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GENERAL PROCEDURE FOR CERTIFYING A WILL UNDER NOTARIAL LEGISLATION OF UKRAINE: JUDICIAL AND NOTARIAL PRACTICE

Abstract. ***Purpose***. The purpose of the article is to disclose the procedure for certifying wills under the notarial legislation of Ukraine. ***Results***. The scientific article considers thoroughly the procedure for certifying wills in the notarial procedure of Ukraine. In particular, the key actors involved in the will certification procedure are identified: a testator, a notary or other persons authorised to certify a will in accordance with the current legislation of Ukraine. The author emphasises that the procedure for certifying a will in Ukraine is regulated by domestic legislation, including the Civil Code of Ukraine, the Law of Ukraine 'On Notaries' and other specialised legal regulations. In case of presence of a foreign element in inheritance relations, the Law of Ukraine 'On International Private Law,' as well as international treaties of Ukraine regulating inheritance issues, shall be applied. The article focuses on the procedure for certifying the wills of Ukrainian citizens residing in the temporarily occupied territories. It is noted that such wills may be certified exclusively by public or private notaries, as well as other persons authorised by law, only in the territory controlled by the Government of Ukraine. The author emphasises that it is inadmissible to certify wills by bodies or persons whose activities are contrary to Ukrainian legislation. Wills certified by such entities are declared invalid from the moment of their conclusion, and the legal effects arising from such invalidity are clearly defined by law, in particular, they are not recognised as valid and do not create relevant legal effects for the persons specified in such wills. ***Conclusions.*** It is concluded that in the course of implementation of these rights, the inheritance legislation of Ukraine has specific features which distinguish the relations on making and certifying a will, amending or cancelling a will, from the relations which arise after the death of a testator and are inheritance relations. The author emphasises the importance of compliance with the legal requirements to the procedure of will certification to ensure their legal validity, as well as to guarantee proper protection of inheritance rights of citizens both in peacetime and in conflict or occupation situations which create additional legal challenges for the exercise of inheritance rights.

Key words: notarial procedure, protection of human rights, inheritance, inheritance relations, will, notary.

1. Introduction

During life, a person, a citizen, is granted a number of rights in the field of civil law. One of these rights is the right to make and certify a will, as well as the right to amend or cancel a will. According to legal literature, the exercise of the right to make a will is not as widespread in Ukraine as it is abroad (Karmaza, 2007). In addition, it suggests that the very procedure for making a will, its form, and the procedure for calling heirs to inheritance by law differ significantly in the states (Pitsyk, 2020).

The topic of inheritance or certification of legal deeds – wills – is not new to jurisprudence. It has been the subject of research by many scholars, such as: V. Barankova, M. Bondarieva, M. Diakovych, Y. Zaika, O. Karmaza, V. Kysil, O. Kukharev, H. Lutska, M. Mykhailiv, O. Pechenyi, Kh. Pitsyk, S. Rabovska, Z. Romovska, I. Spaso- Fatieieva, Ye. Kharytonov, T. Fedorenko, S. Fursa, Ye. Fursa and other Ukrainian scholars. In addition, due to the occupation of the territories of Ukraine, the issue of protection of Ukrainian citizens living in the temporarily occupied territories who wish to certify a will, etc. is not sufficiently covered.

The purpose of the article is to disclose the procedure for certifying wills under the notarial legislation of Ukraine.

2. Certification of a will under the notarial legislation of Ukraine

Pursuant to Article 1233 of the Civil Code of Ukraine (hereinafter - the Civil Code), a will is a personal order of an individual in the event

of his or her death. An individual with full civil capacity has the right to make a will. The right to make a will is exercised personally. Making a will through a representative is not allowed (Article 1234 of the Civil Code) (Civil Code of Ukraine, 2003).

In general, relations regarding the certification of a will are regulated by the legislation of Ukraine, namely: the Constitution of Ukraine, the Civil Code of Ukraine, the laws of Ukraine: 'On Notaries,' 'On International Private Law,' applicable international treaties of Ukraine, as well as by-laws of Ukraine: the Procedure for Certifying Wills and Powers of Attorney Equated to Notarised Ones, approved by Resolution of the Cabinet of Ministers of Ukraine No. 419 dated 15.06.1994, Procedure for performing notarial deeds by notaries of Ukraine, approved by Order of the Ministry of Justice of Ukraine No. 296/5 of 22.02.2012, Procedure for performing notarial deeds by officials of local self-government bodies, approved by Order of the Ministry of Justice of Ukraine No. 3306/5 of 11.11.2011 (Official web portal of the Parliament of Ukraine, 2024).

It should be noted that specific features of certifying the wills of Ukrainian citizens residing in the temporarily occupied territories of Ukraine include the provisions of the Law of Ukraine 'On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine,' which provides that a special legal regime for crossing the administrative border and the line of contact between the temporarily occupied territory and other territory of Ukraine, and for making legal deeds, applies in the temporarily occupied territory for the period of validity of this Law. In other words, the certification of a will as a legal deed has specific features due to the legal regime of the temporarily occupied territory of Ukraine (Article 4 of this Law). Moreover, Article 5 of this Law stipulates that the particularities of exercising other rights and freedoms of the civilian population and making transactions in the temporarily occupied territory are determined by this and other laws of Ukraine. Therefore, according to Article 11 of this Law, in the temporarily occupied territory, any legal deed regarding real estate, including land plots, made in violation of the requirements of this Law, other laws of Ukraine, is considered invalid from the moment of its execution and does not cause legal effects, except for those related to its invalidity.

Therefore, the certification of wills of Ukrainian citizens residing in the temporarily occupied territories may be exercised by public or private notaries, as well as other persons authorised by law, only in the territory of Ukraine. It is inadmissible to certify wills by bodies or persons whose activities are contrary to Ukrainian legislation. Such legal deeds – wills – are invalid from the moment of such legal deed are made and entail the legal effects arising from such invalidity.

It should also be noted that the legal regime of martial law, which was introduced in Ukraine in February 2022, also entails certain specifics for the category of citizens defined in the Law of Ukraine 'On the legal regime of martial law'. Therefore, the relevant amendments have been made to implement the provisions of the law. Under martial law, in the absence of access to the Inheritance Register, notarisation of a will, amendments thereto and its cancellation are carried out without the use of this register with the subsequent entry of relevant information into it within five business days from the date of restoration of such access (Procedure for performing notarial acts by notaries of Ukraine, approved by Order of the Ministry of Justice of Ukraine No. 296/5 of 22 February 2012). Under martial law, the wills of servicemen of the Armed Forces, other military formations formed in accordance with the laws of Ukraine, as well as employees of law enforcement (special) bodies and civil protection bodies involved in measures to ensure national security and defence, repulse and deter armed aggression by a foreign state, can be certified by the commander (chief) of these formations (bodies) or another person authorised by such commander (chief) with further sending such wills through the General Staff of the Armed Forces, the Ministry of Defence, the relevant law enforcement (special) or other body to the Ministry of Justice or its territorial body to ensure their registration by notaries in the Unified Register of Powers of Attorney, the Inheritance Register. Commanders (chiefs) of these formations (bodies, institutions) or another person authorised by such a commander (chief) certify powers of attorney and wills in accordance with the Procedure for certifying wills and powers of attorney equated to notarised ones, approved by Resolution of the Cabinet of Ministers of Ukraine No. 419 of 15 June 1994 (Resolution of the Cabinet of Ministers of Ukraine No. 164 of 28 February 2022 'Some issues of notary during martial law'). In addition, Resolution of the Cabinet of Ministers of Ukraine No. 164 of 28 February 2022 'Some issues of notary during martial law' stipulates that during martial law and within one month from the date of its termination or cancellation, notarial acts shall be performed with due regard to the following specific features (prohibitions): 1) incomplete notarial acts at the request of a person associated with the aggressor state, as defined

by the Resolution of the Cabinet of Ministers of Ukraine No. 187 of 3 March 2022 'On ensuring the protection of national interests in future claims of the State of Ukraine in connection with the military aggression of the Russian Federation,' shall be suspended. If such a person applies for a notarial act, the notary shall refuse to perform it.

That is, russian citizens do not have the right to inherit by will in Ukraine. They do not have the right to draw up a will with a Ukrainian notary.

As already mentioned, relations regarding wills are regulated by the international treaties of Ukraine in force. For example, pursuant to Article 39 of the Treaty between Ukraine and the Republic of Poland on legal assistance and legal relations in civil and criminal matters, the ability to make or revoke a will, as well as the legal effects of defects in the expression of will, are determined by the legislation of the Contracting Party the testator was a citizen of at the time of making or revoking the will. The method of making or revoking a will is determined by the law of the Contracting Party the testator was a citizen of at the time of making or revoking the will. However, compliance with the law of the Contracting Party in the territory thereof the will was made or revoked is sufficient.

In other words, Ukraine's international bilateral treaties in force generally contain conflict-of-laws provisions and determine the law of the state that will govern relations regarding the form of a will, the procedure for drafting, signing, amending or cancelling a will.

It should also be noted that the conflict of provisions of international private law exist. According to Article 72 of the Law of Ukraine 'On International Private Law,' a person's ability to make and cancel a will, as well as the form of the will and the act of its cancellation, are regulated by the law of the state in which the testator had permanent residence at the time of the act or at the time of death. A will or an act of revocation cannot be declared invalid due to non-compliance with the form if the latter meets the requirements of the law of the place of making the will or the law of citizenship or the law of the testator's habitual residence at the time of making the act or at the time of death, as well as the law of the state in which the real estate is located.

Therefore, wills of Ukrainian citizens are certified only on the territory of Ukraine by notaries or officials specified in the law, in the manner prescribed by the national legislation of Ukraine, unless otherwise provided by an international treaty of Ukraine in force.

It should be noted that we support the scholars that although the relations regarding the certification of a will are private law relations like inheritance relations, such relations are not inheritance relations by their nature and content that arise after the death of the testator.

Pursuant to Article 56 of the Law of Ukraine 'On Notaries,' notaries or officials performing notarial acts certify wills of legally capable individuals drawn up in accordance with the requirements of Ukrainian legislation and personally submitted by them to a notary or an official performing notarial acts, and ensure state registration of wills in the Inheritance Register in accordance with the procedure approved by the Cabinet of Ministers of Ukraine. It is not allowed to certify a will through a representative, as well as one will on behalf of several persons. When certifying a will, the testator is not required to submit evidence confirming his or her right to the property to be bequeathed.

That is: 1) a will is certified in a notarial proceeding or by way of procedural actions by officials performing actions equivalent to notarial acts; 2) the mandatory participants in the certification of a will are a legally capable person (the testator) and a notary or an official who performs acts equivalent to notarial acts; 3) the will is drawn up in accordance with the requirements of Ukrainian law; 4) the will is made personally by the testator; 5) several testators are not entitled to sign one joint will, except in cases where, for example, a spousal will is concluded; 6) a will shall not be made through a representative; 7) a will shall be registered in the Inheritance Register; 8) a testator has the right to amend or cancel a will.

According to Articles 1235, 1236, 1237, 1240, 1242, 1244, 1246, 1254, 1286 of the Civil Code, a testator is endowed with an array of rights. These are:

1) He/she has the right to appoint one or more individuals as his/her heirs, regardless of whether he/she has family or kinship relations with these individuals, as well as other participants in civil relations;

2) He/she has the right to deprive any person from among the heirs by law of the right to inherit without giving any reason. In this case, this person cannot obtain the right to inherit (but he/she has no right to deprive persons entitled to a compulsory share in the inheritance of the right to inherit);

3) He/she has the right to cover in his/her will the rights and obligations that he/she has at the time of making the will, as well as those rights and obligations that may be assigned to him/her in the future;

4) He/she has the right to make a will regarding all or part of the inheritance;

5) He/she has the right to make a testamentary refusal in a will;

6) He/she has the right to oblige the heir to perform certain non-property actions, in particular, to dispose of personal papers, determine the place and form of the burial ritual;

7) He/she has the right to oblige the heir to perform certain actions aimed at achieving a socially useful goal;

8) He/she has the right to condition the right to inheritance of the person appointed in the will on the existence of certain conditions, whether related or not to his/her behaviour (presence of other heirs, residence in a certain place, birth of a child, education, etc;)

9) He/she has the right to appoint another heir in case the heir named in the will dies before the opening of the inheritance, does not accept or refuses to accept the inheritance, or is disqualified from inheritance, as well as in the absence of conditions specified in the will;

10) He/she has the right to establish in his/her will a servitude in respect of a land plot, other natural resources or other immovable property to meet the needs of other persons;

11) He/she has the right to make a new will at any time. Each new will cancels the previous one and does not restore the will made by the testator before it;

12) He/she has the right to amend the will at any time;

13) He/she is given the right to appoint an executor of the will.

According to Article 1236 of the Civil Code, the validity of a will regarding the composition of the inheritance is established at the time of commencement of the inheritance.

Requirements to the content and form of a will are set out in Ukrainian law. For example, according to Article 1247 of the Civil Code, a will shall be made in writing, indicating the place and time of its execution. In addition, civil law scholars emphasise that foreign legislation provides for other forms of wills, such as oral or electronic wills, which may be introduced in Ukraine. For example, France provides for a handwritten will (Article 970 of the Civil Code of France), Switzerland for a handwritten will (Article 505 of the Swiss Civil Code); a will in the form of a public act is valid in Germany (paragraphs 2232-2233 of the Civil Code of Germany); an oral will in Poland (Article 952 of the Civil Code of Poland); a secret will in Japan (Article 970 of the Civil Code of Japan), etc.

3. Specifics of certifying a will in connection with the temporary occupation of the territories of Ukraine

In our opinion, given the social relations that have arisen in Ukraine in connection with the temporary occupation of the territories of Ukraine, the provisions on the form of a will may be improved in terms of concluding oral wills and wills in electronic form.

Another condition for the validity of a will is its certification as a handwritten will or a will written by a computer (printed will). Thus, according to Article 1248 of the Civil Code, a notary certifies a will written by the testator in his/her own hand or with the help of generally accepted technical means. At the request of the person, the notary may record the will in his or her own words or with the help of generally accepted technical means. In this case, the will shall be read aloud by the testator and signed by him or her. If the testator is unable to read the will himself or herself due to physical disabilities, the will shall be certified in the presence of witnesses (Article 1253 of the Code).

In this regard, it should be noted that we support scholars in amending the Civil Code and providing for an electronic form of a will that can be signed by the testator using an electronic key and sent to a notary for certification and state registration.

It should be emphasised that the Resolution of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation dated 22 January 2020 in case No. 674/461/16-ц (proceedings No. 61-34764св18) concluded that "a signature is a mandatory requisite of a legal deed made in writing. The signature confirms the intentions and will and records the expression of will of the party(ies) to the deed, ensures their identification and the integrity of the document in which the deed is embodied. As a result, the legal deed is signed by the party(ies) or authorised persons. The main, fundamental content of a will is the appointment of heirs under the will and the determination of the fate of property (movable and immovable) that will be in the testator's ownership at the time of his/her death" (Resolution of the Supreme Court in the composition of the panel of judges of the Second Judicial Chamber of the Civil Court of Cassation, 2020).

It is worth noting that the scientific and practical analysis of the inheritance legislation of Ukraine enables to distinguish the following types of wills: personal will (Articles 1234, 1247 of the Civil Code): a personal will signed personally by the testator (Article 1248 of the Civil Code), a personal will signed in front of witnesses (Article 1253 of the Civil Code), a personal will written by a notary in the words of the testator; a secret will (Article 1249 of the Civil Code); a spousal will (Article 1243 of the Civil Code); a will with a condition (Article 1242 of the Civil Code).

For example, Article 1249 of the Civil Code provides for the notarisation of secret wills,

namely a will that is notarised without familiarisation with its contents, in the following manner: the person who has made the secret will submits it in a sealed envelope to the notary. The envelope shall have the testator's signature on it. The notary shall affix his or her certification inscription to the envelope, seal it and, in the presence of the testator, place it in another envelope and seal it.

The Civil Code enshrines the principle of secrecy of a will (Article 1255 of the Civil Code), which provides that a notary, other official, official who certifies a will, witnesses, as well as an individual who signs a will instead of the testator, are not entitled to disclose information about the fact of making a will, its content, cancellation or amendment of a will before the commencement of the inheritance.

It should also be noted that a will is a civil law agreement (deed), whereas a notary's certification endorsement is a notarial deed.

The Civil Code provides for conditions under which a will is void. Thus, pursuant to Article 1257 of the Civil Code, a will drawn up by a person who did not have the right to do so, as well as a will drawn up in violation of the requirements for its form and certification, is void. At the request of an interested person, the court will invalidate a will if it is established that the testator's will has not been expressed freely and is not consistent with his or her will. The invalidity of a separate order contained in a will does not entail the invalidity of another part of the will. In case of invalidity of a will, the heir who was deprived of the right to inherit under this will shall be entitled to inheritance by law on general grounds.

It should also be noted that we agree with the court practice that the presumption of validity of a legal deed means that the deed is considered valid, that is, the deed that gives rise to the acquisition, modification or termination of civil rights and obligations, until this presumption is rebutted. Thus, until the presumption of validity of a transaction is rebutted, all rights acquired by the parties under it may be freely exercised and the obligations created are subject to fulfilment. The presumption of the validity of a transaction is rebutted in the following cases: when the invalidity of a legal deed is directly established by law (i.e., its voidance); if it is declared invalid by a court, that is, there is a court decision that has entered into force (i.e., the disputed deed is declared invalid by a court). The right to make a will may be exercised throughout a person's life and includes both the right to make a will or several wills and the right to amend or cancel them. All of the above powers of the testator, together with the means of their legal protection and defence, are the exercise of the freedom of will, which is a principle of inheritance law. Freedom of testament covers the personal exercise by the testator of the right to make a will by means of a free expression of will, which, being duly expressed, is subject to legal protection even after the testator's death. Freedom of testament as a principle of inheritance law includes, among other elements, the need to respect the testator's will and the obligation to fulfil it. Classifying a will as void for the reasons of an expanded understanding of the requirements to the form and procedure for its certification, as mentioned in part one of Article 1257 of the Civil Code of Ukraine, would violate the principle of freedom of will. In the absence of defects in the testator's will and expression of will when drafting and certifying a will, classification of the latter as void on the grounds not expressly provided for either in this article or in the provisions of Chapter 85 of the Civil Code in general, essentially cancels the testator's free will without the possibility to express his/her will by drafting another will in connection with his/her death. Only if the testator has physical disabilities that prevent him or her from reading the will, the will should be certified only in the presence of witnesses. In this case, failure to comply with such a requirement regarding the procedure for certifying a will in accordance with part one of Article 1257 of the Civil Code of Ukraine results in the voidance of the will (Resolution of the Supreme Court in case No. 461/2565/20 of 20 July 2022).

