).

Administrative liability of legal entities extends to all legal relations, regardless of their sectoral affiliation, in which the administrative and legal method of regulating social relations is expressed. Such sectors traditionally include land, environmental and financial law. This gives grounds to recognise as controversial judgements on financial, environmental, land and some other types of liability, since all these are essentially the same legal relations that are formed in the process of administrative liability, the subjects of which in many cases are legal entities (organisations) (Slubskyi, 2011).

According to the Law of Ukraine "On State Regulation of Capital Markets and Organised Commodity Markets", officials of the National Securities and Stock Market Commission are liable for non-performance or improper performance of their official duties in accordance with the procedure established by the legislation of Ukraine. Damage caused to participants in capital markets and organised commodity markets by unlawful actions of the National Securities and Stock Market Commission in the exercise of its control and regulatory powers shall be fully compensated by the state in accordance with applicable law (Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996).

In other words, the main feature of administrative liability in the field of stock exchanges in Ukraine is the offenders in this field, as the law provides for administrative liability of stock market participants for violation of the law and administrative liability of officials of the National Securities and Stock Market Commission in case of violation of the law in the exercise of their official powers. The object of an administrative offence by officials of the National Securities and Stock Market Commission is the management procedure in the field of stock exchanges.

The qualifying features of administrative liability are: 1) grounds for administrative liability – an administrative offence (misdemeanour) that does not pose a great public danger; 2) availability of a special set of administrative enforcement tools – administrative penalties; 3) availability of a system of administrative jurisdiction bodies, which, in accordance with the powers defined by law, have the right to apply administrative penalties and bring offenders to justice; 4) special procedure for the implementation of administrative liability (Levenets, 2012).

In Ukraine, the National Securities and Stock Market Commission issued Decision No. 405 of 28 July 2020 approving the Rules for handling cases on violation of the requirements of the legislation on capital markets and organised commodity markets, the application of sanctions or other measures of influence, which determine the procedure and terms for consideration by the National Securities and Stock Market Commission of cases on violation of the legislation on protection of financial services consumers by citizens, officials and legal entities, on capital markets and organised commodity markets, including the system of accumulative pension provision and the procedure for disclosure of financial statements together with the auditor's report (hereinafter referred to as the legislation on capital markets and organised commodity markets) (Decision of the National Securities and Stock Market Commission on the approval of the Rules for handling cases on violation of the requirements of the legislation on capital markets and organized commodity markets, the application of sanctions or other measures of influence, 2020).

3. Liability for violation of the requirements of the legislation on the functioning of stock exchanges in Ukraine

The Code of Ukraine on Administrative Offences provides for penalties for the following offences: placement of securities without registration of their issue or violation of the procedure for issuing securities (Article 163); concealment of information about the issuer's activities (Article 163-5); failure to submit documents required by the legislation on the depository system of Ukraine (Article 163-6); activities in the stock market or in the accumulative pension system without a licence (Article 163-7); manipulation of the stock market (Article 163-8); illegal use of insider information (Article 163-9); violation of the procedure for making changes to the system of depository accounting of securities (Article 163-10); violation of the procedure for disclosure of information in the stock market or in the system of accumulative pension provision (Article 163-11); violation of the terms of issuance of bills of exchange (Article 163-12) (Kuznietsova, 2021).

In our opinion, the following elements of an administrative offence in the field of the functioning of stock exchanges can be formulated:

1) an object – public relations in the stock market;

2) an objective party – violation of requirements, procedures and rules of stock exchanges and financial reporting rules;

3) an actor – a stock market participant;)

4) a subjective party – intentional or negligent actions that caused violation of legislation on the functioning of stock exchanges or intentional violations of financial reporting requirements.

Proceedings on administrative offences, consideration of cases on administrative offences, the procedure for imposing administrative penalties and enforcement of decisions are carried out in accordance with the requirements of the Code of Ukraine on Administrative Offences. The authorised person considers the case of an offence and makes a decision in the case in accordance with the law and evaluates the evidence according to his/her internal conviction based on a comprehensive, full and objective examination of all the circumstances of the case in their totality, guided by the law and legal consciousness. Cases of offences against citizens or officials are considered on the basis of protocols on administrative offences (Decision of the National Securities and Stock Market Commission on the approval of the Rules for handling cases on violation of the requirements of the legislation on capital markets and organized commodity markets, the application of sanctions or other measures of influence, 2020).

The record, together with the person's explanation and documents related to the case, shall be sent within three working days to the authorised person for consideration of the case on the offence. The case on an offence shall be considered within fifteen days from the date of receipt of the record and other case materials by the authorised person entitled to consider the case. The case on an offence shall be considered in the presence of the person being liable. When imposing a penalty, the nature of the offence, the identity of the offender, the degree of his or her guilt, property status, as well as circumstances mitigating and aggravating liability are considered (Decision of the National Securities and Stock Market Commission on the approval of the Rules for handling cases on violation of the requirements of the legislation on capital markets and organized commodity markets, the application of sanctions or other measures of influence, 2020).

The imposition of an administrative penalty is the final measure (form) among other measures of administrative coercion, as it materialises the legal assessment given to the offence and the personality of the offender in the process of considering the case and making a relevant decision on it. As a result of the application of an administrative penalty, the guilty party suffers burdensome material or moral consequences. The logical extension of the protective concept of administrative liability is the punitive concept, according to which an administrative penalty imposed for an administrative offence and being a measure of liability, is inherently a punishment of the offender for committing an unlawful, punishable and culpable act. An administrative penalty is a coercive response to an unlawful act, punishment of the perpetrator, that is, the application of penalties in the form of certain deprivations, material, moral, and personal restrictions (Bosak, Doinik, 2021).

Administrative liability measures are applied by the body (official) authorised to consider an administrative offence case, essentially in accordance with the general rules for imposing administrative penalties and in accordance with the special conditions provided for by the legislation on administrative offences (Bosak, Doinik, 2021).

Having considered the case on an offence, the authorised person shall make a decision in the case. The decision of the authorised person in the case shall be drawn up in the form of a decision. The decision in the case of an administrative offence shall be signed by the authorised person who considered the case and sealed. In the case of an administrative offence, the authorised person shall make one of the following decisions: a) to impose an administrative penalty; b) to close the case on an administrative offence. The decision in the case is announced immediately after the end of the case consideration. Within three days, a copy of the decision is delivered against a receipt or sent by registered mail with acknowledgement of receipt and/or, if the person has an official email address, to the official email address of the person against whom it was issued (Decision of the National Securities and Stock Market Commission on the approval of the Rules for handling cases on violation of the requirements of the legislation on capital markets and organized commodity markets, the application of sanctions or other measures of influence, 2020).

An appeal against a decision to impose an administrative penalty is made in accordance with Chapter 24 of the Code of Ukraine on Administrative Offences. The decision to impose a sanction for an offence against a legal entity (except for the imposition of a financial sanction) may be appealed to the central office of the NSSMC by the person against whom it was issued within fifteen business days from

the date of receipt of the decision. In case the specified period is missed for valid reasons, this period may be extended by the Chairman of the NSSMC at the request of the person against whom the sanction was imposed. The application for extension of the time limit for appealing against the decision to impose a sanction, submitted again, shall not be accepted for consideration, and the complainant shall be notified thereof by a letter signed by the Chairman of the NSSMC. A decision to impose a sanction for an offence against legal entities that imposes a penalty in the form of a fine may be appealed in court in the manner prescribed by law. A complaint or request for extension of the time limit for appealing a decision to impose a sanction (except for the imposition of a financial sanction) shall be sent by mail and/or e-mail: info@nssmc.gov.ua (Decision of the National Securities and Stock Market Commission on the approval of the Rules for handling cases on violation of the requirements of the legislation on capital markets and organized commodity markets, the application of sanctions or other measures of influence, 2020).

In our opinion, the specific features of administrative cases for violations of the legislation on the functioning of stock exchanges in Ukraine are as follows:

– the National Securities and Stock Market Commission is the entity that makes the administrative offence record;

– the administrative record is standard and includes information about stock market participants, the essence of the administrative offence, explanations of stock market participants, and other circumstances of the case;

– the law establishes a special time limit for consideration of these categories of administrative cases (15 days);

– the case is considered in the presence of a stock market participant;

– based on the results of consideration of the case materials, the authorised actor may make two types of decisions in the form of a resolution: 1) closure of the case (in case of absence of an offence); 2) conviction of the offender and imposition of an administrative penalty;

– суб'єкт правопорушення має право оскаржити рішення по справі.

the offender has the right to appeal the decision in the case.

With regard to the trends in the development of administrative and legal framework for the functioning of stock exchanges in Ukraine, A.O. Bosak and Yu.V. Doinik propose to increase liability for offences in the stock market, especially in terms of penalties for the absence or inaccuracy of information on the activities of issuers, disclosure of insider information and failure to comply with decisions of the NSSMC and the Antimonopoly Committee of Ukraine (Bosak, Doinik, 2021).

In our opinion, the amount of the fine is quite low, in accordance with Article 163-8 of the Code of Administrative Offences "Manipulation of Organised Markets", in particular, intentional actions that have signs of manipulation of organised markets established in accordance with the legislation on capital markets and organised commodity markets – entail a fine of one hundred to five hundred tax-free minimum incomes for individuals who have committed such actions. The same actions committed by a group of persons or by a person who has been subjected to an administrative penalty for an offence under part one of this Article within a year shall be punishable by a fine of five hundred to seven hundred and fifty tax-free minimum incomes.

4. Conclusions

Therefore, administrative liability for violating the requirements of the legislation on the functioning of stock exchanges in Ukraine is a type of legal liability that is imposed on stock market participants in the manner prescribed by law for committing administrative offences related to violations of the requirements of the stock market legislation and the financial reporting procedure, which may result in financially negative consequences for stock market participants.

The main specific feature of administrative liability in the field of stock exchanges in Ukraine is the offenders in this field, as the law provides for administrative liability of stock market participants for violating the requirements of the law and administrative liability of officials of the National Securities and Stock Market Commission in case of violation of the law in the exercise of their official powers. The object of an administrative offence by officials of the National Securities and Stock Market Commission is the management procedure in the field of stock exchanges.

References:

Zaiats, R.Ya. (2012). Poniattia ta oznaky administratyvnoi vidpovidalnosti [Concepts and signs of administrative responsibility]. *Naukovi zapysky Lvivskoho universytetu biznesu ta prava – Scientific notes of the Lviv University of Business and Law, 8*, 17-20 [in Ukrainian].

Shchukin, O.M. (2014). Do pytannia kontseptualizatsii poniattia administratyvnoi vidpovidalnosti [To the issue of conceptualization of the concept of administrative responsibility]. *Yurydychnyi visnyk – Legal Bulletin, 3*, 73-78 [in Ukrainian].

Zakon Ukrainy Pro tsinni papery i fondovu birzhu : vid 18 cherv. 1991 r. №1201-XII [Law

of Ukraine On Securities and Stock Exchange: dated June 18, 1991 No. 1201-XII]. (1991). *rada.gov.ua*. https://zakon.rada.gov.ua/laws/show/1201-12#Text [in Ukrainian].

Kuznietsova, Ye.A. (2021). Finansovo-pravove rehuliuvannia diialnosti profesiinykh uchasnykiv rynku tsinnykh paperiv [Financial and legal regulation of the activities of professional participants in the securities market]. *Extended abstract of Doctor's thesis*. Kyiv: Derzhavnyi naukovo-doslidnyi instytut Ministerstva vnutrishnikh sprav Ukraïny [in Ukrainian].

Zakon Ukrainy Pro derzhavne rehuliuvannia rynkiv kapitalu ta orhanizovanykh tovarnykh rynkiv: vid 30 zhovt. 1996 [Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets: dated October 30, 1996 No. 448/96-BP]. (1996). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/448/96-%D0%B2%D1%80#Text [in Ukrainian].

Myniuk, O.Yu. (2011). Suchasnyi stan ta perspektyvy vdoskonalennia administratyvno-pravovoi vidpovidalnosti u sferi birzhovoi diialnosti [The current state and prospects for improving administrative and legal responsibility in the field of exchange activity.]. *Forum prava – Law forum, 1*, 664-669. [in Ukrainian].

Chasovnykov, D. (2019). On the notion of the administrative and economic sanctions for the offence in the securities market. *Law Review of Kyiv University of Law*, 2, 114-120. [in English].

Slubskyi, I.Y. (2011). Poniattia administratyvnoi vidpovidalnosti yurydychnykh osib: pravovyi analiz [Concept of administrative responsibility of legal entities: legal analysis]. *Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav – Concept of administrative responsibility of legal entities: legal analysis, 4*, 280-289. [in Ukrainian].

Levenets, Yu.O. (2012). Poniattia administratyvnoi vidpovidalnosti [Concept of administrative responsibility]. *Aktualni problemy vitchyznianoi yurysprudentsii – Actual problems of domestic jurisprudence, 3*, 54-62 [in Ukrainian].

Rishennia Natsionalnoi komisii z tsinnykh paperiv ta fondovoho rynku Pro zatverdzhennia Pravyl rozghliadu sprav pro porushennia vymoh zakonodavstva pro rynky kapitalu ta orhanizovani tovarni rynky, zastosuvannia sanktsii abo inshykh zakhodiv vplyvu: vid 28 lyp. 2020 roku № 405 [Decision of the National Securities and Stock Market Commission on the approval of the Rules for handling cases on violation of the requirements of the legislation on capital markets and organized commodity markets, the application of sanctions or other measures of influence: dated July 28, 2020 No. 405]. (2020). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/z0966-20#Text [in Ukrainian].

Bosak, A.O., Doinik, Yu.V. (2021). Fondovyi rynok Ukrainy: perspektyvy rozvytku i svitovyi dosvid derzhavnoho rehuliuvannia [The stock market of Ukraine: development prospects and world experience of state regulation]. *Lvivska natsionalna politekhnika – Lviv National Polytechnic, 3*, 290–303 [in Ukrainian].

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

ОСОБЛИВОСТІ АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ПОРУШЕННЯ ВИМОГ ЗАКОНОДАВСТВА ЩОДО ФУНКЦІОНУВАННЯ ФОНДОВИХ БІРЖ В УКРАЇНІ

Анотація. ***Мета.*** Метою статті є визначення особливостей адміністративної відповідальності за порушення вимог законодавства щодо функціонування фондових бірж в Україні. ***Результати.*** Сформовано склад адміністративного правопорушення у сфері функціонування фондових бірж: 1) об'єкт – суспільні відносини у сфері фондового ринку; 2) об'єктивна сторона – порушення вимог, процедур та правил функціонування фондових бірж та правил фінансової звітності; 3) суб'єкт – учасник фондового ринку; 4) суб'єктивна сторона – умисні або необережні дії, які спричинили порушення законодавства щодо функціонування фондових бірж або умисні порушення вимог фінансової звітності. Особливостями адміністративних справ за порушення вимог законодавства щодо функціонування фондових бірж в Україні є: – суб'єктом складення протоколу про адміністративне правопорушення є Національна комісія з цінних паперів та фондового ринку; – адміністративний протокол є стандартний та включає відомості про учасників фондового ринку, суть адміністративного правопорушення, пояснення учасників фондового ринку, інші обставини справи; – законодавством встановлений спеціальний строк розгляду цих категорій адміністративних справ (15 днів); – розгляд справи відбувається в присутності учасника фондового ринку; – за результатами розгляду матеріалів справи уповноважений суб'єкт може прийняти два види рішень у формі постанови:

1) закриття справи (в разі відсутності складу правопорушення); 2) визнати винним суб'єкта правопорушення та накласти на нього адміністративне стягнення. ***Висновки.*** адміністративна відповідальність за порушення вимог законодавства щодо функціонування фондових бірж в Україні – це вид юридичної відповідальності, до якої у встановленій законодавством процедурі притягуються учасники фондового ринку за вчинення адміністративних правопорушень, пов'язаних з порушенням вимог законодавства про фондовий ринок та порядку фінансової звітності, з настанням для учасників фондового ринку фінансово-негативних наслідків. Основною особливістю адміністративної відповідальності у сфері функціонування фондових бірж в Україні є суб'єкти вчинення правопорушень у цій сфері, адже законодавством передбачена адміністративна відповідальність учасників фондового ринку за порушення вимог законодавства та адміністративна відповідальність посадових осіб Національної комісії з цінних паперів та фондового ринку, в разі порушення ними законодавства під час здійснення посадових повноважень. Об'єктом адміністративного правопорушення посадових осіб Національної комісії з цінних паперів та фондового ринку є порядок управління у сфері функціонування фондових бірж.

Ключові слова: адміністративне стягнення, адміністративний примус, правопорушення, правопорушник.

UDC 342.51
DOI https://doi.org/10.32849/2663-5313/2023.8.04

Ihor Pakholok,
Postgraduate student at the Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
pakholokihor@ukr.net
ORCID ID: *0009-0005-5841-8981*

ECONOMIC INTERESTS AS AN OBJECT OF ADMINISTRATIVE AND LEGAL RESEARCH

Abstract. ***Purpose.*** The purpose of this research is to determine the essential content of economic interests as an object of administrative and legal research. Accordingly, the tasks of this study are: 1) to study the concepts of interests, economic interests and their significance for the development of society and the State; 2) to study the characteristics of economic interests in the context of the legal regime of administrative law; 3) to determine the current assessment of the role of administrative law in Ukraine in ensuring and protecting economic interests. ***Results.*** The article examines the essence and significance of economic interests as a special object of administrative law. The author analyses the category of "interest," exploring its material and intangible aspects, as well as its various types, including individual and collective interests. This fundamental category is based on a deep analysis of human nature and its interaction with various social institutions, including both legal and political. Economic interests are considered a special element of reality, formed in public consciousness and playing a key role in social development. They determine the performance of business entities and influence the economic policy of the state. Economic interests can be viewed as an object of administrative-legal research and regulatory framework, considering three primary circumstances of reality. The first circumstance is the economic interests of parties to legal relations, who can also be participants in administrative-legal relations. The second is that economic interests are regulated, implemented, and protected in accordance with the provisions of administrative legislation and are embodied in the state's economic policy. Third, the implementation of economic interests is closely related to the state's efforts to ensure economic security, achieved through the economic function of the state and the creation of conditions favourable for national security. The focus is on the need to regulate and protect economic interests, given their legal significance. ***Conclusions.*** The author emphasises the importance of public administration in the economic sphere, including the creation and maintenance of infrastructure, the legal regulation of economic activity, monitoring compliance with market competition rules, and the implementation of state economic policy. In conclusion, the article summarises the study's results and highlights the need for an integrated approach to considering economic interests within the framework of administrative law. This approach will ensure the effective protection of the rights of business entities and contribute to the state's economic development.

Key words: administrative law, economic interests, economic security, legal and regulatory framework, public administration, public policy.

1. Introduction

Modern Ukrainian society undergoes a period of rapid formation and development of the system of national values and interests, which is a completely natural reaction to the crisis events of the last ten years. Moreover, it should be noted that interests are key to the current evolution of our society, the implementation of economic, social and other relations, as well as personal development. These interests are a special element of reality that is formed in the public consciousness (as the totality of personal aspirations correlated with the so-called 'Common Good'), and are the prism through which reality is assessed and the pyramid of priorities of society is built. The relevant interests are a powerful incentive that drives the activities of both individuals and society in general. In addition, the diversity of such interests, inherent in all participants in social processes and relations, forms an integral system with unique characteristics and internal unity. Moreover, it is important to emphasise that this system can effectively solve a number of functional tasks of society and the individual, including: first, adaptation of society and the individual to the changing reality; secondly, reduction of tension due to various economic, social and other risks; thirdly, holistic integration of participants in legal relations, in particular, economic entities. Given the above, as well as the crisis phenomena observed in Ukraine over the past decade, we can state the actualisation of the need

to consider economic interests as an object of administrative and legal research.

Although economic interests, being one of the key components of the relevant system of interests, play an important role in society, determining the performance of business entities, influencing the economic development of the State and forming the basis for decision-making at all levels of public administration, it should be noted that available scientific research reveals that these interests are most often considered by civil lawyers and economists (Bitiuk, 2023; Olkhova, 2017). Furthermore, with due regard to the current realities, the relevance of the study of economic interests within the framework of administrative law is becoming increasingly evident. Whereas, to date, economic interests have not been comprehensively disclosed as an object of administrative law research, given the development of administrative law science, it should be noted that many administrative lawyers (including, K.E. Demenko, I.I. Komarnytska, D.O. Koshykov, K.O. Kryvosheiev, O.M. Reznik, Ye.Yu. Sybirtseva, M.V. Starynskyi, A.V. Steblianko and other scholars) economic interests have been considered in the context of defining public administration in the field of economy and in the field of ensuring economic security of the State. The scientific developments of these and other scholars enable to deepen the scientific understanding of economic interests as an object of administrative and legal research.

The purpose of this research is to determine the essential content of economic interests as an object of administrative and legal research. Accordingly, the tasks of this study are: 1) to study the concepts of interests, economic interests and their significance for the development of society and the State; 2) to study the characteristics of economic interests in the context of the legal regime of administrative law; 3) to determine the current assessment of the role of administrative law in Ukraine in ensuring and protecting economic interests.

2. Principles of economic interests

In general, such a fundamental category as 'interest' is based on a deep analysis of human nature and its interaction with various social institutions (including both legal and political). Firstly, interests reflect the orientation of consciousness and will of individuals (or groups) to satisfy certain needs or desires, being motivating factors that encourage certain actions and determine the conduct of the relevant actors. When considering the motives of human behaviour in the legal field through the prism of interests, it is important to understand that, firstly, interests can be grouped into material (related to satisfaction of physical and economic needs) and intangible (related to spiritual, cultural and moral values), as well as into individual (belonging to individuals) and collective (reflecting the needs and goals of groups of people or society as a whole). Secondly, interests are socially significant categories that require to be protected and regulated by legal provisions. It should be noted that interests are recognised as legal categories if they have legal significance and meet the requirements of legal principles and provisions. In this context, law is a tool for recognising legal significance, as well as harmonising and balancing different types and kinds of interests, ensuring their fair and equal satisfaction.

Considering the category of 'interest' as a purely legal category, it is important to remember that interest from this perspective should be viewed as a conscious need or desire, which is met by exercising the rights and obligations reflected in legal provisions and directly or indirectly reflected in the requirements of the principles of law of a modern human-centred state. Legally significant interests may be of different nature (personal, public, economic, political, etc.), and they may be in compliance with the law (legitimate interests that meet the requirements of legal provisions and are subject to protection by the state) or not (unlawful interests that contradict the established legal order and, therefore, are subject to restriction or direct prohibition by law). These circumstances are important because interests in the legal system of Ukraine, as in any other legal and democratic state, play a key role in the creation and implementation of legal provisions. Therefore, lawmakers should respect and protect the diverse interests of the parties to the law, ensuring a balance and fairness in their enjoyment. On the other hand, the entities that implement the law (in particular, public administration bodies) also focus on protecting interests in dispute resolution and decision-making.

It should also be noted that in reality, one can also observe the unity of legally significant interests, which is manifested in the following aspects: First, these interests are personified in specific individuals involved in economic activity and/or in the process of ensuring the economic security of the state. Second, each interest is aimed at meeting vital needs, which characterises consumer conduct. Third, the commonality of legally significant economic interests implies a system of direct or indirect interrelations, coordination, subordination and determination of economic interests. This is due to the fact that in practice, no economic interest can be exercised by a participant in legal

relations without a set of connections with other interests that originate from this participant or from other participants in legal relations, which may be affected by actions and decisions taken to meet this interest. Fourth, the social basis for the unity of economic interests is the system of social institutions, among which social norms and traditions, as well as established rules of conduct mediated by public morality and law, are of particular importance.

Recognising the special public legal significance of economic interests, we note that they are also typically a full-fledged object of economic activity which is the object of administrative and legal research and, at the same time, the object of administrative and legal adjustment. Economic interests can be viewed as a relevant object, given the circumstances of reality, such as:

1) *The economic interests of parties to legal relations, who can also be participants in administrative-legal relations.* They reflect the needs and goals of the actors operating in the relevant legal field. These actors are involved to varying degrees in administrative and legal relations, which makes their interests an important element in the formation and implementation of administrative and legal provisions and mechanisms for regulating actions and decisions taken by this group of actors. It is important to consider several key aspects when analysing this feature. First, a human being, as a carrier of a system of interests, is an integral part of society and interacts with the environment, striving for self-preservation and harmony in his or her social existence. Second, this aspiration is manifested through overcoming negative impacts and implementing universal values. These aspects are important because all participants in legal relations, whether individuals or legal entities, are human beings. Therefore, economic interests apply to various actors of administrative law, but it is important to consider that in the context of these actors, the so-called 'universal character' of economic relations is manifested through the 'specific character' of economic interests objectified by different actors. Therefore, this specificity requires careful consideration when defining and regulating the economic interests of these actors;

2) *The economic interests are regulated, implemented, and protected in accordance with the provisions of administrative legislation and are embodied in the state's economic policy.* It should be noted that administrative law regulates the economic interests of the state, as well as the main economic interests of legal entities and physical persons in Ukraine, directly reflecting these interests or deriving them from existing norms. Administrative law establishes rules and procedures that regulate economic activity, protect economic interests and ensure compliance with legal provisions in the economic sector. Therefore, these provisions form the basis of the administrative and legal regime for ensuring economic security and legally predictable, harmonious interaction of legal entities involved in the economy. In this context, it is important to consider that the current administrative legislation of Ukraine covers a wide range of issues. They include taxation, licensing, control over compliance with economic standards, antitrust and anti-cartel regulatory frameworks, and other aspects that ensure the economic security of the state at all levels of its functioning. These rules not only regulate but also protect economic interests, promoting stability and predictability in economic relations. In addition, the realisation of economic interests of legal entities is embodied in the economic policy of the state, which is an integral part of public administration and is an important object of modern administrative law. The economic policy includes measures and actions aimed at achieving such economic goals as sustainable growth, improving the welfare of the population, providing employment, developing critical infrastructure, etc. In this context, it is also important to consider that public economic policy is formed on the basis of an analysis of national interests, which include both internal needs to maintain the administrative and legal regime of economic security and external obligations and challenges that affect the normal interaction of legal entities involved in economic relations;

3) *Third, the implementation of economic interests is closely related to the state's efforts to ensure economic security, achieved through the economic function of the state and the creation of conditions favourable for national security.* It is important to emphasise that the priorities of the modern development of any state depend on the clarity of the formulation of national interests and understanding of the mechanisms for their protection. Scientists rightly note that one of the main goals of sustainable development of the state is to ensure national security in all its forms (Pavlenko, 2022), including economic security. Therefore, economic security at all levels of public and state activities is possible only with a clear understanding of the priorities in the economic sector that determine this security.

3. Peculiarities of economic interests as an object of administrative and legal research

A comprehensive analysis of economic interests as an object of administrative and legal research reveals that they are achieved mainly

through public administration. In this context, the tasks that have already been addressed to varying degrees by Ukrainian administrative lawyers come to the fore:

a) Create and mainten infrastructure, which is the basis of the socio-economic system of society. This infrastructure includes tangible and intangible objects, systems and services necessary for the functioning and development of society. These are the production and economic infrastructure, which includes transport (roads, railways, ports, airports), energy (power plants, power lines, gas pipelines), industrial facilities (factories, plants, production complexes) and communication networks (telephone lines, the Internet). Social infrastructure includes educational and medical institutions, cultural and sports facilities, as well as social services that meet the basic needs of the population and improve the quality of life, which contributes to social stability and human capital development. Institutional infrastructure should also be noted, which includes the legal and organisational structures that ensure the efficient functioning of the economic system. In this case, it refers to public service bodies responsible for economic security at all levels, as well as civil society actors (trade unions, employers' associations, consumer protection organisations) and financial institutions (banks, insurance companies, investment funds) that provide access to financial resources and financial risk management. As for the financial and market system, it includes the credit and banking system and the markets for goods and services, as well as financial markets;

b) Create a legal framework for the functioning of economic entities is one of the key functions of a modern state aimed at creating stable and predictable conditions for doing business. These activities include the development, adoption and implementation of regulations governing the activities of business entities and guaranteeing the protection of property rights and compliance with contractual obligations. This legal framework is then subject to continuous improvement to ensure the efficient functioning of the economic system;

c) Control over the observance of market competition rules as one of the most important functions of the state in ensuring fair and efficient functioning of the market economy, which, in turn, contributes to meeting economic interests. The main purpose of such control is to prevent monopolistic practices through the adoption of antimonopoly legislation and the operation of the Antimonopoly Committee of Ukraine. Second, to monitor compliance with anti-cartel legislation and supervising cartel agreements in the market, including combating agreements between competitors aimed at restricting competition, price fixing, market division and other anticompetitive actions that harm the economy by increasing prices for consumers and limiting the choice of goods and services. Thirdly, to support fair competition in the market, which stimulates innovation, improves the quality of goods and services, and reduces prices. Fourth, to protect consumers and small entrepreneurs, who are the most vulnerable market participants and often suffer from anti-competitive practices by big business and entities associated with oligarchic influence.

4. Conclusions

Economic interests are a fundamental component of social development, which determine the performance of business entities and influence the economic policy of the State. The administrative and legal research of economic interests enables to identify the essence, structure and mechanisms of protection of such interests, which contributes to the formation of a scientific basis for the creation of effective regulations and the development of effective approaches to the formation of an efficient economic policy. In addition, the consideration of economic interests as an object of administrative and legal regulation opens up new opportunities for a deeper understanding of the role of the state in ensuring economic security. It should be considered that meeting economic interests is only possible if there is effective public administration in the economic sector, which includes the creation and maintenance of infrastructure, proper legal regulation of economic activity, control over compliance with market competition rules and implementation of public economic policy. It is important to consider social, political and legal aspects in the formation and realisation of economic interests, which enables sustainable economic development and improvement of the population's welfare.

References:

Bitiuk, I.M. (2023). Natsionalni ekonomichni interesy: pryntsypy upravlinskoi diahnostyky ekonomichnoi bezpeky krainy v umovakh informatsiinoi ekonomiky [National economic interests: principles of managerial diagnostics of the country's economic security in the context of the information economy]. *Pidpryiemnytstvo i torhivlia, 38*, 13–18 (in Ukrainian).

Olkhova, T. (2017). Osoblyvosti pravovoho zabezpechennia bezpeky biznesu v zovnishnoekonomichnii diialnosti v umovakh hlobalizatsii [Peculiarities of legal support for business security in foreign economic activity in the context of globalization]. *Yurydychnyi visnyk, 2*, 144–149 (in Ukrainian).

Pavlenko, V.S. (2022). Natsionalni interesy ta zahrozy derzhavnii bezpetsi Ukrainy [National interests and threats to the state security of Ukraine]. *Naukovi zapysky Lvivskoho universytetu biznesu ta prava, 34*, 84–92 (in Ukrainian).

Ігор Пахолок,
здобувач
Науково-дослідного інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
pakholokihor@ukr.net
***ORCID ID:** 0009-0005-5841-8981*

ЕКОНОМІЧНІ ІНТЕРЕСИ ЯК ОБ'ЄКТ АДМІНІСТРАТИВНО-ПРАВОВОГО ДОСЛІДЖЕННЯ

У статті досліджується сутність та значення економічних інтересів як особливого об'єкта адміністративного права. Автором аналізується категорію «інтерес», її матеріальні та нематеріальні аспекти, а також різні її типи – індивідуальні та колективні інтереси. Така фундаментальна категорія, як «інтерес», ґрунтується на глибокому аналізі людської природи та її взаємодії з різними соціальними інститутами (включаючи як правові, так і політичні). Економічні інтереси розглядаються як особливий елемент дійсності, що формується у суспільній свідомості та відіграє ключову роль у суспільному розвитку, визначаючи поведінку насамперед суб'єктів господарювання та впливаючи на економічну політику держави. Економічні інтереси можуть розглядатися в якості об'єкта адміністративно-правового дослідження та об'єкта адміністративно-правового регулювання, беручи до уваги щонайперше три обставини дійсності. Перша – економічні інтереси є інтересами суб'єктів права, які можуть бути також учасниками адміністративно-правових відносин. Друга – регламентація, реалізація та захист економічних інтересів здійснюються у відповідності до норм адміністративного законодавства та втілюються в економічній політиці держави. Третя – реалізація економічних інтересів тісно пов'язана з діяльністю держави щодо забезпечення економічної безпеки, що досягається за рахунок реалізації економічної функції держави та створення сприятливих умов національної безпеки. Акцентується увага на необхідності правового регулювання та захисту економічних інтересів, враховуючи їх юридичне значення. У статті розглядаються різні підходи до визначення та регулювання економічних інтересів адміністративно-правовими нормами та обґрунтовується, що ці інтереси постають в якості об'єкту правового регулювання, що потребують чіткого визначення та захисту з боку держави. Особлива увага приділяється аналізу ролі адміністративного права в забезпеченні та захисті економічних інтересів. У статті досліджуються нормативно-правові акти, що регулюють економічну діяльність, а також інституційні механізми, які сприяють реалізації та захисту економічних інтересів. Автор підкреслює важливість публічного адміністрування у сфері економіки, що включає створення та підтримання інфраструктури, правове регулювання економічної діяльності, контроль за дотриманням правил ринкової конкуренції та реалізацію державної економічної політики. У висновках до статті узагальнюються результати дослідження та вказується на необхідність комплексного підходу до розгляду економічних інтересів у рамках адміністративного права, що дозволить забезпечити ефективний захист прав суб'єктів господарювання та сприятиме економічному розвитку держави.

***Ключові слова:** адміністративне право, державна політика, економічна безпека, економічні інтереси, правове регулювання, публічне адміністрування.*

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.8.05

Serhii Serykov,
Postgraduate student at the Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
Serikovsergey8181@gmail.com
ORCID ID: *0009-0004-0007-9481*

THE ROLE AND IMPORTANCE OF SUPPORT FOR ENTREPRENEURIAL ACTIVITY IN MODERN CONDITIONS

Abstract. ***Purpose.*** The purpose of the article is to reveal the role and importance of support for entrepreneurial activity in modern conditions. ***Results.*** Based on the analysis of scientific views of scholars and provisions of current legislation, the article formulates the author's approach to defining the purpose and objectives of support for entrepreneurial activity in Ukraine. It is emphasised that the essence of the support under study is to provide various forms of assistance to entities intending to or already engaged in entrepreneurial activity in order to create conditions for its sustainable development as the basis of the national economy. ***Conclusions.*** It is concluded that the essence of support for entrepreneurial activity is characterised by the following: first, it consists of a number of legal, organisational, financial, information and advisory and other measures; second, their implementation should comply with the legal status of the actors involved; third, its overall goal can be considered to be ensuring an optimal balance between the interests of entrepreneurs and the public interests of socio-economic development; fourth, the task depends on the specific area of business activity and objective conditions of reality; fifth, it can be performed by any authorised actors, except for the entrepreneur who will receive it. They may be state authorities, local self-government bodies, public organisations, etc. Therefore, it is the essence of the support under study is to provide various forms of assistance to entities intending to or already engaged in entrepreneurial activity in order to create conditions for its sustainable development as the basis of the national economy. The role of support from the state and local governments is not in regulating all aspects of business activity in detail, which is typical for anti-democratic non-market systems, but in assisting and facilitating the implementation of proactive and independent risky activities with minimising factors that affect or may adversely affect such activities. The support should be dynamic and adequately flexible to changes in social, economic and political life that affect the conditions for entrepreneurial activity.

Key words: support, entrepreneurial activity, government programmes, legal and regulatory framework.

1. Introduction

Nowadays, Ukraine is undergoing extremely difficult social and economic conditions, primarily due to the full-scale invasion of the terrorist state, which has a negative impact on entrepreneurial activity, including the danger of shelling, especially in the east and south of the country; destruction of natural resources, the impossibility of their use in a large part of the country due to hostilities and occupation, and environmental pollution; destruction of the energy infrastructure; a significant reduction in the male population, including among skilled workers in entire business sectors, etc. In addition, the problems that existed before 2022 are also deepening, including an increase in the tax burden, the general imperfection of the tax system, etc. That is why, in today's realities, support for entrepreneurship is of great importance.

Some problematic issues related to the support of entrepreneurial activity in Ukraine were considered in the scientific works by: D.O. Bezzubov, D.S. Bukreieva, M.O. Bukher, I.B. Hobyr, O.V. Huk, K.V. Denysenko, M.I. Melnyk, T.Y. Melnyk, Ye.V. Somova and many others. However, despite the significant theoretical achievements, the role and importance of support for entrepreneurial activity is constantly growing.

Therefore, the purpose of the article is to reveal the role and importance of support for entrepreneurial activity in modern conditions.

2. Specific features of state support for business

To begin our research, we note that support is always associated with ensuring a certain interest. As for the support of state and local authorities, it is primarily about reconciling

the public interests represented by these bodies with the interests of business entities. It should be emphasised that the interests in the development of entrepreneurial activity both in individual regions and in the country as a whole coincide with the public interest in terms of increasing the welfare of the population. Therefore, state support is the state's actions implemented in the process of regulatory influence. State support is a part of the broader concept of 'public support for entrepreneurial activity', which is related to the scope of interests that state authorities and local governments represent in these relations. According to O. Bavyko, the state regulatory framework for entrepreneurship is a system of legal, administrative and regulatory measures aimed at solving socio-economic problems by stimulating the development of socially efficient entrepreneurial activity. As part of this mechanism, the author identifies a subsystem of supporting and stimulating influence, which includes privatisation, public procurement, investment, state consulting, export-import policy (Bavyko, 2017). Therefore, the researcher emphasises that the overall goal of state support is to direct entrepreneurial activity to meet the public interest in socio-economic sustainable development.