4. Conclusions

Ukrainian civil law in general and inheritance law in particular contains provisions under which persons (citizens of Ukraine, foreigners or stateless persons) in Ukraine, having full civil capacity, unless otherwise provided by the national legislation of Ukraine, have the right to exercise their indisputable right in the notarial process, namely to draw up and certify a will, amend it, cancel it (to be a testator) or inherit an inheritance by will (to be an heir).

The certification of wills of Ukrainian citizens residing in the temporarily occupied territories may be exercised by public or private notaries, as well as other persons authorised by law, only in the territory of Ukraine. It is inadmissible to certify wills by bodies or persons whose activities are contrary to Ukrainian legislation. Such legal deeds – wills – are invalid from the moment of such legal deed are made and entail the legal effects arising from such invalidity.

In the course of implementation of these rights, the inheritance legislation of Ukraine has specific features which distinguish the relations on making and certifying a will, amending

or cancelling a will, from the relations which arise after the death of a testator and are inheritance relations.

We support researchers in expanding the forms of wills in Ukraine.

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ЗАГАЛЬНИЙ ПОРЯДОК ПОСВІДЧЕННЯ ЗАПОВІТУ ЗА НОТАРІАЛЬНИМ ЗАКОНОДАВСТВОМ УКРАЇНИ: СУДОВА ТА НОТАРІАЛЬНА ПРАКТИКИ

Анотація. ***Мета.*** Метою статті є розкриття порядку посвідчення заповітів за нотаріальним законодавством України. ***Результати.*** В науковій статті детально розглянуто порядок посвідчення заповітів у нотаріальному процесі України. Зокрема, визначено ключових суб'єктів, які беруть участь у процедурі посвідчення заповіту: це заповідач, нотаріус або інші особи, уповноважені на посвідчення заповіту відповідно до чинного законодавства України. Автор наголошує, що процедура посвідчення заповіту на території України регулюється внутрішнім законодавством, включаючи Цивільний кодекс України, Закон України «Про нотаріат» та інші спеціалізовані нормативно-правові акти. У разі наявності іноземного елемента у спадкових відносинах застосовується Закон України «Про міжнародне приватне право», а також міжнародні договори України, що регламентують питання спадкування. Особливу увагу в статті приділено порядку посвідчення заповітів громадян України, які перебувають на тимчасово окупованих територіях. Зазначено, що такі заповіти можуть посвідчуватись виключно державними чи приватними нотаріусами, а також іншими уповноваженими законом особами лише на території, підконтрольній уряду України. Наголошено на неприпустимості посвідчення заповітів органами чи особами, діяльність яких суперечить українському законодавству. Заповіти, посвідчені такими суб'єктами, визнаються недійсними з моменту їх укладення, а юридичні наслідки, що випливають із такої недійсності, чітко визначені законом, зокрема, не визнаються чинними і не створюють відповідних правових наслідків для осіб, зазначених у таких заповітах. ***Висновки.*** Зроблено висновок, що спадкове законодавства України при реалізації цих прав має особливості, які відрізняють відносини щодо складення та посвідчення заповіту, внесення до заповіту змін чи скасування заповіту, від відносин, які виникають після смерті заповідача і є спадковими відносинами. Автор підкреслює важливість дотримання законодавчих вимог до процедури посвідчення заповітів для забезпечення їх правової дійсності, а також гарантування належного захисту спадкових прав громадян як в умовах мирного часу, так і в умовах конфліктних чи окупаційних ситуацій, які створюють додаткові правові виклики для реалізації спадкових прав.

Ключові слова: нотаріальний процес, захист прав людини, спадкування, спадкові відносини, заповіт, нотаріус.

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CIVILIAN FIREARMS CIRCULATION AS A FOCUS OF PUBLIC POLICY AND AN OBJECT OF ADMINISTRATIVE AND LEGAL STUDY

Abstract. ***Purpose.*** The purpose of the article is to reveal the civilian firearms circulation as a focus of public policy and an object of the administrative and legal study. ***Results.*** The article reveals the concept of civilian firearms as technical and structurally specialised means of destruction which are permitted for circulation among individuals in accordance with the procedure established by law, which do not belong to the category of combat or special firearms, and are used for legitimate purposes of self-defence, hunting, sports activities, collecting or in cultural and artistic practices. Civilian firearms circulation is defined as a focus of public policy, which is a holistic, systematic and organised activity of the State aimed at regulating, controlling, developing and ensuring the safe operation of all stages of the life cycle of firearms allowed for possession by civilians, including their production, acquisition, storage, carrying, transportation, transfer, use, disposal and other forms of movement or change of legal status. It is determined that civilian firearms circulation, as a focus of public policy, is formed with due regard for national interests, constitutional rights of citizens to security and self-defence, current challenges (armed conflict, crime, terrorist threats), and the social context, with a view to achieving a balance between individual freedom, public security and stability of the constitutional order. It is revealed that civilian firearms circulation as an object of administrative and legal study is a system of public relations arising in the course of regulatory, licensing, supervisory, control and preventive and law enforcement activities of public administration bodies with regard to the lawful application of ownership rights in relation to civilian firearms. ***Conclusions.*** It is determined that, as an object of administrative and legal science, civilian firearms circulation covers the study of public administration mechanisms, legal status of actors, specific features of liability for offences in the field of firearms circulation, and the effectiveness of administrative and legal means of ensuring a balance between the citizen's right to security and the interests of national security. It is noted that civilian firearms circulation in the context of a full-scale invasion in Ukraine is of particular importance for the exercise of the constitutional right of citizens to personal security and for the protection of national security.

Key words: administrative regulatory framework, administrative legal relations, administrative procedures, administrative and legal mechanism, public policy, expertise, weapons, control, legal system, actors.

1. Introduction

The lawful conduct of actors operating within the administrative and legal regime of firearms circulation is a prerequisite for ensuring the rule of law in this field. Unfortunately, not everyone behaves in this way. The level of crime is directly related to firearms circulation, and a significant number of administrative offences are committed every year, which are the most common offences in this field. The legal norms that form the basis of firearms circulation regime provide for the use of coercive means to avoid or neutralise the negative consequences of violations of firearms circulation rules. Ensuring the public interest and law and order in the field of firearms circulation necessarily entails the use of coercion, which is inherent in the activities of bodies empowered by the State (Bokii, 2010).

The main legal instrument for addressing key social needs regarding the possession of civilian firearms in Ukraine is through the provisions of administrative law, as they can be used to formulate and implement relevant public policy, combining imperative and dispositive methods of influence, ensuring the right of citizens to acquire, possess, use and dispose of legally permitted types of weapons in civilian circulation (Kurinnyi, 2021).

Administrative and legal aspects of public policy on firearms circulation in Ukraine have been comprehensively studied by scholars such as: O. Bokii, I. Vasyliev, S. Didenko, O. Drozd, K. Kastornov, M. Komissarov, M. Kulyk,

V. Litoshko, V. Makarchuk, V. Otsel, I. Pokhylenko, R. Serbyn, O. Fomenko, T. Shumeiko and others.

However, firearms circulation in Ukraine, unfortunately, is not sufficiently regulated, to a greater extent by administrative law, and therefore, scientific challenges in this area are timely and relevant.

The purpose of the article is to reveal the civilian firearms circulation as a focus of public policy and an object of the administrative and legal study.

2. Weapons as an object of civil legal relations

To begin the study, it is necessary to define the theoretical concept of 'weapon'. Historically, weapons have evolved along with humanity. Initially, it helped people to get food and defend themselves from animal attacks. Then people began to use weapons to attack their own kind and defend themselves against them. The evolution of weapons began with wooden sticks and spears. Later, bows appeared, which allowed shooting pointed arrows. In the Paleolithic era, daggers made of stone and bone appeared, and spearheads were made of flint and bone. With the development of bronze and iron, it became possible to create cold steel weapons that were strong, durable and effective (swords, iron spears) (Staritsyna, 2010).

A real revolution in arms production took place in the twelfth century, when gunpowder was invented. This was the beginning of the development of firearms, which, unlike cold steel, allowed for combat at a distance and accurate targeting. The first mention of the successful use of handguns dates back to the fourteenth century. Initially, such weapons were simply a metal tube closed at one end and mounted on a wooden bed. Then came squeakers and arquebuses, equipped with wooden stocks for easy aiming and wick locks for firing. Later, wheel and silicon locks were invented. However, firearms only reached their peak development in the mid-nineteenth century with the invention of the cartridge, which combined a metal case, bullet, powder charge and incendiary capsule. The use of a metal cartridge made it possible to create magazine firearms with a high rate of fire. Later, explosive weapons appeared, and then computerised weapons, which allow combat without human intervention (for example, homing missiles), which increases the degree of safety of soldiers, but at the same time is capable of delivering a devastating blow to the enemy (Staritsyna, 2010).

S.O. Staritsyna believes that weapons as an object of civil legal relations are an individually defined thing, the rights to which are acquired in a specially defined manner, which is intended to damage a living or other target and has no other industrial or household purpose (Staritsyna, 2010). P. Melnyk argues that weapons are a certain set of devices and means used to destroy manpower, equipment (armoured vehicles, helicopters, aircraft, etc.), and structures during hostilities (Melnyk, 2015). According to Yu. Belinskyi, weapons are objects that are structurally designed and technically suitable for hitting a living or other target (Belinskyi, 2012). S. Didenko defines weapons in Ukraine as the following types: firearms; cold steel; cold throwing weapons; gas; pneumatic; incendiary; non-lethal; devices that have structural features but are not considered cold steel due to the lack of the possibility of inflicting life-threatening injuries (in particular, devices of dosed physical impact). These devices can be effective means of necessary defence, as they do not cause serious bodily harm and, in turn, cause severe painful shock. Moreover, they require administrative and legal support for their circulation and use, as they can be used to inflict beatings (Didenko, 2016).

In general, D.V. Andreev considers weapons to be factory-made or home-made items, devices designed specifically to hit living targets, destroy or damage the environment. Weapons include any firearms, including artillery and small arms, as well as grenade launchers; other conventional means of destruction, including mines and incendiary weapons; edged weapons; and nerve gas weapons; airguns with a calibre of more than 4.5 mm with a bullet velocity of more than 100 metres per second; special weapons for firing rubber bullets; electroshock weapons; explosives or ammunition, weapons of mass destruction (Andrieiev, 2017).

Ye. Kurinnyi proposes his own definition of civilian weapons, which should be understood as firearms and cold steel weapons permitted for circulation by the State, which may be owned by individuals or legal entities subject to a legally (normatively) provided permit for the purpose of hunting, self-defence, engaging in relevant sports, collecting, and use in the artistic and cultural spheres (cinema, theatre, museums, etc.) The term 'civilian firearms' includes hunting weapons, sporting weapons, self-defence weapons, collector's weapons, signal weapons and deactivated weapons. The scope of civilian firearms does not include items that have a different purpose (e.g., household or kitchen) (Kurinnyi, 2021).

Therefore, civilian firearms are technical and structurally specialised means of destruction which are permitted for circulation among individuals in accordance with the procedure established by law, which do not belong to the category of combat or special firearms, and are used for legitimate purposes of self-de-

fence, hunting, sports activities, collecting or in cultural and artistic practices. Civilian firearms do not have a domestic purpose, and their use, circulation and storage are regulated by administrative and legal provisions, with due regard for public and private interests and to ensure public safety.

3. Civilian firearms in the legal system of Ukraine

Civilian firearms in Ukraine include only those categories of weapons that are permitted for peaceful, non-combat purposes, are under state control and have a legal regime aimed at ensuring public safety, preventing criminal use and, at the same time, exercising the right of citizens to self-defence, hobbies and participation in cultural life.

In the national legal system, civilian firearms are divided into separate types depending on their design characteristics, functional purpose and legal regime of their circulation, and include the following types: hunting firearms; sports weapons; self-defence weapons (traumatic weapons, electric shock devices; devices of dosed physical impact, etc.); collection firearms; signal weapons (designed to give light or sound signals and be used in tourist, rescue or cultural and entertainment activities; cultural and artistic firearms; deactivated (unfit for fire) firearms.

Despite the war, our country continues to position itself in the international political arena as a legal State, with human and civil rights and freedoms at the core. Article 3 of the Constitution of Ukraine states that a person, his or her life and health, honour and dignity, inviolability and security are recognised as the highest social value in Ukraine. Human security is ensured by the State in the form of law enforcement bodies, courts and other state bodies. A sense of security enables a person to develop and, as a result, so do society as a whole. In addition, the notion of security, or rather the feeling of security for each person or individual, is unique and distinctive. It can be influenced by the actions or behaviour of other people, especially in conditions of increased risks (war, pandemic, etc.). Therefore, the need for a sense of security can be satisfied, for example, by owning firearms. On the other hand, the presence of a large number of firearms in the possession of citizens can pose a danger to society itself, in particular, lead to mass killings, overthrow of the constitutional order in the state, etc. Therefore, firearms and their use require increased control by the state, especially in times of war. In particular, the concept of civilian firearms circulation is of scientific interest. After all, this very concept and this type of firearms circulation causes a lot of debate and is the subject of legislative battles (Khvostovtsov, 2023).

"Circulation" means "use," "application" of something (Andrieiev, 2017). However, in our opinion, the use of weapons, that is, their use for their intended purpose - to destroy a living target, etc. is not a component of the concept of "circulation." Circulation is considered to be the process of producing firearms, their further movement from a state or criminal producer (manufacturer) to a legal or illegal (criminals, citizens who illegally purchase firearms for self-defence, collecting, etc.) consumer, as well as maintaining them in good condition, transferring them from one owner to another, etc., until they are destroyed. The physical impact on firearms (manufacturing, processing), their spatial (carrying, transportation), temporary (storage), and social (change of ownership) movement have legal designations that determine the qualification of the relevant actions. Each such influence is a structural element of firearms circulation (Andrieiev, 2017). O. Bokii highlights that the concept of 'firearms circulation' contains a significant number of elements that, to varying degrees, are activities directly related to firearms and ammunition (Bokii, 2010).

According to S. Khvostovtsov, civilian firearms circulation is the state's granting of permission to citizens to acquire the right to own firearms (of a certain category) in accordance with the procedure established by law, as well as all other actions related to firearms circulation, namely: production, trade, sale, exchange, gift, transfer, acquisition, collection, display, inheritance, accounting, storage, carrying, transportation, transport, use, repair, withdrawal, theft, loss, dilution, deactivation, disposal, import (export) of firearms to (from) Ukraine that do not belong to military or service firearms, that is, are not related to the professional activities of law enforcement and other state authorities (Khvostovtsov, 2023).

4. Conclusions

З урахуванням всього вищевикладеного, можна сформувати наступні висновки:

– Civilian firearms circulation as a focus of public policy is a holistic, systematic and organised activity of the State aimed at regulating, controlling, developing and ensuring the safe operation of all stages of the life cycle of firearms allowed for possession by civilians, including their production, acquisition, storage, carrying, transportation, transfer, use, disposal and other forms of movement or change of legal status. Civilian firearms circulation, as a focus of public policy, is formed with due regard for national interests, constitutional rights of citizens to security and self-defence, current challenges (armed conflict, crime, terrorist threats), and the social context, with a view to achieving

a balance between individual freedom, public security and stability of the constitutional order;

– Civilian firearms circulation as an object of administrative and legal study is a system of public relations arising in the course of regulatory, licensing, supervisory, control and preventive and law enforcement activities of public administration bodies with regard to the lawful application of ownership rights in relation to civilian firearms. As an object of administrative and legal science, civilian firearms circulation covers the study of public administration mechanisms, legal status of actors, specific features of liability for offences in the field of firearms circulation, and the effectiveness of administrative and legal means of ensuring a balance between the citizen's right to security and the interests of national security;

– Civilian firearms circulation in the context of a full-scale invasion in Ukraine is of particular importance for the exercise of the constitutional right of citizens to personal security and for the protection of national security. Як напрямок державної політики, обіг цивільної зброї виступає цілісним механізмом стратегічного управління, що поєднує нормотворчу, дозвільну, організаційно-контрольну, профілактичну та правоохоронну діяльність суб'єктів публічної адміністрації. Як об'єкт адміністративно-правового дослідження, обіг цивільної зброї репрезентує багаторівневу систему суспільних відносин, що виникають у процесі адміністративного регулювання, ліцензування, контролю, обліку та відповідальності за правопорушення. Обіг цивільної зброї, як об'єкт адміністративно-правового дослідження поєднує нормативне регулювання, процедурно-технічні аспекти використання зброї, та аспект ефективності адміністративно-правових засобів впливу на спеціальну сферу правовідносин (обіг зброї) для формування оптимальної моделі взаємодії між державою та громадянином, з врахуванням (на сучасний стан) безпекових викликів воєнного часу.

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ОБІГ ЦИВІЛЬНОЇ ЗБРОЇ ЯК НАПРЯМОК ДЕРЖАВНОЇ ПОЛІТИКИ ТА ОБ'ЄКТ АДМІНІСТРАТИВНО-ПРАВОВОГО ДОСЛІДЖЕННЯ

Abstract. ***Purpose.*** Мета статті полягає у тому, щоб розкрити обіг цивільної зброї як напрямок державної політики та об'єкт адміністративно-правового дослідження. ***Results.*** У статті розкрито поняття цивільної зброї як технічно придатних та конструктивно-спеціалізованих засобів ураження, що дозволені для обігу серед фізичних осіб у встановленому законом порядку, які не належать до категорії бойової або спеціальної зброї, та використовуються з легітимною метою самозахисту, полювання, спортивної діяльності, колекціонування чи в культурно-мистецьких практиках. Визна-

чено обіг цивільної зброї як напрямок державної політики, що є цілісною, системно-організованої діяльності держави, яка спрямована на правове регулювання, контроль, розвиток та безпечне функціонування усіх стадій життєвого циклу зброї, яка допускається до володіння цивільним населенням, включаючи її виробництво, придбання, зберігання, носіння, транспортування, передачу, використання, утилізацію та інші форми переміщення або зміни правового статусу. Визначено, що обіг цивільної зброї, як напрям державної політики, формується з урахуванням національних інтересів, конституційних прав громадян на безпеку та самозахист, сучасних викликів (збройний конфлікт, злочинність, терористичні загрози), а також соціального контексту, з метою досягнення балансу між свободою особи, публічною безпекою та стабільністю конституційного ладу. Розкрито, що обіг цивільної зброї як об'єкт адміністративно-правового дослідження є системою суспільних відносин, що виникають у процесі здійснення органами публічної адміністрації нормативного регулювання, дозвільно-наглядової, контрольно-превентивної та правоохоронної діяльності щодо правомірного застосування права власності відносно цивільної зброї. ***Conclusions.*** Визначено, що як об'єкт адміністративно-правової науки, обіг цивільної зброї охоплює вивчення механізмів публічного управління, правового статусу суб'єктів, особливостей відповідальності за правопорушення у сфері обігу зброї, а також ефективності адміністративно-правових засобів забезпечення балансу між правом громадянина на безпеку та інтересами національної безпеки. Зазначено, що обіг цивільної зброї в умовах повномасштабного вторгнення в Україні набуває особливого значення для реалізації конституційного права громадян на особисту безпеку та для захисту національної безпеки.

Ключові слова: адміністративне регулювання, адміністративні правовідносини, адміністративні процедури, адміністративно-правовий механізм, державна політика, експертиза, зброя, контроль, правова система, суб'єкти.

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THE CONCEPT AND IMPORTANCE OF AGRICULTURE AS AN OBJECT OF ADMINISTRATIVE AND REGULATORY FRAMEWORK FOR ENSURING FOOD SECURITY IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to define the concept and reveal the importance of agriculture as an object of administrative and regulatory framework for ensuring food security in Ukraine. ***Results.*** In the article, relying on the review of scientific views of scientists and current legislation, it is emphasised that agriculture is a branch of economy whose key purpose is to produce, process and sell products of plant and animal origin through the use of land, water, climate and biological resources. The importance of food security is in its impact on public health, economic stability and national security of the entire State. Food security means reducing hunger and poverty, while promoting sustainable agricultural practices, efficient food distribution systems and sustainable food supply chains of various kinds. It is virtually impossible to ensure food security without active support from the state and international cooperation. It is determined that agriculture is a branch of economy whose key purpose is to produce, process and sell products of plant and animal origin through the use of land, water, climate and biological resources. It is emphasised that the work object as a starting material in the manufacturing industry mainly contains the entire physical mass of matter from the beginning of the technological process, which is gradually transformed into finished products, where its shape and quality parameters change during the production process. ***Conclusions.*** It is concluded that agriculture as an object of administrative and regulatory framework in Ukraine is a special scope of administrative legal relations and is regulated by administrative law provisions, as well as by a set of institutions and mechanisms of public administration defined by them, which are aimed at creating appropriate conditions for functioning, organisation, management, control and further development of this sector to ensure food security of the State, sustainable and rational use of natural resources and socio-economic development of the entire country.

Key words: agriculture, object, administrative and regulatory framework, food security.

1. Introduction

Nowadays, an important task for the leading countries of Europe and the world, including Ukraine, is to ensure an adequate level of food security. The latter should be viewed as a state in which all people have constant, uninterrupted physical and economic access to safe and nutritious food in sufficient quantities to meet their dietary needs and preferences for an active and healthy life. The importance of food security is in its impact on public health, economic stability and national security of the entire State. Moreover, it should be noted that food security means reducing hunger and poverty, while promoting sustainable agricultural practices, efficient food distribution systems and sustainable food supply chains of various kinds. It is virtually impossible to ensure food security without active support from the state and international cooperation. It is determined that

Some problematic issues related to ensuring food security in Ukraine have been considered in their scientific works by: A.M. Aparov, Kh.A. Hryhorieva, Yu.V. Yevtifiieva, Ya.A. Zhalila, K.O. Perepelytsia, Yu.Yu. Pustovit and many others. However, despite the significant theoretical contribution, the problem of the functioning of Ukrainian agriculture as an object of administrative and legal regulation to ensure food security remains insufficiently studied in the scientific literature.

Therefore, the purpose of the article is to define the concept and reveal the importance of agriculture as an object of administrative and regulatory framework for ensuring food security in Ukraine.

2. The role of agriculture as a sector of the economy

Agriculture is one of the leading industries in the production sector, characterised by

the cultivation of crops and livestock breeding. The main task of agriculture is to provide the population with food and supply raw materials for industry. Agriculture is one of the leading sectors of Ukraine's economy (share in GDP is almost 10%) (Website of the State Statistics Service of Ukraine, 2023).

According to the Law of Ukraine 'On State support for agriculture of Ukraine', agricultural activities are defined as: production of crops, in particular plant crops, as well as growing berries, fruits and vegetables, flowers and ornamental plants (in open or closed ground), mushrooms, seeds, spices, seedlings and algae, as well as their handling, processing and/or preservation; production of livestock products, in particular domestic farm animals, poultry, rabbit, bee, and breeding of silkworms, worms, snails, molluscs, snakes and other reptiles or slugs, other terrestrial mammals, invertebrates and insects, as well as its handling, processing and/or preservation; afforestation, including the creation of protective forest plantations, collection of wild mushrooms and berries, other wild plants, their handling and preservation; breeding and/or keeping and/or cultivation and/or catching of freshwater and/or marine fish, frogs, invertebrates, algae and other aquatic organisms; processing and/or preservation of fish or other freshwater or marine invertebrates, other aquaculture facilities, wild algae; provision of agricultural services (sowing, harvesting, storage of agricultural products) (Law of Ukraine On State support for agriculture of Ukraine, 2004).

V. H. Mazurenko describes agriculture as a leading sector of Ukraine's economy, which is aimed at functional soil cultivation, development of the agricultural market, growing grain crops, breeding livestock, and stimulating the production of agricultural products of plant and animal origin (Mazurenko, 2023). According to A.M. Aparov, agricultural activities are socially useful, systematic, paid economic activities organised and performed in the field of social production by business entities in order to meet social needs and related to agricultural production, that is, activities that include all stages of the technological process associated with the cultivation of crops and animals and the resulting agricultural products with price certainty, as well as with the provision of agricultural services (Aparov, 2016).

V. Rusan, L. Zhurakovska and Ya. Zhalilo emphasise the fact that agriculture is the most vulnerable sector of the economy to climate change, since the functioning of agriculture and livestock, as well as crop yields, depend largely on the agro-climatic conditions of the territory and, above all, on its moisture supply. Climate change poses serious threats to the sustainable development of Ukraine due to the increase in the number of extreme weather events, associated risks to natural ecosystems and the health and livelihoods of the population. The development of climate change adaptation, resilience building and mitigation of climate change risks is an integral part of Ukraine's commitments and stems from the ratified UN Framework Convention on Climate Change and the EU-Ukraine Association Agreement. The set of necessary measures to implement this task should include the inclusion of climate change adaptation and resilience to climate-related risks and disasters in state and national strategies, plans and programmes for the development of the State's economy and its sectors, and the provision of state support for the creation and constant updating of methodological approaches to assessing actual and modelling expected climate change and its consequences (Rusan, Zhurakovska, Zhalilo, 2024).

According to L.M. Berezina, agricultural production as the main branch of the complex is characterised by the intersection of economic processes and phenomena in the process of reproduction with the action of natural forces, where the object of human activity is living organisms, which develop according to the laws inherent in organic nature. It is the processes that determine the growth and development of plants and animals in agriculture that affect the essence of people's economic activity, due to objective factors such as the time of production processes and the length of the working period. The next feature of agriculture, according to this author, is that the technologies used in the production of both crop and livestock products are fundamentally different from those used in the production of other sectors of the national economy. Thus, the work object as a starting material in the manufacturing industry mainly contains the entire physical mass of matter from the beginning of the technological process, which is gradually transformed into finished products, where its shape and quality parameters change during the production process. The starting material for agricultural production is animals and plants, which at the beginning of the technological process do not contain the entire physical mass of matter that the future product will have. Such matter is created in the technological process of production under the influence of development and functioning according to the laws of nature, with the participation of human labour) (Berezina, 2010).

3. Specific features of agriculture

The scientific perspective of V. H. Mazurenko is rather comprehensive and informative. The

author concludes that agriculture has a number of features that determine its role in the structure of the Ukrainian economy. It is one of the leading sectors of the national economy and an important area of entrepreneurial activity. The development prospects cover all sub-sectors of the agricultural sector and the production of agricultural products, which contributes to the country's economic stability. The object of agriculture is the social relations arising in the public law sphere regarding the cultivation and use of land resources, production of plant and animal products, and development of the agricultural sector. The entities in this sector include both public administration bodies, including the Ministry of Agrarian Policy and Food of Ukraine, the State Service for Geodesy, Cartography and Cadastre, the State Agency for Land Reclamation and Fisheries, as well as local authorities and private law entities. Given the unique natural conditions, including rich black earth soils, and the significant potential of the agricultural sector, it is particularly important to introduce effective control over the use of land resources. This involves systematic monitoring of their condition, rational land use and control over the sale of agricultural products, which will ensure the sustainable development of Ukrainian agriculture (Mazurenko, 2023).

M.P. Denysenko and D.V. Novikov emphasise that agriculture as an industry has a number of specific features that largely determine the efficiency of agricultural enterprises. One of the key characteristics is that the main means of production are living organisms - plants and animals, the development of which is subject to biological laws. This leads to a close interconnection of economic processes with natural factors. The main means of production is land, which is directly involved in the labour process and the formation of products. Its qualitative and quantitative characteristics directly affect the results of economic activity. Natural conditions largely determine the functioning of agricultural enterprises, which requires a large amount of information to minimise risks and uncertainty in the production process. As agricultural production involves the use of large territorial resources, it entails significant logistical costs associated with the transportation of machinery, materials (seeds, fertilisers, fuel) and finished products (grains, root crops, etc.). The industry is also characterised by the principle of "products for the sake of new products," where the results of production serve as the basis for creating new means of economic activity. An important factor is the time delay between the period of work and the actual receipt of products, as the production cycle depends on natural conditions and direct human involvement at all stages, from tillage to harvesting. This, in turn, leads to the seasonal nature of production, which affects labour organisation and the efficient use of labour resources. Water resources are of great importance in agricultural production, as their shortage in certain regions significantly affects the cost of production. In addition, the transport of labour and products requires significant energy and financial costs, which is also a determining factor in the operations of agricultural enterprises (Denysenko, Novikov, 2019).

Therefore, agriculture is a branch of economy whose key purpose is to produce, process and sell products of plant and animal origin through the use of land, water, climate and biological resources. It plays a key role in ensuring the social and economic stability of Ukraine, as it is not only a source of essential food, but also a business sector, providing jobs, etc. It is thanks to the export potential of agricultural products that our country is able to secure foreign exchange earnings and improve the country's trade balance.

Given the above, agriculture is a sector in which a large number of public legal relations arise, which, in particular, are regulated by administrative law. According to H.S. Ivanova, the object of administrative and regulatory framework in the field of agriculture is social relations concerning: making agricultural legal provisions; establishing the main tasks and principles of sectoral regulation; determining the administrative and legal status of participants in management and agricultural relations; registration of agricultural property; establishing legal regimes for the protection of property relations in agriculture; bringing to administrative responsibility for violations of rules in agriculture and sanitary and veterinary medicine, etc. It is this system of objects that the public administration should focus its efforts on when performing the function of managing the agro-industrial complex of Ukraine (Ivanova, 2020). D.V. Novikov emphasises that in 2021, Ukraine reached record high levels of agricultural production. The main problems for the agricultural sector were the lack of sufficient storage space for storing crops and high railway tariffs. Experts predicted a successful 2022 agricultural year and focused on the construction of elevators, hangars and the use of alternative forms of grain storage, solving logistics problems and improving production technologies - all of which seemed like routine issues and problems. However, it is difficult to predict the outbreak of hostilities on the part of Russia, which has created a crisis situation in the leading sector of Ukraine's economy. The main routes of agricultural exports have been blocked, and it has become impossible to use Ukrainian arable land in the occupied territories (Novikov, 2022).

4. Conclusion.

To sum up, it should be noted that agriculture as an object of administrative and regulatory framework in Ukraine is a special scope of administrative legal relations and is regulated by administrative law provisions, as well as by a set of institutions and mechanisms of public administration defined by them, which are aimed at creating appropriate conditions for functioning, organisation, management, control and further development of this sector to ensure food security of the State, sustainable and rational use of natural resources and socio-economic development of the entire country.

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ПОНЯТТЯ ТА ЗНАЧЕННЯ СІЛЬСЬКОГО ГОСПОДАРСТВА УКРАЇНИ ЯК ОБ'ЄКТА АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ДЛЯ ЗАБЕЗПЕЧЕННЯ ПРОДОВОЛЬЧОЇ БЕЗПЕКИ

Abstract. ***Purpose.*** Метою статті є визначити поняття та розкрити значення сільського господарства України як об'єкта адміністративно-правового регулювання для забезпечення продовольчої безпеки. ***Results.*** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, наголошено, що сільське господарство – це галузь економіки, ключовим призначенням якої є виготовлення, переробка та реалізація продукції рослинного і тваринного походження шляхом використання земельних, водних, кліматичних та біологічних ресурсів. Значущість продовольчої безпеки полягає в її впливі на здоров'я населення, економічну стабільність і національну безпеку держави в цілому. Забезпечення продовольчої безпеки означає зменшення голоду, бідності, одночасно сприяючи сталим сільськогосподарським практикам, ефективним системам розподілу продовольства та стійким ланцюгам постачання продовольчих товарів різноманітного характеру. Забезпечення продовольчої безпеки є фактично неможливим без державної активної підтримки та міжнародної співпраці. Визначено, що сільське господарство – це галузь економіки, ключовим призначенням якої є виготовлення, переробка та реалізація продукції рослинного і тваринного походження шляхом використання земельних, водних, кліматичних та біологічних ресурсів. Наголошено, предмет праці як вихідний матеріал у галузях обробної промисловості переважно від

початку технологічного процесу містить усю фізичну масу матерії, яка поступово трансформується у предмети готової продукції, де під час виробничого процесу змінюється її форма та якісні параметри. ***Conclusions.*** Зроблено висновок, що сільське господарство України, як об'єкт адміністративно-правового регулювання, представляє собою особливу сферу виникнення адміністративних правовідносин, яка регулюється за допомогою норм адміністративного права, а також сукупністю визначених ними інституцій та механізмів державного управління, що спрямовані на створення належних умов для функціонування, організації, управління, контролю та подальшого розвитку даної сфери з метою забезпечення продовольчої безпеки держави, сталого та раціонального використання природних ресурсів й соціально-економічного розвитку країни в цілому.

Ключові слова: сільське господарство, об'єкт, адміністративно-правове регулювання, продовольча безпека.

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ON DESCRIPTION OF THE SYSTEM OF LEGAL FRAMEWORKS OF THE SECURITY SERVICE OF UKRAINE RELATED TO ENACTING THE STATE ANTI-CORRUPTION PROGRAMME TO IMPLEMENT THE ANTI-CORRUPTION STRATEGY

Abstract. ***Purpose.*** The purpose of the article is to describe the system of regulatory and legal frameworks of the Security Service of Ukraine's activities related to enacting the State anti-corruption programme to implement the Anti-Corruption Strategy. ***Results.*** The article identifies a range of legal regulations of different legal force which constitute the system of legal frameworks of the Security Service of Ukraine's activities related to enacting the State anti-corruption programme to implement the Anti-Corruption Strategy. The activities of the Security Service of Ukraine aimed at enacting the State anti-corruption programme to implement the Anti-Corruption Strategy go much deeper than the usual process of fulfilling the tasks assigned to this law enforcement agency. It is a multidimensional, complex legal activity, a type of internal activities aimed at combating, preventing and deterring corruption in the SSU system. In addition, it is virtually impossible to ensure the SSU's effective work in this field without creating a high-quality and effective legal framework. Moreover, it should be noted that in the context studied in this article, the regulatory framework, as one of the key elements of the administrative and legal mechanism for enacting the State anti-corruption programme, is distinguished by its individual specificity. ***Conclusions.*** It is concluded that the legal framework for the activities of the Security Service of Ukraine to implement the State anti-corruption programme to implement the Anti-Corruption Strategy is currently presented by: the Constitution of Ukraine and a number of laws and by-laws. For instance, the Basic Law defines the most important principles of the functioning of the State in general, as well as the activities of its key bodies in particular. The largest range of targeted provisions is enshrined in laws and by-laws. They regulate most of the administrative, organisational, logistical and other issues of both the general process of preventing corruption in public authorities and local self-government bodies and the implementation of anti-corruption policy directly as part of the activities of the Security Service of Ukraine.

Key words: legal framework, anti-corruption, corruption prevention, anti-corruption programme, Anti-Corruption Strategy, Security Service of Ukraine.

1. Introduction

The activities of the Security Service of Ukraine aimed at enacting the State anti-corruption programme to implement the Anti-Corruption Strategy go much deeper than the usual process of fulfilling the tasks assigned to this law enforcement agency. It is a multidimensional, complex legal activity, a type of internal activities aimed at combating, preventing and deterring corruption in the SSU system. In addition, it is virtually impossible to ensure the SSU's effective work in this field without creating a high-quality and effective legal framework. Moreover, it should be noted that in the context studied in this article, the regulatory framework, as one of the key elements of the administrative and legal mechanism for enacting the State anti-corruption programme, is distinguished by its individual specificity.

Some problematic issues related to the regulatory and legal framework for the activities of the Security Service of Ukraine have been considered in the scientific works by: V.F. Demskyi, T.V. Ilienok, Ya.M. Kashuba, O.M. Melnyk, O.V. Lytvyn, A.V. Nikitin, R.M. Tuchak and many others. However, despite the significant theoretical and juridical basis, the issue of the legal framework of the Security Service of Ukraine in the context of enacting the State anti-corruption programme to implement the Anti-Corruption Strategy remains virtually unexplored in the scientific literature.