I.B. Hobyr and M.I. Melnyk characterise the purpose of state support for business as creating equal conditions for all business entities, as well as aligning business structures with other sectors of social production. Small and medium-sized businesses in particular need such support. And not without reason, as these forms of business are the structuring factor of the economy in the new business environment. Large enterprises, which are the backbone of any industry, always embody the results of structural changes, and in this sense, they represent a stable, 'conservative' beginning of the economy (Hobyr, Melnyk, 2015). Therefore, according to the authors, the purpose of this support is to 'smooth out' the negative factors that create an obstacle to entrepreneurial activity.

T. Melnyk understands state support as state regulatory framework for entrepreneurial activity, which primarily involves the deliberate formation by state structures of appropriate direct and indirect instruments of business support, in particular, creation of incentives, use of material, financial and other resources attracted for its actors. The priority of state regulatory framework and support for entrepreneurship in times of war necessitates a transition from direct administrative assistance to the formation of a favourable economic and social environment to improve mechanisms and tools to stimulate the development of business entities (Melnyk, 2022). The researcher emphasises that the direct administrative influence of the state on the regulation of entrepreneurial activity should give way to measures that directly or indirectly stimulate its development by creating favourable conditions.

The Commercial Code of Ukraine, in particular, in Article 48, defines state support for entrepreneurship as the following activities performed by the authorities in order to create favourable organisational and economic conditions for the development of entrepreneurship under the context and in the manner prescribed by law: provision of land plots to entrepreneurs, transfer of state property necessary for entrepreneurial activity; assistance to entrepreneurs in organising logistics and information services for their activities, and training of personnel; initial arrangement of undeveloped territories with production and social infrastructure facilities with their sale or transfer to entrepreneurs in accordance with the procedure established by law; stimulation of technology modernisation, innovation, development of new types of products and services by entrepreneurs; provision of other types of assistance to entrepreneurs. It also stipulates that the state promotes the development of small business and creates the necessary conditions for this (Commercial Code of Ukraine, 2003). Therefore, the purpose and main trends of state support for entrepreneurship are defined, which are not exclusive.

Given these author's positions on the purpose of the State support, it seems appropriate to formulate it as: first, creation of favourable conditions for the development of entrepreneurship which offset or reduce the role of negative factors affecting entrepreneurial activity; and second, directing entrepreneurship to achieve public social and economic interests of the country. Depending on the specific negative impact, the overall goal is manifested in specific tasks that provide for the achievement of the required result of support measures.

3. Areas of the entrepreneurial protection system

According to D.O. Bezzubov and M.O. Bukher, the tasks of the system of business protection areas follows: participation in the implementation of state programmes in the field of ensuring the security of the economy; creation and maintenance of a specialised information fund of commercial organisations on the security of their activities; development and implementation of an effective mechanism

for protecting capital and material assets of enterprises; facilitating the regulation of the activities of non-governmental organisations working in the security sector on issues affecting the interests of individual commercial enterprises and the state in general; assisting non-governmental organisations in dealing with information security issues; comprehensive protection of the interests of domestic entrepreneurs in their relations with foreign firms; addressing security issues in industrial and financial groups; solving problems of inter-objective exchange of confidential information; facilitating the improvement of the regulatory framework for business security; participating in security inspections of commercial structures; solving complex, unusual and controversial problems related to the security of the country's economic system, as well as groups of enterprises and individual objects; performing special scientific and technical work on business protection; protecting the interests of entrepreneurs in the legislative, executive and judicial authorities on protection against economic espionage (Bezzubov and Bukher, 2017). In addition, the tasks depend on the legal status of the entity that implements the measures to support entrepreneurial activity. For example, the main tasks of the Ukrainian Entrepreneurship Support Fund are to facilitate the implementation of public policy on entrepreneurship development by attracting and efficiently using financial resources on a repayable and non-repayable basis, financing targeted programmes and projects, and partially paying interest on loans issued to entrepreneurs by banking institutions; cooperation with international, foreign and Ukrainian financial organisations in matters of entrepreneurship development; participation in the implementation of international agreements on financial support for entrepreneurship development in Ukraine; participation in the establishment of organisations aimed at providing support to entrepreneurship (On the Ukrainian Entrepreneurship Support Fund: Decree of the Cabinet of Ministers of Ukraine, 1995).

The support tasks are implemented in the forms defined by law or not prohibited by it. There are two main forms of state support for small businesses in the world. One is extensive regulatory state support for small businesses combined with state protectionism. It is typical for the initial stage of small business development. The other form involves moderate regulatory state support for small business and the creation of market conditions for competition and is typical for more mature market relations (On the Ukrainian Entrepreneurship Support Fund: Decree of the Cabinet of Ministers of Ukraine, 1995). It seems that the optimal combination of these forms is a priority for the effective development of entrepreneurship in the difficult security, social, economic and other conditions that exist in Ukraine, taking into account its European, democratic development path.

Due to the specific task, there should be appropriate support measures. According to D.S. Bukreieva and K.V. Denysenko, the main priority support measures for the development of social responsibility of entrepreneurs should be: state promotion of the importance of social responsibility, its benefits and needs for society; creation of a state fund and attraction of funds from local budgets for partial co-financing of social projects implemented by private enterprises; various tax benefits and creating moral incentives for entrepreneurs who invest in socially important projects; mandatory social reporting at the national level for companies that can list shares on stock exchanges, participate in government tenders, obtain certain licences, etc. (Bukreieva, Denysenko, 2022). The current conditions of the country's socio-economic life are complicated by many factors that significantly affect entrepreneurial activity. According to O. Huk and Ye. Somova, these include a decrease in the production of exported goods, as parts of Mykolaiv, Kherson and Zaporizhzhia regions are occupied, which in turn makes access to ports impossible. The Black Sea is also in question, as there are Russian ships there that pose a threat. In addition, many domestic products, including grain, were exported to the territory of Russia, causing obstacles to foreign trade, disruption of transport and logistics processes, outflow of personnel abroad or partial relocation of labour resources within Ukraine. On 24 February 2022, some domestic enterprises suspended their operations due to the inability to do business, significant damage and losses. The other part of the business was developing strategic plans for the future operations of the companies (Huk, Somova, 2022). Therefore, the task of support under martial law is, first and foremost, to ensure maximum security of business activity and, at the same time, to stimulate economic activity in less secure areas of the country.

An example of such support is the Enterprise Relocation Programme implemented by the Ministry of Economy of Ukraine. This programme involves relocating businesses from areas close to or in the war zone to safe regions of Western Ukraine

(Zakarpattia, Ivano-Frankivsk, Lviv, Ternopil, Khmelnytskyi, Chernivtsi, Vinnytsia, Volyn and Rivne regions). Any enterprise can join the programme by relocating its facilities in full or in part. The programme applies to regions affected by the hostilities. You can apply for the programme by submitting an application for relocation, indicating the specialisation of the enterprise, the number of employees, production capabilities, needs for production space, raw materials, employee accommodation, and the method of transportation. There are no grounds for refusal to relocate. There is a priority for consideration of the application, the possibility of dismantling, the availability of a location with the necessary conditions for work in the host regions and the priority of transportation (Enterprise relocation program, 2020). Furthermore, in one of the regions of Ukraine most affected by the full-scale Russian aggression (Kharkiv region), entrepreneurs were exempted from paying the following taxes: single tax, rent, and real estate and land taxes. In this way, local governments are trying to stop the outflow of entrepreneurs and ensure the revival of economic life, public needs and employment.

4. Conclusions

Therefore, the analysis conducted enables the following statements to be made, the essence of support for entrepreneurial activity is characterised by the following: first, it consists of a number of legal, organisational, financial, information and advisory and other measures; second, their implementation should comply with the legal status of the actors involved; third, its overall goal can be considered to be ensuring an optimal balance between the interests of entrepreneurs and the public interests of socio-economic development; fourth, the task depends on the specific area of business activity and objective conditions of reality; fifth, it can be performed by any authorised actors, except for the entrepreneur who will receive it. They may be state authorities, local self-government bodies, public organisations, etc.

Therefore, it is the essence of the support under study is to provide various forms of assistance to entities intending to or already engaged in entrepreneurial activity in order to create conditions for its sustainable development as the basis of the national economy. The role of support from the state and local governments is not in regulating all aspects of business activity in detail, which is typical for anti-democratic non-market systems, but in assisting and facilitating the implementation of proactive and independent risky activities with minimising factors that affect or may adversely affect such activities. The support should be dynamic and adequately flexible to changes in social, economic and political life that affect the conditions for entrepreneurial activity.

References:

Bavyko, O.Ie. (2017). Neobkhidnist derzhavnoho rehuliuvannia pidpryiemnytstva ta mekhanizmy yoho zdiisnennia [The need for state regulation of entrepreneurship and mechanisms for its implementation]. *Efektyvna ekonomika*. № 12. Retrieved from http://www.economy.nayka.com.ua/?op=1&z=5985 (in Ukrainian).

Bezzubov, D.O., Bukher, M.O. (2017). Zavdannia systemy zabezpechennia zakhystu pidpryiemnytstva v Ukraini [asks of the system of ensuring the protection of entrepreneurship in Ukraine]. *Yurydychnyi visnyk*. № 3 (44). pp. 108-113 (in Ukrainian).

Bukreieva, D.S., Denysenko, K.V. (2022). Sotsialna vidpovidalnist biznesu yak osnova zabezpechennia dilovoi aktyvnosti pidpryiemstv: yevrointehratsiinyi aspekt [Social responsibility of business as a basis for ensuring business activity of enterprises: European integration aspect]. *Ekonomika ta suspilstvo*. Vyp. 38. Retrieved from https://economyandsociety.in.ua/index.php/journal/article/download/1316/1271/ (in Ukrainian).

Hobyr, I.B., Melnyk, M.I. (2015). Derzhavna pidtrymka rozvytku maloho pidpryiemnytstva v Ukraini v kryzovykh umovakh [State support for the development of small businesses in Ukraine in crisis conditions]. *Ahrosvit*. № 10. Retrieved from http://www.agrosvit.info/pdf/10_2015/12.pdf (in Ukrainian).

Hospodarskyi kodeks Ukrainy vid 16 sichnia 2003 roku № 436-IV [Economic Code of Ukraine dated January 16, 2003 No. 436-IV]. (2003). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/436-15#Text (in Ukrainian).

Huk, O.V., Somova, Ye.V. (2022). Vitchyznianyi biznes v umovakh viiny [Domestic business in conditions of war]. *Biznes, innovatsii, menedzhment: problemy ta perspektyvy*. № 1. pp. 44-45 (in Ukrainian).

Melnyk, T.Iu. (2022). Derzhavna pidtrymka ta stymuliuvannia rozvytku biznesu v Ukraini pid chas dii voiennoho stanu [State support and stimulation of business development in Ukraine during martial law]. *Ekonomika, upravlinnia ta administruvannia*. № 2 (100). pp. 3-11 (in Ukrainian).

Pro Ukrainskyi fond pidtrymky pidpryiemnytstva: Postanova Kabinetu Ministriv Ukrainy vid 27 serpnia 1995 r. № 687 [On the Ukrainian Entrepreneurship Support Fund: Decree of the Cabinet of Ministers of Ukraine of August 27, 1995 No. 687]. (1995). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/687-95-%D0%BF#Text (in Ukrainian).

Prohrama relokatsii pidpryiemstv [Enterprise relocation program]. Ministerstvo ekonomiky Ukrainy. 2022. *me.gov.ua*. Retrieved from https://me.gov.ua/Documents/Detail?lang=uk-UA&id=3e766cf9-f3ca-4121-8679-e4853640a99a&title=ProgramaRelokatsiiPidprimstv (in Ukrainian).

Сергій Сериков,
здобувач
Науково-дослідного інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
Serikovsergey8181@gmail.com
***ORCID ID:** 0009-0004-0007-9481*

РОЛЬ ТА ЗНАЧЕННЯ ПІДТРИМКИ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ В СУЧАСНИХ УМОВАХ

Анотація. ***Мета.*** Мета статті полягає у розкритті ролі та значення підтримки підприємницької діяльності в сучасних умовах. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, сформульовано авторський підхід щодо визначення мети та завдань підтримки підприємницької діяльності в Україні. Акцентовано увагу на тому, що зміст досліджуваної підтримки полягає в наданні різних форм допомоги суб'єктам, які мають намір або вже здійснюють підприємницьку діяльність, задля створення умов її сталого розвитку як основи національної економіки. ***Висновки.*** Зроблено висновок, що сутність підтримки підприємницької діяльності характеризується тим, що вона: по-перше, складається із низки правових, організаційних, фінансових, інформаційно-консультативних та інших заходів; по-друге, їх реалізація має відповідати правовому статусу суб'єктів, які їх здійснюють; по-третє, її загальною метою можна вважати забезпечення оптимального балансу між інтересами суб'єктів підприємницької діяльності та публічними інтересами соціально-економічного розвитку; по-четверте, задання залежать від конкретної сфери підприємницької діяльності та об'єктивних умов дійсності; по-п'яте, може здійснюватися будь-якими уповноваженими на це суб'єктами, окрім самого підприємця, який її отримає. Ними можуть бути органи державної влади, органи місцевого самоврядування, громадські організації тощо. Отже, зміст досліджуваної підтримки полягає в наданні різних форм допомоги суб'єктам, які мають намір або вже здійснюють підприємницьку діяльність, задля створення умов її сталого розвитку як основи національної економіки. Роль підтримки з боку держави та органів місцевого самоврядування проявляється не в детальному врегулюванні всіх аспектів підприємницької діяльності, що є властивим для антидемократичних не ринкових систем, а в допомозі, сприянні в реалізації ініціативної та самостійної ризикової діяльності з мінімізацією факторів, що впливають чи можуть негативно вплинути на таку діяльність. Підтримка має бути динамічною та адекватно гнучкою до змін, що мають місце в суспільному, економічному та політичному житті та впливають на умови здійснення підприємницької діяльності.

Ключові слова: підтримка, підприємницька діяльність, державні програм, нормативно-правове регулювання.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.8.06

Mykola Ulmer,
Candidate of Juridical Science,
Senior Researcher at
Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
ulmermykola@ukr.net
ORCID ID: *0009-0008-7685-7728*

DETERMINATION OF THE CONTENT OF FORMAL PRECONDITIONS FOR EXERCISING THE RIGHT TO CASSATION APPEAL IN ADMINISTRATIVE PROCEEDINGS OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to determine the content of the formal preconditions for exercising the right to cassation appeal in administrative proceedings in Ukraine. ***Results.*** Procedural time limits of cassation proceedings are the period of time established by law and the administrative court of cassation within which the parties and other persons involved in the case, as well as persons not involved in the case, if the court has decided on their rights, freedoms, interests and obligations, have the right to take procedural actions. The cassation proceedings have certain types of procedural time limits during which all procedural actions are performed during the commencement of proceedings in the case, consideration of the cassation appeal and adoption of a resolution by the court and participants in the case. One of the types of procedural time limits of cassation appeal is the time limit for exercising the right to cassation appeal, by which the author means the period of time established by law during which the eligible parties have the right to appeal to the administrative court of cassation. The time limit for exercising the right to cassation appeal is a period of time established by law during which eligible actors have the right to apply to an administrative court of cassation. In our opinion, the time limit of cassation appeal is a procedural time limit by its content and legal nature. The filing of a cassation appeal to the High Administrative Court of Ukraine within the scope of consideration of a particular administrative case is a procedural action of the parties and other persons involved in the case, as well as persons not involved in the case, if the court has decided on their rights, freedoms, interests and obligations. ***Conclusions.*** The grounds for a cassation appeal are the circumstances by which the appellant demonstrates that the administrative courts of first and/or appellate instance have incorrectly applied the substantive and procedural law. In such a case, the cassation appeal should specify what exactly constitutes a significant violation or misapplication of substantive or procedural law, with a reasonable presentation of relevant evidence (court decisions, copies of documents, other materials, etc.). The content of the cassation appeal will include the appellant's request to the administrative court of cassation to take certain actions to cancel or replace the court decisions of the administrative courts of first and/or appellate instance. In our opinion, the specified requirements for the form and content of the cassation appeal are of great importance, since it is within the cassation appeal that the administrative court of cassation will verify that the provisions of substantive and procedural law are applied correctly.

Key words: court decision, case consideration, cassation appeal, court hearing, procedural time limits.

1. Introduction

One of the preconditions for exercising the right of cassation appeal is compliance with the procedural time limits established by the CAPU or set by the administrative court for applying to the cassation court.

In order to fulfil the tasks of administrative court proceedings, it is essential not only to establish the procedural order of administration of justice in administrative cases, but also to create an optimal time regime for its implementation, that is, to establish procedural time limits. After all, it is extremely important that administrative proceedings are administered not only correctly, but also in a timely manner.

It is to achieve this goal that procedural time limits are set.

Moreover, their existence and strict observance is not only a guarantee of the exercise of subjective procedural rights by the parties to the proceedings, but also a guarantee of the effi-

ciency of the proceedings (Andrushko, Bilousov, Stefanchuk, Uhrynovska, 2006, p. 85).

2. The concept of procedural time limits

In modern research on administrative law and administrative procedure, the problems of procedural time limits in administrative proceedings have been covered in textbooks, manuals on the basics of administrative proceedings, administrative procedure, administrative procedure law, or in the context of analysing issues related to the conduct of proceedings on administrative offences, citizens' appeals and disciplinary proceedings.

V.A. Lypa focuses his research on the problem of determining the specifics of time limits at certain stages of administrative proceedings. For example, the scholar analyses the issues of the functions of time limits in administrative proceedings, and characterises time limits as a means of ensuring the legislative rights, interests and freedoms of citizens. However, a comprehensive study of the issue of the essence of procedural time limits in administrative proceedings, systematisation of procedural time limits, and their characteristics as an institute of administrative procedural law is made in the thesis by M.A. Soroka on 'Procedural Time Limits in Administrative Proceedings' (Soroka, 2011). Nevertheless, scholars have not focused on the issue of the content of procedural time limits in cassation proceedings.

In the theory of legal procedure, the concept of procedural time limits is interpreted differently by specialists in different branches of law.

In this regard, this article will focus on the achievements of civil procedure. A civil procedural time limit should be understood as a period of time established by law or court during which a certain procedural action may or shall be performed by the participants of civil proceedings (Andrushko, Bilousov, Stefanchuk, Uhrynovska, 2006, p. 85).

According to S.V. Vasyliev, procedural time limits are defined as a period established by law or court within which a certain procedural action must be taken by the court, parties and other persons involved in the case (Vasyliev, 2013, p. 95).

Specialists in administrative law and procedure provide a slightly different interpretation of the concept of 'procedural time limits'.

The authors of the textbook 'Administrative Law' Z.R. Kisil and R.V. Kisil define the procedural time limit as a period established by law or court, the beginning or end of which or the commencement of which entails legal consequences and during which procedural actions are performed (Kisil, Kisil, 2011).

V. H. Perepeliuk argues that the procedural time limit is a period established by a legal regulation, calculated according to the established rules, during which authorised persons are entitled to perform procedural actions, fulfil an obligation, or a point in time when a procedural action is to be performed (Perepeliuk, 2003).

According to M.O. Soroka, a procedural time limit in administrative proceedings is a moment or period of time established by a procedural law and/or court that must inevitably occur and have legal significance in connection with the performance of a separate procedural action, consideration and resolution of an administrative jurisdiction case (Soroka, 2011, p. 5).

The literature review in the field of administrative law and procedure reveals that procedural time limits in most of the above definitions are associated with the period during which certain legal consequences of procedural actions should occur.

In administrative proceedings, general provisions on the definition of procedural time limits are provided for in the CAPU. For example, in part 1 of Article 101 of the CAPU, the legislator understands procedural time limits as the time limits established by law or court within which procedural actions are performed.

The specifics of procedural time limits in administrative proceedings are defined by the provisions of Chapter 8 'Time Limits' of the CAPU, which consists of five articles, namely Articles 99 to 103.

The content of procedural time limits in administrative proceedings is also disclosed in other legal instruments of the judiciary. For example, in its Information Letter No. 1909/12/13-12 of 27.08.2012 the HACU explains the concept of procedural time limits as the time limits for performing procedural actions established by law or court (High Administrative Court of Ukraine Information letter, 2012).

For example, pursuant to Letter No. 196/11/13-11 of the High Administrative Court of Ukraine of 09 February 2011 on implementing the work plan for the first half of 2011 and providing information on the practice of applying the provisions of Articles 99-103, 186, part three of Article 189 of the Code of Administrative Procedure of Ukraine by local and appellate administrative courts in the second half of 2010, the Vinnytsia Administrative Court of Appeal informs that 'Procedural time limit in administrative proceedings (one of the most effective procedural means of ensuring timely resolution of cases) is a period established by the current procedural legislation - the Code of Administrative Procedure of Ukraine or a judge (court), during which a particular procedural action shall or may be performed or a certain part of the pro-

ceedings completed (Generalization of the Vinnytsia Appeal Administrative Court regarding the application of time limits for appeals to the court, 2022).

Therefore, in our opinion, procedural time limits in administrative proceedings should be understood as a period established by law or court within which a certain procedural action shall be taken by the court and other participants in the administrative procedure. All other scientific approaches in which procedural time limits are linked to events or actions, etc. are not justified (Ulmer, 2014).

Therefore, procedural time limits of cassation proceedings are the period of time established by law and the administrative court of cassation within which the parties and other persons involved in the case, as well as persons not involved in the case, if the court has decided on their rights, freedoms, interests and obligations, have the right to take procedural actions.

Therefore, cassation proceedings have certain types of procedural time limits during which all procedural actions are performed during the commencement of proceedings in the case, consideration of the cassation appeal and adoption of a decision by the court and participants in the case.

3. The types of procedural time limits of cassation appeal

One of the types of procedural time limits of cassation appeal is the time limit for exercising the right to cassation appeal, by which the author means the period of time established by law during which the eligible parties have the right to appeal to the administrative court of cassation.

The analysis of the HACU's practice in cassation cases shows that there is a problem with the calculation of procedural time limits and their renewal.

Pursuant to Part 2 of Article 101 of the CAPU, the terms established by law or court are determined by days, months and years, and may also be determined by indicating an event that must inevitably occur.

Pursuant to Article 103 of the CAPU, the procedural timeline commences on the day following the relevant calendar date or the occurrence of an event to which its commencement is related.

Generally, under Article 102 of the CAPU, the procedural time limit established by law that has been missed for valid reasons may be renewed, and the procedural time limit established by the court may be extended by the court at the request of a person involved in the case. The court shall decide on the renewal or extension of the missed time limit in written proceedings or in a court hearing at the discretion of the court. Failure to appear at the court hearing by persons who have been duly notified shall not prevent consideration of the motion. The court's resolution to refuse to renew or extend the missed procedural time limit may be appealed by the persons involved in the case. The rules of Article 102 of the CAPU do not apply to the time limits for applying to an administrative court.

An analysis of the provisions of the CAPU regarding the time limits for cassation appeal leads to the conclusion that the right of cassation appeal is limited by the procedural time limits established by the CAPU for its exercise. According to Part 2 of Article 212 of the CAPU, a cassation appeal against court decisions shall be filed within twenty days after the court decision of the court of appeal enters into force, except as provided by this Code, and in case of a full court decision, in accordance with Article 160 of the CAPU, from the date of the full court decision.

Part 3 of Article 160 of the CAPU stipulates that in exceptional cases, depending on the complexity of the case, the full resolution may be postponed for a period of no more than five days from the date of the end of the case consideration. In this case, the introductory and operative parts of the resolution shall be signed by the entire court, pronounced at the same session in which the case was completed, and attached to the case file.

In other words, in exceptional cases, a cassation appeal may be filed with the court within twenty-five days from the date of the full resolution.

The analysis of the provisions of Articles 101, 103 and 212 of the CAPU suggests that the time limit for cassation appeal of a court resolution, both rulings and judgments, provided for in Article 212 of the CAPU is calculated with due regard to Part 1 of Article 103 of the CAPU, which sets out the rules for the commencement of the procedural time limits - from the day following the relevant calendar date or the occurrence of an event to which the commencement is related.

As noted above, the HACU's practice has problems with the application of the rules establishing the time limit for exercising the right of cassation appeal. A study of the court practice has revealed that there are mistakes in determining the date from which the appeal period is determined, the beginning of the period, the end of the period, and the range of valid reasons for its omission. This is also stated in the Information Letter No. 708/11/13-10 of the HACU of 19 May 2010 (The High Administrative Court of Ukraine Information letter, 2010).

According to the above-mentioned Information Letter of the HACU, the first problem

is related to the moment when a court decision enters into force, that is, it is the event with which the legislator links the beginning of the cassation appeal period. Court practice reveals that administrative courts have an ambiguous understanding of the moment when a court decision enters into force. In some cases, this moment is associated with the fact of the court decision being pronounced at the hearing itself, in others - with the fact of the court decision being made.

The analysis of court practice reveals that the problem of determining the date from which the time limit for exercising the right of cassation appeal is calculated mainly arises in cases where the full judgement was delayed. In most cases, the reason for the cancellation of court decisions was the court's conclusion that the pronouncement of the court decision in the presence of the parties is a proper notification of them of the court decision and its content, regardless of whether the full text of the court decision was pronounced at the court hearing or only its introductory and operative parts. In this regard, the Supreme Court of Ukraine notes that the courts should give due consideration to the fact that only the introductory and operative parts of the decision are pronounced in the court hearing, and the legal position of the court, on which the appealed decision is based, can be reviewed by the persons involved in the case only after receiving the full text of the latter. The courts should consider that the grounds for appealing a court decision can be determined by the parties to the case only after they have read the full text of the decision (The High Administrative Court of Ukraine Information letter, 2010).

Moreover, a study of court practice reveals that administrative courts, considering that only the introductory and operative parts of the court decision were delivered at the court hearing, determine the date from which the appeal period begins to be the date of expiry of the five-day period established by Part 3 of Article 160 of the Administrative Procedure Code, for which the full preparation of the court decision may be postponed, rather than the date of actual preparation of the court decision. This was the reason why the Supreme Court of Ukraine cancelled the resolution of the High Administrative Court of Ukraine of 30 June 2009 and the resolution of the Kyiv Administrative Court of Appeal of 11 September 2008 in the case brought by Limited Liability Company 'S' against the State Tax Inspectorate in the Shevchenkivskyi District of Kyiv to declare unlawful and cancel the tax assessment notice (The High Administrative Court of Ukraine Information letter, 2010).

In court practice, there are also frequent cases of incorrect establishment of the beginning of the time limit for exercising the right to cassation appeal and the end of this period.

According to Parts 1 and 3 of Article 103 of the CAP, the procedural time limit, which is determined in months, starts on the day following the relevant calendar date or the occurrence of the event with which its beginning is connected, and ends on the corresponding day of the last month of this period. Pursuant to Article 103 of the CAP, the last day of the time limit lasts until the twenty-fourth hour (part 8), and the time limit is not considered to have been missed if, before its expiry, the statement of claim, complaint, other documents or materials or money are delivered by post or transferred by other appropriate means of communication (part 9).

For example, the incorrect determination of the beginning of the cassation appeal period is stated in the Resolution of the Judicial Chamber on Administrative Cases of the Supreme Court of Ukraine of 10 February 2009.

For example, the contested ruling of 24 October 2008 of the High Administrative Court of Ukraine returned the defendant's cassation appeal against the resolution of the Kharkiv Administrative Court of Appeal of 24 June 2008.

The cassation court's ruling was motivated by the fact that the complainant had missed the statutory deadline for filing the complaint and had not filed a motion to renew it.

According to the case file, on 24 June 2008, only the introductory and operative parts of the challenged resolution of the Kharkiv Administrative Court of Appeal were read out in court, and the full resolution was adopted on 01 July 2008. Pursuant to Part 1 of Article 103 of the Code of Administrative Procedure, the procedural time limit starts on the day following the relevant calendar date or the occurrence of an event with which its beginning is connected. Therefore, the defendant filed the cassation appeal of 31 July 2008 before the expiry of the one-month period for appealing the resolution of the Court of Appeal, which began on 2 July 2008 (Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine, 2009).

The court of cassation concluded that the complainant had missed this deadline due to incorrect application of procedural law. Therefore, the ruling of the High Administrative Court of Ukraine should be cancelled and the case should be remanded for consideration of the cassation appeal (Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine, 2009).

According to the court practice, in some cases, the High Administrative Court determines the beginning of the appeal period from the day of the decision in the case, and not from the day following that day, despite the postponement of weekends when they were holidays or non-working days.

Instead of the date of submission of the cassation appeal, the date of receipt of the appeal by the court was taken into account for mailing, which led to the cancellation of the rulings of the High Administrative Court of Ukraine by the Supreme Court of Ukraine (The High Administrative Court of Ukraine Information letter, 2010).

According to the legal position of the Supreme Court of Ukraine and in accordance with Part 9 of Article 103 of the Code of Administrative Procedure, the procedural time limit is not considered to have been missed if the complaint is sent by post or other appropriate means of communication before its expiry. Incorrect calculation by the court of the time limits for appealing against court decisions is a violation of procedural law, which gives grounds for cancellation of the ruling on leaving the complaint without consideration.

The next problem is to determine the valid reasons for missing the appeal deadline. According to the practice of the Supreme Court of Ukraine, when assessing the circumstances that prevented the exercise of the procedural right to appeal, the court shall proceed from the assessment and analysis of all the arguments presented in the motion, as well as from whether the applicant had the opportunity to exercise his/her right to appeal in a timely manner. If a complaint is filed out of time due to the fact that the complainant was not sent a court decision in time, such a reason is valid and, provided that there is a request for extension of the appeal period and this fact is confirmed by proper evidence, the appeal period should be extended (The High Administrative Court of Ukraine Information letter, 2010).

For example, in the Resolution of the Judicial Chamber on Administrative Cases of the Supreme Court of Ukraine of 20 January 2009, the cassation court, assessing the circumstances that prevented the exercise of the procedural right to cassation appeal, which the applicant refers to as valid, shall proceed from the assessment and analysis of all the arguments presented in the motion and whether the applicant had the opportunity to exercise the right to cassation appeal in a timely manner under such circumstances (Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine, 2009).

Having failed to assess the fact that the court of appeal pronounced the introductory and operative parts of the decision at the court hearing, and the party could only get acquainted with the legal position of this court, on which the contested decision was based, after receiving the full text of the latter, the cassation court erroneously found it impossible to renew the missed deadline for cassation appeal.

The Court of Cassation, when deciding on the renewal of the deadline for cassation appeal, found that the challenged ruling of the court of appeal was delivered in the presence of the defendant's representative, and therefore concluded that the defendant was duly notified of the contested ruling and its content. Moreover, the cassation court did not assess the fact that the Lviv Commercial Court of Appeal pronounced the introductory and operative parts of the resolution at the hearing on 28 November 2006, and the defendant could only get acquainted with the legal position of the court, which was the basis for the challenged resolution, after receiving the full text of the latter. Leaving this circumstance unaccounted for, the cassation court concluded that there were no grounds for renewal of the time limit. This conclusion is erroneous, as it is not based on the circumstances of the case (Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine, 2009).

The parties to the case, as well as persons not involved in the case, if the court has decided on their rights, freedoms, interests or obligations, are provided with the right to appeal and cassation against administrative court decisions in accordance with Article 13 of the Code of Administrative Procedure in cases and in the manner prescribed by this Code.

Pursuant to Part 1 of Article 8 of the CAPU, the court shall be guided by the rule of law when deciding the case.

In assessing the circumstances that impeded the exercise of the procedural right to cassation appeal, which the applicant refers to as valid, the court shall proceed from the assessment and analysis of all the arguments provided in the motion and from the fact whether the applicant had the opportunity to exercise the right to cassation appeal in a timely manner under such circumstances (Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine, 2009).

In finding it impossible to renew the time limit for cassation appeal in this case, the court did not take into account that the defendant could determine the grounds for such appeal only after reading the full text of the ruling, as well as the violation by the appellate court

of the requirements of Part 3 of Article 167 of the CAPU, under which the court shall send a copy of the court decision to the person involved in the case no later than the next day after the court decision is made.

Therefore, the ruling of the High Administrative Court of Ukraine shall be cancelled, and the case shall be remanded for a new consideration to the court of cassation to decide on the issue of renewal of the time limit for appeal (Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine, 2009).

It should be noted that the time limit for exercising the right to cassation appeal of court decisions by persons who were not involved in the case, but whose rights and interests were violated by the decision, constitutes a separate issue. Its commencement should be determined from the time when the person is acquainted with the full text of the contested decision. This position was expressed by the Supreme Court of Ukraine in the case of the claim of a citizen B. regarding the recognition as unlawful of the refusal of the Sudak City Council of the Autonomous Republic of Crimea to transfer a land plot free of charge (The High Administrative Court of Ukraine Information letter, 2010).

Therefore, when a person who has the right to cassation appeal fails to apply to the administrative court of cassation in a timely manner, the need to clarify the legality of the court decision does not disappear, resulting in the concept of 'missed procedural deadline for cassation appeal' and the need to renew it. In court practice, cases of missing the procedural time limits for cassation appeal are not uncommon.

4. Time limits for cassation appeals

As is known from Part 1 of Article 205 of the CAPU 'Court Decisions of the Court of Appeal', court decisions of the court of appeal are adopted, pronounced, issued or sent to persons involved in the case in accordance with the procedure established by Articles 160 and 167 of this Code. In addition, Article 167 of the CAPU "Pronouncement of a court decision, issuance or sending of a court decision to persons involved in the case and persons not involved in the case, if the court has decided on their rights, freedoms, interests or obligations" provides that at the request of a person involved in the case, as well as a person not involved in the case, but in respect of whom the court has decided on his/her rights, freedoms, interests or obligations, the court shall issue a copy of the judgement (or its introductory and operative parts) or ruling on the same day. This means that the resolution or ruling of the court of appeal comes into force from the date of its pronouncement in the court session. In other words, it is the date of pronouncement of the court decision that marks the beginning of the time limit for cassation appeal under Article 212 of the CAPU.

In addition, according to Part 3 of Article 160 'Procedure for adoption of court decisions and their form', in exceptional cases, depending on the complexity of the case, the full resolution may be postponed for a period not exceeding five days from the date of the end of the trial, but the court must announce the introductory and operative parts of the resolution at the same session in which the trial ended. This means that the cassation appeal time limit begins to run after five days from the date of the court hearing.

Persons involved in the case but not present at the court hearing shall be sent a copy of the court decision by registered mail with acknowledgement of receipt within three days from the date of its adoption or completion in full or, if they request, shall be delivered against receipt directly in court. If a copy of the court decision is sent to a representative, it is deemed to have been sent to the person he or she represents.

Simple calculations suggest that even if the administrative court of appeal complies with the procedural time limits for the execution and issuance of court decisions, a situation may arise where a person receives a court decision on the seventh or eighth day (and sometimes even later) after it is pronounced, which means that almost half of the cassation appeal period has already expired.

In this case, according to Part 4 of Article 214 of the CAPU, the cassation appeal is left without motion. The cassation appeal is also left without motion in cases where the person who filed it does not raise the issue of renewal of the cassation appeal time limit, or if the grounds stated in the application are found to be disrespectful by the court. Moreover, within thirty days from the date of receiving the ruling on leaving the cassation appeal without motion, the person has the right to apply to the cassation court with a request to renew the time limit or to indicate other grounds for renewal of the time limit.

If the application is not filed by the person within the specified time limit or the grounds for renewal of the time limit of cassation appeal are found to be disrespectful, the judge-rapporteur shall refuse to open cassation proceedings.

Therefore, the analysis of the court practice of consideration of cassation appeals reveals that the administrative court of cassation does not apply the provisions of the CAPU regarding the calculation and renewal of the time limit for cassation appeal in the same way.

In cases where the failure to comply with the cassation appeal time limit was caused by the actions or omissions of the court, such circumstances should serve as grounds for renewal of the cassation appeal time limit upon application by the person filing the cassation appeal. For example, the actions or inaction of the court in such cases may include: a person who was not properly notified of the time and place of the court hearing; a person was not sent a court decision within the prescribed time limit.

In this case, the administrative court of cassation shall establish a causal link between the unlawful action or inaction of the court and the fact of missing the deadline for cassation appeal.

The CAPU does not establish a procedural time limit for a person who has the right to cassation appeal to file a motion to renew the time limit for cassation appeal. Such a motion shall be contained in the materials to the cassation appeal and submitted simultaneously with the cassation appeal. The motion to extend the time limit for cassation appeal shall specify the reasons for its omission and evidence confirming the validity of such reasons.

Therefore, procedural time limits in administrative proceedings contribute to the timely consideration and resolution of administrative cases. Compliance with procedural time limits is an important means of influencing unscrupulous participants in administrative court proceedings who, by their actions, impede the prompt and efficient resolution of a case.

Procedural time limits, along with other procedural remedies, are intended to ensure the guarantee, reality and efficiency of judicial protection of the subjective rights of the parties involved in the case and the interests of the state (Shtefan, 2005, p. 178).

Establishment of precise procedural time limits for cassation proceedings in the CAPU, first, facilitates prompt and efficient consideration and resolution of an administrative case; second, it helps to avoid haste in exercising procedural rights and obligations of participants in administrative proceedings; third, it enables the parties and other participants in the process to timely familiarise themselves with the case file and, in case of disagreement with the decision made in the case, to appeal it in cassation; fourth, it ensures stability, clarity and certainty of administrative procedure relations.