That is why the purpose of the article is to describe the system of regulatory and legal

frameworks of the Security Service of Ukraine's activities related to enacting the State anti-corruption programme to implement the Anti-Corruption Strategy.

2. Legal regulations on enacting the State anti-corruption programme to implement the Anti-Corruption Strategy of the Security Service of Ukraine

To begin with, it is most appropriate to consider the legal regulations in the field under study depending on their legal force. First of all, it should be noted that the Constitution of Ukraine is the most important law of the State. According to this document, our State is a sovereign and independent, democratic, social and legal country. A human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State. In Ukraine, the principle of the rule of law is recognised and effective. The Constitution of Ukraine has the highest legal force. Laws and other legal regulations are adopted on the basis of the Constitution of Ukraine and shall conform to it The norms of the Constitution of Ukraine are norms of direct effect. Appeals to the court in defence of the constitutional rights and freedoms of the individual and citizen directly on the grounds of the Constitution of Ukraine are guaranteed. State power in Ukraine is exercised on the principles of its division into legislative, executive and judicial power (Constitution of Ukraine, 1996).

According to Article 17 of the Constitution, to protect the sovereignty and territorial indivisibility of Ukraine, and to ensure its economic and informational security are the most important functions of the State and a matter of concern for all the Ukrainian people. The defence of Ukraine and the protection of its sovereignty, territorial indivisibility and inviolability, are entrusted to the Armed Forces of Ukraine. Ensuring state security and protecting the state border of Ukraine are entrusted to the respective military formations and law enforcement bodies of the State, whose organisation and operational procedure are determined by law. The Armed Forces of Ukraine and other military formations shall not be used by anyone to restrict the rights and freedoms of citizens or with the intent to overthrow the constitutional order, subvert the bodies of power or obstruct their activity (Constitution of Ukraine, 1996).

As the regulatory and legal framework for the SSU's activities in enacting the State anti-corruption programme to implement the Anti-Corruption Strategy, the Constitution is a declarative document that establishes the main, basic principles of the SSU's functioning as a public authority and, in particular, a law enforcement body. The Basic Law sets out the basic provisions that should be considered, inter alia, when creating an anti-corruption environment in the system of the SSU's bodies and units.

The review of the next group of legal regulations and laws reveals that their provisions are directly related to the SSU's activities in enacting the State anti-corruption programme to implement the Anti-Corruption Strategy. For instance, the Law of Ukraine 'On the Security Service of Ukraine' defines the legal status, tasks, structure, powers and other features of this state law enforcement body. The provisions of the Law are the basis for organising and implementing the State anti-corruption programme, as well as all other measures aimed at counteracting and combating corruption within the SSU (On the Security Service of Ukraine: Law of Ukraine, 1992).

The Law of Ukraine 'On Prevention of Corruption' is currently the key legal regulation on combating and preventing corruption in the entire country. The document defines the legal and organisational framework for the functioning of the system of entities for corruption prevention in Ukraine, the content and procedure for applying preventive anti-corruption mechanisms, and the rules for eliminating the consequences of corruption offences. For example, its provisions define the concepts of corruption, unlawful benefit, which is the purpose of committing acts that constitute the content of this negative phenomenon, conflict of interest, close associates and other issues (Law of Ukraine On Prevention of Corruption: Law of Ukraine, 2014).

Section II of the Law is entirely devoted to defining the status of the main state body in the field of corruption prevention, which is directly involved in the development of the State anti-corruption strategy and programme. This is the National Agency for Prevention of Corruption, a central executive body with a special status that ensures the development and implementation of public anti-corruption policy. The NAPC is responsible to and controlled by the Verkhovna Rada of Ukraine within the limits provided by law and is accountable to the CMU, which establishes it. In its activities, the NAPC is completely independent of any interference with its targeted activities, which is guaranteed by: 1) the special status of the National Agency; 2) the special proce-

dure for selection, appointment and termination of powers of the Head of the National Agency; 3) special procedure for financing and logistical support for the National Agency established by law; 4) proper remuneration conditions for the Head, Deputy Heads of the National Agency and employees of the National Agency's staff, as defined by this and other laws; 5) transparency of its activities (Law of Ukraine On Prevention of Corruption: Law of Ukraine, 2014).

The list of regulatory frameworks for the SSU's activities includes the Law of Ukraine 'On the Principles of State Anti-Corruption Policy for 2021-2025', which approved the Anti-Corruption Strategy for 2021-2025, as it is the catalyst for the goals of the relevant state anti-corruption programme. The Law provides for that the purpose of the current Strategy is to achieve significant progress in preventing and combating corruption, as well as to ensure coherence and systematic anti-corruption activities of all state authorities and local self-government bodies. This Anti-Corruption Strategy views corruption as a key obstacle to sustainable economic growth and the development of effective and inclusive democratic institutions. According to the legislator's definition, the previous Anti-Corruption Strategy focused on priorities related to the creation of a system of modern anti-corruption instruments (legal institutions) and the development of a system of anti-corruption bodies to ensure the effective implementation of these instruments. Along with this, the Government limited opportunities for corruption in certain sectors through sectoral reforms, as it implemented other policy documents (On the Principles of State Anti-Corruption Policy for 2021-2025: Law of Ukraine, 2022).

An equally large number of important documents that guide the SSU in organising and executing the State anti-corruption programme to implement the Anti-Corruption Strategy of Ukraine are concentrated at the by-law level. The first of these is the CMU Resolution 'On Approval of the State Anti-Corruption Programme for 2023-2025' No. 220 of 04.03.2023. The purpose of the Programme is to achieve significant progress in preventing and combating corruption, ensuring coherence and systematic anti-corruption activities of all state and local authorities, as well as a proper process of post-war recovery of Ukraine. Implementation of the Programme will contribute to further work on Ukraine's membership in the EU, North Atlantic Alliance (NATO), and the Organisation for Economic Cooperation and Development (OECD). (On approval of the State Anti-Corruption Program for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine, 2023).

3. By-laws and regulations on enacting the State anti-corruption programme to implement the SSU Anti-Corruption Strategy

One of the bylaws of the state's top leadership is the Decree of the President of Ukraine 'On the Decision of the National Security and Defence Council of Ukraine of 14 September 2020 "On the National Security Strategy of Ukraine"' 392/2020 of 14.09.2020. The document does not directly address anti-corruption issues, but its provisions address this issue. The Decree stipulates that the Strategy is based on the following main principles: deterrence - development of defence and security capabilities to prevent armed aggression against Ukraine; resilience - the ability of society and the State to adapt promptly to changes in the security environment and maintain sustainable functioning, in particular by minimising external and internal vulnerabilities; interaction - the development of strategic relations with key foreign partners, primarily the European Union and NATO and their Member States, the United States of America, pragmatic cooperation with other states and international organisations based on Ukraine's national interests. Its implementation is aimed at: a) protecting individuals, society and the State from offences, including corruption, ensuring restoration of violated rights, and compensation for damages; b) completing reforms and overcoming corruption to bring the Ukrainian economy out of the depression, ensure its sustainable and dynamic growth, and reduce vulnerability to threats; c) affirming the principle of zero tolerance to corruption, ensuring effective operation of bodies that prevent corruption and combat corruption offences, etc. (On the decision of the National Security and Defense Council of Ukraine dated September 14, 2020 "On the National Security Strategy of Ukraine": Decree of the President of Ukraine, 2020).

A subgroup of bylaws regulating technical issues of enacting the State anti-corruption programme to implement the Anti-Corruption Strategy in the activities of the Security Service of Ukraine is formed by acts of the NAPC and the SSU directly. An example is the NAPC Order 'On improving the process of corruption risk management' No.830/21 of 28.12.2021, which approves the Corruption Risk Management Methodology; Procedure for submitting anti-corruption programmes and amendments thereto for approval to the National Agency for the Prevention of Corruption and for their approval (On improving the process of corruption risk management: Order of the NACP, 2021).

The SSU documents include Orders of the SSU Central Directorate No. 126 of 19.04.2021 approving the SSU Anti-Corrup-

tion Programme for 2021-2024; 'On Conducting Corruption Risk Assessment in the Activities of the Security Service of Ukraine' No. 131 of 13.04.2023; 'On approving the Rules of Professional Ethics and Integrity of a Serviceman of the Security Service of Ukraine' No. 474 of 27.11.2023, etc.

Thus, the SSU Anti-Corruption Programme stipulates that the general principles of the departmental anti-corruption policy are formed with due regard to the need to build a high level of trust in the SSU; conditions enabling the corruption potential in law enforcement related to the management of significant state resources, high level of secrecy and the principle of unity of command, which gives commanders (chiefs, managers) certain discretionary powers, contacts of employees with the criminal environment, impact of law enforcement on the rights and freedoms of citizens; constant public control over the activities of law enforcement bodies.

In addition, Order No. 126 of the SSU Central Directorate of 19.04.2021 establishes that the SSU departmental policy on preventing and combating corruption provides for the implementation of anti-corruption reforms, the development of effective mechanisms for preventing corruption, resolving conflicts of interest and ensuring control over the observance of moral and ethical standards, integrity and decency by persons authorised to perform state functions, and strengthening the efficiency of financial resources management (Anti-corruption program of the Security Service of Ukraine for 2021-2024: Order of the Security Service of Ukraine, 2021).

4. Conclusion.

Therefore, the legal framework for the activities of the Security Service of Ukraine to implement the State anti-corruption programme to implement the Anti-Corruption Strategy is currently presented by: the Constitution of Ukraine and a number of laws and by-laws. For instance, the Basic Law defines the most important principles of the functioning of the State in general, as well as the activities of its key bodies in particular. The largest range of targeted provisions is enshrined in laws and by-laws. They regulate most of the administrative, organisational, logistical and other issues of both the general process of preventing corruption in public authorities and local self-government bodies and the implementation of anti-corruption policy directly as part of the activities of the Security Service of Ukraine.

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ДО ХАРАКТЕРИСТИКИ СИСТЕМИ ПРАВОВИХ ЗАСАД ДІЯЛЬНОСТІ СЛУЖБИ БЕЗПЕКИ УКРАЇНИ ЩОДО РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ АНТИКОРУПЦІЙНОЇ ПРОГРАМИ З ВИКОНАННЯ АНТИКОРУПЦІЙНОЇ СТРАТЕГІЇ

Abstract. ***Purpose.*** Метою статті є: надати характеристику системі нормативно-правових засад діяльності Служби безпеки України щодо реалізації державної антикорупційної програми з виконання Антикорупційної стратегії. ***Results.*** У статті виділено коло нормативно-правових актів різної юридичної сили, які складають систему правових засад діяльності Служби безпеки України щодо реалізації державної антикорупційної програми з виконання Антикорупційної стратегії. Діяльність Служби безпеки України щодо реалізації державної антикорупційної програми з виконання Антикорупційної стратегії значно глибша за звичайний процес виконання поставлених перед цим правоохоронним органом завдань. Вона є багатоаспектною, складною правовою активністю, видом внутрішньої діяльності із протидії, попередження та запобігання корупції в системі СБУ. Разом із тим, забезпечення ефективної діяльності Служби безпеки України за даним напрямом є фактично неможливим без створення якісного та ефективного нормативно-правового підґрунтя. При цьому слід зауважити, що у досліджуваному у статті контексті, нормативно-правові засади, як один з ключових елементів адміністративно-правового механізму реалізації державної антикорупційної програми, відрізняються своєю індивідуальною специфікою. ***Conclusions.*** Зроблено висновок, що нормативно-правові засади діяльності Служби безпеки України щодо реалізації державної антикорупційної програми з виконання Антикорупційної стратегії на сьогоднішній день представлено: Конституцією України та низкою законодавчих та підзаконних нормативно-правових актів. Так, Основний Закон визначає найбільш важливі засади функціонування держави взагалі, а також діяльності її ключових органів, зокрема. Найбільше коло цільових норм закріплено на законодавчому та підзаконному рівні. Саме за їх допомогою регламентовано більшість адміністративно-організаційних, матеріально-технічних та інших питань як загального процесу запобігання корупції в органах державної влади та місцевого самоврядування, так і реалізації антикорупційної політики безпосередньо в рамках діяльності Служби безпеки України.

Ключові слова: нормативно-правові засади, протидія корупції, антикорупційна програма, Антикорупційна стратегія, Служба безпеки України.

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INFORMATION SECURITY AS A FUNDAMENTAL COMPONENT OF NATIONAL SECURITY

Abstract. ***Purpose.*** The purpose of this article is to examine the theoretical and methodological foundations of information security as a fundamental component of national security, which plays a key role in safeguarding national interests and the security of the state. ***Results.*** The article explores the essence of information security as a fundamental element of national security. The information domain is increasingly exposed to both external and internal threats, which, in most cases, pose risks to the interests of individuals, society, and the state. Information security, as an integral part of national security, plays a crucial role in the external and internal policies of the state and encompasses all areas of public life. The article examines the components of ensuring the state's information security and outlines the main areas of activity of governmental authorities. It defines the system for ensuring information security and highlights the features, functions, and operational aspects of its actors within the national security framework. The analysis covers the impact of information security on national security, the challenges posed by internal and external informational threats, protection of information, information sovereignty of the state, and information support. Conceptual approaches are proposed for ensuring information security and developing an information security system to support the proper functioning of the information space. This includes identifying and preventing threats to national security, the state, and its citizens in the information domain. ***Conclusions.*** The study concludes that the Information Security Strategy provides a normative basis for ensuring information security within the state's territory. However, it lacks provisions for economic security, leading to legal gaps and complications in the implementation of comprehensive information security. The field of information security is rapidly evolving and requires urgent regulatory improvement. It is essential to develop a legal framework to protect the rights and interests of the subjects and objects of information relations. The information domain must be based on reliable, complete, and timely information, as well as freedom of speech, in order to preserve and enhance the national information product within the global information space.

Key words: national security, information security, information protection, national security assurance, information, information leakage.

1. Introduction

In the national security system of the state, information security plays a crucial role, as it can significantly influence the resolution of domestic political, foreign policy, economic, and military conflicts. Inefficiencies in the organization of state authorities and civil society result in a broad spectrum of internal threats to the country's information security. The issue of legal gaps in the national information strategy is highly relevant; their refinement and amendment would substantially contribute to the successful resolution of challenges in the political, social, economic, and other domains of state activity.

The relevance of information security as a component of national security has been emphasized by leading scholars in the field of administrative law, including V.B. Averyanov, O.M. Bandurka, Yu.P. Bytyak, V.V. Halunko, I.P. Holosnichenko, O.Yu. Drozd, T.O. Kolomoiets, V.K. Kolpakov, A.T. Komziuk, V.A. Lipkan, O.M. Muzychuk, V.I. Kurylo, V.I. Olefir, S.P. Ponomariov, A.A. Starodubtsev, M.M. Tyshchenko, S.O. Shatrava, among others.

The purpose of this article is to examine the theoretical and methodological foundations of information security as a fundamental component of national security, which plays one of the key roles in ensuring the protection of vital national interests and the overall security of the state.

2. Information Security as a Component of National Security

One of the primary objectives of the state is ensuring the security of society, as the formation and development of human civilization have

always been closely linked with overcoming various internal and external political threats. National security cannot be viewed as an isolated or detached phenomenon from public life. Information support plays a particularly significant role in this context. At the current stage of societal development, a wide array of new information technologies, communication systems, and telecommunications infrastructure has emerged, making information a constant and essential attribute of state functioning. Informational influence on the state and society has become more effective than political, economic, or even military pressure.

Article 17 of the Constitution of Ukraine states: "The protection of the sovereignty and territorial integrity of Ukraine, the provision of its economic and information security, shall be the most important functions of the state and a matter of concern for all the Ukrainian people" (Constitution of Ukraine, 1996).

Thus, the term *"information"* is employed across various scientific and legal disciplines. It has acquired multiple meanings and is interpreted depending on the field of activity. According to the Law of Ukraine *On Information*, information is defined as any data and/or knowledge that can be stored on physical media or represented in electronic form (Law of Ukraine On Information, 1992).

A more comprehensive definition is offered in the *Legal Encyclopedia*: "Information" (from Latin *informatio* – explanation, representation, interpretation) is understood as data concerning individuals, objects, technologies, tools, resources, events, and phenomena occurring in all areas of state activity, public life, and the environment, regardless of the form in which such data are presented. This data may be expressed in the form of signals, symbols, sounds, moving or static images, or in any other way (Shemshuchenko, 1998).

The field of information security is governed by relevant normative legal acts, including: the Constitution of Ukraine, the Law of Ukraine *On Information*, the Law of Ukraine *On the National Informatization Program*, the Law of Ukraine *On National Security of Ukraine*, the Presidential Decree *On the Information Security Strategy*, the *Concept of National Security of Ukraine*, as well as applicable international standards.

It is appropriate to assert that information security, as a component of national security, represents a state of protection of vital interests of individuals, society, and the state, in which harm is prevented due to: incomplete, untimely, or unreliable information; negative informational influence; adverse effects of information technology use; unauthorized dissemination, use, and breaches of integrity, confidentiality, and availability of information (Sashchuk, 2019).

Modern scholar O.V. Lytvynenko defines information security as the protection of information, the safeguarding and control of the information space, and ensuring an adequate level of informational sufficiency (Lytvynenko, 1997, p. 10).

Researchers M.M. Prysiazhniuk and Ya.I. Bieloshevych characterize information security as a state of protection of vital interests of individuals, society, and the state, in which harm is prevented due to: incomplete, untimely, or unreliable information; negative informational influence; adverse consequences of the use of information technologies; unauthorized dissemination, use, and breaches of the integrity, confidentiality, and availability of information (Prysiazhniuk, Bieloshevych, 2013, p. 44).

B. Kormych rightly notes that information security is the state of protection of legally established norms and parameters of information processes and relations that ensure the necessary conditions for the existence of individuals, society, and the state as subjects of these processes and relations (Kormych, 2004, p. 92).

In the academic literature, various conceptual approaches to defining information security can be found. Some scholars consider it to be a multi-dimensional and multifaceted phenomenon affecting all spheres of public life, while others focus on the growing number of potential threats in the information space and the increasing destabilizing factors.

The Law of Ukraine *On the Concept of the National Informatization Program* defines information security as an essential component of national security. Thus, information security is recognized as an integral part of the political, economic, defense, and other sectors of national security. The objects of information security include information resources, channels of information exchange and electronic communication, mechanisms ensuring the functioning of electronic communication systems and networks, as well as other elements of the national information infrastructure. As a result of implementing the Program, a comprehensive set of regulatory documents will be developed addressing all aspects of the use of computing equipment for processing and storing restricted information; a set of national standards for documentation, maintenance, use, and certification of information protection software; a database of tools for diagnosing, localizing, and preventing viruses; new information protection technologies using spectral methods; and highly reliable cryptographic methods of information protection (Law of Ukraine On the Concept of the National Informatization Program, 1998).

The Law of Ukraine *On National Security of Ukraine*, which serves as a fundamental guide for ensuring Ukraine's national security, presents information security as a systemic and integral component of national security, albeit without a precise definition of the term (Law of Ukraine On National Security of Ukraine, 2018).

According to O.M. Kosohova and A.O. Siryk, who have studied the protection of the national information space in the context of hybrid warfare, several key destructive factors have been identified as having a damaging impact on Ukraine's information environment:

1. continuous personnel losses (casualties, prisoners, and wounded), which contribute to public distrust in Ukraine's military-political leadership, portraying it as unable to control the internal situation;

2. an inadequate national information security system that undermines patriotic sentiment;

3. the active dissemination of external information campaigns by the Russian Federation, which influence public opinion towards accepting a federal structure for Ukraine and resolving the conflict in the East under the terms of the Kremlin regime (Kosohov, Siryk, 2017, p. 39).

Information security is generally interpreted as the level of protection of information processes within the state. The current legislation establishes a range of legal and organizational measures aimed at securing the field of information security.

The main directions of the *Information Security Strategy of Ukraine* include: ensuring national information security, countering disinformation, and resisting information operations. The Strategy defines information security as a component of Ukraine's national security, representing a state of protection of state sovereignty, territorial integrity, democratic constitutional order, and other vital interests of the individual, society, and the state. This includes the proper assurance of constitutional rights and freedoms, such as the collection, storage, use, and dissemination of information; access to reliable and objective information; and the existence of an effective system of protection and counteraction to harmful informational influences — including coordinated dissemination of false information, destructive propaganda, other information operations, as well as unauthorized dissemination, use, and violations of the integrity of restricted-access information (Decree of the President of Ukraine On Information Security Strategy, 2021).

3. The Role of State Authorities in Ensuring Information Security

It is appropriate to highlight a distinct list of powers vested in state authorities regarding the assurance of information security, as the implementation of such powers plays a crucial role in safeguarding national security. The National Security and Defense Council of Ukraine operates in the information domain in accordance with the Constitution and laws of Ukraine. It coordinates the activities of executive authorities aimed at ensuring national security in the information sphere, particularly through the capacities of the Center for Countering Disinformation (Decree of the President of Ukraine On the Information Security Strategy, 2021).

The Cabinet of Ministers of Ukraine plays a leading role in the field of information security, ensuring the formation and implementation of state information policy, guaranteeing information sovereignty, allocating funding for programs related to information security, directing and coordinating the work of ministries and other executive bodies, and approving an action plan for implementing the Information Security Strategy.

The Ministry of Foreign Affairs of Ukraine, in the context of information security, contributes to the promotion and formation of a positive international image of Ukraine in global and foreign national information resources in order to protect its political, economic, and socio-cultural interests, reinforce national security, and restore the country's territorial integrity.

The Ministry of Defense of Ukraine, as a member of the National Security and Defense Council, is authorized to:

1. monitor the information environment and forecast and identify information threats to national security in the military sphere;

2. prepare and conduct information defense activities, coordinating the involvement of national security actors in these efforts;

3. develop and maintain the system of strategic communications of the defense forces;

4. carry out legal, organizational, technical, informational, and other actions to ensure its own information security, including the protection of the unified information environment of the defense forces, especially in deployment locations of military units and formations of the Armed Forces of Ukraine and other military entities established under Ukrainian law;

5. cooperate with domestic and foreign media outlets to report on national security and defense measures, as well as efforts to repel and deter armed aggression by the Russian Federation in Donetsk and Luhansk oblasts;

6. counter information operations and other information influence campaigns targeting the Armed Forces and other Ukrainian military formations;

7. deliver reliable information to members of the Armed Forces and other components of the defense forces (Decree of the President of Ukraine On the Information Security Strategy, 2021).

The Security Service of Ukraine (SSU) is designated by law as one of the main actors in ensuring national security. According to Article 17 of the Law of Ukraine *On National Security of Ukraine*, it is responsible for counterintelligence protection of state sovereignty, constitutional order, territorial integrity, defense and scientific-technical potential, cybersecurity, information security, and critical infrastructure (Law of Ukraine On National Security of Ukraine, 2018).

The SSU's activities in the area of information security are regulated by the following legislative acts: the Law of Ukraine *On the Security Service of Ukraine*, *On National Security of Ukraine*, *On Operative-Investigative Activity*, *On Counterintelligence Activities*, *On Combating Terrorism*, *On the Organizational and Legal Framework for Combating Organized Crime*, the *Information Security Strategy*, the *Cybersecurity Strategy of Ukraine*, as well as relevant international legal instruments. The SSU identifies, neutralizes, and mitigates threats to national security in the information domain within the scope of its authority.

In accordance with the Information Security Strategy, the main functions of the SSU in the information sphere include the special monitoring of domestic and foreign mass media and online platforms to detect threats to Ukraine's national security, and counteracting special information operations aimed at undermining the constitutional order, sovereignty, territorial integrity, or exacerbating socio-political and economic conditions (Decree of the President of Ukraine On the Information Security Strategy, 2021).

Ukrainian intelligence agencies, in the sphere of information security, safeguard national interests abroad and counter external information threats in the context of national defense and security.

Article 22 of the Law of Ukraine *On National Security of Ukraine* designates the State Service of Special Communications and Information Protection of Ukraine as the body responsible for the functioning and development of government communication systems, the National System of Confidential Communication, and for implementing state policy in areas such as cybersecurity of critical information infrastructure, state information resources and legally protected data, cryptographic and technical protection of information, telecommunications, use of the national radio frequency spectrum, special-purpose postal services, and government courier communications, among other statutory duties.

The National Council of Television and Radio Broadcasting of Ukraine is tasked with protecting Ukraine's information space from propagandist audiovisual content of the aggressor state and promoting Ukrainian broadcasting in the temporarily occupied territories (Decree of the President of Ukraine On the Information Security Strategy, 2021).

The powers of the Ministry of Internal Affairs of Ukraine in the area of information security are defined by the Resolution of the Cabinet of Ministers of Ukraine *On Approval of the Regulation on the Ministry of Internal Affairs of Ukraine* and by laws including *On National Security of Ukraine*, *On the National Police*, *On Operative-Investigative Activity*, and *On the Basic Principles of Ensuring Cybersecurity of Ukraine*.

The Ministry of Internal Affairs is a member of the National Security and Defense Council of Ukraine and acts as a stakeholder in the implementation of state information policy. It also cooperates with other national security entities to counter threats to national interests and national security.

The National Police of Ukraine ensures the protection of individual rights and freedoms, as well as public and state interests against cybercrime. It is responsible for preventing, detecting, suppressing, and solving cybercrimes, and raising public awareness about cybersecurity (Law of Ukraine On the Basic Principles of Cyber Security of Ukraine, 2017).

The Prosecutor's Office of Ukraine operates in accordance with the Constitution and the Law of Ukraine *On the Prosecutor's Office*. It forms a unified system responsible for:

1. maintaining public prosecution in court;
2. organizing and supervising pre-trial investigations, including overseeing covert investigative actions;
3. representing state interests in court in exceptional cases and as provided by law (Constitution of Ukraine, 1996).

Justice in Ukraine is administered exclusively by the courts, in accordance with Articles 124–125 of the Constitution of Ukraine and applicable laws. The courts adjudicate criminal offenses that threaten national security in the information domain.

Information security is of great importance not only for the state but also for the international community. The United Nations plays a significant role in global information security efforts by developing international legal frameworks to counteract the unlawful use of scientific and technological advances by terrorist

groups and organized crime. Issues of information security in the context of building a sustainable global information society are also actively addressed by several specialized UN agencies (Frolova, 2018, p. 4).

4. International Information Security

The United Nations defines international information security as a state of international relations that excludes violations of global stability and the creation of threats to the security of individual states and the global community within the information space (Dubov, Ozhevan, 2012, p. 61). New international documents were developed based on the UN resolutions "The Role of Science and Technology in the Context of International Security and Disarmament" and "Developments in the Field of Information and Telecommunications in the Context of International Security." These resolutions contain provisions concerning the use of emerging technologies in both civilian and military spheres, the application of modern scientific and technological advancements in weapons modernization, and the importance of countering destructive information influences (Kopiika, 2020, p. 103).

The primary goal of international organizations is security itself, with NATO having most effectively reformed its policy regarding information security. The organization has established centers in member states as multinational institutions for the development of digital security doctrines, the enhancement of intergovernmental cooperation, the implementation of theoretical findings into practical measures against digital threats, and the exchange of best practices in information protection among member and partner countries. Currently, NATO's Cyber Security Center operates in Estonia. It does not form part of NATO's military structure and is funded by sponsoring countries and NATO member states (Kononenko, Novikova, Kopytska, 2021).

Information security, as a component of national security, plays a vital role in identifying national interests and security priorities. The main threat to national security is the informational influence exerted on society by another state or actor, which poses risks to Ukraine's sovereignty, critical infrastructure, information resources, strategic communications, and public consciousness. Disinformation campaigns aim to impose an alternative system of values on the state and manipulate the behavior of its population for the benefit of the aggressor.

5. Conclusions

The Information Security Strategy outlines the regulatory framework for ensuring information security within the territory of the state. However, the legislator does not provide for the integration of economic security into the Information Security Strategy, which results in regulatory gaps and complicates the process of ensuring effective information security. The information security domain is dynamic and requires ongoing legal improvement. It is essential to develop a comprehensive regulatory framework aimed at protecting the rights and interests of the subjects and objects of informational relations.

The information environment must be built upon accurate, comprehensive, and timely information, while simultaneously upholding freedom of expression and fostering the development and preservation of national informational products in the global information space.

Responsibility for ensuring information security is currently distributed among various state authorities and law enforcement agencies. Therefore, it is necessary to establish a dedicated state body endowed with specific powers in the field of information security.

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ІНФОРМАЦІЙНА БЕЗПЕКА ЯК ФУНДАМЕНТАЛЬНА СКЛАДОВА НАЦІОНАЛЬНОЇ БЕЗПЕКИ

Abstract. ***Purpose.*** Мета статті полягає дослідженні теоретико-методологічних основ інформаційної безпеки як фундаментальну складову національної безпеки, що відіграє одну з ключових ролей у забезпеченні національної безпеки та життєво важливих інтересів держави. ***Results.*** Стаття присвячена розкриттю сутності інформаційної безпеки як фундаментальної складової національної безпеки. В інформаційній сфері супроводжуються появи зовнішніх так і внутрішніх загроз, які в більшості випадків загрожують інтересам особистості, суспільства, держави та її національній безпеці. Інформаційна безпека як складова національній безпеці відіграє важливу роль є складовою зовнішньої і внутрішньої політики держави та охоплює всі сфери життєдіяльності суспільства. Розглянуто складові щодо забезпечення інформаційної безпеки держави та основні напрямки діяльності державних органів влади. Визначено систему забезпечення інформаційної безпеки та особливості функціонування та функції її субєктів у сфері національної безпеки. Проаналізовано вплив інформаційної безпеки на національну безпеку, а також проблеми внутрішніх та зовнішніх інформаційних загроз, захист інформації безпеки, інформаційного суверенітету держави та інформаційного забезпечення. Запропоновані концептуальні підходи щодо забезпечення інформаційної безпеки та системи інформаційної безпеки для належного функціонування інформаційного простору, з метою виявлення та попередження загроз національній безпеці, держави та її громадянам в інформаційній сфері.

Conclusions. Зроблено висновок, що в Стратегії інформаційної безпеки вбачаються нормативне закріплення щодо забезпечення інформаційної безпеки в межах території держави. Законодавець в Стратегії інформаційної безпеки не передбачає забезпеченні економічної безпеки, що призводить до нормативних прогалин та ускладнює забезпечення інформаційної безпеки. Сфера інформаційної безпеки постійно змінюється є нагальною і потребує нормативного вдосконалення. Слід розробити нормативну правову базу щодо забезпечення захисту прав та інтересів суб'єктів і об'єктів інформаційних відносин. Інформаційна сфера повинна будуватися на достовірній повній, своєчасній інформації та свободу слова щодо вдосконалення, збереження національного інформаційного продукту у світовому інформаційному просторі.

Ключові слова*: національна безпека, інформаційна безпека, інформаційний захист, забезпеченя національної безпеки, інформація, виток інформації.*

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DIGITAL LAW IN THE SYSTEM OF UKRAINIAN LAW: ANALYSIS OF PARTIES

Abstract. ***Purpose.*** The purpose of the article is to establish the role of digital law in regulating social relations and to outline the main issues of determining its legal nature from the perspective of actor analysis. ***Results.*** The article analyses the criteria for distinguishing digital law as an independent branch of law. It is emphasised that the use of digital technologies leads to the formation of a separate branch of law which, so to speak, "autonomously" regulates social relations in the field of digitalisation independently of other branches, using its regulatory methods through digital technologies. Digital technologies are not only a way to give a new form to existing social relations, but also a tool for qualitative changes in the conduct of parties to legal relations. In addition, modern digital practice leads to a certain blurring of the boundaries between absolute and relative rights, in particular in the context of the implementation of legal remedies. In the context of distinguishing digital law as an independent branch, it is important to emphasise that some legal relations exist only in a special digital environment, which significantly changes the nature of interaction between their participants, sometimes actually creating a new digital legal reality characterised by the integration of the digital and real worlds, public and private platforms, private and public networks, etc. Obviously, this circumstance cannot be ignored by the national legislator. ***Conclusions.*** It is concluded that Ukraine's digital law is specific and independent in nature. The basis for this statement is the criteria enabling to state that digital law is relatively independent. It is not only about using a specific conceptual apparatus, determining the legal status of the parties to legal relations, which are essential for the exercise of digital rights, but also about the formation of a system of regulatory framework for digital legal relations, in which self-regulatory acts, technical and even ethical provisions that ensure the formation of their own arsenal of means of interaction between participants in digital legal relations continue to occupy a special place. Modern legal relations, based on digital technologies, actively influence relations outside the digital world. In fact, we mean a qualitatively new development of law and regulatory framework that fundamentally changes traditional approaches to building social relations in the context of interaction between individuals, society and their contacts with public authorities. However, this new digital legal reality poses additional risks for parties to legal relations, as it requires to be regulated systematically and consistently, and therefore the issue of forming digital law, defining its legal nature and place in the Ukrainian legal system is relevant and timely.

Key words: law, digital law, digital environment, digital legal relations, parties to legal relations, digital actors, digitalisation, information technology, digital state.

1. Introduction

The digitalisation of all sectors of society and the state has led to the transformation of relevant social relations, which have taken on new forms. This, in turn, has led to the formation of a new regulatory framework and amendments to existing legislation. These trends are further complicated by the transformation of digital relations themselves, the emergence of new forms of interaction between legal entities in the digital environment.

Digitalisation provides new opportunities to improve welfare and address social issues in education, business, healthcare and environmental protection, public administration, transport and other sectors of human life (Haltsova, 2021). Modern legal relations, based on digital technologies, actively influence relations outside the digital world. In fact, we mean a qualitatively new development of law and regulatory framework that fundamentally changes traditional approaches to building social relations in the context of interaction between individuals, society and their contacts with public authorities. However, this new digital legal reality poses additional risks for parties to legal relations, as it requires to be regulated systematically and consistently, and therefore the issue of forming digital law, defining its legal nature and place in the Ukrainian legal system is relevant and timely.

The scientific research in the field of digital law and the legal status of participants in

the digital environment includes the works of domestic legal scholars who have studied these issues at different times, including O. Barabash, M. Baimuratov, O. Batanov, D. Bielova, Yu. Bysaha, O. Bernaziuk, V. Voronkova, O. Karmaza, Yu. Razmetaieva, N. Parkhomenko, T. Podorozhna, O. Skrypniuk, O. Streltsova, Y. Tikhomyrov, Yu. Shemshuchenko, D. Yatskiv, and others.

The purpose of the article is to establish the role of digital law in regulating social relations and to outline the main issues of determining its legal nature from the perspective of actor analysis.

2. Actors in the information space

With the development of information technologies, the Ukrainian state is increasingly seeking to establish itself as a legal state with the aim of regulating the activities of legal entities that are currently 'unusual' for perception. For example, the current legislation introduces the following new actors and provides their definitions: "website owner," "hosting provider," "blogger," "search engine operator," "owner of an audiovisual service," etc. (Barabash, 2022).

Among the actors in the information space, several groups of actors can be distinguished, depending on their role in this environment: information producers, information recipients, actors that systematise and store information, and actors that provide information distribution (transmission) services. The state seeks to regulate their legal status in relation to all of these actors. For more effective supervision of the actions of some of the most active entities, the state enters information about them into the relevant registers. According to scholars, the list of legal relations arising in the field of IT law is quite general, but it is obvious that they are heterogeneous in their legal nature, and therefore it is very difficult to find clear criteria that would allow for a certain classification. The only unifying factor is the virtual environment in which these relations arise, change and terminate (Urtaiev, 2022).

Recently, through amendments to the current legislation, the state has been trying to regulate the activities of entities that do not directly create new information themselves, but provide services to content consumers by systematising and transmitting this information. These are information intermediaries. An information intermediary is a person or organisation that sends, receives or stores electronic documents, messages or provides other services using information and telecommunication technologies on behalf of another person (Varenko, 2014). This means a person who transmits material in an information and telecommunication network, in particular the Internet, a person who provides the possibility of placing material or information necessary for its receipt using an information and telecommunication network, a person who provides access to material in this network. By establishing prohibitions and restrictions on entities providing information dissemination services (information intermediaries), the state imposes obligations on them that are actually a continuation of state functions.