The time limit for exercising the right to cassation appeal is a period of time established by law during which eligible actors have the right to apply to an administrative court of cassation. In our opinion, the time limit of cassation appeal is a procedural time limit by its content and legal nature. The filing of a cassation appeal to the High Administrative Court of Ukraine within the scope of consideration of a particular administrative case is a procedural action of the parties and other persons involved in the case, as well as persons not involved in the case, if the court has decided on their rights, freedoms, interests and obligations.

We believe that it is necessary to supplement Article 213 of the CAPU with para. 6 as follows: 'In case of missed time limit for cassation appeal, the cassation appeal may contain a person's request for its renewal'.

The next precondition for the opening of cassation proceedings is the filing of a cassation appeal to the administrative court of cassation.

Filing a cassation appeal to an administrative court is the initial stage of exercising the right to cassation appeal, which decides whether cassation proceedings can be initiated. However, it should be noted that filing a cassation appeal is not yet a condition for opening cassation proceedings, as the cassation appeal shall meet both formal and substantive requirements, namely, comply with the form established by law, the procedure for its submission to the administrative court of cassation, etc. The fact that the cassation appeal shall be filed in strict compliance with the provisions of the CAPU is of great importance at the stage of filing a cassation appeal.

For example, the CAPU establishes formal requirements for a cassation appeal, according to which a cassation appeal shall be filed in writing.

Pursuant to Article 213 of the CAPU, the cassation appeal shall contain the following information: 1) the name of the administrative court of cassation; 2) the name (titles), postal address of the person filing the cassation appeal and the persons involved in the case, as well as their communication numbers, e-mail address, if any; 3) the court decisions being appealed; 4) the substantiation of the claims of the person filing the cassation appeal, indicating the violation of substantive or procedural law; 5) the claims of the person filing the cassation appeal to the court of cassation; 6) if necessary, a motion by the person filing the cassation appeal; 7) a list of materials to be attached; 8) a list of written materials and motions to be attached to the appeal; 9) the signature of the person filing the appeal. If the cassation appeal is filed by a representative, a power of attorney or other duly executed document confirming his/her powers shall be attached to the appeal.

As follows from Part 3 of Article 213 of the CAPU, a cassation appeal may contain a person's request to consider the case with his/her participation. In the absence of such

a motion, it is considered that the person does not wish to participate in the court hearing of the court of cassation.

The cassation appeal shall be attached to a document on payment of the court fee, as well as copies of the cassation appeal in accordance with the number of persons involved in the case. In addition, the cassation appeal shall be accompanied by duly certified copies of the appealed decisions of the first instance and appellate courts.

The analysis of Article 213 of the CAPU suggests that the cassation appeal should include three parts: introductory, regulatory and pleading. The first part should contain a brief description of the case, with references to the court decisions being appealed. The second part should contain a list of substantiated arguments, according to which the complainant considers the court decision to be unlawful. The third part contains a request for a review of the court decision and the need to change or cancel it.

The law also provides for that in case of termination of cassation proceedings due to withdrawal of the cassation appeal, the person concerned is not allowed to appeal against such decisions or rulings again.

In addition to formal requirements, a cassation appeal must also meet substantive requirements. Namely, the content of the cassation appeal shall indicate the violation of substantive and procedural law by the administrative courts of first instance and appellate courts, or their incorrect application. The cassation appeal may not contain references to the failure to prove the circumstances of the case.

In addition, the cassation appeal shall set out the requirements regarding the challenged court decisions within the limits provided for in Article 223 of the CAPU 'Powers of the court of cassation upon consideration of the cassation appeal'. For example, to change the court decision of the court of appeal by cancelling the court decision of the court of first instance; or to cancel the court decision of the court of appeal and uphold the court decision of the court of first instance; or to cancel the court decisions of the courts of first instance and appeal and send the case for a new trial or for further consideration; or to cancel the court decisions of the courts of first instance and appeal and pass a new court decision, etc.

4. Conclusions

The grounds for a cassation appeal are the circumstances by which the appellant demonstrates that the administrative courts of first and/or appellate instance have incorrectly applied the substantive and procedural law. In such a case, the cassation appeal should specify what exactly constitutes a significant violation or misapplication of substantive or procedural law, with a reasonable presentation of relevant evidence (court decisions, copies of documents, other materials, etc.).

The content of the cassation appeal will include the appellant's request to the administrative court of cassation to take certain actions to cancel or replace the court decisions of the administrative courts of first and/or appellate instance.

In our opinion, the specified requirements for the form and content of the cassation appeal are of great importance, since it is within the cassation appeal that the administrative court of cassation will verify that the provisions of substantive and procedural law are applied correctly.

References:

Andrushko, A.V., Bilousov, Yu.V., Stefanchuk, R.O., Uhrynovska, O.I. ta in. (2006). Tsyvilnyi protses [Civil process]. K.: Pretsedent, 293 p. (in Ukrainian).

Kisil, Z.R., Kisil, R.V. (2011). Administratyvne pravo [Administrative law]. K. Alerta; TsUL, 696 p. (in Ukrainian).

Perepeliuk, V.H. (2003). Administratyvnyi protses [Administrative process]. Chernivtsi: Ruta, 367 p. (in Ukrainian).

Postanova Sudovoi palaty v administratyvnykh spravakh Verkhovnoho Sudu Ukrainy vid 10 liutoho 2009 r. [Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine dated February 10, 2009]. (2009). *scourt.gov.ua*. Retrieved from http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents). (in Ukrainian).

Postanova Sudovoi palaty v administratyvnykh spravakh Verkhovnoho sudu Ukrainy vid 20 sichnia 2009 r. [Resolution of the Judicial Chamber in Administrative Cases of the Supreme Court of Ukraine dated January 20, 2009]. (2009). *scourt.gov.ua*. Retrieved from http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents). (in Ukrainian).

Shtefan, M.I. (2005). Tsyvilne protsesualne pravo Ukrainy: Akademichnyi kur [Civil procedural law of Ukraine]. K.: Kontsern "Vydavnychyi Dim "In Yure", 2005. 624 p. (in Ukrainian).

Soroka, M.O. (2011). Protsesualni stroky v administratyvnomu sudochynstvi [Procedural time limits in administrative proceedings]. *Extended abstract of candidate's thesis*. Irpin: Natsionalnyi universytet derzhavnoi podatkovoi sluzhby. 21 p. (in Ukrainian).

Ulmer, M.M. (2014). Poniattia protsesualnykh strokiv kasatsiinoho oskarzhennia [Concept of procedural time limits of cassation appeal]. Teoriia i praktyka pravotvorchoi ta pravozastosovnoi diialnosti u konteksti suchasnykh reformatsiinykh protsesiv, № 1. pp. 67-69. (in Ukrainian).

Uzahalnennia Vinnytskoho apeliatsiinoho administratyvnoho sudu shchodo zastosuvannia strokiv zvernennia do sudu [Generalization of the Vinnytsia Appeal Administrative Court regarding

the application of time limits for appeals to the court]. (2022). *vaas.gov.ua*. Retrieved from www.vaas.gov.ua/files/.../Uz_28_03_2011. (in Ukrainian).

Vasyliev, S.V. (2013) Tsyvilnyi protses Ukrainy [Civil process of Ukraine]. K.: «Tsentr uchbovoi literatury», 344 p. (in Ukrainian).

Vyshchyi administratyvnyi sud Ukrainy : Informatsiinyi lyst № 708/11/13-10 vid 19 travnia 2010 r. [The High Administrative Court of Ukraine Information letter No. 708/11/13-10 dated May 19, 2010]. (2010). *inspektsia.kiev.ua*. Retrieved from http://inspektsia.kiev.ua/informatsiyniy-list. (in Ukrainian).

Vyshchyi administratyvnyi sud Ukrainy : Informatsiinyi lyst №1909/12/13-12 vid 27 serpnia 2012 r. [High Administrative Court of Ukraine Information letter No. 1909/12/13-12 dated August 27, 2012]. (2012). Retrieved from http://zakon2.rada.gov.ua/laws/show/v1909760-12. (in Ukrainian).

Микола Ульмер,
кандидат юридичних наук,
старший науковий співробітник
Науково-дослідного інституту публічного права,
вулиця Георгія Кірпи 2 а, Київ, 03055
ulmermykola@ukr.net
***ORCID ID:** 0009-0008-7685-7728*

ВИЗНАЧЕННЯ ЗМІСТУ ФОРМАЛЬНИХ ПЕРЕДУМОВ РЕАЛІЗАЦІЇ ПРАВА НА КАСАЦІЙНЕ ОСКАРЖЕННЯ В АДМІНІСТРАТИВНОМУ СУДОЧИНСТВІ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є визначення змісту формальних передумов реалізації права на касаційне оскарження в адміністративному судочинстві України. ***Результати.*** Процесуальні строки касаційного провадження – це встановлений законом та адміністративним судом касаційної інстанції проміжок часу, протягом якого сторони та інші особи, які беруть участь у справі, а також особи, які не брали участі у справі, якщо суд вирішив питання про їхні права, свободи, інтереси та обов'язки, мають право на вчинення процесуальних дій. Касаційне провадження має певні види процесуальних строків, протягом яких вчиняються всі процесуальні дії під час відкриття провадження у справі, розгляду касаційної скарги та прийняття рішення, судом та особами, які беруть участь у справі. Одним із видів процесуальних строків касаційного оскарження є строк реалізації права на касаційне оскарження, під яким автор розуміє встановлений законом проміжок часу, протягом якого правомочні суб'єкти мають право звернення до адміністративного суду касаційної інстанції. Строк реалізації права на касаційне оскарження – це встановлений законом проміжок часу, протягом якого правомочні суб'єкти мають право звернення до адміністративного суду касаційної інстанції. На нашу думку, строк касаційного оскарження є процесуальним строком за своїм змістом та правовою природою. Подання касаційної скарги до Вищого адміністративного суду України у межах розгляду конкретної адміністративної справи є процесуальною дією сторін та інших осіб, які беруть участь у справі, а також осіб, які не брали участі у справі, якщо суд вирішив питання про їхні права, свободи, інтереси та обов'язки. ***Висновки.*** Підстави касаційної скарги складають обставини, якими скаржник обґрунтовує неправильність застосування норм матеріального та процесуального права адміністративними судами першої та/або апеляційної інстанції. В такому разі у касаційній скарзі слід зазначати, в чому саме проявляється суттєве порушення або неправильне застосування норм матеріального чи процесуального права, з обґрунтованим наведенням відповідних доказів (рішення судів, копій документів, інших матеріалів тощо). Змістом касаційної скарги буде звернута вимога скаржника до адміністративного суду касаційної інстанції про здійснення певних дій стосовно скасування або заміни судових рішень адміністративних судів першої та / або апеляційної інстанції. На нашу думку, визначені вимоги щодо форми та змісту касаційної скарги мають велике значення, адже саме в межах касаційної скарги адміністративний суд касаційної інстанції буде перевіряти правильність застосування норм матеріального та процесуального права.

Ключові слова: судове рішення, розгляд справи, касаційне оскарження, судове засідання, процесуальні строки.

UDC 342.92
DOI https://doi.org/10.32849/2663-5313/2023.8.07

Yevhenii Frantovskyi,
Senior Researcher at Scientific Institute of Public Law
Candidate of Juridical Science
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
frantovskyiyevhenii@ukr.net
ORCID ID: *0009-0007-6966-3135*

ADMINISTRATIVE AND LEGAL FRAMEWORK FOR ORGANISATION AND FUNCTIONING OF LAW ENFORCEMENT AGENCIES: EUROPEAN EXPERIENCE AND NATIONAL SPECIFICITIES

Abstract. ***Purpose.*** The purpose of the article is to analyse the foreign experience of administrative and legal framework for the organisation and functioning of law enforcement agencies and the possibility of its adaptation to the national law enforcement system. ***Results.*** The effective operation of law enforcement bodies is extremely relevant and important for the state. Given certain problems in the functioning of law enforcement institutions, as well as the low level of effective exercise of powers by the relevant entities defined by law, it is particularly relevant to study foreign practice in this regard. Therefore, it seems appropriate to study the procedure for administrative and legal support of the organisation and functioning of law enforcement agencies in foreign countries. The experience of organisation and functioning of law enforcement agencies in France enables to identify the need for judicial police in Ukraine, which would be responsible for pre-trial investigation of criminal offences. Therefore, in case of creation and functioning of this institution in Ukraine, the pace of pre-trial investigation and court proceedings in criminal cases would be much faster. Germany's experience in the context of administrative and legal framework for the organisation and functioning of law enforcement agencies is useful in the context of establishing rules for the selection of and requirements for persons wishing to hold positions in law enforcement agencies. It should be noted that German legislation in this context is clear and does not allow for double interpretation. Therefore, Ukraine should analyse the experience of its foreign colleagues and make appropriate changes to its national legislation. ***Conclusions.*** It is concluded that in the course of transformation of state institutions and relevant processes to the standards existing abroad, one should have due regard to the level and standards of legal culture existing in Ukraine. It is the legal culture which is a factor and an indicator of the readiness of the legal system itself for relevant transformations and reforms. In addition, legal culture is a factor that undoubtedly affects the quality of reforms in a particular area. Therefore, when borrowing the experience of foreign countries within the administrative and legal framework for the organisation and operation of law enforcement agencies, it is appropriate to analyse not only the effectiveness of a particular procedure abroad, but also the readiness of Ukraine's legal culture to adopt it.

Key words: law enforcement agencies, state bodies, firearms, law enforcement functions, state policy, employee, legality.

1. Introduction

European integration processes have contributed to the transformation of the state apparatus and the reform of a whole range of public administrators. Both latent and high levels of crime among high-ranking officials raised the issue of the need for a new body for Ukraine, a body that would focus on investigating and solving crimes committed by persons vested with state power. The effective operation of law enforcement bodies is extremely relevant and important for the state. Given certain problems in the functioning of law enforcement institutions, as well as the low level of effective exercise of powers by the relevant entities defined by law, it is particularly relevant to study foreign practice in this regard. Therefore, it seems appropriate to study the procedure for administrative and legal support of the organisation and functioning of law enforcement agencies in foreign countries.

2. Definitions of 'law enforcement agency' and 'law enforcement body'

Primarily, it should be noted that within the legal doctrine there is no definition of the legal category 'law enforcement

agency', since scholars pay special attention to the analysis of the concept of 'law enforcement body', which, in their opinion, should be identified with the category mentioned above. Therefore, within the legal doctrine, there are differentiated approaches to defining the essence of this concept. Therefore, we propose to focus on the main approaches that have found justification and support within the legal community. First of all, it should be noted that according to P. Khamula, law enforcement bodies aare 'bodies for which the law enforcement function is the main one, they exercise powers aimed at protecting human rights and freedoms and maintaining law and order, are endowed with state powers, in particular, have the right to legally use coercion, which determines the peculiarities of their status, imposes special requirements on employees of these bodies in terms of professional training, psychological and moral qualities' (Khamula, 2016, p. 16).

We believe that the definition proposed above is a good one. However, it can be supplemented and at the same time detailed by identifying a number of features that characterise law enforcement agencies. Thus, we can establish that law enforcement agencies are characterised by the following features:

• The main function of a law enforcement agency, implemented through the powers of a law enforcement agency, is law enforcement, that is, maintaining and ensuring law and order in society in general, and ensuring the observance and exercise of human rights and freedoms, in particular;

• law enforcement agencies include paramilitary units and are empowered to use legal coercion against offenders;

The law establishes specific features of personnel, social and economic support of law enforcement officers.

In addition, law enforcement agencies have been studied in the works by V. Boniak, who studied the content of the legal category under review and decided to analyse it through the prism of correlation with related legal categories. The researcher argues that since law enforcement bodies of Ukraine are law enforcement agencies, and law enforcement agencies are state bodies, they have the same essential features as the above categories. At the same time, among these features, the scientist distinguishes the following features: the presence of armed units; the right of employees to use legal coercion (including firearms); they are entrusted by law with the performance of the law enforcement function, which is the main and everyday function (the activities of the law enforcement body of Ukraine are aimed at implementing public policy on the protection of human rights, freedoms and legitimate interests, ensuring law and order in society) (Boniak, 2015, p. 86). Therefore, the author proposes to consider the category of law enforcement agency through the prism of the legal concepts of 'law enforcement agency' and 'law enforcement body', which is rather rational, given the similarity of these legal categories and their certain identity.

Therefore, the analysis of the doctrinal approaches to understanding the category of 'law enforcement agency' and the identification of the features that the latter should meet, enables to provide a definition of what should be understood as the legal category of law enforcement agency. Therefore, a law enforcement agency is a law enforcement body whose activities are aimed at implementing the law enforcement function by using legal coercion, if necessary, to maintain law and order in society and ensure the exercise of human and civil rights and freedoms, and whose employees are provided with special social and material guarantees.

With regard to administrative and legal framework for the organisation and functioning of law enforcement agencies, it should be noted that this legal framework is a process of streamlining social relations through the functioning of an integral mechanism, which consists of the relevant administrative law provisions, administrative law principles, methods of interpreting administrative regulations, administrative legal relations, and acts of implementing administrative law provisions. Analysis of the content of the procedure (mechanism) for administrative and legal framework for law enforcement agencies reveals that the relevant mechanism can be considered as an important part of ensuring the efficiency and effectiveness of the relevant institutions. Therefore, given a number of problematic aspects in the context of law enforcement in Ukraine today and the European integration processes underway in the state mechanism, it is appropriate to consider the foreign experience of administrative and legal support for the organisation and functioning of law enforcement agencies.

To begin with, it should be noted that law enforcement agencies in foreign countries have differentiated names. Therefore, it is impossible to formulate a certain consistency within this aspect. Moreover, similar names – police, guards, gendarmerie, constables, marshals, sheriffs – in different countries can be associated with different law enforcement functions (Miedviediev, 2014, p. 143). Therefore,

the analysis of each law enforcement agency should be comprehensive and multidimensional. It should also be noted that the system of law enforcement agencies in Europe is characterised by a number of features that are common to all law enforcement agencies of foreign European institutions. These features are as follows:

– Branched and diverse police systems, the presence of police agencies in different ministries and departments, and their independence from each other;

– Division of police structures by sources of funding into state (federal), municipal (local government), and private (firms, concerns, syndicates, etc.) with close cooperation between them;

– Social orientation of police work, which is primarily focused on protecting the rights and freedoms of citizens;

– High professionalism of the police, which is achieved not only through in-depth professional training in specialised police educational institutions;

– Nonpartisanship in the work of the police, which imposes certain restrictions on the manifestation of political and party beliefs, ensures impartiality in the work of police officers, awareness and belief that the police serve the people and the state, not individual parties, clans or groups;

– Active work of voluntary associations aimed at supporting and assisting the police;

– Openness, publicity, constant appeal to public opinion in solving difficult situations arising in law enforcement practice ensure the police trust and support of the population (Subbot, 2014).

3. Functioning of law enforcement agencies of the Federal Republic of Germany

Given that Ukraine belongs to the Romano-Germanic legal system, it seems appropriate to begin our consideration of the issues we have chosen with an analysis of the Federal Republic of Germany. First of all, it should be noted that the law enforcement system of Germany can be considered a two-tier system, which is divided into the law enforcement system of the federation and the law enforcement system of the federal states, respectively. The main law enforcement agency in Germany is the police, which is vested with a number of powers. It should be noted that today the main act establishing the basic principles of police organisation and activity is the 'Model Draft Unanimous Police Law (Law on Police)', adopted by the Conference of Ministers of the Interior of the Länder in 1975. According to this legal act, the German police consists of the Federal Criminal Police; the National Police; the Federal Border Police; and the Federal Office for the Protection of the Constitution. The structure of the police is built in accordance with the federal structure of Germany and its administrative and territorial division. For example, the Federal Police includes the Federal Border Guard, the German Bundestag Police Service, the Federal Criminal Police Office (Grundgesetz für die Bundesrepublik Deutschland, 1949). It should be noted that the Federal Criminal Police Office plays a key role in the context of ensuring law and order in society. It should be emphasised that the Federal Criminal Police Office (Bundeskriminalamt) is the central body responsible for coordinating the actions of federal and state structures on all matters related to police activities, in addition, it acts as the main intelligence agency and repository of information on the activities of the German police and is the founder of the National Central Bureau of the International Criminal Police Organisation (Interpol) of the Federal Republic of Germany (Raevskyi, Parkhomenko, 2021). It should be noted that the Federal Criminal Police Office of Germany was created on the basis of the US experience. Therefore, the administrative and legal status of the latter, as well as the specific features of its organisation and activities, are very similar to those of the US FBI. In sum, the police in Germany is differentiated according to the internal and external areas of its activity, that is, it can be considered to consist of a number of institutions that perform differentiated powers, but are united in a single system. In addition to the structure, it should be noted that one of the constituent elements of administrative and legal support for the organisation and functioning of the police in Germany is the principles on the basis of which the institution under analysis functions. The main purpose of police activity in a modern democratic society was formulated by a well-known German law enforcement expert Schulte, who, based on the analysis of a wide range of regulations, identifies the following basic principles of police activities (Schulte, 1996, p. 10). First, the scholar notes the need to comply with the principle of efficiency, which means that the police should not only ensure law and order in the event of an offence, but also take a number of preventive measures aimed at preventing the commission of unlawful acts. Second, the activities shall be in line with the law. German legislation is clear, it sets out the rules for the activities of German officials and employees in the most common situations, thus minimising the situation of administrative discretion, which, if it arises, is resolved on the basis of the principle of the greatest benefit to the individual. Third, in exercising its powers, the police shall adhere to the principle

of transparency. Moreover, transparency in the context of police activities in Germany is mostly considered in the context of civic transparency, which means that the activities of law enforcement agencies should be as open as possible to the public. To sum up, the activities of the police in Germany shall be subject to a number of principles designed to ensure the effectiveness of the latter. As for the functions entrusted to the police in Germany, it should be noted that the latter is responsible for the following functions: ensuring public order and security on the territory of the state and on its borders; detection and investigation of crimes; support of internal security; prevention of crime; promotion of legal knowledge among the population and security measures; protection and assistance to the population in emergency situations (natural disasters, catastrophes, military operations); participation in civil defence measures (Zommermann, 1999, p. 123). Therefore, police structures in Germany perform the classic functions of this institution, which have been interpreted above. In addition to the functions and principles of operation, the administrative and legal framework for the organisation and functioning of the police in Germany can be analysed from the perspective of the requirements for persons wishing to serve in the German police, which are set in accordance with German law and based on special selection rules. Training is provided at regional training centres and at the Federal Police Academy. Applicants for training shall be citizens of Germany or one of the European Union countries, have no criminal record, no tattoos or piercings on visible parts of the body, and shall have a swimming certificate and a category B driver's licence. Otherwise, the future police officer undertakes to obtain them by the end of the training period (Guidelines for the Selection and Selection of Bewerberinnen and Bewerbern nach § 12 BPolLV for the Mittelren Polizeivollzugsdienst in der Bundespolizei, 2007). Furthermore, Germany provides for the so-called standards to be met by the knowledge of persons holding police positions. This knowledge is called competences and can be divided into three types, such as professional competences, special competences and methodological competences. The professional competences of future police officers have been identified as follows: professional knowledge, skills and abilities; didactic and methodological knowledge, skills and abilities; knowledge, skills and abilities required for recording protocols, examining the scene of an incident; ability to handle a case from the beginning to the moment of its transfer to the court and understanding the degree of personal responsibility for it; ability to give clear orders and ensure their implementation; conduct interviews and interrogations; competent response to requests from other departments or bodies, making appropriate decisions; performance of duties of the head in case of his/her temporary absence; ability to manage a small unit, such as a department or group; ability to communicate with foreigners in English during daily duties and in special situations (participation in missions abroad). Special competencies and qualities include communication skills, ability to get to the heart of the matter, tolerance, respect for others, ability to cooperate, conflict resolution, teamwork, leadership skills, ability to lead employees, high intellectual development, and ability to behave in accordance with generally accepted ethical principles and beliefs. Methodological competences referred to the following: the ability to effectively organise work, rationally allocate time, reasonably apply stress management techniques, the ability to learn, correctly apply the methodology of presenting information, conducting a class (Diplomstudiengang (Diplomverwaltungswirt). Modulhandbuch, 2010).

Therefore, in Germany, a special system of functioning of the police as a law enforcement agency exists, which is indirectly determined by the specific features of administrative and legal framework for the activities, organisation and functioning of this institution.

4. Functioning of law enforcement agencies in France

In addition to the experience of Germany, the experience of France in the context of the organisation and functioning of law enforcement institutions, in particular the police, is also worth considering, given that this institution is one of the oldest. We can establish that law enforcement agencies in France can be analysed from the perspective of a number of features, such as:

• First, law enforcement agencies in France are part of the executive branch of government;

• Second, the law enforcement agencies in France are structurally divided into subdivisions, including national police, municipal police, and gendarmerie;

• Third, the law enforcement system in France is characterised by detailed regulatory framework both at the level of laws and bylaws.

Considering the above features, it should be noted that today the French law enforcement system has moved away from the approach established over a long period of time, according to which it was considered centralised and hierarchical. Nowadays, using a modern approach to the construction

and functioning of the law enforcement system, including the system of law enforcement agencies, the police in France is characterised by a combination of centralisation and decentralisation. It should be noted that the French law enforcement system is quite unusual when compared to existing global trends and standards (Dammer, 2013, p. 106). Therefore, for a complete and detailed analysis of the administrative and legal framework for the organisation and functioning of law enforcement agencies in France, it seems appropriate to study the specifics of each of them. Analysis of the National Gendarmerie in France reveals that it is a specialised law enforcement institution empowered to ensure law and order in the context of crimes against national security. In particular, the Gendarmerie is entitled to prevent and eliminate crimes such as terrorism, hostage-taking, prison riots, as well as crimes on air and sea transport and crimes committed by or against high-ranking officials. Further analysing the French National Gendarmerie, it is important to note that according to French law, the gendarmerie also performs law enforcement functions in rural areas with a population of less than 10,000 people (Terrill, 2009, p. 139). With regard to the selection procedure and criteria for persons wishing to hold positions in this structural unit, it should be established that, in addition to professional and moral qualities, the relevant candidates shall meet the appropriate level of physical fitness. Therefore, the analysis of the National Gendarmerie of France enables to establish that this institution is characterised by a broad and somewhat dispersed scope of powers, which does not diminish its importance in the system of state and law enforcement apparatus of France. In addition to the National Gendarmerie, France also has the National Police, whose powers are more general than those of the institutions analysed above. Moreover, the French legislation is structured in such a way as to ensure a clear delineation of powers of the above institutions. For example, the National Police in France is authorised to ensure law and order in cities, on the roads, and to investigate administrative offences and crimes. A special institution of the French law enforcement system is the municipal police. It should be noted that the existence of this institution makes the law enforcement system of France unique. An interesting fact is that the municipal police in this country is created and operates in accordance with national laws, and special powers are granted to this organisation by local mayors (Terrill, 2009, p. 141). Therefore, the powers of the municipal police in France are differentiated in each city, however, it can be established that most often this institution is vested with the authority to patrol the streets, regulate traffic, but in no case has the authority to prosecute and investigate criminal offences. On the other hand, it should be noted that the municipal police is quite extensive in terms of its structure. The municipal police system includes: first, the traffic police, tasked with ensuring road safety and regulating the continuity and safety of traffic on the roads; second, the spectacle police, which is designed to ensure the safety of citizens during public events; third, the police of buildings, whose main task is to intervene to prevent danger if a building in danger of collapse is located near a road or square and threatens passers-by and persons; fourth, the fire prevention police, which is authorised to prevent, prevent and provide necessary assistance in accidents and disasters related to fires) (The Serious Organized Crime Agency, 2020).

Therefore, the police in France has a number of specific features in terms of both its structure and functioning that can be undoubtedly adopted by Ukraine.

The analysis of the experience of administrative and legal framework for the organisation and functioning of law enforcement agencies and police in European countries provides an opportunity to formulate proposals for the adaptation of international institutions and specific aspects of their functioning to the national law enforcement system.

First, it should be noted that in all of the countries analysed above, the principle of 'presumption of correctness' of the police officer exists at the legislative level and is applied in practice. This principle is an integral part of the functioning of law enforcement agencies in foreign countries. However, in Ukraine, there are still discussions about the appropriateness of providing for the latter at the legislative level. Given the importance of this principle, it seems appropriate to focus on a detailed analysis of the latter. According to the academic dictionary, 'presumption' in the legal sense means an assumption of the existence of a certain fact enshrined in law, the reality of which is considered true and does not require proof, and 'rightness' means the correctness of thoughts, judgements, deeds, actions (Dictionary of the Ukrainian language, 1970). Therefore, based on the analysis of basic legal categories, we can establish that the presumption of police officers' rightness is a basic legal principle of law enforcement agencies, the essence of which is that the actions of a police officer are known to be lawful, that

is, in accordance with the law. However, the presumption of rightness of a police officer should not be equated with the legally established arbitrariness of law enforcement agencies, since the former is intended to ensure that the lawful actions of a police officer are undoubtedly lawful. In addition, today the legal doctrine establishes a provision on the conflict between the principle of innocence of a citizen and the principle of presumption of rightness of a police officer. However, in our opinion, the provision on the conflict of these principles is largely debatable, due to the specific vectors of implementation of these legal provisions. Therefore, we will assume that the implementation of these legal principles in practice should not affect each other. In this regard, it seems appropriate to supplement domestic legislation with the principle of presumption of rightness of a police officer.

Second, the analysis of the French experience enables to identify the need for creation of municipal police in Ukraine. We can agree with V. Orlov that in case of introduction of the municipal police in Ukraine, it should consist of civilians – municipal employees. The latter should be financed from the respective local budgets, and the municipal police should be accountable to the respective territorial communities (Orlov, 2013, pp. 442–447). In our opinion, the introduction of this institution in Ukraine is of particular relevance today, as the activities of municipal police should relieve the internal affairs bodies of the large amount of powers they currently have, thus increasing the efficiency of the law enforcement system.

Third, the experience of organisation and functioning of law enforcement agencies in France enables to identify the need for judicial police in Ukraine, which would carry out pre-trial investigation of criminal offences. Therefore, in case of creation and functioning of this institution in Ukraine, the pace of pre-trial investigation and court proceedings in criminal cases would be much faster.

Forth, Germany's experience in the context of administrative and legal framework for the organisation and functioning of law enforcement agencies is useful in the context of establishing rules for the selection of and requirements for persons wishing to hold positions in law enforcement agencies. It should be noted that German legislation in this context is clear and does not allow for double interpretation. Therefore, Ukraine should analyse the experience of its foreign colleagues and make appropriate changes to its national legislation.

Fifthly, the activities of all law enforcement agencies without exception should be effective and meet the requirements of civil society. Despite the principle of effectiveness enshrined in national legislation, which should be implemented within the framework of the activities of the relevant institutions, this criterion remains one of the most vague and difficult to assess. Therefore, it seems appropriate to use the experience of the United States, since this country has developed and successfully uses the Compstat system for assessing the effectiveness of law enforcement agencies, which, in our opinion, can and should be adopted by Ukraine.

Moreover, before making any foreign borrowings, it is advisable to remember that the process of borrowing foreign experience can be divided into several stages:

1) Collect information on the experience of a particular state or group of states;

2) Analyse in order to identify the positive and negative aspects of a particular model used in another country (countries);

3) Determine the degree of acceptability of such a model for Ukraine;

4) Develop scientific principles and methodological recommendations for the implementation of such experience in Ukraine;

5) Implement the model in practice with constant scientific support and monitoring of the state of 'taking root' of innovations in the domestic field;

6) Adjust plans and programmes (Kobzar, 2015, p. 48).

5. Conclusions

In our opinion, in the course of transformation of state institutions and relevant processes to the standards existing abroad, one should have due regard to the level and standards of legal culture existing in Ukraine. It is the legal culture which is a factor and an indicator of the readiness of the legal system itself for relevant transformations and reforms. In addition, legal culture is a factor that undoubtedly affects the quality of reforms in a particular area. Therefore, when borrowing the experience of foreign countries within the administrative and legal framework for the organisation and operation of law enforcement agencies, it is appropriate to analyse not only the effectiveness of a particular procedure abroad, but also the readiness of Ukraine's legal culture to adopt it.

References:

Boniak, V. (2015). Orhany okhorony pravoporiadku Ukrainy v suchasnomu vymiri: konstytutsiino-pravovyi aspekt [Law enforcement agencies of Ukraine in the modern dimension: constitutional and legal aspect]. Dnipropetrovsk: Dnipropetrovskyi der-

zhavnyi universytet vnutrishnikh sprav (in Ukrainian).

Dammer, H. (2013). Comparative criminal justice systems. Cengage Learning [Comparative criminal justice].

Diplomstudiengang (Diplomverwaltungswirt). Modulhandbuch. Modulares Curriculum. FHB, 2010 [in Norwegian].

Grundgesetz für die Bundesrepublik Deutschland. 1949. URL: http://lib.rada.gov.ua/LibRada/static/LIBRARY/catalog/law/deu_constitut.htm [in German].

Khamula, P.I. (2016). Pravookhoronni orhany v systemi orhaniv derzhavnoi vlady [Law enforcement bodies in the system of state authorities]. *Extended abstract of candidate's thesis.* Kh. (in Ukrainian).

Kobzar, O.F. (2015). Vykorystannia dosvidu politseiskoi diialnosti providnykh krain svitu u diialnosti pravookhoronnykh orhaniv Ukrainy [Using the experience of police activity of leading countries in the activity of law enforcement agencies of Ukraine]. Prykarpatskyi yurydychnyi visnyk, № 3, pp. 46 –50 (in Ukrainian).

Miedviediev, O.V. (2014). Napriamky reformuvannia pravookhoronnykh orhaniv [Directions of reforming law enforcement bodies]. Pravo i suspilstvo, № 1-2, pp. 140-145 (in Ukrainian).

Orlov, V.A. (2013). Suchasni problemy stanovlennia ta rozvytku munitsypalnoi militsii v Ukraini [Modern problems of formation and development of municipal militia in Ukraine]. Forum prava, № 3, pp. 442-447 (in Ukrainian).

Raevskyi, P.A., Parkhomenko, S.A. (2021). Orhanizatsiia pravookhoronnoi systemy u deiakykh federatyvnykh krainakh svitu [The organization of the law enforcement system in some federal countries of the world]: informatsiino-dovidkovi materialy. URL: http://www.indem.ru/proj/rpf/OrPraOhrSiFederStra.pdf (in Ukrainian).

Richtlinien für die Auswahl und Einstellung von Bewerberinnen und Bewerbern nach § 12 BPolLV für den mittleren Polizeivollzugsdienst in der Bundespolizei. Berlin, 2007. 25 s. [in German].

Schulte, R. (1996). Vom Polizeifuerer zum Sicherheitsmanager, Anforderungen des Lernuntrnehmerns Polizei als seine Fuehrungskraefte. Referat. Lilienberg [in German].

Slovnyk ukrainskoi movy [Dictionary of the Ukrainian language: in 11 volumes]: v 11 tt. AN URSR. Instytut movoznavstva; za red. I.K. Bilodida. K.: Naukova dumka, 1970-1980 (in Ukrainian).

Subbot, A. (2014). Zastosuvannia v Ukraini peredovykh svitovykh standartiv orhanizatsii efektyvnoi diialnosti pravookhoronnykh orhaniv [Application in Ukraine of advanced international standards for the organization of effective law enforcement activities]. Viche. № 10, pp. 5-8 (in Ukrainian).

Terrill, R.J. (2009). World Criminal Justice Systems: A Comparative Survey. Newnes Comparative criminal justice

The Serious Organised Crime Agency. 2020. URL: http://www.soca.gov.uk Comparative criminal justice

Zommermann, K.P. (1999). Administratyvne sudochynstvo (iustytsiia) u Nimechchyni: istoriia rozvytku ta osnovni rysy [Administrative proceedings (justice) in Germany: history of development and main features]. Derzhava i pravo, № 7, pp. 111-125 (in Ukrainian).

Євгеній Франтовський,
старший науковий співробітник
Науково-дослідного інституту публічного права,
кандидат юридичних наук,
вулиця Георгія Кірпи 2 а, Київ, Україна, 03055
frantovskyiyevhenii@ukr.net
ORCID ID: *0009-0007-6966-3135*

АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ОРГАНІЗАЦІЇ ТА ФУНКЦІОНУВАННЯ ОРГАНІВ ПРАВОПОРЯДКУ: ЄВРОПЕЙСЬКИЙ ДОСВІД ТА НАЦІОНАЛЬНІ ОСОБЛИВОСТІ

Анотація. ***Мета.*** Метою статті аналіз зарубіжного досвіду адміністративно-правового забезпечення організації та функціонування органів правопорядку та можливості його адаптації до національної правоохоронної системи. ***Результати.*** Ефективна діяльність правоохоронних органів є вкрай актуальною та важливою для держави. Враховуючи певну проблематику функціонування правоохоронних інституцій, а також невисокий рівень ефективності реалізації відповідними суб'єктами повноважень, визначених законодавством, на сьогодні, особливо актуальним видається дослідження зарубіжної практики у даному аспекті. Відтак, доречним видається дослідження процедури адміністративно-правового забезпечення організації та функціонування органів правопорядку у зарубіжних державах. Досвід організації та функціонування органів правопорядку у Франції надає можливість встановити необхідність створення в Україні судової поліції, котра б здійснювала досудове розслідування кримінальних правопорушень. Відтак, у разі створення та функціонування даної інституції в Україні темп здійснення досудового розслідування та судового провадження по кримінальних справах став би набагато швидшим. Досвід Німеччини у контексті адміністратив-

но-правового забезпечення організації та функціонування органів правопорядку є корисним у контексті встановлення правил добору та вимог до осіб, які мають бажання займати посади в правоохоронних органах. Можемо відзначити, що законодавство Німеччини у даному контексті є чітким та таким, що не передбачає подвійного тлумачення. Відтак, Україні слід проаналізувати досвід іноземних колег та внести відповідні зміни до національного законодавства. ***Висновки.*** Зроблено висновок, що при трансформації державницьких інституцій та відповідних процесів, до стандартів, що існують закордоном, необхідним видається враховувати рівень та стандарти правової культури, які існують в Україні. Саме правова культура є чинником та показником готовності самої правової системи до відповідних трансформацій та реформування. Окрім того, правова культура є чинником, котрий безперечно впливає на якість реформування тої чи іншої сфери. Відтак, при проведені запозичення досвіду іноземних держав у межах адміністративно-правового забезпечення організації та діяльності органів правопорядку доречно аналізувати не лише ефективність тієї чи іншої процедури закордоном, але і готовність правової культури України, до її прийняття.