The mass media (hereinafter referred to as the media) are particularly important among the entities that create and disseminate information. In Ukraine, the media are institutions and forms of public and open dissemination of information for a wide range of users, which is carried out with the help of technical means. The mass media is a complex system in which there are two main types: electronic (radio, television, film, audio) and print (press) (Makeieva, 2019).

Nowadays, the media are institutions created for the public, open transmission of various information to different people with the help of special technical tools. This relatively independent system (remember that they are classified as the fourth branch of power in Ukraine) is characterised by its many elements: properties, content, methods, forms and levels of organisation (Sikorskyi, 2021). Furthermore, the state should consider the influence of the media on society, while controlling these levers of influence. It should be noted that the media are subject to mandatory state registration. In the modern world, the media are actively using the Internet, namely creating websites, TV and radio channels, organising online broadcasting, having their own print media, etc.

A widespread use of digital technologies leads to the formation of a separate branch of law which, so to speak, "autonomously" regulates social relations in the field of digitalisation independently of other branches, using its regulatory methods through digital technologies. In this regard, the views of the well-known Harvard Law School Professor L. Lessig should be noted, who criticised the position of the US Court of Appeals Judge F. Easterbrook, who opposed the idea of defining cyber law as a unique section of legal research and litigation (Easterbrook, 1996), consistently defended the idea that legal concepts and rules will inevitably evolve as cyberspace develops and expands. The researcher focused on the specifics of cyberspace, where there are special mechanisms of interaction and identification of participants in relations is complicated (Lessig, 1999).

It should be emphasised that the controversy over the sectoral separation of legal provisions regulating social relations in the context

of digitalisation is a consequence of the discussion about the system of law and the criteria for its construction. As is well known, the criterion for distinguishing branches of law is the subject matter and method of regulatory framework.

3. Specific features of digital law separation

Modern researchers believe that a prerequisite for the allocation of a new branch is the formation of a qualitatively different sector of social relations that will potentially be the subject matter of regulatory framework (Hetman, 2023). Moreover, it is important to distinguish such processes from the usual transformation of existing relations related to the use of their new forms.

Another element of this debate is the views of scholars on the allocation of new human rights – digital rights. According to some scholars, digital rights are not a new type of property rights, but only a digital form of binding and other rights, not all, but only those directly specified in the current legislation (De Hert, Kloza, 2012). Therefore, the digitalisation of certain property rights does not change their legal (civil law) nature: it is not the subjective rights themselves that become digital, but only the forms of their consolidation (existence) and the ways of exercising these rights, including the ways of disposing of them, that are determined by this circumstance (Marwick, Boyd, 2014). This perspective is supported by other scholars who believe that digital law is not a separate sub-branch in the legal system, but only a digital form of private and public digital relations that requires new regulatory approaches, but not the substitution of the content of digital relations with their form (Reventlow, 2020).

It is possible that the relevant groups of relations (intellectual property, e-commerce, personal data, information security, etc.) are already included in the subject group of existing branches of law, without constituting a new branch of law in the form of Internet law, cyber law, digital law, etc. Nevertheless, does this mean that it is impossible to identify the specifics of legal relations related to the acquisition, exercise and protection of rights, and to form a new branch of law on this basis? According to O. Bratasiuk, in the modern world, electronic information media, namely, the Internet resources to which they provide access, play an important role in a person's daily life. Few people can imagine their lives without digital devices, which are a way and a tool for obtaining information, and for some it is a mandatory attribute for making a profit. Therefore, the issue of regulating digital rights in the shortest possible time arises. A significant contribution to solving this problem would be to enshrine basic digital rights at the constitutional level or to include these rights in relevant legislation, and it is urgent to develop effective mechanisms for the implementation and protection of these rights (Bratasiuk, 2021). This can be demonstrated by the correlation between civil and financial law. In both cases, the matter subject to regulatory consideration is property relations, but the subject matter of legal relations and the methods of their regulatory framework give grounds for their sectoral delineation even in inter-sectoral institutions, such as government loans, where the issue of government bonds is the subject matter of financial law, and the relationship between the state, represented by its authorised bodies, and the borrower under a government loan agreement is the subject matter of civil law.

In addition, modern digital practice leads to a certain blurring of the boundaries between absolute and relative rights, in particular in the context of the implementation of legal remedies. Therefore, digital technologies are not only a way to give a new form to existing social relations, but also a tool for qualitative changes in the conduct of parties to legal relations.

In the context of distinguishing digital law as an independent branch, it is important to emphasise that some legal relations exist only in a special digital environment, which significantly changes the nature of interaction between their participants, sometimes actually creating a new digital legal reality characterised by the integration of the digital and real worlds, public and private platforms, private and public networks, etc. Obviously, this circumstance cannot be ignored by the national legislator. In addition, as is well known, there has long been an "Internet law," "cyber law" and "network law." Foreign researchers have even come up with a new name for this law: "platform law" (Lobel, 2016), that is, the law of digital technologies. In fact, all of these types of law are used as a synonym for digital law and are based on a mixture of traditional and "new" legal institutions that have emerged and developed due to the existence and widespread use of the Internet, which actually raises the question of the place of the relevant legal provisions in the system of national law.

4. Conclusions

Therefore, the analysis of specifics of Ukraine's digital law enables to conclude that it is independent in nature. The basis for this statement is the criteria enabling to state that digital law is relatively independent. It is not only about using a specific conceptual apparatus, determining the legal status of the parties to legal relations, which are essential for the exercise of digital rights, but also about the forma-

tion of a system of regulatory framework for digital legal relations, in which self-regulatory acts, technical and even ethical provisions that ensure the formation of their own arsenal of means of interaction between participants in digital legal relations continue to occupy a special place.

All these factors together create objective prerequisites for the sectoral separation of digital law. The potential inherent in digital technologies can not only significantly transform existing, but also create fundamentally new social relations, which confirms the above thesis about the possibility of considering digital law as an independent branch of law. Namely, digital law is related to: the specifics of the relations constituting its subject matter, the emergence and existence of which is impossible without the use of certain digital technologies; the peculiarities of the method of their legal regulation, characterised by a combination of mandatory and dispositive regulation; the legislative framework while maintaining a significant role of self-regulation and the need to allow for the specifics of national jurisdiction in the Internet space; the formation of a special system of legal relations based on the specifics of the information space.

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ЦИФРОВЕ ПРАВО В СИСТЕМІ УКРАЇНСЬКОГО ПРАВА: СУБ'ЄКТНИЙ АНАЛІЗ

Анотація. ***Мета.*** Метою статті є з'ясування ролі цифрового права в правовому регулюванні суспільних відносин та окреслення основних проблем визначення його правової природи з точки

зору суб'єктного аналізу. ***Результати.*** У статті зроблено аналіз критеріїв виокремлення цифрового права як самостійної галузі права. Зазначено, що . Наголошено, що використання цифрових технологій зумовлює формування окремої галузі права, яка так би мовити «автономно» регулює суспільні відносини у сфері цифровізації незалежно від інших галузей, використовуючи свої способи правового регулювання за допомогою цифрових технологій. цифрові технології є не тільки способом надання нової форми вже існуючим суспільним відносинам, а й інструментом якісної зміни поведінки суб'єктів права. Крім того, сучасна цифрова практика зумовлює певне розмивання кордонів між абсолютними і відносними правами, зокрема в контексті реалізації заходів правового захисту. У контексті виокремлення цифрового права як самостійної галузі, важливо вказати на те, що деякі правовідносини існують тільки в умовах особливого цифрового середовища, яке помітно видозмінює характер взаємодії їхніх учасників, іноді фактично створюючи нову цифро-правову реальність, для якої характерні інтеграція цифрового і реального світу, публічні та приватні платформи, приватні та загальнодоступні мережі тощо. Вочевидь, ця обставина не може бути проігнорована вітчизняним законодавцем. ***Висновки.*** Зроблено висновок про специфіку цифрового права України та його самостійний характер. Підставою для такого твердження є саме критерії, які дають змогу говорити про відносну самостійність цифрового права. Йдеться не тільки про використання специфічного понятійного апарату, визначення правового статусу суб'єктів правовідносин, без участі яких реалізація цифрових прав стає об'єктивно неможливою, а й про формування системи нормативного регулювання цифро-правових відносин, у якій особливе місце продовжують посідати акти саморегулювання, технічні та навіть етичні норми, що забезпечують формування власного арсеналу засобів взаємодії учасників цифрових правовідносин. Сучасні правовідносини, спираючись на цифрові технології, активно впливають й на відносини за межами цифрового світу. Фактично йдеться про якісно новий розвиток права, правового регулювання, що кардинально змінює традиційні підходи до вибудовування суспільних відносин у контексті взаємодії людини, суспільства та їх контактів з органами державної влади. Утім, така нова цифро-правова реальність породжує додаткові ризики для суб'єктів права, адже потребує системного та послідовного правового регулювання, з огляду на що питання про формування цифрового права, визначення його правової природи та місця в системі права України є актуальним та своєчасним.

Ключові слова: право, цифрове право, цифрове середовище, цифрові правовідносини, суб'єкти права, цифрові суб'єкти, цифровізація, інформаційні технології, цифрова держава.

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ON THE ISSUE OF DEFINING THE CONCEPT OF DELEGATED POWERS AS THE BASIS OF NOTARIAL SELF-GOVERNANCE

Abstract. ***Purpose.*** The purpose of the article is to propose the author's definition of the concept of delegated powers as the basis of notarial self-governance. ***Results.*** To date, several draft laws have been registered in the Verkhovna Rada of Ukraine, the provisions thereof provide an interpretation of the concept of "delegated powers." For example, the Draft Law on the procedure for delegation of powers of executive authorities and local self-government bodies No. 1472 of 01.02.2008 defines: delegated powers are certain powers or a part of powers that are assigned by law to another executive authority or local self-government body in accordance with the law (delegation by law) or an agreement (delegation by agreement), which are situationally, temporarily or indefinitely transferred to the executive authority or local self-government body. The delegated state powers may include powers provided for by law as such that may be delegated and powers that may be transferred by concluding an agreement. ***Conclusions.*** It is concluded that delegation is a transfer of powers, duties or tasks from one person or body to another with the purpose of improving management efficiency, distribution of responsibility and optimisation of a certain process. That is, delegated powers are an atypical for an actor, additional system of rights and duties which it receives from another in accordance with the procedure established by law. Despite the fact that the category described above finds the greatest application and legal definition in the field of local self-government, it can be used in other sectors of social and legal relations, for example, in the labour process, where a manager transfers part of his/her competence to a subordinate. Therefore, the delegation of powers in the field of professional self-government of notaries means the transfer of rights and duties from the State to self-governing institutions, which, despite the public nature of the notary and the existence of a strict mechanism of state regulation of its activities, are officially able to regulate the work of the latter.

Key words: notary, self-government of notaries, powers, delegated powers.

1. Introduction

In November 2017, the International Union of Notaries presented the document 'Professional Ethics and Rules of Notary Organisation', according to which a notary is an official to whom public authority has delegated the right to confer authenticity on documents that he/she prepare, ensure their safety, and endow them with evidentiary and enforcement power (Ethics and rules of notarial organization: international document of the International Union of Notaries, 2004; Statute of the International Union of Notaries, 2007). The above definition emphasises that delegated powers are the basis for the functioning of the entire notary institution, as well as the professional self-government of its representatives. In addition, this is the content of one of the key principles of self-organisation and self-management of notaries, which determines the subject of this research.

Nowadays, the category of 'delegated powers' is actively used in many sectors of social and legal relations, and this leads to a high level of scientific interest in it. In particular, the content, essence and legal nature of the latter have been analysed in the works of scholars such as: S.I. Bevz, O.L. Levchyshyna, O.V. Medvedchuk, V.F. Pohorilko, M.V. Tsvik, I.S. Shchebetun and others. Moreover, the phenomenon of delegation is so broad that the definition of the latter in certain sectors of public life still remains unclear. One of them is the professional self-government of notaries, which is based on delegated powers.

That is why, the purpose of the article is to propose the author's definition of the concept of delegated powers as the basis of notarial self-governance.

2. Regulatory and legal framework for the concept of 'delegated powers'

To date, several draft laws have been registered in the Verkhovna Rada of Ukraine, the provisions thereof provide an interpretation

of the concept of "delegated powers". For example, the Draft Law on the procedure for delegation of powers of executive authorities and local self-government bodies No. 1472 of 01.02.2008 defines: delegated powers are certain powers or a part of powers that are assigned by law to another executive authority or local self-government body in accordance with the law (delegation by law) or an agreement (delegation by agreement), which are situationally, temporarily or indefinitely transferred to the executive authority or local self-government body. The delegated state powers may include powers provided for by law as such that may be delegated and powers that may be transferred by concluding an agreement (Draft Law on the procedure for delegation of powers of executive authorities and local self-government bodies, 2008).

Alternative Draft Law on Delegated Powers No. 1472-1 of 15.02.2008 defines the process of delegation of powers as the vesting of one body, in accordance with the procedure established by law, with another body's own powers, while preserving the right of the delegating body to return such powers to its own exercise. According to the Draft Law, a delegating body is a body that has made a decision to delegate its own or its established powers to another body or official (Draft Law on Delegated Powers, 2008).

In the current legislation, delegated powers are explained quite clearly in the Decree of the President of Ukraine "On measures to implement the Concept of Administrative Reform in Ukraine," which states the following: "Delegated functions, powers - functions, powers (rights and obligations) acquired by a certain actor (body or official) by transferring them to him/her for performance from another actor by the latter's own decision or on the basis of a legal provision. 'Delegation' means, as a rule, the transfer of functions and powers for a certain period of time with the delegating entity retaining the right to return them to its own performance. Moreover, the delegating party acquires the right to control the status and results of the delegated functions and powers; it may also finance their implementation from its own funds, transfer the property objects necessary for this purpose" (Decree of the President of Ukraine on measures to implement the Concept of Administrative Reform in Ukraine, 1998). According to the Law of Ukraine "On Local Self-Government," delegated powers are the powers of executive authorities granted to local self-government bodies by law, as well as the powers of local self-government bodies that are transferred to the relevant local state administrations by decision of district and oblast radas (Law of Ukraine On Local Self-Government in Ukraine, 1997).

3. Scientific interpretations of the concept of delegated powers as the basis of notarial self-governance

In the scientific literature, delegation is not limited to the activities of public authorities. For example, this category has been studied quite actively in the field of management and administration. According to O.O. Darmohrai, delegation of powers means the process of transferring powers and responsibilities by a manager to subordinates, which is intended to ensure that the latter assume responsibility and effectively perform tasks at the most appropriate level of the organisational structure (Darmohrai, 2012).

V.I. Peresunko suggests that delegation is the process of transferring by a manager or supervisor and acceptance by an employee of a part of managerial functions, necessary powers and responsibility for their timely and high-quality performance. Therefore, as a result of delegation, the employee is able to clarify the content of the assigned tasks, independently manage the resources provided, independently make the necessary decisions, and assumes responsibility for the quality of his/her activities. In this interpretation, delegation is seen as one of the technologies of democratisation of HR management, which enables an individual to influence organisational conditions, provides additional powers, forms responsibility and to some extent meets the interests of the employee. The scientist notes the following advantages of the delegation process as a personnel management tool: first, the involvement of personnel in decision-making processes, providing the employee with personal independence, which contributes to his/her recognition as a full-fledged member of society; second, the development of labour potential due to the provision of opportunities for self-improvement through the acquisition of new knowledge, skills and experience; third, stimulation of activity, productivity and creativity of the employee, as a result of moral satisfaction from new achievements, which include successful completion of a complex task, broadening of horizons or change of the monotonous nature of activity; fourth, removal of moral and psychological stress of the employee due to the realisation of hopes, expectations and self-realisation of individual capabilities; fifth, the development of responsibility and awareness of organisational goals due to the focus on key performance criteria – timeliness and quality of results (Peresunko, 2009).

M.D. Pryshchak states that delegation of powers is an important aspect of any head's managerial activity and is a necessary element of the organisation's development efficiency.

Delegation of powers gives independence to subordinates, opens up greater opportunities to meet their legitimate needs, and hence their motives. When motivated, an employee works proactively and efficiently, which contributes to the effectiveness of managerial work in general. In addition, the scientist emphasises that delegation of powers creates preconditions for the development and adoption of more informed managerial decisions and their more effective implementation, and also enables the manager to expand the range of management, relieves him/her of secondary issues, routine operations, and allows him/her to focus on solving major, long-term tasks and fundamental issues that cannot be solved by anyone else but him/her. In addition, delegation of powers contributes to increasing the responsibility and efficiency of managerial activities of both the manager and the executor (Zhalin, Pryshchak, 2017).

According to T. Obydiennova and Yu. Dudnieva, delegation is a process of temporary transfer of powers and tasks to other persons under conditions of fulfilment of these tasks and full responsibility for the results of their implementation. Effective delegation of powers increases the time for making strategic managerial decisions by managers, and solves standard operational tasks more efficiently from the point of view of executives. Motivation to delegate managerial powers is a necessary means of improving the efficiency of any enterprise, institution or organisation (Obydiennova, Dudnieva, Sylantieva, 2021).

In the context of the activities of state authorities and local self-government bodies, delegated powers have been studied by Ya.V. Zhuravel, who argues: "Delegated powers are a kind of requisite for the initial stage of the process of decentralisation of public administration, the logical conclusion of which should be the complete transfer of these powers to the self-governing powers of the executive bodies of village, settlement and city radas that will be fully capable in the future. In the meantime, they can be fully regarded as a way of temporary control over the activities of local self-government bodies by executive authorities" (Zhuravel, 2007).

A.O. Neuhodnikov suggests that it is appropriate to consider delegated powers as the delegating entity's own powers, which are granted by the will of both parties in order to implement it most effectively to the delegated entity, responsible for the proper exercise of these powers by concluding an administrative agreement or by law (Neuhodnikov, 2006). A.H. Korbutiak and N.Ya. Sokrovolska define delegation of powers as a bilateral mandatory legal relationship in which one body has its own competence defined by regulations, and the other has the proper legal capacity to obtain and exercise these powers. Delegation means granting powers to lower-level bodies for a certain period of time, while retaining the right to reclaim them. Meanwhile, the delegating entity is responsible for the consequences of the actions of the lower-level bodies to which it has delegated powers and assumes obligations (Korbutiak, Sokrovolska, 2018).

S.V. Shevchuk, studying the theory of delegation of state powers, argues that the legal nature of this process is as follows: only certain powers that form part of the competence of the relevant public authority may be delegated; after delegation of powers, the competence of the delegating authority does not change; the competence of the body to which these powers are delegated is temporarily expanded; the act of delegation shall necessarily come from the delegating body; delegation extends the competence of the delegating body by vesting new powers in the object of delegation; the delegated powers may be revoked by the delegating body at any time; if the powers are delegated for a certain duration, the termination of the delegation does not require the issuance of a legal instrument revoking these powers (the competence of the body to which the powers are delegated is automatically narrowed). If the powers are delegated for an indefinite duration, they may be revoked at any time by the decision of the body that delegated the powers (Shevchuk, 1997; Tytykalo, 2023).

O.A. Tereshchuk believes that the content of delegation of powers is a system of the following characteristics: 1) delegation of powers is an institution of administrative law; 2) initiation of delegation of powers requires justification of its expediency; 3) imperative or discretionary nature of delegation is established in a legislative provision; 4) the general purpose of using the institution of delegation of powers is to ensure effective, high-quality public interest/public administration; the purpose is justified and detailed in a particular case of delegation; 5) the content of delegation is the process of transferring powers; 6) this process involves entities whose legal status is characterised by certain features: for example, the competence of the delegating entity and compliance with the regulatory requirements of the potential entity with delegated powers (executor of delegated powers); 7) the subject matter of delegation is public administration powers; 8) delegation is usually for a fixed term, but there is still an unlimited delegation; 9) along with delegated powers, additional guarantees (financial/property security) and restrictions (control/responsibility) are transferred. Consolidating the above characteristics into a single concept, the author emphasises: delegation of pow-

ers should be considered as an administrative and legal institution, the content of which is the process (legal relations) of transferring public administrative powers of the delegating party to another participant (public administration body, individual or legal entities of private/public law) for a specified period with mandatory resource provision (financial/property), relevant control and supervisory restrictions and responsibility, implemented in the form of an agreement or act (Tereshchuk, 2016).

4. Conclusions

To sum up, we can state that delegation is a transfer of powers, duties or tasks from one person or body to another with the purpose of improving management efficiency, distribution of responsibility and optimisation of a certain process. That is, delegated powers are an atypical for an actor, additional system of rights and duties which it receives from another in accordance with the procedure established by law. Despite the fact that the category described above finds the greatest application and legal definition in the field of local self-government, it can be used in other sectors of social and legal relations, for example, in the labour process, where a manager transfers part of his/her competence to a subordinate.

Therefore, the delegation of powers in the field of professional self-government of notaries means the transfer of rights and duties from the State to self-governing institutions, which, despite the public nature of the notary and the existence of a strict mechanism of state regulation of its activities, are officially able to regulate the work of the latter.

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ДО ПРОБЛЕМИ ВИЗНАЧЕННЯ ПОНЯТТЯ ДЕЛЕГОВАНИХ ПОВНОВАЖЕНЬ ЯК ОСНОВИ САМОВРЯДНОГО НОТАРІАЛЬНОГО УПРАВЛІННЯ

Abstract. ***Purpose.*** Метою статті є: запропонувати авторське визначення поняття делегованих повноважень як основи самоврядного нотаріального управління. ***Results.*** На сьогоднішній день у Верховній Раді України зареєстровано декілька законопроєктів в положеннях яких наводиться тлумачення поняття «делеговані повноваження». Наприклад, у Проєкті Закону про порядок делегування повноважень органів виконавчої влади та органів місцевого самоврядування від 01.02.2008 №1472 визначається: делеговані повноваження – це ситуаційно, тимчасово або безстроково передані у відповідності із законом (делегування законом) або договором (делегування договором) органу виконавчої влади або органу місцевого самоврядування окремі повноваження або частина повноважень, які віднесені законом до компетенції іншого органу виконавчої влади або іншого органу місцевого самоврядування. До складу делегованих державних повноважень можуть входити повноваження які передбачені законодавством як такі, що можуть бути делегованими та повноваження, що можуть бути передані шляхом укладання договору. ***Conclusions.*** Зроблено висновок, що делегування – це передача повноважень, обов'язків або завдань від однієї особи чи органу, іншому суб'єкту з метою підвищення ефективності управління, розподілу відповідальності та оптимізації певного процесу. Тобто, делеговані повноваження – це нетипова для суб'єкта, додаткова система прав та обов'язків, які він отримує від іншого у встановленому законом порядку. Незважаючи на те, що розкрита категорія знаходить найбільшого застосування та юридичного окреслення в сфері діяльності органів місцевого самоврядування, її можна використати у інших галузях суспільно-правових відносин, наприклад, в трудовому процесі, де керівник передає частину своєї компетенції підлеглому. Таким чином, делегування повноважень у сфері професійного самоврядування нотаріусів – це передача прав та обов'язків від держави самоврядним інституціям, які, незважаючи на публічний характер нотаріату, існування жорсткого механізму державного регулювання його діяльності, отримують офіційну можливість упорядковувати роботу останнього.

Ключові слова: нотаріат, самоврядування нотаріусів, повноваження, делеговані повноваження.а

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CIVIL SOCIETY AND LAW AND ORDER: VALUES AND VECTORS OF INTERACTION AT THE MODERN STAGE OF DEVELOPMENT OF UKRAINE AS A LEGAL STATE

Abstract. ***Purpose.*** The article studies the main issues of interaction between civil society with law and order in the context of building a legal state in Ukraine. ***Results.*** The impact of digital technologies and the values of law on this process is outlined. It is noted that Ukrainian society is currently undergoing changes related to the increasing role of digital technologies in all social processes. Almost every sphere of society's life acquires its 'digital' analogue, namely, it is reflected in the virtual digital space. Therefore, the achievements of technological progress have an ambiguous impact on the state of human rights protection, in particular, law enforcement. it is emphasised that in the process of digital transformation, the legal sector undergoes adjustment. Modern scientific research is largely focused on the understanding that the formation, functioning and development of a civilised civil society with traditional democratic institutions is not possible without the influence of the values of law, without the regime of legality and effective law and order being the main basis. The processes of forming civil society and the legal state in Ukraine are impossible without an appropriate level of legal consciousness, development of the legal culture of society and citizens of Ukraine, and a high level of legal values. In view of this, the vital activity of civil society and its members is inevitably linked to the value-based legal potential, an integral part of which is an effective law and order that allows people to exercise their rights and freedoms. The value-based legal system and the current legal order in Ukraine form the legal space within which civil society institutions and the legal state interact. The unity of the established legal framework and the current legal order ensures the full functioning of both civil society institutions and public authorities, which are called upon to ensure this order. That is why the legal order operating in a democracy and based on the values of law differs from the legal order formally based on positive law and the established system of legislation that reflects the interests of the state itself. ***Conclusions.*** It is concluded that civil society and the legal state purposefully initiate lawful conduct of participants in social relations. The requirement of lawful conduct is a fundamental principle, a vital necessity, since only on this basis the potential of the values of law is embodied in the vital interests and intentions of each person. On the basis of conscious and predictable lawful behaviour of members of society as parties to legal relations, the successful functioning of civil society and the legal state is achieved, and the legal order is established and strengthened.

Key words: law and order, legality, legal state, civil society, legislation, legal culture, legal consciousness, legal values, lawful conduct, digital technologies.

1. Introduction

In the current context of building a legal state in Ukraine, it is impossible to avoid the fact that the technological factor influences social relations, as digital technologies radically change traditional state and public institutions. However, in order for society to benefit from technological progress, it is important to create legal and regulatory frameworks that define the ethical principles of the development, implementation and operation of digital technologies. As the digital sector transcends national borders in the current digitalisation environment, the issue of legal regulation of digital technologies requires supranational efforts to harmonise a unified digital legal order to protect the public interest. Due to the effective digital law and order, civil society will become fair and socially resilient to the technological challenges faced in the world (Danylian, Dzoban, Zhdanenko, 2020).

The relevance of this issue is also due to circumstances of both application and theoretical nature. Ukrainian society is currently undergoing changes related to the increasing role of digital technologies in all social processes.

Almost every sphere of society's life acquires its 'digital' analogue, namely, it is reflected in the virtual digital space. Of course, it should be acknowledged that law and order is vulnerable in the context of digital technologies, as modern technologies lead to the emergence of new elements that change human life and social order. On the other hand, such new technologies determine the emergence of new ways of their penetration into the activities of the state.

Being in constant contact with the structures of civil society and expressing its main goals and interests, the legal state directs its potential for the benefit of this society and its members. Such legal framework enables the proper realisation of valuable human vital interests and effective law and order. Moreover, the achievements of technological progress have an ambiguous impact on the state of human rights protection, in particular, law enforcement. Therefore, under the current conditions of building a legal state in Ukraine, it is necessary to theoretically develop and practically implement appropriate legal measures to ensure law and order.

The theoretical and methodological basis of the study is the ideas and concepts expressed in the works of philosophers of different times, in particular, Aristotle, I. Kant, and Hegel. Nowadays, the issues of digitalisation of law and the impact of information technology on law enforcement are the subject of research by many national legal scholars, including O. Barabash, D. Bielov, Yu. Bysaha, R. Zvarych, O. Kotukha, N. Levytska, and N. Onishchenko. The scholars who have studied the concepts of the legal order, legal state, civil society and their main characteristics in the context of the digital space should be highlighted apart. These are S. Bobrovnyk, T. Podorozhna, N. Parkhomenko, R. Lutskyi, T. Tarakhonych, Yu. Shemshuchenko and others. However, the issues of interaction between civil society, legal state and law and order remain poorly researched, which makes this article relevant.

The article studies the main issues of interaction between civil society with law and order in the context of building a legal state in Ukraine.

2. The development of civil society in Ukraine

Recently, scientific and technological progress in Ukraine and the world has been characterised by an outstripping dynamic, with a significant increase in the number of innovations in the state's activities. The volume of big data is increasing, and digital technologies are being introduced into all sectors of life, which is undoubtedly leading to the transformation of Ukrainian society and the formation of a digital economy based on big data. Over the past few years, a number of approaches to the study of the digital economy have emerged, including the definitions of the concepts of "digital economy," "digital transformation," "digitalisation" (although these concepts are confused, replacing one with another), assessing the level of digital development, measuring the impact on economic growth, and solving other important tasks. However, no single, commonly accepted approach and definition of these concepts has yet been established.

In the modern world, digitalisation has become a key factor that has a significant impact on various aspects of social and legal life in Ukraine. For example, it should be noted that the rapid development of digital technologies has made current legislation lag behind the legal reality, which is largely created in a virtual, digital environment. Until recently, digital investment platforms, distributed ledgers (e.g. blockchain), e-commerce and other rapidly developing technologies and related technological phenomena had no regulatory framework, and were regulated in a chaotic and unsystematic manner. Therefore, *in the process of digital transformation, the legal sector undergoes adjustment*.

However, modern scientific research is largely focused on the understanding that the formation, functioning and development of a civilised civil society with traditional democratic institutions is not possible without the influence of the values of law, without the regime of legality and effective law and order being the main basis. According to scientists, processes of forming civil society and the legal state in Ukraine are impossible without an appropriate level of legal consciousness, development of the legal culture of society and citizens of Ukraine, and a high level of legal values (Chukaieva, 2019). In view of this, the vital activity of civil society and its members is inevitably linked to the value-based legal potential, an integral part of which is an effective law and order that allows people to exercise their rights and freedoms.

It should be underlined that the value-based legal system and the current legal order in Ukraine form the legal space within which civil society institutions and the legal state interact. The unity of the established legal framework and the current legal order ensures the full functioning of both civil society institutions and public authorities, which are called upon to ensure this order. That is why the legal order operating in a democracy and based on the values of law differs from the legal order formally based on positive law and the established system of legislation that reflects the interests of the state itself (Mamenko, Parkhomen-

ko-Kutsevil, 2021). In a democratic social order, priority is given to the individual, his or her rights and freedoms, which are recognised as the highest social value.

In his time, the prominent thinker Hegel argued that the leading role in civil society should be played by the principle of equality of its members, their social and legal freedom, private property, a clearly functioning system of contracts, mechanisms for the protection and defence of law, perfect legislation, and a court with authority (Lisovska, Lisovskyi, Podoliaka, 2018). The researcher understood civil society as "a bourgeois society formed only in the modern world..." (Lisovska, Lisovskyi, Podoliaka, 2018), that is, in the world in which people live and create. The above also describes modern civil society, which is based on the legal order, which implements all the necessary values of law in the functioning of this society.

The principle of legal equality is the main pillar of the legal basis of civil society and the current legal order. Thanks to this principle, a person freely expresses his or her will in all important aspects of life and thereby forms himself or herself as a creative, proactive actor who realises his or her interests and needs in accordance with constitutional values and the rule of law (Barabash, 2023). Legal equality describes the legal order as a scope of equal opportunities provided to every party to legal relations seeking to exercise their rights and freedoms and based on an effective legal order.

The legal order is based on the values of civil society and its members, and is enforced by the relevant state authorities. Therefore, the regulatory and protective basis of the legal order, as well as the legal basis of civil society in general, are formed and function under the influence of the tasks and goals that are identified in the process of interaction between civil society and governmental structures. It is in the process of correlation of public and state interests that those vital problems are identified, the solution of which is associated with innovative development of law based on the current legal order. Civil society as a system of various social relations is an autonomous, independent, self-governing phenomenon based on democracy, legal framework and legal order (Pohribnyi, 2019). When regulating certain social relations, civil society institutions establish certain links with the relevant state authorities and thereby ensure the legal order, which determines the proper functioning of both civil society and legal state in Ukraine.

In such conditions, legal interests are realised at both the public and state levels. The values of law that define the content of the proper legal order contribute to the ordering of social relations, thanks to which the effectiveness of the exercise of inalienable rights and freedoms of all members of civil society increases significantly. Civil society can only fully function and develop in the context of democracy and a functioning legal state. Therefore, the processes of formation and functioning of civil society and the legal state are naturally interconnected, determine each other, and are focused on the interests and needs of the individual as the highest social value.

However, the priority of civil society is the individual, not the state. This circumstance is the reason for the 'primacy' of civil society and the 'secondary' nature of the legal state. In the current conditions of democracy in Ukraine, the processes of formation of civil society and the legal state coincide to some extent, as they are equally based on the same values of law, in particular, human centredness, the rule of law, equality of human rights, etc. This is the nature of civil society due to the value and legal parameters of the legal state.

3. Civil society and law and order in Ukraine at the current stage of development

Civil society is focused not only on proclaiming but also on actually ensuring the rights and freedoms of every person, and therefore ensuring law and order is the main area of activities of the legal state (Barabash, 2018). Reliance on a legal order based on legal values enables members of civil society to ensure their personal freedom and rights. In this regard, I. Kant noted that "No one may force anyone to be happy according to his manner of imagining the well-being of other men; instead, everyone may seek his happiness in the way that seems good to him as long as he does not infringe on the freedom of others to pursue a similar purpose, when such freedom may coexist with the freedom of every other man according to a possible and general law" (Kasyniuk, Melnyk, 2019).

It should be emphasised that freedom is the ability and capacity of civil society members to take necessary actions in accordance with their goals, interests, and needs (Karas, 2003). In addition, it is a certain behavioural choice in accordance with one's will in accordance with the current legislation. Possessing relative freedom, a person in a true democracy retains the ability to make the maximum choice of those life requirements that do not contradict the requirements of the law. However, it is important that current laws and legal provisions comply with the natural and inalienable rights and freedoms of man and citizen (Malyshev, 2008). This is exactly *positive law, which accumulates the values of natural law.*

As a fundamental good of civil society and its members, freedom enables individuals to perform various acts that are within the scope of the law in force and contribute to law and order (Rudych, 2006). The values of law, recognised by civil society and the legal state, embodied in the proper legal order, allow defending the interests, needs, rights and freedoms of every person and citizen in Ukraine. Moreover, according to scholars, the values of civil society and the legal state are reflected primarily in the basic principles of the constitutional order. The Constitution of Ukraine of 1996 not only enshrines the structure of the supreme bodies of state power and proclaims the fundamental rights and freedoms of man and citizen, but also defines the principles (mechanisms) of interaction between the state and civil society. It prioritises the interests of the individual as a member of society and a party to legal relations.

Since public authorities, provisions and requirements of law reveal their purpose and potential within the framework of civil society, they are aimed at organising the joint life of people, their interaction in order to ensure their rights and freedoms. This establishes the necessary constitutional and legal regime of legality and ensures proper legal order (Podorozhna, 2016). The Constitution of Ukraine is the basis for the stability and successful functioning of civil society, which protects the interests and needs of all its members. On a democratic constitutional basis, the state and public structures operate, society improves its vital functions, and rights and freedoms are exercised as an embodiment of the true values of law and a manifestation of the essential potential of the regime of law and order (Chukaieva, 2019).

The Constitution of Ukraine, based on the principles of freedom, equality, respect for human and civil rights and freedoms, is a state and social value that enables each individual to achieve the parameters of his or her decent existence and to achieve the exercise of his or her rights and freedoms through active lawful conduct. The Constitution of Ukraine acts as a leading guarantor of the functioning of civil society, enabling it to reach public agreement on the most complex issues and consolidate the efforts of political and social structures aimed at realising the common interests of the individual, society and the state.

However, it should be emphasised that the implementation of the values of law in the life of civil society, ensuring the proper legal order is a rather controversial, ambiguous, but natural and logical process. After all, in the regulatory system of social relations, the leading role is assigned to the individual who claims to achieve various benefits in life. Therefore, the individual as a party to legal relations is required to act lawfully. Civil society institutions (political parties and movements, public associations and organisations, unions, associations, etc. (Mernyk, 2011)), which, if necessary, interact with public authorities, through the system of law, legislation, and sectoral norms of law, contribute to the realisation of vital interests of civil society members.