Ключові слова: правоохоронні органи, державні органи, вогнепальна зброя, правоохоронні функції, державна політика, службовець, законність.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.8.08

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*

THE ESSENCE OF ADMINISTRATIVE AND LEGAL PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES OF THE FINANCIAL SECTOR OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to reveal the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine. ***Results.*** The article reveals the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine. It is determined that administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a system of security and protective measures implemented by authorised actors of the national critical infrastructure protection system to ensure the stability and security of the financial services market segments which form the financial sector of critical infrastructure of Ukraine. ***Conclusions.*** To characterise its essence, it is proposed to focus on the following aspects: 1) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is an element of the mechanism of the national security system; 2) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine originated as a response to the need to ensure the safety of critical financial transactions and administrative actions, the violation of which causes significant damage to economic processes or the course of social relations that are directly dependent on the stable functioning of the distribution of cash flows or the proper exercise of financial and administrative functions of the authorised authorities; 3) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is implemented on the basis of legislative and departmental regulatory and legal framework; 4) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is comprehensive, enabling (if necessary) a transitional transformation of actions taken from purely security to directly protective ones without changing the institutional or procedural component of its implementation; 5) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine as a set of relevant measures is a representation of the existence of specialised activities in the law application context, which has its own purpose, tasks and functions; 6) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a continuous ongoing process, the intensity of which (activity, readiness) depends on the state of the internal and external security environment.

Key words: administrative and legal protection, banking sector, security and protection measures, critical infrastructure, national system of critical infrastructure protection, financial sector, financial services.

1. Introduction

It will not be news that meeting the general needs of society, including both individual needs and especially collective needs, is fundamentally conditioned by the existence of institutions that provide the financial resources necessary to purchase all those goods and services that represent what experts define as public needs (Onet, 2018). The process by which money is produced, accumulated, consumed or spent drives the economy and contributes to social development. From this perspective, it can be said that: 'in a modern economy, the financial sector plays an important role through financial intermediation, where funds flow from savers to investors' (European Commission, 2015).

In the context of market restructuring of the national economy, the financial sector not only performs the functions of monetary support, but also mobilises and transforms free savings into investment resources for expanded economic reproduction, meets the needs of entities in financial services and thereby ensures economic growth (Shkolnyk, Semenoh, 2013). In other words, it is logical to assume that certain elements of the financial sector of Ukraine's economy can be naturally defined from the perspective of critical infrastructure,

which, accordingly, requires protection and defence.

This is confirmed by the provisions of the Law of Ukraine 'On Critical Infrastructure', which recognises banks and other entities operating in the financial services markets as critical infrastructure. These objects form the relevant sector for the purpose of organising the effective provision of its security and resilience (Law of Ukraine On Critical Infrastructure, 2021). In addition, this Law provides that the specifics of the implementation of public policy on critical infrastructure protection are determined for the critical infrastructure sectors (Law of Ukraine On Critical Infrastructure, 2021) m, and therefore it is justified to state that critical infrastructure facilities of the financial sector of Ukraine are under the administrative and legal protection.

Therefore, the purpose of the article is to reveal the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine.

The issues being analysed have not been covered in scientific literature, but scholars such as S. Bulavina, T. Davydova, T. Zhuk, L. Kozhura, V. Krykun, N. Petryna, V. Pitatelev, A. Semenoh, N. Trotiuk, V. Tsvih, I. Shkolnyk and others have established the foundation for the development of scientific thought in the discourse of the issues raised.

2. Definition of the terms 'security' and 'protection'

In the general context, the categories of 'security' and 'protection' are used as synonyms or similar concepts in terms of purpose, tasks, and methods. At the same time, scholars also sometimes do not distinguish between these terms (Bulavina, Davydova, 2017). In addition, Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection contains a provision that defines 'security and protection' as a single concept covering all activities aimed at ensuring the functionality, continuity and integrity of critical infrastructures in order to prevent, mitigate and neutralise a threat, risk or vulnerability (Council Directive on the identification and determination of European critical infrastructures and assessment of the need to improve their protection, 2008; Zhuk, 2021).

A more comprehensive analysis of the understanding of the essence of the categories 'protection' and 'security' and their correlation reveals that in most cases the former is perceived as a component of the latter. For example, D. Horbas argues that the latter is defined as a set of measures aimed at preventing violations of certain socially important objects and values, as well as at protecting them. In conclusion, the scientist points out that in this case the concept of 'protection' is absorbed by the concept of 'security' (Horbas, 2008). A similar approach is taken by the authors of the textbook on Administrative Law under the general editorship of V. Halunko (2005), who argue that 'security' is a broader concept that includes prevention of violations of rights and freedoms, while 'protection' is its component and consists in taking measures after a violation of rights. Security involves methods of persuasion, while protection involves methods of coercion.

We support the opinion of V. Krykun that this approach is not true, because the analysis of the provisions of the current national legislation reveals the opposite situation. It follows that regardless of the type of social relations subject to security, in all cases, as well as in most other legislative definitions of the category 'security', its essence is revealed through the prevention or avoidance of the relevant undesirable consequences. If we analyse the approaches of the legislator to understanding the essence of the category 'protection', we will see that in addition to prevention, a number of its components of this phenomenon will be listed. For example, according to Article 4 of the Code of Civil Protection of the Population of Ukraine of 2 October 2012, civil protection is a function of the state aimed at protecting the population, territories, environment and property from emergencies by preventing such situations, eliminating their effects and assisting victims in peacetime and in a peacetime and special period (Code of Civil Protection of the Population of Ukraine, 2012; Krykun, 2021).

We agree that security involves the application of preventive measures and the use of persuasion to avoid violations of the established rules. Protection, on the other hand, is more focused on responding to existing violations using coercive methods, but at the same time, there is a certain interconnectedness between protection and security measures.

According to S. Bulavina and T. Davydova, security of rights is aimed at preventing violations of rights and obligations, and protection is aimed at restoring violated rights and obligations or compensation for lost rights as a result of a violated right. They differ in terms of the timeframe for application. Security is permanent, as prevention, and protection is applied as a result of a breach of rights and obligations. They also differ in the tools used. Security is characterised by a wider

range of measures – ideological, economic, legal, etc., while protection is the use of purely legal methods. The solution to the problem of effective protection and defence of rights is directly dependent on the development of legal regulations governing the relations of security and protection, and on the ability of scholars to find the boundaries of their non-identity (Bulavina, Davydova, 2017).

Accordingly, scientific approaches to defining the concepts of human rights protection and security emphasise their difference in content, methods and structure, while recognising their interdependence in the context of more general processes.

However, we do not deny that protection can be interpreted more broadly, including the processes of emergence, formation, development, stabilisation and extinction of needs, interests and rights. This implies that protection should be provided not after (Tsvykh, 2002) the unlawful acts have been committed, but before they are committed. In this regard, it is more correct to define protection as actions aimed at stopping or preventing violations (Tsvykh, 2002), as well as eliminating the consequences in case of their commission.

3. Definitions of 'administrative and legal protection' and 'administrative and legal security'

In the context of the study, this interpretation is also applicable, since in accordance with the provisions of the current legislation, the protection of critical infrastructure involves all activities carried out before or during the creation, operation, restoration and reorganisation of a critical infrastructure facility, aimed at timely detection, prevention and neutralisation of threats to the safety of critical infrastructure facilities, as well as minimisation and elimination of effects in case of their implementation (Law of Ukraine On Critical Infrastructure, 2021).

Thus, the legislator has decided to consider this issue from the perspective of including security in the protection system, which is not unreasonable, since the field under study is characterised by the existence of a national system of critical infrastructure protection (in the institutional aspect), which is quite objectively able to combine the implementation of both preventive measures and response to deviations from the norm.

It should be noted that the term 'legal protection' in administrative law is mostly limited to the activities of competent public authorities, administration and local self-government bodies (Trotsiuk, Petryna, 2015), which objectify the implementation of relevant measures. Specialised activities are referred to as administrative and legal protection.

In regards to the essence of administrative and legal protection, it is important to note that it is associated with the appropriate branch of law. Ukrainian legislation and scientific works do not present a single perspective on how to understand this legal category. This concept is frequently associated with the words 'administrative and legal protection' or 'administrative and legal support.' It is also used in different ways, with different scope of content. (Kozhura, 2015).

In the general context, it is important to recognise that the term applies to the legal relationship of protecting the rights, freedoms, and legitimate interests of a person. For example, the authors of the textbook on Administrative Law under the general editorship of V. Halunko understand administrative and legal protection as dynamic (active) actions of public administration aimed at restoring violated rights, freedoms and legitimate interests of individuals and legal entities, removing obstacles to their implementation by means of administrative law with the possibility of applying administrative coercion measures and bringing perpetrators to administrative liability (Halunko, 2005). Alternatively, scholar L. Kozhura defines it as the organisational and legal activities of public administration bodies, which are performed on the basis of administrative and legal provisions, supported by a system of legal guarantees; the essence of which is to ensure and protect, through legal remedies, the rights of individuals from unlawful acts with the prosecution of offenders to legal liability (Kozhura, 2015).

In general, in their interpretations of the essence of this category, scholars rather clearly and correctly emphasise the totality of legal relations which are subject to protection through the established regulatory guidance to this effect and the developed procedural aspect of the implementation of relevant measures by administrative law, but by disobjectifying this category, they make the mistake of automatically revealing its essence through legal relations associated with human and civil rights, although they are the main, but not the only object of unlawful encroachment. It would be more appropriate to refer to legally protected values and interests that may either belong to a particular person, their group or the state in general. In other words, two main objects of unlawful encroachment exist: a single or public interest (value, benefit) protected by law. With regard to the latter, the resolution of the Grand Chamber of the Supreme Court states that the needs of a significant number of individuals and legal entities, which are

important for a significant number of individuals and legal entities and are provided by public administration entities in accordance with the legally established competence (Resolution of the Grand Chamber of the Supreme Court, 2019), form the category of 'public interests'.

This statement enables to argue that administrative and legal protection, as well as administrative and legal security or administrative and legal support, should be considered more logically from the perspective of independent regulatory processes with different tasks and mechanisms of implementation. Generally and schematically, their correlation can be represented as follows: support is focused on security and protection, and security and protection are implemented in close interaction. Moreover, the very definition of administrative and legal protection should be considered from the dual interpretation of the objective component. This means that in addition to the legal relationship of a person to a particular interest (usually the right to something), its immediate state should be regarded from the perspective of ensuring protection against changes in properties or characteristics, damage or destruction in general.

For example, V. Pitatelev's opinion that administrative and legal protection of agricultural land is a dynamic action of the public administration aimed at restoring the violated right to agricultural land in Ukraine, minimising obstacles to its legal possession, by means of administrative law with the possibility of applying administrative coercion measures and bringing the perpetrators to administrative liability seems controversial (Pitatieliev, 2017). The author has limited its content to legal relations of a person to such a good, while it would be more appropriate to refer to agricultural land itself as a value requiring comprehensive protection and preservation. In this context, administrative and legal protection is not limited to aspects of land ownership and use, but also includes environmental, economic and social factors affecting the condition and quality of land resources.

Therefore, the essence of administrative and legal protection of critical infrastructure of the financial sector of Ukraine. It is determined that administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a system of security and protective measures implemented by authorised actors of the national critical infrastructure protection system to ensure the stability and security of the financial services market segments which form the financial sector of critical infrastructure of Ukraine.

4. Conclusions

To sum up, in the absence of administrative and legal protection of critical infrastructure in Ukraine's financial sector, it is unlikely that the financial services market in Ukraine will be able to ensure an adequate level of security and stability.

To characterise its essence, we suggest to focus on the following aspects:

1) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is an element of the mechanism of the national security system;

2) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine originated as a response to the need to ensure the safety of critical financial transactions and administrative actions, the violation of which causes significant damage to economic processes or the course of social relations that are directly dependent on the stable functioning of the distribution of cash flows or the proper exercise of financial and administrative functions of the authorised authorities;

3) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is implemented on the basis of legislative and departmental regulatory and legal framework;

4) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is comprehensive, enabling (if necessary) a transitional transformation of actions taken from purely security to directly protective ones without changing the institutional or procedural component of its implementation;

5) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine as a set of relevant measures is a representation of the existence of specialised activities in the law application context, which has its own purpose, tasks and functions;

6) The administrative and legal protection of critical infrastructure facilities of the financial sector of Ukraine is a continuous ongoing process, the intensity of which (activity, readiness) depends on the state of the internal and external security environment.

References:

Bulavina, S., Davydova, T. (2017). «Zakhyst» ta «okhorona»: teoretychni aspekty yurydychnykh terminiv ["Protection" and "protection": theoretical aspects of legal terms]. Istoryko-pravovyi chasopys, № 1, pp. 27–31 (in Ukrainian).

Dyrektyva Rady pro identyfikatsiiu i vyznachennia yevropeiskykh krytychnykh infrastruktur ta otsiniuvannia neobkhidnosti pokrashchennia yikh okhorony ta zakhystu: vid 08 hrudnia 2008 r. № 2008/114/IeS [Council Directive 2008/114/

EC dated December 8, 2008 on the identification and determination of European critical infrastructures and assessment of the need to improve their protection: dated December 8, 2008 No. 2008/114/EC]. (2008). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/984_002-08#Text (in Ukrainian).

European Commission. (2015). Understanding European Union Policies: Finance and Banking. Luxembourg: Publications Office of the European Union. Retrieved from https//www.Publications.europa.eu/resource/cellar/ac18de8a-d423-4f9f-941f9f29b5cc6fd1.0012.03/DOC (in English).

Halunko, V.V. (red.). (2005). Administratyvne pravo Ukrainy [Administrative law of Ukraine]. Kherson: PAT «Khersonska miska drukarnia» (in Ukrainian).

Horbas, D.V. (2008). Zdiisnennia subiektyvnykh tsyvilnykh prav fizychnykh osib: poniattia, sposoby, mezhi [Implementation of subjective civil rights of natural persons: concepts, methods, limits]. *Candidate's thesis*. Kyiv (in Ukrainian).

Kodeks tsyvilnoho zakhystu naselennia Ukrainy: vid 02.10.2012 № 5403-VI [Code of Civil Protection of the Population of Ukraine: dated 02.10.2012 No. 5403-VI]. (2012). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/5403-17#Text (in Ukrainian).

Kozhura, L.O. (2015). Administratyvno-pravovyi zakhyst ta okhorona: poniattia ta spivvidnoshennia [Administrative and legal protection: concepts and relationships]. Naukovyi visnyk Uzhhorodskoho Natsionalnoho universytetu, № 35, pp. 119–122 (in Ukrainian).

Krykun, V.V. (2021). Administratyvno-pravovyi mekhanizm zakhystu obiektiv krytychnoi infrastruktury v Ukraini [Administrative and legal mechanism for the protection of critical infrastructure objects in Ukraine]. *Doctor's thesis*. Kharkiv: Kharkivskyi natsionalnyi universytet vnutrishnikh sprav (in Ukrainian).

Onet, C. (2018). Public Financial Law. Budget law. Universul Juridic Publishing House (in English).

Pitatieliev, V.H. (2017). Administratyvno-pravovyi zakhyst zemel silskohospodarskoho pryznachennia v Ukraini [Administrative and legal protection of agricultural land in Ukraine]. *Candidate's thesis*. Kyiv: Naukovo-doslidnyi instytut publichnoho prava (in Ukrainian).

Postanova Velykoi Palaty Verkhovnoho Sudu: vid 13 liutoho 2019 roku [Resolution of the Grand Chamber of the Supreme Court: dated February 13, 2019]. (2019). *court.gov.ua*. Retrieved from https://reyestr.court.gov.ua/Review/79883398 (in Ukrainian).

Shkolnyk, I., Semenoh, A. (2013). Finansovyi sektor Ukrainy: teoretychnyi analiz ekonomichnoi definitsii [Financial sector of Ukraine: theoretical analysis of the economic definition]. Visnyk Ukrainskoi akademii bankivskoi spravy, № 1(34), pp. 31–36 (in Ukrainian).

Trotsiuk, N.V., Petryna, N.O. (2015). Administratyvno-pravovyi zakhyst avtorskoho prava ta sumizhnykh prav: teoretyko-pravovyi aspect [Administrative and legal protection of copyright and related rights: theoretical and legal aspect]. Porivnialno-analitychne pravo, № 2, rr. 115–118 (in Ukrainian).

Tsvykh, V.F. (2002). Profspilky u hromadianskomu suspilstvi: teoriia, metodolohiia, praktyka [Trade unions in civil society: theory, methodology, practice]. Kyiv: VPTs «Kyivskyi universytet» (in Ukrainian).

Zakon Ukrainy Pro krytychnu infrastrukturu: vid 16 lystopada 2021 r. № 1882-IX [Law of Ukraine On Critical Infrastructure: dated November 16, 2021 No. 1882-IX]. (2021). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/1882-20#Text (in Ukrainian).

Zhuk, T. (2021). Administratyvno-pravovi zasady zabezpechennia vzaiemodii kontrrozviduvalnykh orhaniv z inshymy subiektamy sektoru bezpeky z metoiu okhorony natsionalnykh interesiv [Administrative and legal principles of ensuring the interaction of counterintelligence bodies with other subjects of the security sector for the purpose of protecting national interests]. *Candidate's thesis*. Kyiv: NDIPP (in Ukrainian).

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

СУТНІСТЬ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ ОБ'ЄКТІВ КРИТИЧНОЇ ІНФРАСТРУКТУРИ ФІНАНСОВОГО СЕКТОРУ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є розкриття сутності адміністративно-правового захисту критичної інфраструктури фінансового сектору України. ***Результати.*** Стаття присвячена розкриттю сутності адміністративно-правового захисту критичної інфраструктури фінансового сектору України. Визначено, що адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України є системою заходів охоронного та захисного спрямування, реалізованою уповноваженими суб'єктами національної системи захисту критичної інфраструктури задля забезпечення стійкості та безпеки сегментів ринку фінансових послуг, що формують фінансовий сектор критичної інфраструктури України. ***Висновки.*** Характеризуючи його сутність запропоновано

обмежитись такими положеннями: 1) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України є елементом механізму системи забезпечення національної безпеки; 2) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України виник як реакція на необхідність забезпечення схоронності критично важливих фінансових операцій та адміністративних дій, порушення яких завдає значної шкоди економічним процесам або перебігу кола суспільних відносин, що є прямо залежними від стабільного функціонування розподілу грошових потоків чи належного здійснення фінансово-адміністративних функцій уповноважених органів влади; 3) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України реалізується на основі наявності законодавчого та відомчого нормативно-правового забезпечення; 4) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України має комплексний характер, що об'єктивує можливість (при необхідності) без зміни інституційної чи процедурної складової його здійснення виникнення перехідної трансформації вчинюваних дій з суто охоронних до безпосередньо захисних; 5) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України як сукупність відповідних заходів є репрезентацією існування у правореалізаційній площині спеціалізованої діяльності, що має власну мету, завдання та функції; 6) адміністративно-правовий захист об'єктів критичної інфраструктури фінансового сектору України є безперервним постійно здійснюваним процесом, інтенсивність якого (активність, готовність) залежить від стану внутрішнього та зовнішнього безпекового середовища.

Ключові слова: адміністративно-правовий захист, банківський сектор, заходи охорони та захисту, критична інфраструктура, національна система захисту критичної інфраструктури, фінансовий сектор, фінансові послуги.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.8.09

Nataliia Zolotarova,
Doctor of Law, Professor , Professor at Police Law Department of National Academy of Internal Affairs
Solomianska Square, 1, Kyiv, 03035
oloprado@ukr.net
ORCID ID: *0000-0002-3614-8328*

INTERNATIONAL EXPERIENCE IN ENSURING NATIONAL SECURITY

Abstract. ***Purpose.*** The purpose of the article is to study the current trends in ensuring national security of European countries and the USA. To make proposals for improving the system of ensuring the national security of the Ukrainian State. ***Results.*** The article analyses the experience in ensuring national security in Europe and the USA. The essence and system of national security of European countries and the USA are considered. International standards of legal framework for national security are established. The legal status of actors in the field of national security of European countries and the United States is characterised. The role and place of actors in the field of national security of European countries and the United States are determined. The international experience in improving the system of national security is analysed for its further use in the Ukrainian realities of today. It is advisable to consider the experience of building national security systems in Europe and the USA and to amend the current legislation in this field. ***Conclusions.*** It is concluded that the system of ensuring national security of Ukraine needs to be improved by amending the Law of Ukraine "On National Security" and establishing the term "national idea", thereby enabling proper and effective national security. Therefore, nowadays, the United States dominates the world in terms of the effectiveness of coordination of various state and non-state agencies in the field of national security. The US National Security Strategy provides for separate chapters on different regions of the world to ensure its national interests in Europe and Eurasia. The US National Security Strategy for Ukraine is an example for further development and improvement of the national security system. In the European Union, the security model of these states is increasing. The policy of European countries is based on the model of collegiality, considering the institutional features of their European security programmes.

Key words: European security, national security, state security, national interests, ensuring national security, actors of ensuring national security, civil society.

1. Introduction

Nowadays, the problematic issues of forming an effective national security of the Ukrainian State are very acute and are gaining relevance. This is primarily due to the aggravation of both external and internal threats, such as Russia's aggression. Relevant legal acts should incorporate the experience of building national security systems of European countries and the United States. In order to create an effective and efficient national security of the Ukrainian state, it is necessary to intensify the issue of systematisation of international experience. After all, Ukraine is to become a member of the European Union, so it is advisable to analyse the experience of European countries and the United States in making public policy on national security.

The issue of studying foreign experience in ensuring national security is also covered in the scientific works by domestic scholars: V.B. Averianov, S.M. Alforov, Yu.P. Bytiak, D.D. Burkaltseva, Z.S. Varnaliia, S.B. Havrysh, V.P. Horbulin, N.P. Matiukhina, A. H. Moseiko, O. M. Pidkhomnyi, Yu.I. Rymarenko, L.A. Savchenko, V.Ya. Tatsii, V.P. Tykhyi, V.I. Shakun, M. V. Chumak and others. This issue remains not fully covered, which makes this study relevant.

The purpose of the article is to study the current trends in ensuring national security of European countries and the USA. To make proposals for improving the system of ensuring the national security of the Ukrainian State.

2. National security in the USA

The main goal of the modern world is to ensure national security and preserve national values, the constitutional order, territorial integrity and sovereignty of the state. For the proper functioning of the modern world, national security is ensured through a system of legal relations, namely between a citizen and the state, between society and the state and between different states.

Therefore, national security is a state of internal and interstate relations that determines the effectiveness of the system of public, legal and social guarantees of human and civil rights and freedoms, basic values and interests of society and the sovereign state against internal and external threats (Hetmanchuk, Hryshchuk, Turchyn, 2010, p. 301).

The term "national security" was first used in the United States, with the concept of "national security" being enshrined in law in 1947 with the adoption of the US National Security Act (Pavliutin, 2020, p. 85).

The term national security in the modern world is derived from international security. The main task of the international community is to create an environment that prevents the violation of universal peace or the emergence of any form of threat to the security of peoples. The national security of any state, due to its multicomponent nature, requires a special system of its provision, the main purpose of which is to perform certain actions aimed primarily at protecting national values and realising national interests (Hadzhyev, 2016, p. 223). The international community considers national security as a system of state and non-state institutions and other entities that are called upon to solve problems in the implementation of measures to ensure national security in the manner prescribed by law (Reznikova, Tsiukalo, Palyvoda, 2015, p. 6).

The main world leader in the field of national security is the United States. Here is a closer look at the US experience in creating national security systems. The US national security system began to be created in 1947 on the basis of the National Security Act.

The US National Security Act is based on the principles of implementing tools to protect US interests in the world. The national security system solved offensive rather than defensive tasks (Kyrychenko, 2011, p. 318). The US national security system includes: The President of the United States, Advisers to the President of the United States, the Executive Branch, Ministries and Departments, and the Congress.

The US National Security Act defines the main tasks of the Department of Defence ('the Department of Defence'), and the Joint Chiefs of Staff of all the armed forces of the country in the structure of the armed forces.

The President of the United States makes all decisions in the field of national security, whose powers are defined in the US Constitution. The Assistant to the President for National Security Affairs has a special status in the implementation of national security policy, acting as a coordinator and main adviser to the President. The Executive Office of the President of the United States consists of 14-16 structures, including certain bureaus and councils, including the National Security Council and the Central Intelligence Agency to assist the President in implementing national security policy (Dudko, 2006, p. 325).

In the US national security system, the National Security Council (NSC), which is a subdivision of the Executive Office (Administration) of the President of the United States, plays a key role. It operates under the coordination of the President of the United States and the leadership of the National Security Advisor (Secretary of the NSC) and acts as a coordinating and controlling body, which includes representatives of all responsible agencies and institutions. The NSC offers the president options for decisions that later form the basis of national security policy (Moseў ko, Nehodchenko, 2019).

The functions of the National Security Council are to advise the president on domestic, international and military policies relating to national security and to promote effective co-operation between the military services and departments of the government on national security issues. The US National Security Act specifies the structure of the National Security Council, the functions and responsibilities of each of the departments, and provides quite specific definitions (Bidenko, 2006).

The main priorities for strengthening the US national security include:

1. Take measures to preserve the territorial integrity, democracy and peace in Europe;
2. Create a strong and stable Pacific Community;
3. Support the United States as a leader in the implementation of measures to strengthen peace on a global scale;
4. Strengthen cooperation in countering new security threats that cannot be addressed unilaterally (Hetmanchuk, Hryshchuk, Turchyn, 2010, p. 224).

The US National Security Strategy envisages protecting the nation's territorial integrity and way of life, as well as implementing a wide range of measures: expanding military alliances, international cooperation, strengthening arms control rules, creating multinational coalitions to fight terrorism, corruption, crime and drug trafficking, etc. B The US National Security Strategy outlines methods of coordination, unity and agreement on the most effective use of diplomatic and military instruments to shape the international situation, and a clear distinction between intelligence, counterintelligence and operational activities (Lipkan, 2009, p. 223).

We should agree with A.H. Moseiko's who identifies the main features of the US national security system and compares the US National Security Council with the Security Service of Ukraine, as well as highlights the following differences of the United States:

1) Focus on solving the internal problems of the United States;

2) Importance of national values and the national idea;

3) Information of the US intelligence agencies is communicated to all authorised decision-making bodies and is targeted;

4) Provisions of the US National Security Strategy are specifically focused on certain regions of the world and the preference for securing its national interests in Europe and Eurasia;

5) Effective coordination of various agencies in the field of national security has been implemented;

6) Use of the scientific potential of think tanks in shaping national security policy and training highly professional staff to work in the Presidential Administration and the Congressional apparatus (Moseyko, 2019, p. 150).

M. Bielieskov considers the US national security priorities to be:

1) Protection of the security of American citizens in the broadest sense;

2) Expansion of economic prosperity and opportunities;

3) Implementation and protection of democratic values.

The key goals of foreign policy, the implementation of which will ensure the interests of the United States, include: 1) to protect and develop the sources of US power (people, economy, national security and defence sector, democracy); 2) to promote a favourable balance of power in key regions, preventing enemies from threatening the US and its allies or dominating key regions; 3) to ensure the leading role and development of a stable open international system built on strong alliances, partnerships, multilateral institutions and rules (Bielieskov, 2021).

Therefore, the literature review on the US national security experience reveals that the focus is on the National Security Act, the US National Security Strategy, the main priorities of alliances, diplomacy, and the military factor.

In the US national security legislation, the legislator emphasises investment in military power and defence, to protect and defend the core national interests. The armed forces of the United States are on alert, armed and prepared to deal with challenges, first of all, from China and then from Russia. The US National Security Strategy defines priorities in the field of defence: defence of the United States, deterrence of strategic attacks on the United States and its allies/partners, development of capable armed forces and defence ecosystem.

Compared to the Ukrainian legislation in the field of national security, namely the Law of Ukraine "On National Security", the National Security Strategy of Ukraine is the main regulatory document that defines the main trends in public policy on national security.

The National Security Strategy of Ukraine is developed on the instructions of the President of Ukraine within six months after he takes office. The National Security Strategy of Ukraine defines: 1) priorities of national interests of Ukraine and ensuring national security, goals, main directions of public policy on national security2) current and projected threats to the national security and national interests of Ukraine, taking into account foreign and domestic conditions; 3) main trends in the foreign policy activities of the state to ensure its national interests and security; 4) trends and tasks of reforming and developing the security and defence sector; 5) resources necessary for its implementation (Law of Ukraine On National Security of Ukraine, 2018).

According to the National Security Strategy of Ukraine, the main priorities of national security will be ensured in the following areas: 1) restoration of peace, territorial integrity and state sovereignty in the temporarily occupied territories in Donetsk and Luhansk regions of Ukraine on the basis of international law; 2) implementation of international legal, political, diplomatic, security, humanitarian and economic measures aimed at ending the illegal occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation; 3) continuation of defence and deterrence measures, active use of negotiation formats and consolidation of international pressure on the Russian Federation as a guarantee of preventing the escalation of the conflict by Russia, reducing tension and ending the armed aggression by the Russian Federation; 4) using all available mechanisms of the UN, the Council of Europe, the OSCE and other international organisations to consolidate international support for Ukraine in countering Russian aggression, restoring the territorial integrity and state sovereignty of Ukraine; 5) developing relations with the United States of America, the United Kingdom of Great Britain and Northern Ireland, Canada, the Federal Republic of Germany, the French Republic, neighbouring and other states, as well as with international organisations to ensure international security;

6) full implementation of the 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, and modernisation of its parameters, where necessary, based on the results of a comprehensive review of the achievement of the objectives of the Agreement in accordance with Article 481, with a view to Ukraine's full membership in the European Union; 7) development of a special partnership with the North Atlantic Treaty Organisation with a view to Ukraine's full membership in NATO; 8) strengthening the capabilities of the Armed Forces of Ukraine and other security and defence institutions; 9) sustainable development of the national economy and its integration into the European economic space; 10) development of Ukraine's human capital, in particular through the modernisation of education and science, healthcare, culture, and social protection; 11) protection of an individual, society and the state from offences, including corruption, ensuring restoration of violated rights, compensation for damage; 12) environmental safety, creation of safe conditions for human life, in particular in the territories affected by hostilities, development of an effective civil protection system; 13) strengthening the capabilities of the national cybersecurity system to effectively counter cyber threats in the modern security environment; 14) development of public-private partnerships (Decree of the President of Ukraine On the decision of the National Defense Security Council of Ukraine, 2020).

Therefore, the US National Security Strategy is the main legal instrument in the field of national security. The main goal for the United States is to protect national values, domestic and foreign policy. For Ukraine, the US National Security Strategy is an example of further development and improvement of the national security system. The analysis of the national security strategy of Ukraine reveals some positive changes in the improvement and development of the national security system by the President of Ukraine, with some gaps in the legislation that does not meet the standards and requirements of European countries.

3. National security in European countries

According to T.P. Lebedeva, European countries' national security strategy is almost indistinguishable from the international security strategy, since they all form a single system of collective security, whereby military force does not play any active role in relations between states that are elements of this system (Lebedeva, 2008).

The national security of European countries is primarily related to the protection of human rights and the interests of society and the individual. The European National Security Strategy "A secure Europe in a better world", adopted in 2003, states that the overall goal of the European Union's security and foreign policy is to:

– Protect the fundamental interests, common values and independence of the EU;

– Increase the level of protection of the EU member states by all possible means;

– Preserve peace and strengthen the system of human rights protection in the field of international and national security;

– Promote international cooperation in the field of human rights protection;

– Strengthen and develop the principles of democracy, respect for fundamental human rights and freedoms (Chyzhov, 2022).

Therefore, European countries have created several special international institutions to support national security, such as the League of Nations, the UN, and the OSCE. European countries are convinced that EU and NATO membership can be effective only if they are complementary. The foreign policy of Poland, France and Germany, especially in the European context, is a good example of this, as it is clearly seen in the process of transformation (Horbatova, 2000). The current dynamic geopolitical transformations in Europe clearly demonstrate the importance of Polish, French and German factors in determining the future of the European security system (Guyomarch, Machin, Ritchie, 1998).

France initiated the development of the military capabilities of European countries, while proposing its own models of continental security institutions (in particular, François Mitterrand's concept of a European confederation). France was focused on implementing the policy of a great power, for which it had sufficient leverage both within international institutions and through its own resource components of national power. However, it was not able to conduct global world politics, so it focused its efforts on promoting the idea of creating Europe as a powerful centre of the future multi-vector world with the expectation of taking its rightful place in it (Mytrofanova, 2002).

France faced a number of problems, namely the process of European integration, the development of the EU's military components, and its attitude to NATO and EU enlargement. The chosen tactics for solving them, based on the priorities of the "special position", showed the need to constantly adjust it in accordance with changing circumstances

and consider the national interests of other participants in the process (Mitrofanova, 1999). French President E. Macron said, "We need to take new initiatives, build new alliances. France wants Europe to defend itself, especially when extremism has increased and nationalism has awakened" (Makron, 2018).

Foreign scholars S. Biscop, A. Gromyko, and I. Kier have highlighted the role of the United Kingdom in the European security system in their works (Biscop, 2012). The British approach to the formation of the European security system is focused on the UK's foreign policy course after the Second World War, which was aimed at finding its place in the new security system and gaining a stable status in the new, post-war world (Kolomiiets, 2012).

The main conceptual provisions of the UK National Security Strategy reveal the content and focus of the state's foreign policy and domestic policy to maintain and strengthen its dominant position in the world arena. The state was characterised by full alignment with the US security doctrine, as well as by its focus on maintaining the dominant position of the state in the Euro-Atlantic area and beyond. Later, British interests were to some extent reflected in the European Security and Defence Policy of the European Union (Iakovenko, 2003).

Germany plays a significant role in European politics in the process of shaping the EU's common foreign and security policy. The German National Security Strategy states that multilateral and bilateral cooperation in international relations is based on common interests and values. European policy has traditionally remained the main focus of German diplomacy, despite rapid changes in the international environment and the emergence of new challenges (Kryvonos, 2002).

In the field of national security, Poland claims to be a democratic sovereign state. Poland seeks to promote the preservation of common values and the development of mechanisms of cooperation within the European Union, the North Atlantic Alliance and international security (Chyzhov, 2022).

4. Conclusions

To sum up, the system of ensuring national security of Ukraine needs to be improved by amending the Law of Ukraine "On National Security" and establishing the term "national idea", thereby enabling proper and effective national security.

Therefore, nowadays, the United States dominates the world in terms of the effectiveness of coordination of various state and non-state agencies in the field of national security. The US National Security Strategy provides for separate chapters on different regions of the world to ensure its national interests in Europe and Eurasia. The US National Security Strategy for Ukraine is an example for further development and improvement of the national security system.

In the European Union, the security model of these states is increasing. The policy of European countries is based on the model of collegiality, considering the institutional features of their European security programmes.

References:

Bidenko, A. (2006). Zakonodavchi aspekty upravlinnia natsionalnoiu bezpekoiu za rubezhem [Legislative aspects of national security management abroad]. Politychnyy menedzhment. no. 3, pp. 132–140 (in Ukrainian).

Bielieskov, M. (2021). «Tymchasovi stratehichni nastanovy u sferi natsionalnoï bezpeky» adminstratsiï Dzh. Baydena: kliuchovi polozhennia [*"Interim strategic guidelines in the field of national security" of the J. Biden administration: key provisions*]. Natsionalnyy instytut stratehichnykh doslidzhen. *no*. 3, pp. 1–5 (in Ukrainian).

Biscop S. (2012). The UK and European defence: leading or leaving [The UK and European defense: leading or leaving]. International Affairs. no 8. pp. 1297-1313 (in English).

Chyzhov, D.A. (2022). Mizhnarodni standarty zabezpechennia prav liudyny u sferi natsionalnoi bezpeky [International standards for ensuring human rights in the field of national security]. Aktualni problemy polityky. no. 69, pp. 224-231 (in Ukrainian).

Dudko, I. (2006). Rada natsionalnoï bezpeky v systemi zovnishnoï polityky SShA [The National Security Council in the US foreign policy system]. Politychnyy menedzhment. no. 2, pp. 156–166 (in Ukrainian).

Guyomarch, A., Machin, H., Ritchie, E. (1998). France in the European Union. London (in English).

Hadzhyev, K.S. (2016). Heopolytyka [Geopolitics]. M.: Yzdatelstvo Yurait (in Russian).

Hetmanchuk, M.P., Hryshchuk, V.K., Turchyn Ya.B. ta in. (2010). Politolohiia [Politology]. K.: Znannia (in Ukrainian).

Horbatova, E. (2000). Pryorytetы Frantsyy v ES y formyrovanye obsheў polytyky bezopasnosty y oboronы ES [Priorities of France in the EU and the formation of the general security and defense policy of the EU]. Retrieved from https://www.cast.ru/joumal/2000/3 (in Russian).

Iakovenko, N. (2003). Velyka Brytaniia v suchasniy systemi mizhnarodnykh vidnosyn: zaiavka na yevropeyske liderstvo [Great Britain in the modern system of international relations: application for European leadership]. K.: Naukovyy svit (in Ukrainian).

Kolomiiets, O. (2012). Kontseptsiia natsionalnoï bezpeky Velykobrytaniï «v epokhu nevyznachenosti» [The UK's concept of national security "in an age of

uncertainty"]. Panorama politolohichnykh studiy: nauk, visnyk Rivnenskoho derzhavnoho humanitarnoho universytetu. no. 8, pp. 142-147 (in Ukrainian).

Kryshtanovych, M.F., (2022). Metody doslidzhennia mizhnarodnoho spivrobitnytstva Ukraïny ta Polshchi u sferi mizhnarodnykh vidnosyn [Research methods of international cooperation of Ukraine and Poland in the field of international relations]. Naukovi zapysky Lvivskoho universytetu biznesu ta prava, no. 32, pp. 175-179 (in Ukrainian).

Kryvonos, R.A. (2002). Nimechchyna u strukturi yevropeyskoho spivrobitnytstva [Germany in the structure of European cooperation]. *Candidate's thesis.* Kyïv: Kyïvskyy natsionalnyy universytet imeni Tarasa Shevchenka (in Ukrainian).

Kyrychenko, I.O. (2011). Chynnyk «miakoï syly» u stratehiiakh natsionalnoï informatsiynoï bezpeky SShA [The "soft power" factor in US national information security strategies]. Aktualni problemy mizhnarodnykh vidnosyn. no. 1, pp. 209–218 (in Ukrainian).

Lebedeva, T.P. (2008). Heopolytyka [Geopolitics]. M.: MHU (in Russian).

Lipkan, V.A. (2009). Natsionalna bezpeka Ukrainy [National security of Ukraine]. K.: KNT (in Ukrainian).

Makron, E. (2018). Bezpeka YeS bilshe ne povynna zalezhaty vid SShA [EU security should no longer depend on the US]. Yevropeyska pravda. Retrieved from https://www.eurointegration.com.ua/news/2018/08/27/7086084/ (in Ukrainian).

Mitrofanova, O. (1999). Paryzkyy vymir yevroatlantyzmu [The Paris dimension of Euro-Atlanticism]. Doslidzhennia svitovoï polityky. no. 8, pp. 37-40 (in Ukrainian).

Moseyko, A.H. (2019). Publichne administruvannia u sferi natsionalnoï bezpeky Ukraïni [Public administration in the field of national security in Ukraine]. *Candidate's thesis.* Zaporizhzhia: Zaporizk. nats. un.-tet (in Ukrainian).

Moseyko, A.H., Nehodchenko, V.O. (2019). Dosvid Spoluchenykh shtativ Ameryky shchodo publichnoho administruvannia v sferi natsionalnoï bezpeky [The experience of the United States of America regarding public administration in the field of national security]. Pravo i suspilstvo. no. 4, pp. 323–329 (in Ukrainian).

Mytrofanova, O.O. (2002). Bezpekova polityka Frantsiï v konteksti suchasnykh yevropeyskykh heopolitychnykh transformuvan [French security policy in the context of modern European geopolitical transformations]. *Candidate's thesis.* K.: Znannia (in Ukrainian).

Pavliutin, Yu.M. (2020). Systema natsionalnoï bezpeky: polityko-pravovyy analiz [National security system: political and legal analysis]. Chest i zakon. no. 3, pp. 84-90 (in Ukrainian).

Reznikova, O.O., Tsiukalo, V.Iu., Palyvoda, V.O. (2015). Kontseptualni zasady rozvytku systemy zabezpechennia natsionalnoi bezpeky Ukrainy [Conceptual principles of the development of the national security system of Ukraine]. K.: NISD (in Ukrainian).

Ukaz Prezydenta Ukraïny «Pro rishennia Rady natsionalnoï bezpeky oborony Ukraïny vid 14 veresnia 2020 roku «Pro Stratehiiu natsionalnoï bezpeky Ukraïny» vid 14 veresnia 2020 r. № 392/2020 [Decree of the President of Ukraine "On the decision of the National Defense Security Council of Ukraine dated September 14, 2020 "On the National Security Strategy of Ukraine" dated September 14, 2020 No. 392/2020]. (2020). president.gov.ua. Retrieved from https://www.president.gov.ua/documents/3922020-35037 (in Ukrainian).

Zakon Ukrainy Pro natsionalnu bezpeku Ukraïny: vid 21 chervnia 2018 r. № 2469-VIII [Law of Ukraine On National Security of Ukraine: dated June 21, 2018 No. 2469-VIII]. (2018). rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text (in Ukrainian).

Наталія Золотарьова,
доктор юридичних наук, професор, професор кафедри поліцейського права
Національної академії внутрішніх справ
Солом'янська площа, 1, Київ, 03035
soloprado@ukr.net
ORCID ID: *0000-0002-3614-8328*

МІЖНАРОДНИЙ ДОСВІД У СФЕРІ ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ

Анотація. ***Мета.*** Метою статті є дослідити сучасні напрями забезпечення національної безпеки європейських країн та США. Вироблення пропозицій щодо удосконалення системи забезпечення національної безпеки Української держави. ***Результати.*** Стаття присвячена аналізу досвіду забезпечення національної безпеки у країнах Європи та США. Розглянуто сутність та систему забезпечення національної безпеки європейських країн та США. Встановлено міжнародні стандарти правового забезпечення національної безпеки. Охарактеризовано правовий статус суб'єктів в сфері забезпечення національної безпеки європейських країн та США. Визначено роль та місце суб'єктів в сфері забезпечення національної безпеки європейських країн та США. Проаналізовано міжнародний досвід щодо удосконалення системи забезпечення національної безпеки для подальшого використання її в українських реаліях сьогодення. Доцільно врахувати досвід побудови систем

забезпечення національної безпеки країнах Європи та США і внести зміни до чинного законодавства в даній сфері. ***Висновки.*** Зроблено висновок, що система забезпечення національної безпеки України потребує вдосконалення шляхом внесення змін до Закону України «Про національну безпеку» та закріпити термін «національна ідея», що дасть можливість належно та ефективно здійснювати забезпеченню національної безпеки. Отже, сучасному світі США обіймає домінуюче місце щодо ефективності координації різних державних та недержавних відомств у сфері забезпечення національної безпеки. В стратегії національної безпеки США, передбачаються окремі розділи, що присвячені різним регіонам світу для забезпечення своїх національних інтересів в Європі і Євразії. Стратегія національної безпеки США для України є прикладом для подальшого розвитку та вдосконалення систему забезпечення національної безпеки. В Європейському Союзі постерігається збільшення моделі безпеки цих держав. Політика європейських країн побудована на моделі колективності, враховуючи інституційні особливості їхніх програм щодо європейської безпеки.

Ключові слова: європейська безпека, національна безпека, державна безпека, національні інтереси, забезпечення національної безпеки, суб'єкти забезпечення національної безпеки, громадське суспільство.

UDC 342.6; 342.9; 352.07
DOI https://doi.org/10.32849/2663-5313/2023.8.10

Anastasiia Kozin,
Doctor of Philosophy in Law,
Senior Researcher at the Department of
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: *0009-0000-5793-6852*

FOREIGN EXPERIENCE OF EXERCISING POWERS BY LOCAL SELF-GOVERNMENT BODIES AND EXECUTIVE AUTHORITIES

Abstract. ***Purpose.*** The purpose of the article is to study the foreign experience of interaction between local self-government bodies and executive authorities and to formulate proposals for improving this process in Ukraine. ***Results.*** The article studies the issue of foreign experience of functioning of local self-government bodies and executive authorities in terms of exercising joint powers. Positive examples of interaction between local self-government bodies and executive authorities, as well as trends in implementing the relevant experience in Ukraine are presented. The author identifies the problems faced by foreign local self-government bodies and executive authorities in the course of interaction in terms of exercising joint powers. The ways of borrowing the positive experience of foreign countries in terms of interaction between local self-government bodies and executive authorities in terms of exercising joint powers are proposed. It is revealed that in many countries the mechanisms of coordinating local budgets with central (state/regional) authorities exist, which are aimed at determining local tax rates, expenditure limits and other measures to ensure financial sufficiency and proper coordination of budgets. Such interaction typically tends to be at the political level, usually at the level of ministers or senior officials on the one hand, and municipal associations on the other. ***Conclusions.*** It is concluded that certain types of cooperation are implemented through representative bodies that more effectively represent the positions of municipalities and defend the interests of local authorities. The representative structures of municipalities are beneficial for both central and local authorities. The former can conduct consultations and negotiations in a more orderly manner and expect that the agreements reached wil3l apply to a large number of communities, while the latter are able to participate in the decision-making process and influence its final outcome in a way that is not possible for each municipality individually. Ukraine should adopt the effective experience of cooperation between local self-government bodies and executive authorities, in particular in the form of consultations, meetings, development of joint documents/programmes, organisation of meetings, sessions, joint advisory bodies, etc. in order to effectively perform joint powers.

Key words: interaction between state authorities, interaction with executive authorities, foreign experience of interaction between state and municipal authorities, trends in interaction with executive authorities in Ukraine.

1. Introduction

The most common instruments of cooperation between local self-government and executive authorities are the exchange of information, transfer of necessary data, provision of consultations or meetings. However, some other forms of interaction have proven to be important and effective: various methods of bilateral determination of financial support required to meet statutory obligations; delegation of powers to local authorities, thus expanding their scope of activities; cooperation agreements that define procedures for interaction, bilateral provision of services or financial support. In Ukraine, cooperation between executive authorities and local self-government bodies is sometimes reduced to the implementation of bureaucratic procedures within the scope of delegated powers, and this practice has no development trends. In view of the above, the issue of foreign experience of cooperation between these bodies is relevant and requires a study of those effective cooperation practices that are most common in the European Union due to their efficiency, effectiveness and usefulness.

The issues of foreign experience of interaction between local self-government

bodies and executive authorities have been studied by the following scholars: I. Kovalevych, N. Kaminska, M. Kashchyshyn, O. Chernezhenko, A. Panov, A. Kovalova, A. Chyrkin, N. Mishyna, V. Dudchenko, N. Hvazava, V. Popko and others. The issues of foreign experience of interaction between local self-government bodies and executive authorities have been studied in the scientific works by M. Havrda, A. Moreno, M. Jones and others.

The purpose of the article is to study the foreign experience of interaction between local self-government bodies and executive authorities and to formulate proposals for improving this process in Ukraine.

2. The most common forms of interaction between executive authorities

Almost all member states consider consultations to be the most common form of interaction. Most countries have mandatory consultations on issues of local importance, such as reforms, budgeting, and local taxes. This form of cooperation is usually implemented between associations of municipalities and representatives of central authorities. Many countries have special consultation structures (congresses, conventions, working groups, etc.) that meet periodically (annually, quarterly, etc.). In countries with a well-developed decentralisation of power, these structures are usually regional, although there may be issues that should also be considered at the federal level.

For example, Belgian legislation provides for formal consultative structures that facilitate cooperation in all sectors of interaction between government entities. Belgium is characterised by a mixed model of local self-government, as local interests are part of the national interests, which are realised through the activities of local governments (Kovalevich, 2009).

The Czech Republic has established regular consultation forums between central and local authorities. Representatives of these authorities or their officials meet regularly to coordinate the exercise of their powers and responsibilities. In addition, it is one of the countries that not only has the principle of local self-government enshrined in the constitution, but also has a constitutional provision for the powers of local governments (Havrda, 2020).

In Bulgaria, parliamentary consultations are held on draft laws that may affect local authorities. The National Association of Municipalities represents local governments at these meetings and organises meetings with members of parliament to lobby for local interests. In the area of social security, the Social Security Council was established as a public advisory body, which includes the National Association of Municipalities, together with central government, trade unions, employers' organisations and non-governmental organisations. In addition, the Council of Ministers established an Interministerial Council with the participation of the National Association of Municipalities to exchange specialised information at the expert level between the participants (Peculiarities of organizational and legal support for the activities of associations of local self-government bodies at the national level in the countries of the European Union, 2020).

Estonia has introduced electronic consultation procedures on draft laws, which are actively used by local government associations. In Iceland, discussions cover issues ranging from the adoption of local government charters to the provision of funding and the allocation of responsibilities. In Norway, consultations between central and local governments have been formalised through a series of four annual meetings between ministers and the political leadership of the Norwegian Association of Local and Regional Authorities (Voronov, Hradova, Hryshko, 2022, pp. 24-42). These meetings are a means of discussing the link between the financial situation of local governments and the performance of their duties.

In Italy, all regions have a political representative (a leader or member of the regional executive) who is responsible for relations with local authorities. Its main functions are to coordinate the activities of regional and local authorities, to cooperate with them and to establish legislative and administrative procedures that facilitate this interaction. In addition, an important role in each region is played by the Council of Local Autonomies, an advisory body that represents local interests (Kaminska, 2012, p. 57).

The Local Council Association of Malta represents local authorities in general meetings with the central government, which are held on a regular basis, as well as in ad hoc committees, even though Malta is a small island country that is not divided into administrative units. In the Netherlands, according to the Code of Inter-administrative Relationship Provisions, a consultative meeting of government agencies chaired by the Prime Minister is held twice a year. In Romania, consultations with associations of local authorities on issues within their competence are provided for in the Local Act (Kashchyshyn, 2018; Moreno, 2012; Code on Inter-administrative Relations, 2013)

Slovenia also has a statutory requirement to consult with the Association of Municipalities on draft regulations on local issues.

In Spain, official consultations between national and regional authorities are held within the framework of sectoral conferences, which are considered necessary to agree on their common policy.

Swiss law also provides for negotiations with municipalities to resolve local issues. In addition, the Constitution of this country stipulates that the Confederation shall consider the impact of its activities on local authorities (Federal Constitution of the Swiss Confederation, 2000). In pursuance of this provision, the Federal Government adopted the 'Guidelines for Cooperation between the Confederation, the Cantons and the Municipalities', which enshrines the right of municipalities to participate in consultations on federal activities that may have an impact on local governments; to participate in expert committees or working groups established by the Confederation and to provide relevant opinions within their competence. In addition, representatives of local governments should be involved in the work of permanent advisory commissions in some areas with sectoral functions in cases where their interests are affected.

Central government plays an important role in advising local authorities. Such contacts are often informal and usually take place between civil servants and individual municipalities. In some cases, communication is accompanied by training of local staff to help municipalities improve their performance. The above-mentioned relations take place in all areas where circumstances require, usually without a pre-determined regularity due to their informal nature. Electronic communications facilitate increased contact, frequency and responsiveness.

In Hungary, several services established by the Ministry of Local Government and Territorial Development exist to advise or train local authorities and their officials. For example, the Local Government Hotline provides fast and professional assistance to local authorities by telephone. In addition, regular conferences are held with the participation of international experts to provide professional training for both local political representatives and civil servants. The Ministry also publishes documents, guidelines and books related to local government. In addition, the European Union Information Service for local governments was established in 2003 to assist local authorities in the integration process by providing information on the functioning of the EU, legislative harmonisation and investment opportunities (Chernezhenko, 2018).

The Italian Ministry of the Interior provides ongoing assistance and advice to local authorities, both directly (through the so-called 'Window for Local Authorities') and through its offices in the provinces (Prefecture-U.T.G., or territorial government offices). As part of these activities, the Ministry also collects and publishes municipal statutes on its official website. In addition, the Italian regional governments have administrative offices that monitor the work of local authorities, provide them with legal advice, information and recommendations (Panov, 2020).

The annual Dialogue Day in Bulgaria is a nationwide initiative that brings together (in each of the 28 constituencies) members of parliament from the constituency, mayors, other representatives of municipalities and citizens, as well as members of central government and the media. The main outcome of these meetings is a better understanding of stakeholders' positions on various issues. Cooperation in setting common goals, organising governance or identifying sources of financial support is also considered a good practice of cooperation between municipal and central government.

For example, in Bulgaria, an agreement on institutional cooperation was signed between the Council of Ministers and the Association of Municipalities on 12 October 2005. The agreement envisages long-term cooperation based on the principles of partnership, transparency and coherence, which includes regular meetings, as well as participation in advisory, monitoring and working groups. In addition, the inter-municipal cooperation on regional policy issues envisages the establishment of partnership councils consisting of local authorities, representatives of enterprises, institutions, organisations, etc. to implement activities, programmes and projects of mutual interest.

In Iceland, in February 2006, a cooperation agreement was signed that laid the foundation for establishing relations between the state and local authorities. Its main goal is to establish cooperation between the government and municipalities and harmonise public administration policies. Under the Agreement, representatives of expert committees from both levels of government meet periodically to discuss common issues (Government offices of Iceland. Local Authorities and Regional Policy, 2009).

In Italy, cooperation is a regional function; each region has a political figure in charge of cooperation and an administrative support structure. In the main policy sectors, usually there are bodies that ensure cooperation. For example, in order to implement programmes to strengthen law enforcement and security

services, the Minister of the Interior and prefects may sign agreements with the regional government and local authorities to determine the logistical, instrumental and financial contribution of the region and local authorities.

District commissariats in Luxembourg perform advisory, mediation and coordination functions between central and local authorities (Kovalova, 2009). In the Slovak Republic, municipalities are amalgamated to ensure the fulfilment of those powers that cannot be exercised by each municipality individually, which is considered an effective coordination mechanism for the provision of services to high standards (Chyrkin, 2019).

In Switzerland, the institution of cooperation defines joint responsibilities between cantons and municipalities to ensure their effective implementation. Legal entities with federal obligations often include representatives of both cantons and municipalities to their administrative councils (Jones, 1998).

The UK has introduced a Partnership Framework that regulates relations between central and local authorities (in England since 1997, in Scotland since 2001), although it has no legislative basis. For example, in England, the Central Local Partnerships meet regularly to consider key issues related to local government. In Scotland, the purpose of the Framework is to ensure regular communication and discussions, establish procedures for consultation and areas of joint work.

3. Mechanisms of interaction between central and local authorities

In England, there are also mechanisms for mutual prioritisation between central and local authorities. For example, the Local Area Agreement (LAA) is a three-year agreement that provides for the allocation of funds by the central government to address local priorities within the framework of certain policies agreed with the central government. The local area is represented by the local government and the Local Strategic Partnership (LSP), a single body that brings together different components of the public and private sectors, as well as business, community and voluntary sector representatives, to ensure that initiatives and services are effectively delivered (Mishyna, 2004).

Good practice in the financial sector refers to the bilateral identification of the needs required by local authorities to fulfil their responsibilities and to be able to provide services to citizens. Bulgaria's budget approval process involves the National Association of Municipalities at various stages. The consultations, which are held at both the political and expert levels, are designed to ensure a transparent and balanced allocation of funds. If the opinions of experts differ, a bilateral protocol is attached to the draft budget, which allows the Council of Ministers to make a decision on the issue (Dudchenko, 2015).

For 20 years, Danish municipalities have played an important role in shaping economic policy. Budgetary cooperation is based on the agreement that economic policy is developed on the basis of agreements with local authorities after the economic and political goals are defined by the central authorities (government and parliament). These agreements, concluded between the central government and associations of local governments, establish growth rates for public spending, municipal tax rates, and other issues related to local expenditures and revenues. They are not binding on each municipality, although members of the association are expected to comply with their provisions (Hvazava, 2012).

In Finland, central and local governments also cooperate by discussing the allocation of municipal resources. In addition, parliamentary acts are regularly assessed for their possible impact on local governments (municipalities) (Popko, 2017).

In Iceland, it is agreed to estimate the costs associated with the development of bills and other regulations governing municipal finance. Several ministries (Ministry of Social Affairs, Ministry of Education, Science and Culture, Ministry of the Environment) are involved in conducting such audits together with the Icelandic Local Government Association. In some countries, the empowerment of local governments through delegation by the central government is considered a positive practice of cooperation (Czech Republic, Spain). Other effective ways of cooperation between central and local authorities exist. For example, Denmark has established an independent body (comprising central government (ministries), the Association of Local and Regional Councils and representatives of the academic community) to evaluate the activities of local and regional authorities in order to identify best practices and develop proposals for improvement. Estonia has introduced an e-consultation system that allows the National Association of Local Authorities to comment on draft laws related to local issues. In some regions of Italy, local government officials are trained as part of regional programmes, as local authorities are usually unable to provide such training on their own (Monitoring of the application of the European Charter of Local Self-Government, 2020).

The Netherlands has adopted the Code of Intergovernmental Relations, which establishes the rules of interaction

between central and local authorities. This document not only regulates the scope of functions and powers of each party, but also contains provisions on expenditures and control. Representatives of these bodies meet twice a year to consider issues of common interest. In Portugal, contract programmes (Contrato programma) are considered a useful tool for financial and technical cooperation. These agreements have made it possible to implement new projects in several sectors (environment and public sanitation, infrastructure, transport, education and civil protection). Service agreements (contrats de prestation) are also used in Switzerland as a mechanism for cooperation between cantons and municipalities. Although not very common at present, these agreements play an important role in the revision of the financial equalisation system [20].

4. Conclusions

Communication between central and local governments, in the form of consultations, advice or information exchange, is the type of interaction most commonly practiced in EU countries. However, this type of cooperation is usually informal, although it can become formalised under certain circumstances.

In a number of countries, the mechanisms of coordinating local budgets with central (state/regional) authorities exist, which are aimed at determining local tax rates, expenditure limits and other measures to ensure financial sufficiency and proper coordination of budgets. Such interaction typically tends to be at the political level, usually at the level of ministers or senior officials on the one hand, and municipal associations on the other.

Some countries have also established formal institutions to conduct bilateral negotiations with local government associations on issues of interest to the local population (statutes, budgets, etc.). However, most countries have a 'mixed model' that combines information exchange and consultations (informal interaction) with the activities of organisations for bilateral cooperation (formal interaction) (Lithuania, the Netherlands, Portugal, Romania, the Slovak Republic, Slovenia, Spain, and the United Kingdom) (Making Decentralisation Work, 2019).

Certain types of cooperation are implemented through representative bodies that more effectively represent the positions of municipalities and defend the interests of local authorities. The representative structures of municipalities are beneficial for both central and local authorities. The former can conduct consultations and negotiations in a more orderly manner and expect that the agreements reached will apply to a large number of communities, while the latter are able to participate in the decision-making process and influence its final outcome in a way that is not possible for each municipality individually.

Ukraine should adopt the effective experience of cooperation between local self-government bodies and executive authorities, in particular in the form of consultations, meetings, development of joint documents/programmes, organisation of meetings, sessions, joint advisory bodies, etc. in order to effectively perform joint powers.

References:

Kovalevich, I.P. (2009). Zarubizhnyi dosvid zaluchennia hromadskosti do formuvannia ta realizatsii mistsevoi polityky [Foreign experience of involving the public in the formation and implementation of local policy]. Teoriia ta praktyka derzhavnoho upravlinnia, 2009, no. 2, pp. 1–5 (in Ukrainian).

Havrda, M. (2020). «Local government borrowing in the Czesh Republic» publication of Europeum – European Policy Forum. Retrieved from http://www.europeum.org/doc/arch_eur/EPF_Local Borrowing.pdf (In English).

Osoblyvosti orhanizatsiyno-pravovoho zabezpechennia diialnosti asotsiatsiy orhaniv mistsevoho samovriaduvannia natsionalnoho rivnia v kraïnakh Yevropeyskoho Soiuzu [Peculiarities of organizational and legal support for the activities of associations of local self-government bodies at the national level in the countries of the European Union]. Shveytsarsko-ukraïnskyi proekt "Pidtrymka detsentralizatsiï v Ukraïni" DESPRO. 2020. Retrieved from https://komsamovr.rada.gov.ua/uploads/documents/42251.pdf (in Ukrainian).

Voronov, M.I., Hradova, Yu.V., Hryshko, L.M. (2022). Yevropeyski standarty mistsevoho samovriaduvannia ta rehionalna polityka YeS [European standards of local self-government and EU regional policy]. Kharkiv: KhNU im. V.N. Karazina (in Ukrainian).

Kaminska, N.V. (2012). Yevropeiska systema mistsevoho i rehionalnoho samovriaduvannia ta Ukraina [The European system of local and regional self-government and Ukraine]. K.: Natsionalna akademiia vnutrishnikh sprav (in Ukrainian).

Kashchyshyn, M.A. (2018). Povnovazhennia orhaniv mistsevoho samovriaduvannia v zarubizhnykh krainakh [Powers of local self-government bodies in foreign countries]. Chasopys Natsionalnoho universytetu "Ostrozka akademiia", 2018, no. 2(18), pp. 31-35 (in Ukrainian).

Government of the Netherlands. Code on Inter-administrative Relations. 2013. Retrieved from https://www.government.nl/binaries/government/documenten/reports/2023/01/20/code-on-inter-administrative-relations/code-interbestuurlijke-verhoudingen_EN.pdf (In English).

Moreno, A. (2012). Local Government in Romania. 2012. Retrieved from https://eu.vlex.com/vid/

local-government-in-romania-394138974 (In English).

Federal Constitution of the Swiss Confederation. 2000. Retrieved from https://codices.coe.int/codices/documents/constitution/04ed7a11-81ba-444b-93ce-8d1f745906c4 (In English).

Chernezhenko, O.M. (2018). Terytorialna struktura ta mistseve samovriaduvannia v Uhorshchyni [Territorial structure and local self-government in Hungary]. Naukovyy visnyk Uzhhorodskoho natsionalnoho universytetu, 2018, no. 50, pp. 47-51 (in Ukrainian).

Panov, A. (2020). Administratyvno-terytorialnyi ustrii Italii: suchasnist ta reformuvannia [Administrative and territorial system of Italy: modernity and reformation]. Retrieved from https://alenpanov.org.ua/ua/article/11/14 (in Ukrainian).

Government offices of Iceland. Local Authorities and Regional Policy. 2009. Retrieved from https://www.government.is/topics/local-authorities-and-regional-policy/ (In English).

Kovalova, A.D. (2009). Sotsialno-ekonomichnyy rozvytok Liuksemburgu v konteksti YeS-15 [Socio-economic development of Luxembourg in the context of the EU-15.]. Hileia, 2009. no. 27, pp. 46–52 (in Ukrainian).

Chyrkin, A.S. (2019). Kharakterystyka mistsevoho samovriaduvannia Slovachchyny v konteksti vidpovidnosti standartam Yevropeiskoi khartii mistsevoho samovriaduvannia [Characteristics of local self-government in Slovakia in the context of compliance with the standards of the European Charter of Local Self-Government]. Derzhavne budivnytstvo ta mistseve samovriaduvannia, 2019, no. 38, C. 89-102 (in Ukrainian).

Jones, M. (1998). Local governments. International encyclopedia of public policy and administration. Boulder : Westview, 1998. no. 3. pp. 1295–1300 (In English).

Mishyna, N.V. (2004). Deiaki osoblyvosti munitsypalnoho upravlinnia v Londoni. Aktualni problemy derzhavy i prava [Some features of municipal administration in London], 2004, no. 22, pp. 229–233 (in Ukrainian).

Dudchenko, V.O. (2015). Stan ta struktura derzhavnykh finansiv Respubliky Bolhariia [State and structure of public finances of the Republic of Bulgaria]. Ekonomichnyi analiz, 2015, no. 20, pp. 136-144 (in Ukrainian).

Hvazava, N.H. (2012). Mistsevi biudzhety ta mizhbiudzhetni vidnosyny u zarubizhnykh krainakh [Local budgets and inter-budgetary relations in foreign countries]. Derzhava ta rehiony, 2012, no. 3 (39), pp. 108-113 (in Ukrainian).

Popko, V.V. (2017). Pravove rehuliuvannia orhanizatsii mistsevoho samovriaduvannia u Finliandskii Respublitsi [Legal regulation of the organization of local self-government in the Republic of Finland]. Chasopys Kyïvskoho universytetu prava, 2017, no. 3, pp. 281-286 (in Ukrainian).

MONITORING of the application of the European Charter of Local Self-Government. Congress of Local and Regional Authorities of the Council of Europe. 2020. Retrieved from https://rm.coe.int/a5-monitoring-of-the-application-of-the-european-charter-of-local-self/168098aadb (In English).

OECD. Making Decentralisation Work: A Handbook for Policy-Makers, OECD Multi-level Governance Studies, OECD Publishing, Paris, 2019. (In English).

Анастасія Козін,
доктор філософії в галузі права,
старший науковий співробітник відділу
актуальних питань філософії права та юридичної лінгвістики
Науково-дослідного інституту публічного права)
вулиця Георгія Кірпи 2 а, Київ, 03055
ORCID ID: *0009-0000-5793-6852*

ЗАРУБІЖНИЙ ДОСВІД РЕАЛІЗАЦІЇ ПОВНОВАЖЕНЬ ОРГАНАМИ МІСЦЕВОГО САМОВРЯДУВАННЯ ТА ОРГАНІВ ВИКОНАВЧОЇ ВЛАДИ

Анотація. ***Мета.*** Метою статті є дослідження зарубіжного досвіду взаємодії органів місцевого самоврядування з органами виконавчої влади та формулювання пропозицій для удосконалення визначеного процесу в Україні. ***Результати.*** Наукова стаття присвячена дослідженню питання зарубіжного досвіду функціонування органів місцевого самоврядування та органів виконавчої влади у частині реалізації спільних повноважень. Наведено позитивні приклади взаємодії органів місцевого самоврядування та органів виконавчої влади, тенденції запровадження відповідного досвіду в Україні. Визначено проблеми, з якими стикаються зарубіжні органи місцевого самоврядування та органи виконавчої влади під час взаємодії у частині реалізації спільних повноважень. Запропоновано способи запозичення позитивного досвіду зарубіжних країн щодо взаємодії органів місцевого самоврядування та органів виконавчої влади у частині реалізації спільних повноважень. З'ясовано, що у багатьох державах існують механізми узгодження місцевих бюджетів з центральними (державними/регіональними) органами влади, які полягають у визначенні ставок місцевих податків, лімітів видатків та проведенні інших заходів із метою забезпечення фінансової достатності та належної координації бюджетів. Така взаємодія відбувається на політичному рівні, як правило,

рівні міністрів або вищих посадових осіб – з одного боку, та асоціацій муніципалітетів з іншого. ***Висновки.*** Зроблено висновок, що певні види співпраці реалізуються за допомогою представницьких органів, які більш ефективно репрезентують позиції муніципалітетів і відстоюють інтереси місцевої влади. Існування представницьких структур муніципалітетів є вигідним як для центральної, так і для місцевої влади. Перші можуть проводити консультації та переговори в більш упорядкований спосіб і розраховувати на те, що досягнуті домовленості будуть стосуватися значної кількості громад, тоді як другі отримують можливість брати участь у процесі прийняття рішень впливати на його кінцевий результат у спосіб, який не під силу кожному із муніципалітетів окремо. Україні слід запозичити ефективний досвід співпраці органів місцевого самоврядування та органів виконавчої влади, зокрема у формі консультацій, нарад, формування спільних документів/ програм, організації зустрічей, засідань, спільних дорадчих органів тощо, з метою ефективного виконання спільних повноважень.

Ключові слова: взаємодія між державними органами, взаємодія з органами виконавчої влади, зарубіжний досвід взаємодії органів державної та муніципальної влади, тенденції взаємодії з органами виконавчої влади в Україні.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.8.11

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*

PROMISING WAYS TO IMPROVE ORGANISATIONAL AND LEGAL FRAMEWORKS FOR TRAINING PERSONNEL FOR THE ARMED FORCES OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to develop promising ways to improve the organisational and legal framework for training personnel for the Armed Forces of Ukraine. ***Results.*** Relying on the analysis of current legislation, the article focuses on the fact that today the legislator rather superficially considers the problem of training personnel for the Armed Forces of Ukraine. The author summarises the theoretical approaches of scholars who have studied the issues of manning the Armed Forces of Ukraine in their works. The author's original approach to promising trends in improving the organisational and legal framework for training personnel for the Armed Forces of Ukraine is proposed. It is emphasised that various legal regulations focus on issues of state, in particular, military security of Ukraine. In addition, a number of state strategies have repeatedly emphasised the importance of improving the system of personnel support of the Armed Forces of Ukraine. However, it is fair to say that no specific practical suggestions and recommendations were given. ***Conclusions.*** It is concluded that the solution of organisational problems requires improvement of the regulatory framework for training personnel for the AFU. In this context, it is considered necessary to develop and adopt three key legal regulations: 1. The National Strategy for Improving the Staffing of the Armed Forces of Ukraine. In this legal regulation, in the context of the presented issues, it is necessary to identify: first, the general problems that currently exist in the staffing of the Armed Forces of Ukraine; second, to identify training for the Armed Forces of Ukraine as one of the areas in which the problems of staffing should be solved; third, to outline the tasks that need to be solved on the way to improving the training system; fourth, to identify the areas in which military personnel should be trained, with due regard to their position and, accordingly, the tasks they will perform during their service; 2. The Law of Ukraine 'On Training of Personnel for the Armed Forces of Ukraine'. This legal regulation should become a unified document that will: a) define the requirements for servicemen/ women to meet when holding a particular position in the Armed Forces of Ukraine; b) define the specifics of physical and, most importantly, psychological training of servicemen/ women of different levels (from sergeants to senior officers); c) describe the curriculum for different branches of the armed forces; d) define the range and legal status of entities authorised to train relevant specialists; etc.; 3. Develop a programme of cooperation with other countries, including NATO members, to exchange practical experience in military training.

Key words: improvement, organisational principles, legal framework, personnel training, the Armed Forces of Ukraine.

1. Introduction

Nowadays, the system of training for the Armed Forces of Ukraine requires comprehensive improvement. It should be noted that both the legal and organisational framework for the relevant training needs to be improved. For example, the legal framework is a set of legal regulations of different legal force, the provisions thereof are aimed at regulating social relations arising in the process of training for the Armed Forces of Ukraine. For its part, the organisational framework in the context of the presented issues is best understood as a set of non-legal (managerial, economic, organisational, etc.) measures aimed at creating conditions under which training for the Armed Forces of Ukraine will be effective, qualitative and efficient.

Some problematic issues related to improving the training of personnel for the Armed Forces of Ukraine have been considered in the scientific works by: O. Zolochevskyi, M. Kasynenko, O. Maslii, M. Palevych, O. Piddubnyi, V. Rakhmanova, O. Tkachuk, O. Yatsyno,

S. Yatsenko and many others. However, despite the significant theoretical contribution, the scientific literature lacks comprehensive studies on improving the organisational and legal framework for training personnel for the AFU.

Therefore, the purpose of the article is to develop promising ways to improve the organisational and legal framework for training personnel for the Armed Forces of Ukraine.

2. Specific features of state and military security

Starting a scientific study, it should be noted that various legal regulations focus on issues of state, in particular, military security of Ukraine. In addition, a number of state Strategies have repeatedly emphasised the importance of improving the system of personnel support of the Armed Forces of Ukraine. However, it is fair to say that no specific practical suggestions and recommendations were given. In view of this, the issue of developing and adopting a separate 'Strategy for Improving the Staffing of the Armed Forces of Ukraine', which will be aimed at a comprehensive improvement of the personnel policy of the Armed Forces of Ukraine in general and personnel training in particular, is currently relevant.

However, the problematic issue under study has received attention not only at the legislative but also at the scientific level. For example, in his study of the problematic issues of staffing in the Armed Forces of Ukraine, O. Yatsyno made a number of interesting conclusions. Based on the results of the analysis of the personnel situation in the Armed Forces, the scientist identifies a number of major problematic issues, the consequences of their failure to resolve and the impact on the effectiveness of staffing: 1) Inadequate funding and resources for the personnel training system for the Armed Forces; 2) Incomplete development of draft programme documents for the medium and long term, lack of approved targets for the structure and strength of the Armed Forces of Ukraine, including at the legislative level; 3) Inconsistency of the provisions of regulatory framework in the areas of CP in the Armed Forces with the requirements of the present; 4) the need to further improve the tasks, functions, powers of the personnel bodies of the MoD of Ukraine, the General Staff of the Armed Forces of Ukraine and the branches of the Armed Forces of Ukraine, optimise their organisational structure and number; 5) The following issues remain unresolved, which are the most urgent and significantly affect the final results of achieving the appropriate level of manning of units and motivation of personnel to continue military service under new contracts: inadequate funding and resource provision; incomplete development of draft programme documents for the medium and long term; inconsistency of regulatory provisions with the requirements of the present; need for further improvement of the system of personnel bodies (Yatsyno, 2012).

In this context, it should also be noted the scientific work of V. Rakhmanov and S. Yatsenko, who developed proposals for providing the Armed Forces of Ukraine with quality personnel, improving educational activities in the context of defence, personnel and other reforms, with due regard for current international and military factors that affect the formation of the AFU's capability. For example, scientists have identified the following as priority areas for the development of the personnel management system in the AFU: 1) in the area of 'educational outcomes/needs': clarification of the business model of military education based on modern practices; clarification of the goals and motivational component of the organisation of educational activities; 2) in the area of 'organisation of educational activities': reforms in the HR management system and the introduction of new forms, methods and mechanisms for implementing HR policy; full implementation of a process approach to building educational organisations in general, a project approach to implementing reform and continuous improvement, and a blended approach to the courses themselves; 3) in the area of 'resource support of educational activities': improvement of the system of providing educational activities with teaching staff of the required level; wide automation of educational activities, including remote education; 4) in the area of selection/search of candidates for educational programmes: improvement of methods and forms of recruitment to the military service of Ukraine; improvement of mechanisms for the formation of the military reserve; improvement of the system of selection/search of candidates for educational programmes; 5) in the area of 'formation of the educational environment': development of a personnel training system in accordance with the main legal regulations in the military sphere; optimisation of social and humanitarian support for personnel, adaptation of servicemen to civilian life (Rakhmanov, Yasenko, 2021, p. 200). In the context of the presented issues, it should be noted that V. Rakhmanov and S. Yatsenko name the following among the main trends in improving educational activities for

personnel management in the AFU: a) training of specialists for personnel services of the AFU on the basis of new standards of recruitment, adaptation, and military service; b) introduction of personnel technologies in accordance with NATO standards, bringing them to world-class levels in order to further integrate Ukraine's military sector into a single European security sector; c) optimisation of the mechanisms of state management of the military sector and building personnel policy in the Armed Forces on these principles; d) improvement of regulatory and legal framework for personnel policy both at the state level and at the level of the Ministry of Defence of Ukraine; e) adequate funding of the needs of the Armed Forces of Ukraine; f) development of social and resource support for the military establishment at the level of international standards; g) developing the optimal structure and determining the number of the Armed Forces of Ukraine in accordance with the potential capabilities of the state, which will determine military personnel policy and placement of state orders for training of military specialists (Rakhmanov, Yasenko, 2021, p. 200).

3. Professional training for the Armed Forces of Ukraine

M. Kasyanenko focuses his research on analysing the problems of professional training of Ukrainian citizens under the reserve officer training programme. The author rightly argues that the training of reserve officers is a crucial element of the Armed Forces of Ukraine, and as practice has shown, the scientist is not mistaken in his statement. In his scientific work, the scholar notes that in modern conditions the problem of the quality of training of future reserve officers has become particularly relevant. The author emphasises the existence of fundamental differences between the needs and the traditional content and methods of training the reserve for military formations. Current approaches to organising the educational process of reserve officers have not proved to be effective enough. As a result, despite the existence of a sufficient reserve, the state faces a shortage of qualified personnel from among reserve officers (Medvid, 2019; Kasianenko, 2020). According to M. Kasyanenko, the experience gained shows that there are a number of contradictions in the modern organisation of reserve officers' training institutions: between traditional forms of methodological support of the educational process and the need for innovative forms of information presentation, with due regard to current trends in armed struggle; between the process of informatisation of military education and the absence of a common approach to the development, creation and provision of teaching aids that organically combine modern pedagogical and information technologies. The scientist quite rightly emphasises that these processes are significantly affected by the difficult financial and economic situation in the country and the insufficient qualifications of some scientific and pedagogical staff (Kasianenko, 2020). These contradictions reveal the main problematic issues inherent in the organisation of the educational process in the modern system of training reserve officers, such as: substantiation of the methodology for the use of modern educational technologies that synthesise pedagogical innovations, information, information and communication technologies and simulation tools, with due regard for modern views on armed struggle; integration of traditional pedagogical technologies with computer technologies in education; modernisation of simulation computer models of learning and their application in the educational process of a higher military educational institution (Kasianenko, 2020).

In the study of the problem and trends in improving the special physical training of air force personnel of the Armed Forces of Ukraine, S. Palevych, O. Piddubnyi, O. Tkachuk and V. Zolochevskyi note that the problem of physical training of military personnel as an integral part of the structure of the combat training system of the Armed Forces is sufficiently represented in the scientific field. The main scientific achievements relate to solving the problems of improving the theoretical, motivational, educational, psychological, methodological, mobile and regulatory functional components of the system of special physical training. Moreover, the researchers conclude that researchers do not focus on substantiating new approaches to the interaction of special physical training systems and general military disciplines, as well as ways of their integration. Improvement of the system of special physical training is possible due to the reorganisation of the educational process in higher military educational institutions, including, by updating the curriculum and work programmes in the discipline, introducing the concept of student-centred learning, which is based on the processes of standardisation of learning outcomes, integration of combat training elements into a single integrated system of training based on special physical training (Palevych, Piddubnyi, Tkachuk, Zolochevskyi, 2018).

In his scientific work, O.M. Maslii argues that the relevance and necessity of systematic support for the concept of professional training of future officers of missile and artillery weapons

in the current conditions of the Armed Forces development is due to: the need to fulfil the tasks; the growing requirements of a competence-based approach to the professional training of cadets of military universities; the importance of developing professional competence in military professionals with higher education; the expediency of developing innovative conceptual provisions to ensure the quality of military education of cadets as a pedagogical system; the proactive nature of preparing a complete list of the most specialised officer professions, etc. (Maslii, 2017). In the author's opinion, the concept is based on the integration of competence, personal, activity, systemic, integrative, technological and synergistic approaches, which determines the combination of social and personal goals of training, the need to increase the role of military specialists, the actualisation of social and value orientations caused by the status, appointment of the future missile and artillery officer, his motivation aimed at purposeful activity in educational, research and military service activities. mastery of modern high-tech weapons and military equipment (from mortars to missile systems), development of personal qualities necessary for self-realisation in military and professional activities, ability and readiness to ensure the fulfilment of tasks caused by the needs of military service in peacetime and wartime (Maslii, 2017).

4. Conclusions

To sum up, over recent years, active work has been done at both the legislative and scientific levels to improve the system of staffing the Armed Forces of Ukraine in general and personnel training in particular. However, today's challenges have revealed the existence of serious legal and organisational problems that need to be addressed.

Therefore, the study enables to identify the following key trends in improving the organisational framework for training personnel for the Armed Forces of Ukraine:

– First, it is advisable to increase the level of financial and logistical support of higher education institutions, as well as other specially authorised entities that, in accordance with the current legislation, provide theoretical and practical training for military personnel of all levels;

– Second, the training programme for the military in general, as well as for the command staff of the Armed Forces of Ukraine, should be revised to adapt it to NATO requirements and standards. In this context, it is also necessary to develop new, scientifically based methodological support that will meet: a) the challenges of today; b) the requirements and standards of NATO, accession to which is a priority for the Ukrainian state;

– Thirdly, an effective system of information support for the Armed Forces and entities authorised to train military personnel should be developed;

– Fourth, as practice has shown, it is necessary to improve the psychological training of military personnel. Moreover, their training should be adapted to the level of responsibility of their position.

– Fifth, to expand opportunities for international cooperation, which will ensure effective exchange of experience with professional military personnel from other countries.

However, the solution of organisational problems requires improvement of the regulatory framework for training personnel for the AFU. In this context, it is considered necessary to develop and adopt three key legal regulations:

1. The National Strategy for Improving the Staffing of the Armed Forces of Ukraine. In this legal regulation, in the context of the presented issues, it is necessary to identify: first, the general problems that currently exist in the staffing of the Armed Forces of Ukraine; second, to identify training for the Armed Forces of Ukraine as one of the areas in which the problems of staffing should be solved; third, to outline the tasks that need to be solved on the way to improving the training system; fourth, to identify the areas in which military personnel should be trained, with due regard to their position and, accordingly, the tasks they will perform during their service;

2. The Law of Ukraine 'On Training of Personnel for the Armed Forces of Ukraine'. This legal regulation should become a unified document that will: a) define the requirements for servicemen/ women to meet when holding a particular position in the Armed Forces of Ukraine; б) define the specifics of physical and, most importantly, psychological training of servicemen/women of different levels (from sergeants to senior officers); c) describe the curriculum for different branches of the armed forces; d) define the range and legal status of entities authorised to train relevant specialists; etc.

3. Develop a programme of cooperation with other countries, including NATO members, to exchange practical experience in military training.

References:

Yatsyno, O.V. (2012). Systema kadrovoho zabezpechennia u Zbroinykh Sylakh Ukrainy: problemni pytannia ta napriamky yikh vyrishennia [The personnel support system in the Armed Forces of Ukraine:

problematic issues and directions for their solution]. Systemy ozbroiennia i viiskova tekhnika, 2012, no. 4. pp. 200-205 (in Ukrainian).

Kasianenko, M. (2020). Analiz problem profesiinoi pidhotovky hromadian Ukrainy za prohramoiu pidhotovky ofitseriv zapasu [Analysis of the problems of professional training of citizens of Ukraine according to the reserve officer training program]. Social development & Security, 2020, no. 10, Iss. 5, pp. 161-168 (in Ukrainian).

Maslii, O.M. (2017). Kontseptualni zasady profesiinoi pidhotovky maibutnikh ofitseriv raketno-artyleriiskoho ozbroiennia [Conceptual principles of professional training of future officers of missile and artillery weapons]. Profesiina osvita: metodolohiia, teoriia ta tekhnolohii, 2017, no. 5, pp. 142-155 (in Ukrainian).

Medvid, Yu.I. (2019). Formuvannia hotovnosti maibutnikh ofitseriv zapasu do sluzhbovoboiovoi diialnosti v protsesi profesiinoi pidhotovky [Formation of readiness of future reserve officers for military service in the process of professional training]. *Candidate's thesis.* Hlukhiv: Hlukhiv. nats. ped. unt im. Oleksandra Dovzhenka (in Ukrainian).

Palevych, S.V., Piddubnyi, O.H., Tkachuk, O.A., Zolochevskyi, V.V. (2018). Stan problemy ta napriamy udoskonalennia spetsialnoi fizychnoi pidhotovky viiskovosluzhbovtsiv Povitrianykh Syl Zbroinykh Syl Ukrainy [The state of the problem and directions for improving the special physical training of servicemen of the Air Force of the Armed Forces of Ukraine]. Sportyvna nauka Ukrainy, 2018, no. 1 (83), pp. 15-25 (in Ukrainian).

Rakhmanov, V., Yasenko, S. (2021). Udoskonalennia osvitnoi diialnosti dlia kadrovoho menedzhmentu v Zbroinykh sylakh Ukrainy [Improvement of educational activities for personnel management in the Armed Forces of Ukraine]. Viiskova osvita, 2021, no. 2 (44), pp. 194-204 (in Ukrainian).

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

ПЕРСПЕКТИВНІ ШЛЯХИ ВДОСКОНАЛЕННЯ ОРГАНІЗАЦІЙНИХ ТА ПРАВОВИХ ЗАСАД ПІДГОТОВКИ КАДРІВ ДЛЯ ЗБРОЙНИХ СИЛ УКРАЇНИ

Анотація. ***Мета.*** Метою статті є: опрацювати перспективні шляхи вдосконалення організаційних та правових засад підготовки кадрів для Збройних сил України. ***Результати.*** У статті, спираючись на аналіз норм чинного законодавства, акцентовано увагу на тому, що на сьогоднішній день законодавець досить поверхнево розглядає проблему підготовки кадрів для ЗСУ. Узагальнено теоретичні підходи науковці, які у своїх працях досліджували проблематику кадрового забезпечення збройних сил України. Запропоновано авторський підхід щодо перспективних напрямів вдосконалення організаційних та правових засад підготовки кадрів для Збройних сил України. Наголошено, що в різних нормативно-правових актах досить багато уваги приділялося питанням державної, зокрема воєнної безпеки України. Окрім того, у ряді державних Стратегій неодноразово акцентувалась увага на важливості вдосконалення системи кадрового забезпечення Збройних сил України. Втім, справедливим буде відзначити той факт, що конкретних практичних пропозицій та рекомендацій наведено не було. ***Висновки.*** Зроблено висновок, що вирішення організаційних проблем вимагає вдосконалення нормативно-правового забезпечення підготовки кадрів для ЗСУ. У даному контексті вбачається необхідним розробити та прийняти три ключові нормативно-правові акти: 1. Загальнодержавну «Стратегію вдосконалення кадрового забезпечення Збройних сил України». У вказаному нормативно-правовому акті в контексті представленої проблематики необхідно визначити: по-перше, загальні проблеми, які наразі існують у кадровому забезпечення ЗСУ; по-друге, одним із напрямів, в якому слід вирішувати проблеми кадрового забезпечення визначити підготовку кадрів для збройних сил України; по-третє, окреслити задачі, які необхідно вирішити на шляху до покращення системи підготовки кадрів; по-четверте, визначити напрями, за якими має відбуватись підготовка військовослужбовців з урахуванням їх посади, а відповідно і завдань, що вони будуть виконувати в процесі служби; 2. Закон України «Про підготовку кадрів для Збройних сил України». Вказаний нормативно-правовий акт повинен стати уніфікованим документом, в якому буде: а) визначено вимоги до військовослужбовців, яким вони повинні відповідати при зайнятті тієї чи іншої посади в Збройних силах України; б) визначено особливості фізичної, та, що дуже важливо, психологічної підготовки військовослужбовців різного рівня (від сержантів до вищого керівного складу); в) розкрито програму військовослужбовців для різних родів військ; г) визначено коло та правовий статус суб'єктів, які уповноважені здійснювати підготовку відповідних фахівців; тощо; 3. Розробити програму взаємодії з іншими державами світу, зокрема членами НАТО щодо обміну практичним досвідом у сфері військової підготовки.

Ключові слова: вдосконалення, організаційні засади, правові засади, підготовка кадрів, Збройні сили України.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2023.8.12

Andrii Pashchuk,
Postgraduate student at Scientific Institute of Public Law
2a H. Kirpa street, Kyiv, Ukraine, postal code 03055,
pashchukandrii@ukr.net
ORCID ID: *0000-0001-9519-6476*

CONCEPT AND TYPES OF RISKS TO ECONOMIC SECURITY OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to define the concept and identify the types of risks to Ukraine's economic security. ***Results.*** In the article, relying on the analysis of scientific views of scholars, the author forms an original approach to defining the concept of economic security risks. On the basis of summarising the provisions of current legislation and theoretical approaches of domestic scholars, the following risks to economic security of Ukraine are identified and characterised: legal; corruption; administrative and managerial risks; military and political; social; environmental; financial. It is emphasised that economic security is a component of national security and characterises the adequacy of protection of the economic interests of the State and ensuring its sustainable economic development. Such definition is quite rational and logical given its regulatory basis; however, it practically does not dominate in the theoretical and legal domain. As a rule, scholars consider this category much broader. It is established that economic security of Ukraine is a component of national security, which is a state-provided and state-supported status of positive, efficient and high-quality functioning of the national economy, which contributes to the economic development of the State, internal stability and social welfare, implementation of international economic standards and emergence of new financial and legal institutions. It is determined that the essence of legal risks is due to the impact of the quality of the regulatory framework for certain social and legal relations on the full implementation of the rights and legitimate interests of the State in general, and of each individual in particular. Therefore, regulatory sources are of utmost importance in the context of governing national processes, especially those related to national security and all its components. Clarity, logic, consistency and harmony of legal regulations ensure the orderliness of economic and legal processes, their security and targeted focus. The lack of proper regulatory frameworks causes collisions, conflicts of legal provisions, a legal vacuum in which the national economy does not work properly, provides ample resources for illegal activities of individuals and groups, and has other negative impacts. ***Conclusions.*** It is concluded that the risks to Ukraine's economic security are a combination of factors (legal, administrative and managerial risks, military and political, social, environmental and financial ones) that negatively affect the efficient and high-quality functioning of the national economy.

Key words: national security, economic security, risks, national economy, legislation.

1. Introduction

The 21st century is marked by the increased intensification of globalisation processes aimed at overcoming strict borders between states and creating a global space in which people can freely exchange knowledge, culture, technological progress, etc. In the context of these developments, the focus is not on the military component of countries' development, but on their economic progress. More and more nations are willing to evolve together, sharing resources, replacing competitive relations with close cooperation. The most famous example in this context is the European Union (EU), which is a vivid testament to the results of the international community, which allows achieving previously unknown economic development indicators. However, in order to be an active and effective player in the international arena, a state must have a stable, organised, internally supported national economy. One of the most important factors that helps to achieve these indicators is the economic security of the state. This is a systemic and complex category in legal and organisational terms, which is confronted by a number of risks, the concept and types of which will be analysed in this study.

The issue of risks to the economic security of the State has been considered in the scientific works of many representatives of the legal and economic fields, including: O.M. Bandurka, V.I. Babenko, V.V. Halunko, O.P. Hetmanets, O.V. Dzhafarova, V.E. Dukhova, V.I. Kurylo, V.B. Pchelin and others. However, despite the numerous scientific achievements, the problem of defining the concept and out-

lining the types of risks to Ukraine's economic security remains insufficiently developed in the scientific literature.

Therefore, the purpose of the article is to define the concept and identify the types of risks to Ukraine's economic security.

2. The concept of risks to Ukraine's economic security

In order to correctly identify and define the content of risks to Ukraine's economic security, it is necessary to understand what the latter is. If we analyse the provisions of legal regulations and bylaws, we can see a clear link between this category and national security. The Law of Ukraine "On National Security of Ukraine" contains the following definition: "National security of Ukraine is the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats" (Law of Ukraine On National Security of Ukraine, 2018). According to other provisions of the Law, the fundamental national interests of Ukraine are: "1) state sovereignty and territorial integrity, democratic constitutional order, prevention of interference in the internal affairs of Ukraine; 2) sustainable development of the national economy, civil society and the state to ensure the growth of the standard of living and quality of life of the population; 3) Ukraine's integration into the European political, economic, security and legal space, membership in the European Union and the North Atlantic Treaty Organisation, development of equal and mutually beneficial relations with other states. Public policy on national security and defence is aimed at ensuring military, foreign policy, state, economic, information, environmental security, critical infrastructure security, cyber security of Ukraine and its other areas" (Law of Ukraine On National Security of Ukraine, 2018).

Therefore, from legislative perspective, economic security is a component of national security and characterises the adequacy of protection of the economic interests of the State and ensuring its sustainable economic development. Such definition is quite rational and logical given its regulatory basis; however, it practically does not dominate in the theoretical and legal domain. As a rule, scholars consider this category much broader.

For example, K.X. Ippolitov argues that the economic security of the state covers the security of the entire system of economic relations that determine the progressive development of the country's economic potential and ensure the improvement of the welfare of all members of society and its individual social groups, as well as form the basis of the country's defence capability, protection from dangers and threats arising from internal and external contradictions (Heiets, Kyzym, Klebanova, Cherniak, 2006). According to H. Pasternak-Taranushchenko, economic security is a status of the state, which ensures the possibility of creating and developing conditions for a fruitful life and growth of the population's wealth, as well as promising development in the future (Pasternak-Taranushchenko, 1994).

Therefore, economic security of Ukraine is a component of national security, which is a state-provided and state-supported status of positive, efficient and high-quality functioning of the national economy, which contributes to the economic development of the State, internal stability and social welfare, implementation of international economic standards and emergence of new financial and legal institutions.

On the other hand, risks to Ukraine's economic security are the opposite category, which carries a negative meaning and consequences. According to the explanatory dictionaries of the Ukrainian language, the word 'risk' is defined as follows: 1) a conscious possibility of danger; 2) a possibility of loss or failure in a business; 3) a threat, a factor that carries a certain danger (Bilodid, 1977). At the level of theoretical research, risks were studied by L.S. Shevchenko, O.A. Hrytsenko, and S.M. Makukha. They defined the latter as potential and real threats to the status of the national economy and sustainable economic development, including: 1) increasing technological lagging behind other countries implies the following risks: loss of competitiveness and the ability to participate in technology transfer on an equivalent basis, loss of markets; 2) the absence of motivational mechanisms for all participants in the innovation process – degradation of technological potential, consolidation of the economy's raw material orientation; 3) the global financial crisis – significantly reduced probability of attracting foreign and domestic investments to the risky innovation sector; reduction of public funding for research, which, in the absence of alternative sources, will lead to curtailment of research and development activities; 4) the absence of domestic demand for innovative products – consolidation of the economy's raw material orientation, degradation of scientific and technological potential; 5) increased dependence on other countries for imports of technologies and high-tech products – technological innovations will lead to higher product prices, but if labour resources remain cheap, domestic consumption and demand will not grow, but, on the contrary, may decrease, which can provoke crisis phenomena; dependence on foreign

transnational corporations, whose efforts may be aimed at destroying Ukrainian competitors, which will lead to the curtailment of innovation activities in the country; 6) migration of scientific personnel and specialists, lowering the priority of scientific work – degradation of the country's scientific potential, systemic obstacles to the implementation of the guidelines for increasing wages and investing in human development, etc. (Shevchenko, Hrytsenko, Makukha, 2009).

In their scientific work, O.A. Maslii and O.P. Kivshyk emphasise the following: "Military destruction, russian attacks on infrastructure facilities, occupation of a part of Ukraine's territory, budget crisis and other global challenges increase the negative impact of systemic internal threats to Ukraine's economic security, including the raw material orientation of the national economy, its low competitiveness, problems with updating the material and technical base of production, large-scale corruption, high level of the shadow economy and other structural deformations. During global transformations, characterised by the growing influence of exogenous challenges and threats, in order to maintain a sufficient level of economic security of Ukraine in the conditions of war and to restore economic growth in the post-war period, it is important to implement a proactive approach to ensuring the economic security of the state aimed at implementing preventive measures to prevent the destructive impact of potential threats" (Maslii, Kivshyk, Kotelevets, 2023).

3. Types of risks to Ukraine's economic security

N.E. Avanesova considers globalisation to be a key risk to the economic security of the state, which poses a number of additional challenges: instability of the global financial system, accompanied by imbalance of world trade and investment flows between the world's largest economic centres; expansion of world markets for certain types of products, goods and services; spread of crisis phenomena; expansion of advanced countries; shortage of resources for expanded development. The scientist further emphasises that a special place in the system of national economic security is the dual nature of economic security of individual sectors of the national economy. The scientist writes, "On the one hand, industries operate in a non-stationary external environment, which is characterised by a decline in investment, high interest rates on long-term bank loans, instability of tax legislation, etc, which significantly reduces the level of vital activity of individual enterprises in the industry and increases the potential for a crisis. On the other hand, crisis trends at the micro level create prerequisites for negative trends in the development of regional systems and a decrease in the level of national economic security" (Avanesova, 2016).

Therefore, considering the provisions of the legislation and scientific approaches, economic security risks can be most appropriately grouped into:

– Legal risks. The essence of these risks is due to the impact of the quality of the regulatory framework for certain social and legal relations on the full implementation of the rights and legitimate interests of the State in general, and of each individual in particular. Therefore, regulatory sources are of utmost importance in the context of governing national processes, especially those related to national security and all its components. Clarity, logic, consistency and harmony of legal regulations ensure the orderliness of economic and legal processes, their security and targeted focus. The lack of proper regulatory frameworks causes collisions, conflicts of legal provisions, a legal vacuum in which the national economy does not work properly, provides ample resources for illegal activities of individuals and groups, and has other negative impacts. Legal risks to Ukraine's economic security also include economic offences. They include two types: administrative and criminal. The degree of public danger and the amount of damage depends on the level of risk that the relevant illegal activity poses;

– Corruption risks. Corruption is a significant risk to the economic security of the state, as it leads to such critically dangerous results as embezzlement of budget funds, misallocation of subsidies and benefits, violation of the independence and equality of the state's economic sector, creation of additional pressure on the national business sector, etc;

– Administrative and managerial risks. This group of negative factors is related to the imperfection of the state apparatus and the accuracy of the distribution of power. In other words, the structure of public authorities is not sufficiently optimised. Economic security should be ensured through targeted public administration tools, measures and means implemented by centralised public authorities with special powers. Failure to comply with this requirement leads to the emergence of several power centres, whose activities can negatively affect economic processes, slow them down, and burden the economic sector with inappropriate and unnecessary inspection, licensing, and other administrative procedures;

– Military and political risks. In addition to the fact that any armed aggression carries with it a host of external negative phenomena

in the form of destruction of civilian infrastructure, deaths, and displacement of people from their places of residence, there is a need to activate extreme legal phenomena such as mobilisation and martial law. Both of them significantly change the internal foundations of the country's functioning, especially in the economic sector;

– Social risks. The impact of social fluctuations on Ukraine's economic security should not be underestimated in terms of consequences and damage. The population of the country is the main driver of the economy, as it is people who are engaged in entrepreneurship, pay taxes, elect public authorities that administer economic processes, ensure commodity and currency circulation, and perform other financial activities. The outflow of people from the territory of the state into labour emigration, a decline in purchasing power, rising poverty levels, and other social problems have a very negative impact on the economy and threaten its security. For example, the shadowing of business activities due to an inefficiently designed taxation system can cause significant losses for the state budget and an inability to cover planned expenditures;

– Environmental risks. The environment of our country is an equally important factor affecting economic security. In particular, environmental disasters and emergencies can make certain areas uninhabitable, destroy property, pose a threat to the lives of the population, and lead to internal displacement, etc. In each of the above cases, various economic threats arise, ranging from the liquidation of business facilities to additional burdens on local and state budgets, in particular, in case of the need to overcome the consequences of environmental emergencies, etc;

– Financial risks. In general, O.S. Udalov argues that financial risks are a set of interrelated risks associated with the failure to fulfil financial obligations by the opposite party and risks of changes in financial market conditions. Financial risks include, in particular, credit, currency, insurance and other risks (Udalov, 2010). Therefore, in the context of the issues raised in this study, financial risks are associated with internal processes that directly constitute the content of the national economy and are expressed in the activities of, first of all, banking and credit and financial institutions, as well as enterprises and organisations that have a high degree of financial and economic influence, such as budget-forming enterprises. Disruption of the normal operation of these entities may change the volume of state budget revenues, capital flows, lead to inflation, etc.

4. Conclusions

To sum up, the results of our research suggest that the risks to Ukraine's economic security are a combination of factors (legal, administrative and managerial risks, military and political, social, environmental and financial ones) that negatively affect the efficient and high-quality functioning of the national economy.

References:

Avanesova, N.E. (2016). Ryzyky ta dzherela zahroz ekonomichnii bezpetsi oboronnoi promyslovosti [Threats to the economic security of the state in the context of global transformations]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu, № 7, pp. 6-9. (in Ukrainian)

Bilodid, I.K. (1977). Slovnyk ukrainskoi movy [Dictionary of the Ukrainian language]: Kyiv (in Ukrainian)

Heiets, V.M., Kyzym, M.O., Klebanova, T.S., Cherniak, O.I. (2006). Modeliuvannia ekonomichnoi bezpeky: derzhavy, rehionu, pidpryiemstva [Modeling of economic security: state, region, enterprise]. Kh. : VD «Inzhek» (in Ukrainian)

Kozachenko, H.V., Kuzmenko, O.M. (2013). Ekspleinarnyi bazys ekosesenta: pryntsypovyi pidkhid do zmistu [Explanatory basis of ecosense: a principled approach to content]. *Ekonomika. Menedzhment. Pidpryiemnytstvo*, № 25. pp. 209–217. (in Ukrainian)

Maslii, O.A., Kivshyk, O.P., Kotelevets, M.M. (2023). Zahrozy ekonomichnoi bezpeky derzhavy v umovakh hlobalnykh peretvoren [Threats to the economic security of the state in the context of global transformations]. *Ekonomichnyi prostir*, № 183. pp. 25-30. (in Ukrainian)

Pasternak-Taranushchenko, H.O. (1994). Ekonomichna ta natsionalna bezpeka Ukrainy [Economic and national security of Ukraine]. *Ekonomika Ukrainy,* № 2. pp. 51-57. (in Ukrainian)

Shevchenko, L.S., Hrytsenko, O.A., Makukha, S.M. (2009). Ekonomichna bezpeka derzhavy: sutnist ta napriamy formuvannia [Economic security of the state: essence and directions of formation]. Kh.: Pravo (in Ukrainian)

Udalov, O.S. (2010). Pravove rehuliuvannia strakhuvannia u sferi investytsiinoi diialnosti [Legal regulation of insurance in the sphere of investment activity]. Kyiv: Kyivskyi natsionalnyi universytet vnutrishnikh sprav. (in Ukrainian)

Zakon Ukrainy Pro natsionalnu bezpeku Ukrainy: vid 21 chervnia 2018 roku № 2469-VIII [Law of Ukraine On National Security of Ukraine: dated June 21, 2018 No. 2469-VIII]. (2018). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text (in Ukrainian)

Андрій Пащук,
здобувач Науково-дослідного
інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
pashchukandrii@ukr.net
***ORCID ID:** 0000-0001-9519-6476*

ПОНЯТТЯ ТА ВИДИ РИЗИКІВ ЕКОНОМІЧНІЙ БЕЗПЕЦІ УКРАЇНИ

Анотація. ***Мета.*** Мета статті полягає у тому, щоб визначити поняття та виділити види ризиків економічній безпеці України. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених, сформовано авторський підхід щодо визначення поняття ризиків економічної безпеки. На основі узагальнення норм чинного законодавства та теоретичних підходів вітчизняних вчених, виділено та охарактеризовано наступні ризики економічній безпеці України: правові; корупційні; адміністративно-управлінські; військово-політичні; соціальні; екологічні; фінансові. Наголошено, що економічна безпека є складовою безпеки національної та характеризує стан захищеності економічних інтересів держави, забезпечення її сталого економічного розвитку. Таке визначення має цілком раціональне зерно та логіку з огляду на його нормативне підґрунтя, однак, практично не домінує в теоретико-правовій царині. Як правило вчені розглядають дану категорію значно ширше. З'ясовано, що економічна безпека України – це складова національної безпеки, яка представляє собою забезпечений та підтримуваний державою стан позитивного, ефективного та якісного функціонування національної економіки, що сприяє економічному розвитку держави, внутрішній стабільності та соціальному добробуту, впровадженню міжнародних економічних стандартів та появі нових фінансово-правових інститутів. Визначено, що сутність правових ризиків обумовлюється тим, що від якості нормативно-правового регулювання тих чи інших суспільно-правових відносин залежить повнота реалізації прав і законних інтересів держави в цілому, а також кожної окремої людини. Так, виключну важливість нормативні джерела відіграють у контексті регулювання загальнонаціональних процесів, особливо тих, що пов'язані з національною безпекою та всіма її складовими. Зрозумілість, логічність, послідовність та гармонійність нормативно-правових актів забезпечує упорядкування економіко-правових процесів, їх безпеку, цільову спрямованість. Відсутність належного правового регулювання викликає колізії, конфлікти правових норм, юридичний вакуум, за якого національна економіка працює неправильно, дає широкі ресурси для протиправної діяльності окремих осіб та груп, а також несе інші негативні впливи. ***Висновки.*** Зроблено висновок, що ризики економічній безпеці України представляють сукупність чинників (правового, адміністративно-управлінського, військово-політичного, соціального, екологічного та фінансового характеру), які негативно впливають на стан ефективного та якісного функціонування національної економіки.

Ключові слова: національна безпека, економічна безпека, ризики, національна економіка, законодавство.

UDC 342.9: 351.77
DOI https://doi.org/10.32849/2663-5313/2023.8.13

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*

CONCEPTUAL APPROACHES TO THE SYSTEM OF PRINCIPLES FOR FORMATION AND IMPLEMENTATION OF PUBLIC HEALTH POLICY

Abstract. ***Purpose.*** The purpose of the article is to reveal the conceptual approaches to the system of principles for the formation and implementation of public health policy based on a systematic analysis of the integration of administrative and medical law. ***Results.*** The principles of formation and implementation of public health policy are the basic ideas and principles that determine the main areas, methods and means of designing and implementing state measures to protect the health of the population, and which are characterised by systematicity, consistency, universality, stability, substantive certainty and mandatory nature, and reflect social needs, political, economic and moral principles aimed at ensuring the right to health, access to medical services, protection of the rights of patients and medical personnel, and contribute to improving the overall health of society. ***Conclusions.*** The following classification of the principles of formation and implementation of public health policy is proposed: 1) general principles of public policy: – legality (compliance of all decisions and actions with the Constitution, laws of Ukraine and international treaties); – fairness (ensuring equal access to medical services and appropriate conditions for the realisation of the right to health); – transparency and openness (open access to information on healthcare policy, processes and results); 2) principles of patient-centredness: – accessibility (equal access to medical and rehabilitation services for all citizens regardless of their social status or place of residence); – patient-centredness (priority of patients' health and safety); – inclusiveness and barrier-free (ensuring conditions for all groups of the population, including people with disabilities, to receive medical care); 3) principles of effectiveness and efficiency: – scientific validity (implementation of solutions based on scientific research and evidence-based medicine); – efficiency (maximisation of results with optimal use of resources); – effectiveness (focus on achieving specific, measurable results in improving public health); 4) principles of financial and logistical support: – multichannel financing (use of different sources of financing to ensure the sustainability of the healthcare system); – logistical support (provision of necessary equipment, technologies and medicines); – economic feasibility (decision-making based on the analysis of economic consequences and efficient use of resources); 5) principles of good governance and organisation: – decentralisation (redistribution of powers between central and local authorities); – self-governance (granting healthcare institutions and their employees autonomy in decision-making); – inter-sectoral cooperation (coordination of actions between different sectors and agencies to achieve common healthcare goals); 6) principles of innovation and development: – innovation (constant updating of methods and approaches to medical care; introduction of the latest medical technologies, telemedicine and digital solutions); – interoperability (formation of a single medical information space to ensure data exchange between different systems and institutions); 7) principles of public health, social responsibility and public participation: – the principle of humanistic orientation (priority of universal values and interests of citizens over other interests); – the principle of social responsibility (recognition of the joint responsibility of the state, society and individuals for the health of the population); – public participation (involvement of the public in the formation and implementation of health policy); – solidarity (support and assistance to vulnerable groups of the population through solidarity mechanisms).

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

1. Introduction

Health policy is a complex political phenomenon, determined by diverse and complex factors. In today's context, it is based on a comprehensive, non-departmental approach, as health has become a social issue worldwide and is in the focus of government planners, economists, public health

professionals, policy researchers, representatives of NGOs and supranational organisations, and remains the domain of the state, which is politically and legally responsible for measures and interventions to ensure the health of the population, moreover, serves as an indicator of the humanisation of social relations, social health of society and responsibility of the authorities [5, p. 288–299].

Modern studies emphasise the need to develop and implement public policy that would meet the needs of society and address current challenges. Issues that focus on an integrated approach to reforming the healthcare system in the context of administrative law are covered in the works by scholars such 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, it is essential to develop new administrative and legal approaches and mechanisms that will ensure quality healthcare and the readiness of the healthcare system to respond to global threats.

The purpose of the article is to reveal the conceptual approaches to the system of principles for the formation and implementation of public health policy based on a systematic analysis of the integration of administrative and medical law.

2. Implementation of public health policy

Aware of the importance of the issues of administrative and legal support of regional health care, N.V. Shevchuk suggests that the principles of the administrative and legal framework for health care at the regional level should be understood as the defining ideas underlying the development of public policy for the organisation and direct provision of medical care, ensuring and protecting the rights of recipients and providers of medical services, and promoting the improvement of the health status of the region (Shevchuk, 2013, pp. 80–86).

Therefore, the principles of formation and implementation of public health policy are the basic ideas and principles that determine the main areas, methods and means of designing and implementing state measures to protect the health of the population, and which are characterised by systematicity, consistency, universality, stability, substantive certainty and mandatory nature, and reflect social needs, political, economic and moral principles aimed at ensuring the right to health, access to medical services, protection of the rights of patients and medical personnel, and contribute to improving the overall health of society.

According to the Fundamentals of Ukrainian legislation on health care, the main principles of healthcare in Ukraine are: recognition of healthcare as a priority area of activity of society and the state, one of the main factors of survival and development of the people of Ukraine; observance of human and civil rights and freedoms in the field of healthcare and provision of related state guarantees; humanistic orientation, ensuring the priority of universal human values over class, national, group or individual interests, enhanced medical and social protection of the most vulnerable segments of the population; equality of citizens, democracy and universal access to medical and rehabilitation care and other healthcare services; compliance with the tasks and level of socio-economic and cultural development of society, scientific validity, logistical and financial support; focus on modern standards of health, medical and rehabilitation care, use of modern digital technologies, telemedicine and tele-rehabilitation, combination of national traditions and achievements and the best international experience in healthcare; preventive and prophylactic nature, integrated social, environmental, medical and rehabilitation approach to healthcare; a multi-faceted healthcare economy and multi-channel financing, a combination of state guarantees with demonopolisation and encouragement of entrepreneurship and competition; decentralisation of public administration, development of self-governance of institutions and independence of healthcare workers on a legal and contractual basis; formation of a unified medical information space as a set of databases, technologies for their maintenance and use, information and communication systems operating on the basis of common principles and general rules, as well as on the basis of interoperability, integration and implementation of e-health tools; compliance with the principles of barrier-free and inclusive provision of medical and/or rehabilitation care, including the use of telemedicine methods and tools (Law of Ukraine Fundamentals of Ukrainian legislation on health care, 1992).

3. Systems of principles for the formation of public health policy

Furthermore, the Law of Ukraine 'On the public health system' provides for that the public health system in Ukraine operates in compliance with the following basic principles: 1) legitimacy – compliance with the Constitution and laws of Ukraine and international treaties of Ukraine; 2) fairness – creation of appropriate conditions for everyone to exercise the right to health and ensure equal access to healthcare services in accordance with the needs throughout life; 3) integrity –

a holistic approach to health and recognition of the unity of its physical, mental, psychological, spiritual and social aspects; 4) population-oriented – priority of the interests of health and safety of the population in the organisation and provision of services in the public health system; 5) harm minimisation – systematic elimination or reduction of negative consequences for human health from various types of human behaviour and activities; 6) participation and responsibility – involvement of society in the implementation of operational functions of public health, implementation of measures and mutual responsibility of the individual and the state for actions or inaction in the field of public health; 7) timeliness – prompt implementation of measures necessary to ensure the protection of public health, applied in the presence of potential risks to the health and epidemic well-being of the population; 8) inter-sectoral cooperation – coordination of activities of state authorities and local self-government bodies in the field of public health; 9) implementation of best international practices – international cooperation and focus on timely and proper implementation of best international practices in the field of public health based on evidence; 10) decision-making validity – decision-making in the field of public health based on a preliminary analysis of the consequences, including economic, security and strategic, as well as economic feasibility; 11) combating discrimination against health – prevention of discrimination on the basis of disability and health status, overcoming stigma against people with diseases (Law of Ukraine On the Public Health System, 2022).

The principles of reforming the sector and forming a new public health policy in the country should be: fairness; solidarity; focus on improving public health; focus on meeting the fair needs of the population; focus on improving the quality of health care; effectiveness; efficiency; public participation in policy making (Semyhina, 2014), according to modern researchers (Spivak, 2015, pp. 288–299).

N.V. Shevchuk proposes the following variant of classification of the principles of the administrative and legal framework for health care at the regional level, according to which it is necessary to distinguish between two groups of principles: 1) of the national focus: – a combination of national traditions and foreign experience in organising and providing medical care; – preventive orientation of medical care; – a combination of centralisation and decentralisation of health care; 2) of a mainly regional focus: – accessibility of medical care; – priority of development of the administrative and legal framework for primary healthcare; – planning of the use of medical service forces and means at the regional level (Shevchuk, 2013, pp. 80–86).

According to V.M. Kliuzko, Ukraine should be guided by the experience of Western countries and the European Union in its development and building of statehood, development of social sectors, namely the healthcare sector. Activities in this area should be based on the following principles and in compliance with the following requirements and principles: – openness, which implies active communication with the public regarding the tasks and responsibilities of various authorities and state institutions, as well as decisions made by them; – participation, which implies that citizens and their organisations are not perceived as passive objects (or actors) of policy and administrative decisions, but as direct, active and interested parties with the right to participate in the administrative decision-making process at all stages of policy – from the initial stages and throughout the entire policy and management cycle; – accountability, which is based on the principles of the European right to 'good administration' ('right to good administration' / European Charter of Fundamental Rights, Article 41), in addition to traditional types of responsibility (political and administrative), also provides for the obligation of the authorities to respond to the needs of citizens; – effectiveness: public policy, legislative and regulatory systems should respond to real social needs, have clear objectives and be adopted based on an assessment of their expected impact and previous experience; – coherence requires not only political leadership, but also greater consistency between different instruments, policy mechanisms and different strategies to address the same reality (Kliuzko, 2013).

4. Conclusions

In our opinion, the following classification of the principles of formation and implementation of public health policy can be proposed:

1) General principles of public policy:

– Legality (compliance of all decisions and actions with the Constitution, laws of Ukraine and international treaties);

– Fairness (ensuring equal access to medical services and appropriate conditions for the realisation of the right to health);

– Transparency and openness (open access to information on healthcare policy, processes and results);

2) Principles of patient-centredness:

– Accessibility (equal access to medical and rehabilitation services for all citizens regardless of their social status or place of residence);

– Patient-centredness (priority of patients' health and safety);

– Inclusiveness and barrier-free (ensuring conditions for all groups of the population, including people with disabilities, to receive medical care);

3) Principles of effectiveness and efficiency:

– Scientific validity (implementation of solutions based on scientific research and evidence-based medicine);

– Efficiency (maximisation of results with optimal use of resources);

– Effectiveness (focus on achieving specific, measurable results in improving public health);

4) principles of financial and logistical support:

– Multichannel financing (use of different sources of financing to ensure the sustainability of the healthcare system);

– Logistical support (provision of necessary equipment, technologies and medicines);

– Economic feasibility (decision-making based on the analysis of economic consequences and efficient use of resources);

5) Principles of good governance and organisation:

– Decentralisation (redistribution of powers between central and local authorities);

– Self-governance (granting healthcare institutions and their employees autonomy in decision-making);

– Inter-sectoral cooperation (coordination of actions between different sectors and agencies to achieve common healthcare goals);

6) Principles of innovation and development:

– Innovation (constant updating of methods and approaches to medical care; introduction of the latest medical technologies, telemedicine and digital solutions);

– Interoperability (formation of a single medical information space to ensure data exchange between different systems and institutions);

7) Principles of public health, social responsibility and public participation:

– Humanistic orientation principle (priority of universal values and interests of citizens over other interests);

– Social responsibility principle (recognition of the joint responsibility of the state, society and individuals for the health of the population);

– Public participation (involvement of the public in the formation and implementation of health policy);

– Solidarity (support and assistance to vulnerable groups of the population through solidarity mechanisms).

References:

Kliuzko, V.M. (2013). Vydy pryntsypiv derzhavnoho upravlinnia v haluzi okhorony zdorovia Ukraini [Types of principles of public administration in the field of health care in Ukraine], Derzhavne budivnytstvo, 2009, no. 1, pp. 11-22 (in Ukrainian).

Semyhina, T. (2014). Formuvannia tsinnosti zdorovoho sposobu zhyttia yak imperatyv suchasnoi polityky okhorony zdorovia [Formation of the value of a healthy lifestyle as an imperative of modern health care policy]. Naukovyi chasopys NPU imeni M.P. Drahomanova, 2014, no. 1, pp. 76-82 (in Ukrainian).

Shevchuk, N.V. (2013). Pryntsypy administratyvno-pravovoho zabezpechennia okhorony zdorovia na rehionalnomu rivni [Principles of administrative and legal provision of health care at the regional level]. Publichne pravo, 2013, no. 4, pp. 80-86. (in Ukrainian).

Spivak, M.V. (2015). Pryntsypy, tsili, zavdannia, funktsii derzhavnoi polityky zdoroviazberezhennia: problemy stanovlennia v Ukraini [Principles, goals, tasks, functions of the state policy of health care: problems of formation in Ukraine]. Politolohichnyi visnyk, 2015, no. 78, pp. 288–299 (in Ukrainian).

Zakon Ukrainy Pro systemu hromadskoho zdorovia: vid 6 veresnia 2022 roku № 2573-IX [Law of Ukraine On the Public Health System: dated September 6, 2022 No. 2573-IX]. (2022). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2573-20#Text (in Ukrainian).

Zakon Ukrainy Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia: vid 19 lystopada 1992 roku № 2801-XII [Law of Ukraine Fundamentals of Ukrainian legislation on health care: dated November 19, 1992 No. 2801-XII]. (1992). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text (in Ukrainian).

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*

КОНЦЕПТУАЛЬНІ ПІДХОДИ ДО СИСТЕМИ ПРИНЦИПІВ ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОХОРОНИ ЗДОРОВ'Я

Анотація. ***Мета.*** Мета статті полягає в тому, щоб на основі системного аналізу інтеграції адміністративного та медичного права, розкрити концептуальні підходи до системи принципів формування та реалізації державної політики у сфері охорони здоров'я. ***Результати.*** Принципи формування та реалізації державної політики у сфері охорони здоров'я – це базові ідеї та засади, які визначають основні напрями, методи та засоби створення і впровадження державних заходів щодо охорони здоров'я населення, що характеризуються системністю, узгодженістю, універсальністю, стабільністю, предметною визначеністю та загальнообов'язковістю, та відображають суспільні потреби, політичні, економічні та моральні засади, спрямовані на забезпечення права на здоров'я, доступу до медичних послуг, захисту прав пацієнтів та медичного персоналу, а також сприяють покращенню загального стану здоров'я суспільства. ***Висновки.*** Запропоновано наступну класифікацію принципів формування та реалізації державної політики у сфері охорони здоров'я: 1) загальні принципи державної політики: – законність (відповідність усіх рішень та дій Конституції, законам України та міжнародним договорам); – справедливість (забезпечення рівного доступу до медичних послуг та належних умов для реалізації права на здоров'я); – прозорість та відкритість (відкритий доступ до інформації про політику, процеси та результати у сфері охорони здоров'я); 2) принципи орієнтованості на пацієнта: – доступність (рівний доступ до медичних та реабілітаційних послуг для всіх громадян незалежно від їх соціального статусу чи місця проживання); – орієнтованість на пацієнта (пріоритет інтересів здоров'я та безпеки пацієнтів); – інклюзивність та безбар'єрність (забезпечення умов для отримання медичної допомоги всіма групами населення, включаючи людей з інвалідністю); 3) принципи ефективності та результативності: – наукова обґрунтованість (впровадження рішень на основі наукових досліджень та доказової медицини); – ефективність (максимізація результатів при оптимальному використанні ресурсів); – результативність (орієнтація на досягнення конкретних, вимірюваних результатів у покращенні здоров'я населення); 4) принципи фінансової та матеріально-технічної забезпеченості: – багатоканальність фінансування (використання різних джерел фінансування для забезпечення стійкості системи охорони здоров'я); – матеріально-технічна забезпеченість (забезпечення необхідного обладнання, технологій та медикаментів); – економічна доцільність (прийняття рішень на основі аналізу економічних наслідків та ефективного використання ресурсів); 5) принципи належного управління та організації: – децентралізація (перерозподіл повноважень між центральними та місцевими органами влади); – самоврядування (надання закладам охорони здоров'я та їх працівникам автономії у прийнятті рішень); – міжгалузеве співробітництво (координація дій між різними секторами та відомствами для досягнення загальних цілей у сфері охорони здоров'я); 6) принципи інновацій та розвитку: – інноваційність (постійне оновлення методів та підходів до надання медичної допомоги; впровадження новітніх медичних технологій, телемедицини та цифрових рішень); – інтероперабельність (формування єдиного медичного інформаційного простору для забезпечення обміну даними між різними системами та установами); 7) принципи забезпечення громадського здоров'я, соціальної відповідальності та участі громадськості: – принцип гуманістичної спрямованості (пріоритет загальнолюдських цінностей та інтересів громадян над іншими інтересами); – принцип соціальної відповідальності (визнання спільної відповідальності держави, суспільства та індивідів за здоров'я населення); – участь громадськості (залучення громадськості до формування та реалізації політики охорони здоров'я); – солідарність (підтримка та допомога вразливим групам населення через солідарні механізми).

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

UDC 343.1
DOI https://doi.org/10.32849/2663-5313/2023.8.14

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

ORGANISATION AND TACTICS OF SEARCH DURING INVESTIGATION OF CRIMES COMMITTED BY TRANSNATIONAL ORGANISED CRIMINAL GROUPS

Abstract. Purpose. The purpose of the article is to formulate the tactical principles of 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. The tactical principles of conducting a search in the course of investigation of the category of unlawful acts under study are formulated. It is indicated that the search plays an important role in property-related criminal proceedings. This is due to the fact that when taking possession of certain objects in the course of committing any category of illegal acts, in most cases, offenders keep at least some of them for a certain time. Crimes committed by transnational organised criminal groups are also, in many cases, property-related. In addition, in many situations, this investigative (search) action enables to identify the organisation of a particular group and the roles of its members. It is specified that the authorised person, considering the investigative situation, decides what measures should be taken to ensure unimpeded access to the searched premises. Once the investigative team has entered the place of search (apartment, house, other premises), the authorised person must offer the person in the premises to hand over the items specified in the investigating judge's ruling, as well as those not specified - illegally obtained, withdrawn from civilian circulation, etc. In addition, from the very beginning of the procedural action, the authorised person shall establish psychological contact. In addition, it should be noted that the handing over of the above-mentioned hidden items is not a reason to terminate the search. After all, in many situations, a person may have committed other illegal actions, the evidence of which should also be revealed during the procedural action. ***Conclusions.*** It is stated that it is necessary to involve relevant specialists in the search to extract information from electronic computers. After all, for the effective implementation of this procedural action, the specified equipment must be examined. This type of examination has a certain specificity, which is due to the objective prospect of very quickly eliminating the information contained therein. It is specified that all actions related to work with electronic computing equipment should be performed only by a specialist to protect against possible deletion of the available information. This can be ensured by its protection until the relevant specialist arrives at the place of search.

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

1. Introduction

The search plays an important role in property-related criminal proceedings. This is due to the fact that when taking possession of certain objects in the course of committing any category of illegal acts, in most cases, offenders keep at least some of them for a certain time. Crimes committed by transnational organised criminal groups are also, in many cases, property-related. In addition, in many situations, this investigative (search) action enables to identify the organisation of a particular group and the roles of its members. Therefore, it has become necessary to study 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 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 tactical principles of search during investigation of crimes committed by transnational organised criminal groups.

2. The importance of a search in the investigation of criminal offences

To begin with, M.M. Yefimov argues, "... the importance of searches in the investigation of criminal offences against morality is due to the fact that often their results contain initial information proving the involvement of persons in immoral actions, and can be the basis for putting forward forensic versions and planning the investigation. In addition, all material traces of unlawful acts found during the search can be compared with the information obtained during other investigative (search) actions: inspection of the scene, interrogation of various categories of persons" (Yefimov, 2017). Given that crimes against morality are in some cases committed by transnational organised criminal groups, we also support the above position.

Moreover, L.P. Kovtunenko argues that "... being in a state of strong excitement, the searched person is unable to control his or her actions, the results of which may be expressed in affective outbursts, manifestations of hysteria. Conversely, the passive participation of the searched person will exclude any contact with the investigator. In this case, the person understands that his or her behaviour during the search is being monitored by law enforcement officers, and therefore tries to pull himself or herself together in order to suppress his or her psychophysiological reactions, demonstrates indifference, silence, and stays in one place" (Kovtunenko, 2012). As we can see, thanks to the right search tactics, it is possible to collect evidential information as fully as possible.

It is important to define certain procedural aspects regarding the execution of a ruling on permission to search a person's home or other property, as defined in specific paragraphs of Article 236 of the CPC of Ukraine, such as: "...3. Prior to the execution of the investigating judge's ruling, the person who owns the dwelling or other property, and in his/her absence - another person present, shall be shown the ruling and provided with a copy thereof. The investigator, public prosecutor may prohibit any person from leaving the searched place until the search is completed and from taking any action which impede conducting search. Failure to follow these requests entails liability established by law. The investigator or prosecutor shall not prohibit the search participants from using legal assistance of a lawyer or representative. The investigator, prosecutor is obliged to allow such a lawyer or representative to participate in the search at any stage of its conduct. 4. If no one is present in the home or other possession, the copy of ruling should be left visible in the home or other possession. In such a case, investigator, public prosecutor is required to ensure preservation of property contained in the home or any other possession and make it impossible for unauthorized individuals to have access thereto. 5. Search based on an investigating judge's ruling should be conducted within the scope necessary to attain the objective of search. Upon decision of the investigator, public prosecutor, individuals present in the home or other possession may be searched if there are sufficient grounds to believe that they hide on their person objects or documents which are important for criminal proceedings. Such search should be conducted by individuals of the same sex in the presence of a lawyer, representative at the request of such person. Failure of the lawyer or representative to appear for the search within three hours does not prevent the search from being conducted. The course and results of a personal search are subject to mandatory recording in the relevant protocol" (Criminal Procedure Code of Ukraine, 2012).

Furthermore, we consider it necessary to cite the opinion of a group of researchers (R.I. Blaguta, Ye.V. Priakhin, R.I. Sybirna) who stated that "...a search can be characterised by both conflict and non-conflict situations. The specificity of the search determines the need to distinguish between the following two systems of tactics: tactics aimed at communicating with the searched person; tactics aimed at conducting search actions. The system of tactics for communicating with the searched person includes tactical combinations aimed at: removing obstacles and resistance of the searched person; stimulating the searched person to communicate with the investigator; establishing psychological contact with the searched person and obtaining search information from him/her" (Priakhin, 2016). According to M.B. Holovko and I.P. Osypenko, "...police officers should take measures to ensure the invisibility of the group's arrival: leave the vehicle invisible from the windows of the premises being searched; approach the house and enter it alone or in small groups (from two to three people). The investigator immediately arranges for surveillance of the windows and other exits (if any). In order to get into the apartment, they use a person known to the residents: electricians, plumbers, etc. An apartment can be entered when someone leaves it. In cases when nobody opens the door for a long time, the investigator notifies the apartment of the forced entry and instructs them to open it. When there is information that the offender is armed and may resist, special combinations are carried out to ensure the safety and disarmament

of the person(s) at the place of search" (Holovko, 2015). That is, the authorised person, considering the investigative situation, decides what measures should be taken to ensure unimpeded access to the searched premises.

Once the investigative team has entered the place of search (apartment, house, other premises), as prescribed by the provisions of the CPC of Ukraine, the authorised person shall offer the person in the premises to hand over the items specified in the investigating judge's ruling, as well as those not specified - illegally obtained, withdrawn from civilian circulation, etc. In addition, from the very beginning of the procedural action, the authorised person shall establish psychological contact. In addition, it should be noted that the handing over of the above-mentioned hidden items is not a reason to terminate the search. After all, in many situations, a person may have committed other illegal actions, the evidence of which should also be revealed during the procedural action. Based on the study of forensic practice, we found that in 11% of searches conducted, in addition to the things provided for in the ruling, evidentiary information was found that indicated that the person had committed other illegal acts.

With regard to psychological contact, it should be emphasised that its establishment is of great importance, as it ensures mutual perception of the participants in communication, as well as the exchange of verbal and non-verbal data. According to some authors, this "...contact can be initiated, for example, when the investigator offers to hand over the objects sought before the search, arguing that it is undesirable for children to see the scene of the search when they return from school. Even if the answer is negative, this step can be the basis for further contact. If the person being searched is stiff, self-confident or aggressive, you can try to relieve this state by talking about family relationships, work, health, etc." (Kazmirenko and Moiseieva, 2007).

For example, B. and Z. decided to sell a particularly dangerous drug, cannabis (marijuana), remotely using the Internet, the Telegram messenger. They decided to sell the drugs by leaving them in a certain place, namely by making so-called 'bookmarks,' which should contain a certain amount of particularly dangerous cannabis (marijuana) placed in a paper roll or in a plastic bag with or without a fastener, magnet or wrapped with adhesive tape of different colours. The colour of the adhesive tape corresponded to the weight of the drug that was in the so-called 'bookmark.' In order to implement the criminal intent, in January 2019, the above-mentioned persons purchased a card of the mobile operator PJSC VF Ukraine and registered in the Telegram messenger using mobile communication and the Internet. Then, using the Internet and the created account in the Telegram messenger, they created chats for consumers, including those from other countries (Case No. 607/9052/22, 2022). During the searches of the suspects' residences, the police found drugs and evidence of other criminal offences.

3. Features of search tactics

One of the most effective search tactics is the involvement of the victim or suspect in the search. The participation of these persons in the course of the search allows authorised persons to observe their behaviour. Based on an analysis of forensic practice, it was found that victims were involved in the search in 5% of cases, and suspects in 64%.

Another important tactic that can be used during a search is 'verbal intelligence'. According to K. O. Chaplynskyi, it means '...that the investigator, during the search actions, calls out loud the objects that will be searched next. At the same time, the investigator must create the impression in the searched person that the wanted items will be found' (Chaplynskyi, 2011). In addition, the authorised person may address other participants of the search with various proposals: to use technical means, search in another place, etc. According to Yu.I. Rusnak, this tactic enables the person concerned to communicate, as he emphasises, allowing the investigator not only to diagnose the attitude of the searched person to what is happening, but also to encourage him/her to communicate, change behaviour and the chosen position, and try to verbally interact with the investigator (Investigator's Desk Book, 2014). These conditions are ensured by the thoroughness of the search and the use of a large number of technical and forensic tools. Thanks to this tactic, the investigator can determine the person's attitude to this, as well as change their behaviour and start more open communication.

When investigating crimes committed by transnational organised criminal groups, a special feature of the search is that the person cannot be emotionless during the search. This is explained by the fact that the offender can react specifically to certain stages of the search and, in general, is sharply disturbed in such conditions. In view of the above, O.V. Tsyganenko correctly states that "...the tension of the searched person arises internally and manifests itself externally. The person shows signs of excitement, decreased critical thinking, memory, attention, changes in complexion, short-term dilation of the pupils, uncontrolled micromovements that contradict the content of the person's explanations,

biting or clamping of the lips, heavy breathing, etc. The reactions are significantly intensified if the investigative team comes close to the wanted objects" (Tsyhanenko, 2014).

Regarding the inspection stage of the search, a group of scholars notes that it "...includes a walk-through by an authorised person of the entire premises or area to be searched. During this, the investigator, inquiry officer directly gets acquainted with the place of search: the number and location of rooms, the presence of mezzanines, storerooms, closets, outbuildings, utility rooms, etc. With this in mind, he or she specifies the final version of the plan, the order of the search, assigns independent areas to operational officers, decides on the use of technical means (what kind, where, in what sequence), outlines the most realistic locations of the caches, and determines which areas he or she will search himself or herself. At this stage, the investigator asks the person being searched which premises and storage facilities are used by him or her personally and which are used by his or her family members. During a search of an office space, similar questions are asked of the person being searched and his or her co-workers. The data obtained is immediately verified by interviewing other persons present" (Holovko, Osypenko, 2015).

In the context of the above, we consider relevant the thesis of a group of criminologists (P.Ya. Minka, K.O. Chaplynskyi) that "...a search in the open area consists in a forced inspection of areas owned or used by members of a criminal group and their leaders in order to identify objects buried in the ground or otherwise hidden. A search of the area is conducted according to the same rules as a search of premises. However, the specificity of such searches is determined by the large area of the territory, which causes certain difficulties in their conduct. The territory to be searched shall be cordoned off and then inspected. Before the search begins, the location is divided into sections (sectors) of one hundred metres in length, with trees and bushes as landmarks, which allows the head of the search team to observe the actions of the search participants. The boundaries of the search are determined with due regard to the number of search team members, the nature of the area and the objects being searched" (Minka, Chaplynskyi, 2009). As we can see, the authors emphasised that the territory should be cordoned off before starting the search, and only then should the search operations be carried out.

It should also be noted that, according to O. Shvydkyi, '...the objects found during the search should be handled very carefully, as their smooth surfaces may contain fingerprints of the offender and the victim. It is necessary to pick up such items in such a way as not to destroy the traces on them. Traces on objects found not in the suspect's apartment, but in common places, non-residential premises, various buildings, on a garden plot, or in a vegetable garden are of particular importance, when sufficient evidence against the suspect has not been collected, and he or she claims that he or she has nothing to do with these objects. The detection of the suspect's fingerprints on these items will help to expose his or her lies.' (Shvydkyi, 2006).

According to K.O. Chaplynskyi, during searches of persons who are members of a transnational organised criminal group, computer equipment can be found. The author emphasises that "...a computer may contain information that is directly relevant to the investigation of organised crime. This may include: information about the victim (compromising materials, information about commercial and other activities, phone numbers, addresses, etc;) information on the commission of crimes (plans, schedules, schemes); information on the criminal activity of the group (lists of group members, their addresses, list of property obtained by criminal means, etc.); data on persons protecting the criminal group (compromising information on public officials, amounts of remuneration received by corrupt persons for services rendered, list of lawyers serving the group, etc.)" (Chaplynskyi, 2002).

With regard to cyberbanking as a type of activity of transnational organised criminal groups, we believe that the opinion of J. Richards is relevant, as he argues that traditional currency - paper and coins - is easy to use, widespread and anonymous, but its use is usually limited to small amounts ($1 million in $20 weighs approximately 100 pounds) and in a specific country of issue. Therefore, the author concludes that traditional currency, even cheques, banknotes, debentures or any financial instrument, is not applicable in cyberbanking or cyberpayment systems. Instead of transferring or paying with a financial instrument, these electronic, digital or cyber payment systems facilitate the transfer of financial value through online bank accounts, smart cards or the proposed electronic benefit transfer (EBT) cards (Richards, 1999). Obviously, this requires to involve relevant specialists in the search to extract information from electronic computers. After all, for the effective implementation of this procedural action, the specified equipment must be examined. This type of examination has a certain specificity, which is due to the objective prospect of very quickly eliminating the information contained therein.

Therefore, we agree with the statement of O.I. Motliakh that "...when preparing for

a search, it is necessary to obtain information about the availability of computer equipment, its capabilities, technical characteristics and invite a computer systems specialist" (Motliakh, 2002). Therefore, all actions related to work with electronic computing equipment should be performed only by a specialist to protect against possible deletion of the available information. This can be ensured by its protection until the relevant specialist arrives at the place of search.

For example, at the beginning of 2022, Z. created and led an organised group, which at different times included O., F. and Y. All the members of the organised group were united by a single plan with the distribution of functions and roles, were also aware of and approved of the actions of each of them, and had a single intention to enrich themselves personally by purchasing, storing, transporting, and selling, as well as illegal sale of narcotic drugs and especially dangerous narcotic drugs, the circulation of which is prohibited, were aware that they were involved in criminal activity and clearly performed their assigned functions. The organiser of the group Z., after attracting a sufficient number of people for joint criminal activity, namely the commission of particularly serious crimes related to the illegal trafficking of restricted drugs, developed a single plan of criminal actions, which was communicated to all members of the organised group, who subsequently acted in accordance with it. In particular, on July 15, 2022, O., being a member of an organised criminal group, performing the duties assigned to him by the organiser, Z.'s organiser, after the proposal of A.'s offer to purchase "methadone", he made a phone call to the above-mentioned organiser, to which the latter reported that he had the said drugs (Case No. 442/4122/23, 2023). During the searches at the place of residence of Z.'s place of residence, electronic computing equipment (tablets, computers, smartphones) containing information about the sale of drugs to foreigners who exported them abroad was found.

4. Conclusions

Therefore, the search plays an important role in criminal proceedings on activities of transnational crime. It is specified that the authorised person, considering the investigative situation, decides what measures should be taken to ensure unimpeded access to the searched premises. Once the investigative team has entered the place of search (apartment, house, other premises), the authorised person must offer the person in the premises to hand over the items specified in the investigating judge's ruling, as well as those not specified - illegally obtained, withdrawn from civilian circulation, etc. In addition, from the very beginning of the procedural action, the authorised person shall establish psychological contact. In addition, it should be noted that the handing over of the above-mentioned hidden items is not a reason to terminate the search. After all, in many situations, a person may have committed other illegal actions, the evidence of which should also be revealed during the procedural action. Based on the study of forensic practice, we found that in 11% of searches conducted, in addition to the things provided for in the ruling, evidentiary information was found that indicated that the person had committed other illegal acts. It is stated that it is necessary to involve relevant specialists in the search to extract information from electronic computers. After all, for the effective implementation of this procedural action, the specified equipment must be examined. This type of examination has a certain specificity, which is due to the objective prospect of very quickly eliminating the information contained therein. It is specified that all actions related to work with electronic computing equipment should be performed only by a specialist to protect against possible deletion of the available information. This can be ensured by its protection until the relevant specialist arrives at the place of search.

Reference:

Chaplynskyi, K.O. (2002). Osoblyvosti provedennia obshukiv z metoiu vykryttia lideriv (orhanizatoriv) orhanizovanykh zlochynnykh uhrupovan [Peculiarities of conducting searches in order to expose leaders (organizers) of organized criminal groups]. *Aktualni problemy borotby zi zlochynnistiu na etapi reformuvannia kryminalnoho sudochynstva*, 2, 36–38 [In Ukrainian].

Chaplynskyi, K.O. (2011). Taktychni osnovy zabezpechennia dosudovoho rozsliduvannia [Tactical foundations of ensuring pre-trial investigation]. Dnipropetrovskyi derzhavnyi universytet vnutrishnikh sprav. Dnipropetrovsk [In Ukrainian].

Holovko, M.B., Osypenko, I.P. (2015). Obshuk (iurydyko-psykholohichni aspekty orhanizatsii ta provedennia) [Search (legal and psychological aspects of organization and conduct)]. Chernihivskyi natsionalnyi tekhnolohichnyi universytet : Chernihiv [In Ukrainian].

Kazmirenko, L.I., Moiseieva, Ye.M. (2007). Yurydychna psykholohiia [Legal psychology]. Kyiv: KNT [In Ukrainian].

Kovtunenko, L.P. (2012). Sytuatsiinyi pidkhid do taktyky obshuku [Situational approach to search tactics]. *Problemy zakonnosti*, 118, 175–183 [In Ukrainian].

Kryminalnyi protsesualnyi kodeks Ukrainy vid 13 kvitnia 2012 roku № 4651-VI [Criminal Procedure Code of Ukraine dated April 13, 2012 No. 4651-VI]. (2012). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text [In Ukrainian].

Minka, P.Ia., Chaplynskyi, K.O. (2009). Rozsliduvannia zlochyniv, vchynenykh zlochynnymy uhrupovanniamy [Investigation of crimes committed by criminal groups]. Dnipropetrovsk: Dnipropetrovskyi humanitarnyi universytet [In Ukrainian].

Motliakh, O.I. (2002). Taktychni osnovy provedennia obshuku u zlochynakh, poviazanykh z informatsiinymy tekhnolohiiamy [Tactical foundations of conducting a search in crimes related to information technologies]. *Visnyk Akademii pratsi i sotsialnykh vidnosyn Federatsii profspilok Ukrainy*, 2, 157–159 [In Ukrainian].

N.d. (2014). Nastilna knyha slidchoho [Investigator's Desk Book]. Kyiv: «Tsentr uchbovoi literatury» [In Ukrainian].

Priakhin, Ye.V. (2016). Kryminalistyka [Forensics]. Lviv: LvDUVS [In Ukrainian].

Richards, J.R. (1999) Transnational Criminal Organizations, Cybercrime, and Money Laundering : A Handbook for Law Enforcement Officers, Auditors, and Financial Investigators, 1st Edition. London, 311 p.

Shvydkyi, O. (2006). Osoblyvosti provedennia obshuku pry rozsliduvanni kvartyrnykh kradizhok [Peculiarities of conducting searches in the investigation of apartment thefts]. *Pidpryiemnytstvo, hospodarstvo i pravo*, 3, 143–146 [In Ukrainian].

Sprava № 442/4122/23 [Case No. 442/4122/23]. Arkhiv Drohobytskoho miskraionnoho sudu Lvivskoi obl., 2023 r. [In Ukrainian].

Sprava № 607/9052/22 [Case No. 607/9052/22]. Arkhiv Ternopilskoho miskraionnoho sudu Ternopilskoi obl., 2022 r. [In Ukrainian].

Tsyhanenko, O.V. (2014). Vykorystannia spetsialnykh psykhofiziolohichnykh znan u vdoskonalenni taktyky provedennia obshuku [Using special psychophysiological knowledge in improving search tactics]. *Mytna sprava*, 2, 82–86 [In Ukrainian].

Yefimov, M.M. (2017) Orhanizatsiino-pidhotovchi zakhody do provedennia obshuku pry rozsliduvanni zlochyniv proty moralnosti [Organizational and preparatory measures for conducting a search when investigating crimes against morality]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, 3, 190–197 [In Ukrainian].

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

ОРГАНІЗАЦІЯ І ТАКТИКА ПРОВЕДЕННЯ ОБШУКУ ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПОВАННЯМИ

Анотація. ***Мета.*** Метою статті є формулювання тактичних засад проведення обшуку під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупуваннями. ***Результати.*** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинених транснаціональними організованими злочинними угрупуваннями. Сформульовано тактичні засади проведення обшуку під час розслідування досліджуваної категорії протиправних діянь. Вказано, що обшук займає важливе місце в кримінальних провадженнях майнової спрямованості. Це пояснюється тим, що при заволодінні певними об'єктами під час вчинення будь-якої категорії протиправних діянь в більшості випадків у правопорушників залишаються хоча б деякі з них протягом певного проміжку часу. Злочини, вчинені транснаціональними організованими злочинними угрупуваннями, також в багатьох випадках мають майнове спрямування. Крім того, проведення вказаної слідчої (розшукової) дії в багатьох ситуаціях дозволяє виявити організованість певної групи та ролі її учасників. Зауважено, що уповноважена особа з огляду на слідчу ситуацію вирішує, які заходи варто вжити для безперешкодного потрапляння до обшукуваного приміщення. Після того, як слідчо-пошукова група потрапила в місце проведення обшуку (квартиру, будинок, інше приміщення) уповноважена особа повинна запропонувати особі, яка знаходиться у вказаному приміщенні, видати речі, як ті, що вказані в ухвалі слідчого судді, так і ті, що не вказані – незаконно здобуті, вилучені з цивільного обігу тощо. Крім того, з самого початку процесуальної дії уповноважена особа повинна встановити психологічний контакт. Також варто зауважити, що видача вище перехованих речей не є підставою припинення реалізації обшуку. Адже в багатьох ситуаціях особа могла вчинити інші протиправні дії, підтвердження яких також слід в виявляти під час проведення процесуальної дії. ***Висновки.*** Констатована необхідність залучення до проведення обшуку відповідних спеціалістів для вилучення інформації з електронно-обчислювальної техніки. Адже для ефективної реалізації вказаної процесуальної дії необхідно здійснити огляд вказаної техніки. Зазначений вид огляду має певну специфіку, що зумовлюється об'єктивною перспективою дуже швидко ліквідовувати відомості, які у ній знаходяться. Вказано, що усі дії стосовно роботи з електронно-обчислювальної техніки повинен виконувати тільки спеціаліст, щоб уберегтися від ймовірного видалення наявних відомостей. Це можна забезпечити її охороною до прибуття на місце проведення обшуку відповідного фахівця.

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

UDC 343.3
DOI https://doi.org/10.32849/2663-5313/2023.8.15

Oleksandr Tarasenko,
Candidate of Juridical Science,
Director of the Department of Education, Science and Sport of
Ministry of Internal Affairs of Ukraine
10 Akademika Bohomoltsia Street, Kyiv, 01601
TarasenkoOleksandr@ukr.net
ORCID ID: *0000-0003-0369-520X*

HUMAN RIGHTS AND FREEDOMS BY LAW ENFORCEMENT BODIES IN THE CONTEXT OF MARTIAL LAW: CRIMINAL LAW CHALLENGES

Abstract. ***Purpose.*** The purpose of the article is to prove the necessity of introducing independent oversight of law enforcement bodies during martial law based on international experience, and to analyse the criminal law challenges related to ensuring human rights and freedoms under martial law. ***Results.*** The article studies the issue of ensuring human rights and freedoms by law enforcement bodies under martial law, which is a critical issue for modern Ukraine, which is confronting external aggression. The key challenges that arise in the process of human rights protection are analysed, with due regard for the specifics of law enforcement bodies' functioning during military operations. An emphasis is on the necessity to comply with international human rights standards and to adapt national legislation to the new realities. The impact of martial law on legal guarantees and rights of citizens, including freedom of speech, the right to a fair trial and protection from arbitrariness on the part of state authorities, is studied. The article addresses the issue of the effectiveness of mechanisms for controlling the activities of law enforcement bodies the prevention of human rights violations by them. The importance of the state's cooperation with international human rights organisations to monitor the situation and ensure transparency of law enforcement is analysed. The role of law enforcement agencies in documenting and investigating war crimes, as well as in ensuring fair punishment of perpetrators, is also considered. The need to improve the qualifications of law enforcement officers in the context of human rights protection and the development of specialised training programmes is emphasised. ***Conclusions.*** Recommendations are made to improve control mechanisms, establish independent oversight bodies and strengthen cooperation with civil society. The article emphasises that human rights protection under martial law is a key factor for preserving democratic institutions and public trust in the State. Moreover, the effectiveness of law enforcement bodies under martial law determines both short-term stability in society and the long-term prospects for restoring law and order and ensuring justice.

Key words: martial law, law enforcement bodies, external aggression, criminal law challenges, prevention and prophylaxis of criminal offences, transparency of law enforcement.

1. Introduction

Martial law, as a special legal regime designed to ensure the security of the State and its citizens, at the same time poses serious challenges to human rights and freedoms. In such circumstances, law enforcement bodies face a difficult task: to ensure public order and protection from external and internal threats without violating fundamental human rights. One of the key challenges is the balance between ensuring national security and respect for constitutional rights, such as the right to liberty, personal integrity, freedom of speech, etc.

Martial law grants state authorities much broader powers, including the ability to restrict certain rights. However, such measures are often subject to abuse, which causes distrust in law enforcement bodies and exacerbates social tensions. For example, the apprehension of individuals on suspicion of collaboration or espionage often takes place without adequate evidence and judicial review, which may contravene the principle of presumption of innocence.

Another problem is the criminal law qualification of actions related to war crimes, sabotage or treason. Under martial law, law enforcement bodies may not have sufficient resources or time to conduct a full investigation, leading to hasty decisions and potential errors in the qualification of actions.

The regulatory framework for the apprehension of persons, searches, seizure of property, and protection of personal data requires special attention. Violations of these norms may result

in massive complaints and subsequent lawsuits to the European Court of Human Rights.

In addition, martial law increases the risk of political persecution or the use of criminal law to suppress the opposition or abuse it by law enforcement agencies. This creates additional challenges for the rule of law.

Therefore, the issue of ensuring human rights and freedoms by law enforcement bodies in the context of martial law is multifaceted and requires a clear legal framework, proper control over the activities of law enforcement bodies and compliance with international standards. It is necessary to strike a balance between the effectiveness of security measures and the observance of human rights, which remains an urgent task at both the national and international levels.

Some aspects of ensuring human rights and freedoms by law enforcement bodies in the context of martial law have been studied by a number of scholars, such as the following: K. Antonov, V. Berezniak, O. Hrytenko, L. Hula, A. Vorontsov, O. Dudorov, R. Katorkin, P. Nedbailo, L. Nikitenko, I. Nikolaiko, O. Pankevych, P. Rabinovych, S. Tsyhulskyi, V. Shablystyi, S. Shevchenko, O. Yunin and others.

The purpose of the article is to prove the necessity of introducing independent oversight of law enforcement bodies during martial law based on international experience, and to analyse the criminal law challenges related to ensuring human rights and freedoms under martial law.

2. Framework for ensuring human rights and freedoms by law enforcement bodies

IHL is a key component of the system of international law governing relations during armed conflicts. It is a set of legal provisions and principles that aim to limit the impact of war on people and ensure humanity even in the most difficult circumstances. The main goal of IHL is to protect persons not involved in hostilities, such as civilians, medical personnel, and prisoners of war. An important feature of IHL is to regulate the methods and means of warfare, prohibiting the use of certain weapons and tactics that may cause excessive suffering or indiscriminate harm.

The formation of modern international humanitarian law began in the nineteenth century, but it developed most significantly after the Second World War. It was then that the Geneva Conventions of 1949 and their Additional Protocols were adopted, which are the basis of modern IHL. Together with the Hague Conventions, these documents define the rules of warfare and ensure humane treatment of victims of conflicts. In addition, international documents such as the Universal Declaration of Human Rights (Universal Declaration of Human Rights: adopted and proclaimed by Resolution 217 A (III) of the UN General Assembly, 1948), the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950) and the International Covenant on Civil and Political Rights (1966) enshrine fundamental human rights that apply in both peacetime and wartime. While IHL and human rights share a common goal of protecting human dignity and life, IHL is a more specific tool in armed conflict. It not only protects rights, but also regulates hostilities, which makes it extremely important in situations where other legal mechanisms may not be effective. The principles of IHL not only set limits for military operations, but also create mechanisms of accountability for their violation. It should be noted that war crimes committed during the war do not have a statute of limitations, which allows the perpetrators to be brought to justice even decades after the end of the conflict.

The law enforcement function of the State is one of the main instruments for ensuring law and order and protecting the rights of citizens. This function covers a wide range of tasks, including fighting crime, ensuring national security, and protecting state sovereignty and territorial integrity. In the context of Russia's armed aggression against Ukraine, the role of law enforcement bodies has increased significantly, as they not only ensure order in the rear, but also document war crimes, demine the territories and provide assistance to victims.

Ukraine's legislation provides a framework for law enforcement, but needs to be further improved to meet current challenges. Nowadays, different law enforcement bodies operate in Ukraine, including the prosecutor's office, internal affairs bodies, the Security Service of Ukraine, the Border Guard Service and others. Their tasks are not limited to fighting crime, but also include protecting citizens' rights, providing social support and various administrative services (Berezniak, 2023).

In the context of war, Ukraine's law enforcement system is adapting to new challenges. It should be noted that Ukrainian legislation does not contain a clear list of state institutions that are law enforcement bodies. The latter can include: prosecutor's offices; internal affairs bodies; bodies of the Security Service of Ukraine; military law enforcement service in the Armed Forces of Ukraine; customs bodies; state border protection bodies; penitentiary bodies and institutions; state tax authorities; state control and audit authorities; fishery protection bodies; state forest protection bodies; other bodies performing law enforcement or

law enforcement functions (according to part 1, article 2 of the Law of Ukraine 'On State Protection of Judicial and Law Enforcement Officers') (Law of Ukraine On State Protection of State Authorities of Ukraine and Officials, 1998).

Moreover, the performance of functions by law enforcement bodies is permanent, systematic and takes place throughout the existence of objectively determined tasks facing them. Functions are formed, implemented and developed in accordance with the tasks performed by these units. However, the functions of law enforcement bodies have never been defined, and their dialectical development continues.

In the context of Russia's full-scale armed aggression against Ukraine, the units of the Ministry of Internal Affairs (hereinafter - the MIA of Ukraine) are forced to radically review and adapt their activities to new challenges. These challenges cover a wide range of tasks: from ensuring national security and combating crime to maintaining the normal life of the country's population. Their activities are aimed at fulfilling several important functions: law enforcement, social and service (Yunin, Shablystyi, Berezniak, Kuryliuk, 2023). The subject matter of our scientific research is law enforcement, as it plays a key role in activities, especially under martial law, including the fight against crime, anti-terrorist operations, documentation of war crimes, as well as demining of liberated territories and liquidation of the consequences of hostilities. The main units of the MIA, such as the National Police of Ukraine (NPU) and the National Guard of Ukraine (NGU), ensure law and order and security both in the rear areas and in the newly de-occupied territories. Their work contributes to maintaining stability and legality throughout Ukraine.

3. Specific features of law enforcement bodies' activities under martial law to ensure human rights and freedoms

Under martial law, Ukraine's law enforcement bodies face a particularly challenging task of ensuring human rights and freedoms, balancing the need to maintain law and order with respect for the fundamental rights of citizens. The implementation of this function is accompanied by a number of criminal law challenges that require new approaches and increased efficiency of the relevant structures.

In particular, martial law creates situations in which ordinary human rights protection mechanisms may be limited or revised in accordance with the law. However, the key task remains to ensure fundamental rights, including the right to life, liberty and security of person (Yunin, Shevchenko, 2023). Law enforcement bodies control compliance with these rights, in particular through: preventive measures: organising patrols of vulnerable areas, preventing looting, ensuring law and order during evacuation; documenting criminal offences: recording the facts of genocide, crimes against humanity, war crimes and crimes of aggression for further prosecution of the perpetrators; special measures: operational work of units to prevent violations by military or civilians in the combat zone.

In addition, Ukraine's law enforcement bodies work to ensure access to justice for all citizens, even in wartime. This is done through the functioning of investigative bodies: investigations of war crimes, criminal offences against peace, human security and international law and order and other offences are carried out with strict adherence to procedural norms; and the rights of apprehended persons are protected: An important component is the introduction of the Custody Records system, which records every stage of apprehension and controls the observance of rights in police stations; cooperation with international institutions: documenting war crimes in coordination with the ICC helps bring perpetrators to justice (Order of the Ministry of Internal Affairs of Ukraine On approval of the Instructions for the formation and maintenance of the Custody Records information subsystem of the information and communication system "Information Portal of the National Police of Ukraine", 2022).

It should be noted that law enforcement bodies are actively involved in ensuring the safety of internally displaced persons, who are one of the most vulnerable categories of the population during the war. Law enforcement activities are aimed at: controlling humanitarian corridors: ensuring the safe evacuation of civilians from dangerous areas; responding to cases of discrimination: preventing any manifestations of discrimination or hate crimes against IDPs.

In the current environment, countering information aggression is an important component, which also affects human rights. Law enforcement bodies work actively to identify enemy agents and saboteurs whose activities threaten national security; combat propaganda: identify and block disinformation campaigns that could harm public order.

However, it should be noted that law enforcement bodies can be potential violators of human rights and freedoms, as they are authorised to apply coercive measures, while ensuring and protecting human and civil rights and freedoms provided for by the Constitution of Ukraine. In this case, maintaining parity relations that do not cause criticism or complaints is a very difficult task. Therefore, the Draft Law on Amendments to the Criminal Code of Ukraine on Strength-

ening the Responsibility of Law Enforcement Officers: Draft Law of Ukraine 7657 of August 11, 2022, the explanatory note to which states that the adoption of the draft law will strengthen the guarantees of observance of citizens' rights, as well as criminalisation of the listed illegal actions of law enforcement agencies, having a preventive value and will become a factor that reduces the level of violations of citizens' rights in criminal proceedings (Draft Law of Ukraine on Amendments to the Criminal Code of Ukraine to Strengthen the Responsibility of Law Enforcement Officers, 2022). However, the draft law was withdrawn due to significant shortcomings. In this context, it is worth paying attention to the opinion of A. Hrytenko, who states that "if we give a specific assessment of the need for the existence of the proposed provision in the Criminal Code of Ukraine as a special corpus delicti of a criminal offence, then this also raises doubts, since the existing criminal law provisions envisaging liability for a significant violation of human rights and freedoms in the course of criminal proceedings are already sufficient" (Hrytenko, 2022). In this context, it recommends exploring the possibility to strengthen disciplinary or administrative liability of law enforcement bodies for relevant violations that are not covered by the CC of Ukraine. In contrast, we argue that the creation of a separate Regulation on independent oversight of law enforcement bodies could be a new step in overcoming arbitrariness and ensuring transparency of law enforcement activities, in particular under martial law. Such regulation may include: the specifics of the functioning of a special civilian oversight commission made up of representatives of different social groups and legal experts to review complaints about law enforcement misconduct; the introduction of mechanisms for regular audits of law enforcement actions during martial law, including analysis of the use of force and human rights; mandatory investigation of violations, with the commission empowered to access internal investigations of law enforcement agencies; protection of the rights of complainants and witnesses in the complaint process to prevent any harassment or reprisals; public reporting by the commission on the results of investigations and recommendations to increase transparency and accountability of law enforcement bodies. We believe that the introduction of independent oversight mechanisms based on international experience will help Ukraine strengthen control over the activities of law enforcement bodies in wartime. This will ensure transparency and public trust, especially in cases of possible human rights violations.

4. Conclusions

In the context of the full-scale armed aggression of the Russian Federation against Ukraine, law enforcement bodies play a key role in ensuring stability, law and order and human rights. Given the challenges of martial law, their activities cover a wide range of tasks: from fighting crime to documenting genocide, crimes against humanity, war crimes and crimes of aggression. Law enforcement officers also focus on maintaining the security of internally displaced persons, preventing looting and other criminal offences, and organising safe evacuation of the population. In addition, the challenges of information aggression force law enforcement to actively counter disinformation and identify enemy agents who pose a threat to national security.

Despite the challenging conditions, the NPU and NGU are working to ensure the rule of law even in the areas of hostilities. Meanwhile, law enforcement officers face limitations in the implementation of traditional human rights protection mechanisms, which requires new approaches to adapting the regulatory framework. Maintaining a balance between security and respect for citizens' rights remains a major challenge and task for law enforcement agencies.

Therefore, the effectiveness of law enforcement bodies under martial law determines both short-term stability in society and the long-term prospects for restoring law and order and ensuring justice.

References:

Berezniak, V. (2023). Prava liudyny v diialnosti Natsionalnoi politsii Ukrainy: analiz ofitsiinoho dyskursu [Human Rights in the Activities of the National Police of Ukraine: Analysis of Official Discourse]. *Mizhnarodna ta natsionalna bezpeka: teoretychni i prykladni aspekty, 3*, 8-14. (in Ukrainian).

Hrytenko, O.A. (2022). Porushennia prav ta svobod liudyny pratsivnykom pravookhoronnoho orhanu: analiz okremykh tendentsii kryminalnoho zakonodavstva [Violation of human rights and freedoms by a law enforcement officer: analysis of individual trends in criminal legislation]. *Pivdennoukrainskyi pravnychyi chasopys, 3,* 50-54. (in Ukrainian).

Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 3 vereznia 1950 r. [Convention for the Protection of Human Rights and Fundamental Freedoms of September 3, 1950]. (1950). *zakon.rada.gov.ua*. Retrieved from http://zakon.rada.gov.ua/laws/show/995_015 (in Ukrainian).

Mizhnarodnyi pakt pro hromadianski i politychni prava vid 16 hrudnia 1966 r. [International Covenant on Civil and Political Rights of December 16, 1966]. (1966). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_043#Text (in Ukrainian).

Nakaz MVS Ukrainy Pro zatverdzhennia Instruktsii z formuvannia ta vedennia informatsiinoi pidsystemy Custody Records informatsiino-komunikatsiinoi systemy «Informatsiinyi portal Natsional-

noi politsii Ukrainy» : vid 24 travnia 2022 r. № 311 [Order of the Ministry of Internal Affairs of Ukraine On approval of the Instructions for the formation and maintenance of the Custody Records information subsystem of the information and communication system "Information Portal of the National Police of Ukraine": dated May 24, 2022 No. 311]. (2022). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/z0629-22 (in Ukrainian).

Proekt Zakonu Ukrainy pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy shchodo posylennia vidpovidalnosti pratsivnykiv pravookhoronnykh orhaniv: vid 11 serpnia 2022 r. № 7657 [Draft Law of Ukraine on Amendments to the Criminal Code of Ukraine to Strengthen the Responsibility of Law Enforcement Officers: dated August 11, 2022 No. 7657]. (2022). *zakon.rada.gov.ua*. Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/40225 (in Ukrainian).

Yunin, O.S., Shablystyi, V.V., Berezniak, V.S., Kuryliuk, Yu.B. (2023). Zabezpechennia prykordonnoi bezpeky pravookhoronnymy orhanamy systemy MVS Ukrainy v umovakh voiennoho stanu [Ensuring border security by law enforcement agencies of the Ministry of Internal Affairs of Ukraine under martial law]. Dnipro : DDUVS (in Ukrainian).

Yunin, O.S., Shevchenko, S.I. (2023). Kryminalno-pravove zabezpechennia voiennoi bezpeky Ukrainy. Military offences and war crimes: background, theory and practice [Criminal and legal security of military security of Ukraine. Military offences and war crimes: background, theory and practice]. Riga, Latvia : «Baltija Publishing» (in Ukrainian).

Zahalna deklaratsiia prav liudyny : pryiniata i proholoshena rezoliutsiieiu 217 A (III) Hen. Asamblei OON vid 10 hrudnia 1948 r. [Universal Declaration of Human Rights: adopted and proclaimed by resolution 217 A (III) of the UN General Assembly of December 10, 1948]. (1948). *zakon.rada.gov.ua*. Retrieved from http://zakon.rada.gov.ua/laws/show/995_015 (in Ukrainian).

Zakon Ukrainy Pro derzhavnu okhoronu orhaniv derzhavnoi vlady Ukrainy ta posadovykh osib: vid 04 bereznia 1998 r. № 160/98-VR [Law of Ukraine On State Protection of State Authorities of Ukraine and Officials: dated March 4, 1998 No. 160/98-VR]. (1998). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/160/98-%D0%B2%D1%80#Text (in Ukrainian).

Олександр Тарасенко,
кандидат юридичних наук,
директор Департаменту освіти, науки та спорту
Міністерства внутрішніх справ України
вулиця Академіка Богомольця, 10, Київ, 01601
TarasenkoOleksandr@ukr.net
ORCID ID: *0000-0003-0369-520X*

ЗАБЕЗПЕЧЕННЯ ПРАВ І СВОБОД ЛЮДИНИ ПРАВООХОРОННИМИ ОРГАНАМИ У КОНТЕКСТІ ВОЄННОГО СТАНУ: КРИМІНАЛЬНО-ПРАВОВІ ВИКЛИКИ

Анотація. ***Мета.*** Метою статті є обґрунтування необхідності запровадження незалежного нагляду за діяльністю правоохоронних органів під час воєнного стану на основі міжнародного досвіду на підставі аналізу кримінально-правових викликів, пов'язаних із забезпеченням прав і свобод людини в умовах воєнного стану. ***Результати.*** У статті досліджується проблема забезпечення прав і свобод людини правоохоронними органами в умовах воєнного стану, що є критично важливим питанням для сучасної України, яка протистоїть зовнішній агресії. Аналізуються основні виклики, що виникають у процесі захисту прав людини, з урахуванням особливостей функціонування правоохоронних органів під час воєнних дій. Особлива увага приділяється необхідності дотримання міжнародних стандартів у сфері прав людини та адаптації національного законодавства до нових реалій. Досліджується вплив воєнного стану на правові гарантії та права громадян, включаючи свободу слова, право на справедливий суд і захист від свавілля з боку державних органів. Стаття висвітлює питання ефективності механізмів контролю за діяльністю правоохоронних органів, зокрема запобігання випадкам порушень прав людини з їхнього боку. Проаналізовано важливість співпраці держави з міжнародними правозахисними організаціями для моніторингу ситуації та забезпечення прозорості правоохоронної діяльності. Окремо розглядається роль правоохоронних органів у документуванні та розслідуванні воєнних злочинів, а також у забезпеченні справедливого покарання винних осіб. Наголошується на необхідності підвищення кваліфікації працівників правоохоронних органів у контексті захисту прав людини та розвитку спеціалізованих програм підготовки. ***Висновки.*** Запропоновано рекомендації щодо вдосконалення механізмів контролю, створення незалежних органів нагляду та посилення співпраці з громадянським суспільством. У статті підкреслюється, що забезпечення прав людини в умовах воєнного стану є ключовим фактором для збереження демократичних інституцій і довіри громадян до держави. Також, ефективність діяльності правоохоронних органів у період воєнного стану визначає як короткострокову стабільність у суспільстві, так і довгострокову перспективу відновлення правопорядку та забезпечення справедливості.

Ключові слова: воєнний стан, правоохоронні органи, зовнішня агресія, кримінально-правові виклики, запобігання та профілактика кримінальним правопорушення, прозорість правоохоронної діяльності.

UDC 343.98
DOI https://doi.org/10.32849/2663-5313/2023.8.16

Dmytro Tytor,
Postgraduate student at the Scientific Institute of Public Law
2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055
tytordmytro@ukr.net
ORCID ID: *0009-0002-1363-9725*

SPECIFIC FEATURES OF INTERROGATION DURING INVESTIGATION OF FRAUD IN THE FIELD OF VOLUNTEER AND CHARITABLE ACTIVITIES OR HUMANITARIAN AID

Abstract. ***Purpose.*** The purpose of the article is to highlight the problematic issues arising in the course of preparation for interrogation in criminal proceedings concerning fraud in the field of volunteer and charitable activities or humanitarian aid, and also to provide recommendations on the most efficient organisation of this investigative (search) action. ***Results.*** Investigation of fraud in the field of volunteer and charitable activities or humanitarian aid has certain specifics, due to the circumstances and mechanism of this criminal offence. The success of criminal investigations is directly related to the professional training of investigators, including their ability to conduct effective interrogations. Lack of specialised knowledge and skills during interrogation can lead to incomplete or distorted information, which makes it difficult to establish the objective truth. It is emphasised that a mandatory element of obtaining complete and reliable testimony is the comprehensive application of organisational and preparatory measures during interrogation. The following organisational and preparatory measures are considered: studying the materials of criminal proceedings; determining the circle of persons to be interrogated; studying the identity of the interrogated person; outlining the subject matter of interrogation; and drawing up an interrogation plan. The author highlights the problematic issues arising in the course of preparing for interrogation in proceedings concerning fraud in the field of volunteer and charitable activities or humanitarian aid, and also provides recommendations on the most efficient organisation of this investigative (search) action. **Conclusions.** It is concluded that interrogation is not just a collection of information, but a complex psychological interaction where success depends on the investigator's ability to manipulate facts, analyse the behaviour of the interrogated person and build effective communication. Interrogation is the art of recognising non-verbal cues, understanding the psychological mechanisms that govern human behaviour, and using this knowledge to obtain truthful information. The key to this investigative ((search)) action is quality training.

Key words: fraud, pre-trial investigation, criminal proceedings, volunteer and charitable activities, humanitarian aid, interrogation, tactics, witness, victim, suspect.

1. Introduction

Investigation of fraud in the field of volunteer and charitable activities or humanitarian aid has certain specifics, due to the circumstances and mechanism of this criminal offence. The success of the investigation of criminal offences is directly related to the professional training of investigators, in particular their ability to conduct effective interrogations. Lack of specialised knowledge and skills during interrogation can lead to incomplete or distorted information, which makes it difficult to establish the objective truth.

The review of studies and publications that have contributed to the solution of this problem reveals that the problems of interrogation have been repeatedly considered in the scientific works by V. Bakhin, V. Veselskyi, A. Volobuiev, M. Danshyn, V. Zhuravl, V. Konovalova, V. Kuzmichov, M. Saltevskyi, R. Stepaniuk, V. Shepitko, K. Chaplynskyi and other scholars. However, a number of controversial and unresolved issues remain regarding the interrogation of various categories of persons in the investigation of fraud in the field of volunteer and charitable activities or humanitarian aid.

The purpose of the article is to highlight the problematic issues arising in the course of preparation for interrogation in criminal proceedings concerning fraud in the field of volunteer and charitable activities or humanitarian aid, and also to provide recommendations on the most efficient organisation of this investigative (search) action.

2. Features of preparation and conduct of the interrogation

It should be noted that a mandatory element of obtaining complete and reliable testimony is the comprehensive application of organisational and preparatory measures during interrogation. The most common of them are as follows: 1) study the materials of criminal proceedings; 2) determine the circle of persons subject to interrogation and the sequence of its conduct; 3) study the identity of the interrogated person; 4) outline the subject matter of interrogation; 5) determine the time and place of interrogation; 6) select material evidence and other materials to be presented to the interrogated person; 7) determine the technical means for recording the interrogation; 8) study (if necessary) special knowledge; 9) draw up an interrogation plan (Siroukh, 2018).

Some researchers divide preparation for interrogation into three main levels in psychological terms: cognitive, predictive and synthesising. The first is to study the criminal proceedings, familiarise oneself with operational and investigative data, collect information about the personality of the interrogated person, and study special issues. The information obtained at this level enables the interrogator to predict various interrogation situations and use certain tactical techniques. Preparation for interrogation is completed at the synthesising level and includes drawing up a plan for this procedural action (Pavliuk, 2013).

In this context, it should be noted that the stage of familiarisation with the criminal case file involves the need to

– Substantive systematisation of materials on facts, events, persons, etc;

– Identification of contradictions and gaps in the materials under study;

– Obtaining control information that can be used during interrogation (Panov, 2007).

At this stage, the investigator should find out a number of facts relevant to the investigation and determine the specifics of the proceedings, especially with regard to legal relations and the specifics of the implementation of criminal intentions. To do this, it is necessary to get acquainted with a number of legislative provisions regulating legal relations in the investigated area; to determine the manner and procedure for the emergence of relations between entities operating in this segment; understand which violations contain elements of a criminal offence and under what circumstances a civil tort can be considered. To do this, the investigator should study the legal literature in this field in detail, or better yet, seek the assistance of a specialist. In addition, the materials of the criminal proceedings and the documents contained therein should be carefully studied. If at the time of the interrogation there are examination results, it is advisable to analyse the expert opinions and think about how they can be used during the interrogation (Antoniuk, 2020).

During preparation for interrogation, it is also important to study the personality of the interrogated person. For example, by studying the personality of the suspect, the investigator can obtain important information about his or her past, previous crimes, and social environment, which allows for a more complete picture of the crime. The study of data on the witness and the victim will enable to predict their behaviour and the possibility of concealing important details that will contribute to the establishment of the objective truth.

An important element of preparing for interrogation is to determine the personal interest of the person being interrogated in certain results. In particular, it is advisable to establish the nature of the relationship according to the following scheme: witness – suspect, victim – suspect, victim – witness, suspect – another accomplice. The circumstances that are clarified determine the further interrogation tactics (Antoniuk, 2020). However, it is clear that it is difficult to predict in advance what qualities or states of mind will be required during interrogation. However, it is always desirable to have an idea of the characteristics of the interrogated person, such as gender, age, education, profession, interests, level of culture, views, psychological qualities, and possible emotional state at the time of interrogation. The study of the personality of a minor always involves an individual approach: it is necessary to correlate the degree of importance of finding out information about his or her identity with obtaining possible evidential information from him or her, its value in establishing the truth in the case (Konovalova, 2006).

During preparation for the interrogation, the investigator should determine the range of circumstances in respect of which it is necessary to obtain testimony. The information related to the subject of interrogation may be of a special nature, requiring familiarisation with specialised literature, certain technological processes, the procedure for documenting the turnover of goods at the enterprise, the accounting and reporting system, etc. In such cases, the investigator may use expert advice, data contained in expert opinions and other materials of the criminal proceedings, and reference materials. Information related to the subject of interrogation may also be obtained from operational sources (Antoniuk, 2020).

The subject matter of interrogation is formed by the circumstances that are part of the subject matter of proving, as well as other circumstances that can facilitate the comprehensive, complete, objective conduct of criminal proceedings and the adoption of the correct procedural decision. The main circumstances that should be clarified during interrogation are mainly as follows:

1) Data on the identity of the interrogated person: marital status, health status, education, place of work, criminal record, etc;

2) Specific actions related to the commission of a criminal offence, under what circumstances, motives and purpose;

3) When, where and under what circumstances the criminal offence was committed and in what specific ways the criminal acts were manifested;

4) The cause of the unlawful actions and the person's attitude to his/her actions, their assessment;

5) Relations between the perpetrator and the victim;

6) The number and general characteristics of the participants in the unlawful acts;

7) Evidence of a criminal offence;

8) Circumstances that mitigate or aggravate liability;

9) Whether the victim met with the suspects or their acquaintances after the commission of the unlawful acts, etc.

The above circumstances are undoubtedly relevant, however, this list is not exhaustive and is subject to amendment. In each particular case, it may be necessary to establish other circumstances that are important in criminal proceedings.

During interrogation, the priority circumstance to be established is the event of fraud in the field of volunteer and charitable activities or humanitarian aid, where the place and time of the criminal offence are essential elements.

In substantive law, the time, place, manner and other circumstances of the act are optional features of the objective side of the crime, they are considered when classifying the crime and sentencing the perpetrator. However, in cases where they do not have criminal law significance, they must be proved, since without this it is impossible to establish whether the actual act took place (Halahan, Salikhova, 2017). Instead, it should be emphasised that there is no clearly defined place of commission of fraud in the field of volunteer and charitable activities or humanitarian aid. After all, fraudulent actions may begin in one place and continue in another.

3. Fraud in the field of volunteering, charity or humanitarian aid

If the criminal offence was committed in several places, the obligation to determine the place of investigation is assigned to the prosecutor (CPC of Ukraine, Article 218, Part 3). To do so, the investigator should enter information about the criminal offence into the URPI and immediately send a notice to the prosecutor of the commencement of the pre-trial investigation, which should include the information necessary for the prosecutor to make a procedural decision. Upon receipt of the notification, the prosecutor who supervises the observance of laws during this pre-trial investigation determines the place of its conduct. However, he should consider the place where the signs of the criminal offence were detected, the location of the suspect or most of the witnesses, the place where the criminal offence was completed or its consequences occurred. A similar procedure is provided for when there is uncertainty about jurisdiction. The obligation to determine it is vested in the prosecutor if the investigator becomes aware of circumstances that may indicate a criminal offence, the investigation of which is not within his or her competence, from a statement, report or other sources. After the prosecutor's notification, the investigator conducts the investigation until the prosecutor determines another jurisdiction (CPC of Ukraine, Article 218, Part 2). It should be borne in mind that if it is discovered that another investigator of the pre-trial investigation body or an investigator of another body has already commenced criminal proceedings in relation to the same criminal offence, the investigator who discovered this shall send a cover letter to another investigator who is already conducting a pre-trial investigation, with the materials and information available to him/her, and shall notify the prosecutor by sending him/her a notice (CPC of Ukraine, Article 218, Part 4) (Ihnatchenko, 2020).

It is important to establish the exact time of each of the unlawful acts, its duration, systematic nature and frequency. In this regard, the exact schedule and mode of operation of the enterprise, institution, organisation should be determined, the official documentation should be studied in detail, written instructions of the administration, orders, schedules, plans, diagrams, etc. should be examined in detail. With regard to the periodisation of a criminal offence, it should be noted that the place and time of the onset of negative consequences do not always coincide with the spatial and temporal characteristics (Bezghynskyi, 2021).

The analysis of scientific approaches and questionnaires of employees who have investigated fraud in the field of volunteer and charitable activities or humanitarian aid, suggests that in such proceedings, in addition

to the event of a criminal offence, the following circumstances are subject to establishing: the identity of the suspect (guilt, motive and intent); data on the target of the criminal offence, the victim, and the amount of damage caused; other circumstances.

As for the circumstances that characterise the fraudsters, it is necessary to establish:

1) Who committed the fraud. This group of circumstances involves establishing the person's personal data (surname, name, patronymic, date and place of birth and residence), as well as his or her membership in certain categories of persons (officials, civil servants, previously convicted persons, etc.);

2) Whether the fraud was committed by a group of persons or an organised criminal group; their personal composition and the role of each participant and the duration of participation. Whether all persons involved in the criminal activity were aware of the criminal (illegal) purpose of its activities;

3) The form of guilt of each of the participants in the criminal activity in general and in relation to its individual stages;

4) The main goal and the presence of a beneficial motive for the act (Toporetska, 2018).

It should be noted that the content of guilt is determined by the ratio of its intellectual and volitional aspects during interrogation. In this regard, the degree to which a person is aware of the specific features of the object of the offence, the nature of the acts committed, the consequences of other objective features of the crime and legally significant circumstances, as well as the person's willful attitude to the consequences, shall be established. The investigating bodies and the court shall specifically prove to the suspect and other parties to the criminal proceedings what the intentional motive was, how the criminal intent was implemented, what the purpose of the crime was and the form of guilt (Kovalenko, 2011).

According to the analysis of forensic practice, fraud in the field of humanitarian aid can be committed only in the form of direct intent.

Moreover, in order to detect intent to commit fraud in the actions of entities distributing humanitarian aid, it is necessary to ask the interrogated person about:

– Documentation on the movement of aid and compliance with the law during its importation and distribution;

– Documentation of the importation and distribution process, as well as the procedure for transferring aid to the intended recipient;

– The fact of transferring humanitarian aid to the target recipient;

– The procedure for reporting to the relevant organisations, etc.

It should be noted that establishing a violation of the regulatory requirements governing the allocation of humanitarian aid is a key point for investigating and proving the guilt of fraudsters.

In addition to the above-mentioned, other circumstances of the criminal offence should also be investigated during the interrogation, such as the amount of damage, classifying features, aggravating and mitigating circumstances, grounds for termination of proceedings or exemption from liability. However, these circumstances are derived from the preceding circumstances and depend on the position of the suspect in the pre-trial investigation, whether he or she has been previously convicted, whether he or she acted as part of a group, etc.

The final stage of preparation for interrogation is its planning, which involves outlining the procedure for its conduct and the optimal programme of actions. Proper planning shows the investigator's ability to be creative, to vary different behavioural patterns, and to predict the position of the interrogated person [2]. According to I. V. Siroukh, the shortcoming of the work of most investigators is the neglect of drawing up a written interrogation plan, replacing it with an imaginary scheme. The investigation is characterised by increased complexity, so conducting ill-considered interrogations will be ineffective. When drawing up an interrogation plan, the investigator should focus on the completeness, accuracy of wording and sequence of questions to be clarified, as well as the availability and procedure for presenting material evidence. The use of a system of tactical techniques also helps to obtain truthful testimony during interrogation (Siroukh, 2018).

The interrogation plan should outline the data that the investigator should have at the beginning of the interrogation: the regulations governing the procedure for conducting transactions; what the violation of rights is; which actions were legal and which were illegal; the nature of the illegal actions and the persons involved; the place and time of the fraud; the characteristics of the person being interrogated, his or her position and procedural status, and the relationship with other participants in the criminal proceedings; availability of evidence in the criminal proceedings and the possibility of their use; the presence of contradictions and tactics to eliminate them during interrogation, etc. The investigator needs to determine the maximum scope of circumstances to be established and set

them out in detail in the interrogation plan with a mandatory indication of the tactics to be used (Antoniuk, 2020).

4. Conclusions

Therefore, interrogation is not just a collection of information, but a complex psychological interaction where success depends on the investigator's ability to manipulate facts, analyse the behaviour of the interrogated person and build effective communication. Interrogation is the art of recognising non-verbal cues, understanding the psychological mechanisms that govern human behaviour, and using this knowledge to obtain truthful information. The key to this investigative ((search)) action is effective training.

References:

Antoniuk, I.S. (2020). Osoblyvosti dopytu v kryminalnykh provadzhenniakh shchodo shakhraistva u sferi nadannia posluh iz poserednytstva u pratsevlashtuvanni [Peculiarities of interrogation in criminal proceedings regarding fraud in the field of providing employment mediation services]. *Pidpryiemstvo,hospodarstvo i pravo, 9,* 219-223 (in Ukrainian).

Antoniuk, P.A. (2020). Kryminalistyka [Forensics]. K.: Natsionalna akademiia vnutrishnikh sprav (in Ukrainian).

Bezghynskyi, Yu.S. (2021). Obstavyny, shcho pidliahaiut vstanovlenniu pid chas rozsliduvannia kryminalnykh pravoporushen, poviazanykh z porushenniam pravyl bezpeky na pidpryiemstvakh vuhilnoi promyslovosti [Circumstances to be established during the investigation of criminal offenses related to violation of safety rules at coal industry enterprises]. *Yevropeiski perspektyvy, 1,* 120-126 (in Ukrainian).

Halahan, V.I., Salikhova, I.Iu. (2017). Vstanovlennia podii kryminalnoho pravoporushennia yak obstavyny, yaka pidliahaie pokazuvanniu u kryminalnomu provadzhenni [Establishing the event of a criminal offense as a circumstance that must be shown in criminal proceedings]. Kyiv (in Ukrainian).

Ihnatchenko, N.V. (2020). Obstavyny, shcho pidliahaiut vstanovlenniu pry rozsliduvanni kryminalnykh pravoporushen u sferi zemelnykh vidnosyn [Circumstances that must be established when investigating criminal offenses in the field of land relations]. *Yurydychna nauka, 7,* 210-218 (in Ukrainian).

Konovalova, V.O. (2006). Dopyt: taktyka i psykholohiia [Interrogation: tactics and psychology]. Kharkiv: Vyd. SPD FO Vapniarchuk (in Ukrainian).

Kovalenko, Ye.H. (2011). Naukovi zasady kryminalno-protsesualnoho dokazuvannia [Scientific principles of criminal procedural evidence]. Kyiv: Yurinkom Inter (in Ukrainian).

Panov, M.I. (2007). Nastilna knyha slidchoho [Investigator's desk book]. Kyiv: In Yure (in Ukrainian).

Pavliuk, N.V. (2013). Problemy pidhotovky do dopytu nepovnolitnikh [Problems of preparation for interrogation of minors]. *Pytannia borotby zi zlochynnistiu, 25,* 186-196 (in Ukrainian).

Siroukh, I.V. (2018). Zabezpechennia prav pidozriuvanoho pid chas dopytu pry rozsliduvanni zlochyniv proty moralnosti [Ensuring the rights of the suspect during interrogation in the investigation of crimes against morality]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav, 3,* 272-275 (in Ukrainian).

Toporetska, Z.M. (2018). Osoblyvosti pochatku kryminalnoho provadzhennia ta obstavyny, yaki pidliahaiut vstanovlenniu pry rozsliduvannia sluzhbovoi nedbalosti [Peculiarities of the initiation of criminal proceedings and circumstances to be established during the investigation of official negligence]. *Visnyk kryminalnoho sudochynstva, 1,* 115–122 (in Ukrainian).

Дмитро Титор,
здобувач Науково-дослідного
інституту публічного права
вулиця Георгія Кірпи 2 а, Київ, 03055
tytordmytro@ukr.net
ORCID ID: *0009-0002-1363-9725*

ОСОБЛИВОСТІ ПРОВЕДЕННЯ ДОПИТУ ПІД ЧАС РОЗСЛІДУВАННЯ ШАХРАЙСТВА У СФЕРІ ВОЛОНТЕРСЬКОЇ ТА БЛАГОДІЙНОЇ ДІЯЛЬНОСТІ АБО ГУМАНІТАРНОЇ ДОПОМОГИ

Метою статті є висвітлення проблемних питань, що виникають під час підготовки до допиту у кримінальних провадженнях щодошахрайства у сфері волонтерської та благодійної діяльності або гуманітарної допомоги, а також надання рекомендацій щодо найбільш ефективної організації проведення цієї слідчої (розшукової) дії. Розслідування шахрайства у сфері волонтерської та благодійної діяльності або гуманітарної допомоги відрізняється певною специфікою, обумовленою обставинами та механізмом вчинення цього кримінального правопорушення. Успіх розслідування кримінальних правопорушень безпосередньо пов'язаний із професійною підготовкою слідчих, зокрема їх вмінням проводити ефективні допити. Відсутність спеціальних знань та навичок під час

допиту може призвести до отримання неповної або спотвореної інформації, що ускладнює встановлення об'єктивної істини. Наголошено, що обов'язковим елементом отримання повних і достовірних показань є всебічне застосування організаційно-підготовчих заходів при проведенні допиту. Розглянуто такі організаційно-підготовчі заходи, як: вивчення матеріалів кримінального провадження; визначення кола осіб, які підлягають допиту; вивчення особи допитуваного; окреслення предмета допиту; складання плану допиту. Висвітлено проблемні питання, що виникають під час підготовки до допиту у провадженнях щодо шахрайства у сфері волонтерської та благодійної діяльності або гуманітарної допомоги, а також надано рекомендації щодо найбільш ефективної організації проведення цієї слідчої (розшукової) дії. Зроблено висновок, що допит – це не просто збір інформації, а складна психологічна взаємодія, де успіх залежить від вміння слідчого маніпулювати фактами, аналізувати поведінку допитуваного та будувати ефективну комунікацію. Допит – це мистецтво розпізнавати невербальні сигнали, розуміти психологічні механізми, що керують поведінкою людини, і використовувати ці знання для отримання правдивої інформації. Запорукою цієї слідчої (розшукової) дії є якісна підготовка.

Ключові слова: шахрайство, досудове розслідування, кримінальне провадження, волонтерська та благодійна діяльність, гуманітарна допомога, допит, тактичний прийом, свідок, потерпілий, підозрюваний.