Civil society reflects the ideas and requirements of law as a social value that is designed to exclude arbitrariness and guarantee an equal degree of freedom for each individual. After all, the ideas and principles of natural law, legal provisions primarily correspond to the principles of freedom, equality, humanism, justice and other value-based principles of civil society. Of course, the functioning of civil society is not conditioned by law alone, since this society has the potential for social conduct. Social relations, where the most important vital interests of the members of this society are integrated, require regulatory framework as the most effective and efficient means of regulatory influence. Therefore, the value potential of law is redistributed in a certain way between the value foundations of civil society and the activities of state bodies, which ensures the effectiveness of the legal order and introduces elements of orderliness into the legal activities of society members.

A specific feature of civil society is that its institutions delegate their powers to the state through law, if it does not contradict the interests of a person and a citizen (Pavliuk, 2013). Conversely, the state may transfer certain social relations to the functioning of civil society in order to regulate them with the norms of social conduct (moral norms, traditions, customs, etc.). On this basis, clear boundaries of regulatory frameworks between civil society institutions and public authorities are established. However, a self-regulating civil society can function normally and fully only in the context of a proper legal order, which is constitutionally defined. That is why the value and legal components of civil society determine the choice of proper legal conduct.

4. Conclusions

Civil society is the space where the provisions of law find their practical implementation, meeting the interests and needs of the majority of its members. The effectiveness of the values of law is manifested in the successful functioning of civil society institutions and the exercise of human rights and freedoms. The system of law and the legal order provide civil society with a system of guarantees (based on the values of law), namely, the possibility of functioning and development in the interests

of its members. Such opportunities are related to the fact that, if necessary, civil society institutions have the right to establish cooperation with the relevant state authorities. Civil society has the opportunity to rely on legal mechanisms, if necessary, but at the same time to resist arbitrariness. That is why it is important to clearly distinguish between the boundaries of the social and legal order, the regulatory potential of legal provisions and the norms of social conduct. Therefore, civil society and the legal state purposefully initiate lawful conduct of participants in social relations. The requirement of lawful conduct is a fundamental principle, a vital necessity, since only on this basis the potential of the values of law is embodied in the vital interests and intentions of each person. On the basis of conscious and predictable lawful behaviour of members of society as parties to legal relations, the successful functioning of civil society and the legal state is achieved, and the legal order is established and strengthened.

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ГРОМАДЯНСЬКЕ СУСПІЛЬСТВО ТА ПРАВОПОРЯДОК: ЦІННІСНІ ЗАСАДИ ТА ВЕКТОРИ ВЗАЄМОДІЇ НА СУЧАСНОМУ ЕТАПІ РОЗВИТКУ УКРАЇНИ ЯК ПРАВОВОЇ ДЕРЖАВИ

Анотація. ***Мета.*** У статті досліджено основні проблеми взаємодії громадянського суспільства та правопорядку в умовах побудови правової держави в Україні. ***Результати.*** Окреслено вплив цифрових технологій та цінностей права на такий процес. Зазначено, що нині в українському суспільстві відбуваються зміни, пов'язані з посиленням ролі цифрових технологій у всіх соціальних процесах. Практично кожна сфера життєдіяльності суспільства набуває свого «цифрового» аналога, а саме відображається у віртуальному цифровому просторі. Відтак досягнення технічного прогресу неоднозначно впливають на стан захисту прав людини, зокрема сфери забезпечення правопорядку. Наголошено, що у процесі цифрової трансформації відбувається коригування правової сфери. Сучасний науковий пошук значною мірою зосереджений на розумінні того, що становлення, функціонування та розвиток цивілізованого громадянського суспільства з традиційними інститутами демократії не можливий поза впливом цінностей права, без основного підґрунтя яким є режим законності та ефективний правовий порядок. Процеси формування громадянського суспільства і правової держави в Україні неможливі без відповідного рівня правосвідомості, розвитку правової культури суспільства і громадян України, високого рівня правових цінностей. З огляду на це, життєдіяльність громадянського суспільства та його членів неодмінно пов'язана з ціннісним правовим потенціалом, складовою частиною якого є ефективний правовий порядок, що дозволяє реалізувати людині свої права і свободи. Ціннісно-правова система та чинний правовий порядок в Україні утворюють той правовий простір, у межах якого здійснюється необхідна взаємодія інститутів громадянського суспільства та правової держави. Єдність сформованої правової основи та чинного правового порядку забезпечує повноцінне функціонування як інститутів громадянського суспільства, так і органів державної влади, покликаних забезпечувати цей порядок. Саме тому, правовий порядок, який діє в умовах демократії та заснований на цінностях права, відрізняється від правопорядку, формально заснованого на позитивному праві і сформованій системі законодавства. ***Висновки.*** Зроблено висновок, що громадянське суспільство і правова держава цілеспрямовано ініціюють правомірну поведінку учасників суспільних відносин. Вимога правомірної поведінки є основоположним принципом, життєвою необхідністю, оскільки тільки на такій основі потенціал цінностей права втілюється в життєві інтереси і наміри кожної людини. На основі усвідомленої та передбачуваної правомірної поведінки членів суспільства як суб'єктів права досягається успішне функціонування громадянського суспільства і правової держави, утверджуються і зміцнюються правовий порядок.

Ключові слова: правопорядок, законність, правова держава, громадянське суспільство, законодавство, правова культура, правова свідомість, правові цінності, правомірна поведінка, цифрові технології.

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LEGISLATIVE CONSOLIDATION OF LEGAL TERMS

Abstract. ***Purpose.*** The purpose of the article is to study the significance of legislative consolidation of legal terms. ***Results.*** The article studies the importance of legislative consolidation of legal terms. It is established that the importance of legislative consolidation of legal terms implies unity in the interpretation of one or another legal term. A unified understanding of terminology in its functionality will contribute to an effective regulatory framework for social relations, which will be achieved through the absence of misunderstandings and disagreements in the implementation and application of legal provisions. It is determined that unity in the interpretation of legal terms will also prevent ambiguity, which can lead to legal conflicts and different interpretations of the same concept. A legislative definition avoids such situations and ensures a unified interpretation of terms throughout the territory. It is established that the importance of legislative consolidation of legal terminology is the basis for legal certainty, accuracy of legal documents and unity in the interpretation of legal terms. This is important for the effective functioning of the legal system, ensuring justice and legal protection, and guaranteeing equal rights and obligations for all participants in legal relations. ***Conclusions.*** An in-depth understanding of legal terms contributes to legal literacy, which in turn facilitates access to legal resources, courts and other institutions. If terms are too complex or ambiguous, the ability of people to exercise their rights or protect their interests may be limited. Law application bodies, such as courts, law enforcement agencies, attorneys-at-law, must correctly interpret legal terms to ensure that the law is applied properly. Any misunderstanding of terms can lead to incorrect legal decisions. Relying on the analysis of scientific works and views of scholars, we conclude that the importance of legislative consolidation of legal terms is as follows: 1) accuracy of legal documents; 2) unity in the interpretation of legal terms; 3) legal certainty.

Key words: legal document, legal term, legal certainty, legal accuracy, interpretation of legal terms, regulatory framework, quality of legislation.

1. Introduction

The study of the legislative consolidation of legal terms is due to the need to achieve accuracy, clarity and consistency of the legal text. Legal terminology is essential for ensuring the clarity, comprehensibility and unambiguity of legal provisions and regulations. Terms should be used in legal texts in a manner that prevents different interpretations. Unclear or ambiguous terms can lead to legal errors, create grounds for legal conflicts and cause difficulties in the interpretation and application of legislation.

The need for continuous development and improvement of legal terminology is closely linked to the development of legal science and practice. The legal system is dynamic and constantly adapts to changes in society, the economy, technology and other sectors of life. With the advent of new areas of activities, innovative technologies and social relations, the need arises to formulate, clarify or adapt legal terms to meet new realities. Therefore, it is important not only to create new terms, but also to legislate them in a timely manner and clearly define their content and limits of use.

A comprehensive study of legal terminology allows lawyers to better understand the essence of regulatory changes, correctly interpret legislative provisions, effectively use terms in their professional activities and avoid mistakes in the practical application of legal provisions. Adequate knowledge of legal terminology ensures the effectiveness of legal regulation and a high level of legal practice.

It should be emphasised that the importance of legislative consolidation of legal terms is multifaceted and cannot be reduced to a single aspect. The legal consolidation of terminology ensures not only clarity and consistency in the use of concepts, but also gives them legal force, which determines the limits of their application and enhances the stability and predictability of the entire legal system. Due to the legislative consolidation of terms, it is possible to avoid misunderstandings and legal disputes,

improve the quality of lawmaking and law application, while ensuring an appropriate level of legal certainty in society.

The purpose of the article is to study the significance of legislative consolidation of legal terms.

N. Artykutsa, O. Hladkivska, L. Besedna, V. Lazariev, M. Liubchenko, A. Khvorostiankina have studied the problem of legislative consolidation of legal terms.

The specifics of legal terminology, which is determined by the branch of law, have been studied by S. Fursa, Ye. Fursa, N. Zabolotna, Ye. Michurin, M. Smokovych. The technical and legal aspects of legislative consolidation of legal terms and definitions have been studied by L. Andrusiv, I. Bylia-Sabadash, T. Podorozhna, V. Mamutov, V. Kosovych, L. Pryhara, V. Ryndiuk, I. Shutak and other researchers.

2. Specific features of legal terminology

O. Hladkivska emphasises the specifics of legal terminology, in particular, "as regards legal terminology, it is special due to its universality, since any social activities are closely related to law and legislation. A clear definition and unambiguous interpretation of legal terms is an extremely important condition for the establishment of the rule of law, contributes to the improvement of law-making, effective implementation of legislation, creates an enabling environment for their streamlining and systematisation. In order to perform its functions, a term should meet the requirements that are scientifically substantiated and legally enshrined (Hladkivska, 2015). O. Petryshyn argues, "The universal features of the legal language are its terminologisation (it is based on a system of clear legal concepts), the desire for lapidarity (brevity combined with clarity, accuracy, completeness of expression), subordination of emotionality to rational principles and requirements (i.e. if emotional words and expressions are present, they are used only to enhance and highlight rational meanings). The legal language is largely official in nature, as it is based on the language of legal regulations-documents, in particular the language of written formal legal sources of law" (Petryshyn, 2020).

S. Fursa and Ye. Fursa emphasise that terminology is of particular importance for lawyers, in particular, what terminology to use as a basis for certain concepts to be subsequently enshrined in legislation and acquire the appropriate legal meaning (Fursa, Fursa, 2023).

Scholars do not have a single approach to the need or importance of legislative consolidation of legal terms. A review of the legal literature and the views of lawyers highlights the diversity of approaches and the use of different terminology. If we assume that the legislative consolidation of legal terms is primarily their inclusion in the texts of legal regulations, we understand that such a term is fixed primarily in the provision of law, which in turn form legal structures. The following are the existing approaches to the meaning of legislative consolidation of legal terms.

According to M. Kozyubra, "Reliability (unambiguity) of language is sometimes more important than its compliance with certain nuances of real reality. The principle of *nullum crimen sine lege* (no punishment without law) would remain unrecognised if the law were formulated in terms so unclear that a judge would have to determine what type of crime a particular act falls under and the type of punishment to be imposed. This shows that the meaning of legal terms should be unambiguous and stable" (Koziubra, 2015).

V. Lazarev identifies the following disadvantages of legal terminology: "designation of several different concepts by one term or designation of one concept by several terms; lack of clear definitions for several terms; use of words with expressive colouring as terms; not always justified use of foreign terminology; use of linguistically and stylistically incorrect terms; use of outdated terms, etc. These shortcomings in the use of terminology in legal regulations may lead to a number of negative consequences: distortion of the will of lawmakers; difficulties in the implementation of law. All of this can lead to human rights violations, which will have a negative impact on the authority of law as the most important regulator of social relations in the modern world and may lead to a decrease in the value of law in society" (Lazariev, 2022).

According to L. Andrusiv (2020), accuracy and clarity are also required for a legal regulation as a legal document. V. Pankratova (2016) emphasises the requirement of accessibility and comprehensibility of a legal regulation. N. Zabolotna considers "the accuracy of the statement of a provision of law in a legal contract as achieving the most optimal form of expression of the ideas of its parties. The degree of compliance with this requirement is of particular importance in the process of interpreting the content of the contract in the future" (Zabolotna, 2016). At the same time, N. Zabolotna refers to the requirements to the terminology used in a legal act as unambiguousness, which is revealed through "the absence of many options for interpreting the term" (Zabolotna, 2016).

V. Ryndiuk argues that the terminology of legal regulations implies the so-called terminological unification, that is, unambiguity (consistent use of one term in the same meaning) (Ryndiuk, 2009).

Based on the review of research by scholars, we can confidently say that the legislative consolidation of legal terms is important for the accuracy of legal documents.

Next, the importance of legislative consolidation of legal terms implies unity in the interpretation of one or another legal term. A unified understanding of terminology in its functionality will contribute to an effective regulatory framework for social relations, which will be achieved through the absence of misunderstandings and disagreements in the implementation and application of legal provisions. In the scientific and practical textbook "Technique of drafting contracts," Ye.Michurin aptly uses the word 'misinterpretation' and notes that it is necessary to follow the technical and legal rules for drafting the texts of legal regulations and contracts. The accuracy of fulfilment of contractual obligations by the parties depends on the unambiguous wording of the content (Michurin, 2006).

According to U. Andrusiv and S. Fedyk, 'the category of quality of law includes various features, namely: accuracy, clarity, comprehensibility and predictability. The accuracy and clarity of the wording of legal provisions can be stated in case if: a) the content of the legal provision is understandable to an ordinary citizen who is not a legal expert. We are talking about both a specific legal provision and a system of legal provisions that are interrelated; b) the content of the legal provision becomes clear by identifying a more complex interrelation of legal provisions, including on the basis of summarising court practice in relation to a specific area of social relations; c) the content of the legal provision becomes clear after seeking legal assistance. The level of accuracy, in turn, depends on the content of the disputed law and the area it is intended to cover" (Andrusiv, Fedyk, 2019).

That is why the unification of terminology will in any case lead to the same understanding and interpretation by those in charge of applying the law. An example is the term 'declaration.' The explanatory dictionary of the Ukrainian language gives several meanings. Thus, the first meaning is: "An official statement about something, a solemn proclamation by a government, party, congress, etc. of any principles, provisions, as well as a document in which they are set out" (Busel, 2005). The second meaning is "the name of some official documents that provide required information" (Busel, 2005). The Tax Code of Ukraine (2011) uses the term 'declaration' 895 times. Meanwhile, the terms 'tax declaration,' 'excise tax declaration,' 'clarifying declaration,' 'clarifying tax declaration,' 'customs declaration,' 'annual declaration of property status and income,' 'income tax declaration,' 'financial agent's tax declaration,' etc. are used. Despite such diversity of the term 'declaration' within the same legal instrument, Article 46 of the Tax Code of Ukraine contains a legislative definition of the term and definition of 'tax declaration' exclusively. The title of Article 46 is "Tax Declaration (Calculation)." The legal provision includes the following definition: a tax declaration, calculation, report (hereinafter referred to as a tax declaration) is a document submitted by a taxpayer (including a separate subdivision in cases specified by this Code) to the controlling authorities within the terms established by law, on the basis of which a monetary obligation is accrued and/or paid, including a tax liability, or the amount of transaction(s), income (profit) for which the tax and customs legislation provides for exemption of the taxpayer from the obligation to accrue and pay tax and fee, or a document evidencing the amount of income income accrued (paid) in favour of individual taxpayers, the amount of tax withheld and/or paid, and the amount of the accrued unified social tax. One article and one codified legal instrument contain a conflict or inaccuracy. The title of Article 46 contains the term 'tax declaration (calculation)', while the text offers a definition of the term 'tax declaration, calculation, report'. It is unclear what the legislator meant by placing the calculation in brackets or listing it separated by commas together with the report. As a result, some lawyers will use 'calculation' as a synonym for 'tax declaration,' while others will use 'report' as a synonym for it.

Clarification of the exact meaning of a legal term, unification of its definition and uniformity in its use throughout the text of a legal regulation is a prerequisite for effective regulatory and enforcement action. In addition, S. Fursa and Ye. Fursa argue that: "we could name even more regulations that use different terminology that is not consistent with the terms adopted in the legal regulations, which makes it impossible to unambiguously perceive and apply them in practice" (Fursa, Fursa, 2023).

3. The role of legal certainty

The next meaning of legislative consolidation of legal terminology is to achieve legal certainty.

M. Smokovych argues that "in a democratic society, legal certainty is recognised as one of the fundamental values, it is the principle that is designed to enable participants in legal relations to predict the results of their actions, and at the same time provides for predictability of court decisions based on the results of disputes. Most researchers define the principle of legal certainty as a set of requirements for the organisation and functioning of the legal system in order to ensure a stable legal position of a person by improving both law-making

and law application processes. The requirement of certainty is one of the most essential requirements for both legal regulations and court verdicts" (Smokovych, 2020).

L. Luts emphasises the diversity of approaches to the principle of legal certainty and concludes that "the principle of legal certainty is a set of requirements to the organisation and functioning of the legal system with the aim of ensuring, first of all, a stable legal position of an individual by improving the processes of law-making and law application. The requirements are differentiated into three groups: for certainty of legislation, for certainty of powers and for certainty of court decisions. The requirements for certainty of legislation are clear wording of the legal provision; clear wording of the conditions under which restriction or deprivation of liberty is imposed; mandatory publication of legal regulations; prevention of unforeseen changes to legislation; consistency and stability of legal provisions" (Luts, 2023).

V. Smorodynskyi considers legal certainty to be "not only one of the general principles of law and one of the requirements of the rule of law, but also a fundamental property and condition of the significance of law and its instrumental value as a systemic means of regulating relations between people and their groups (collectives) in society. This position is confirmed, in particular, by the review of scientific studies by well-known Western philosophers and legal theorists who, long before the emergence of this special term in legal science and judicial practice, considered legal certainty as an important (if not the most important) requirement of the rule of law over state arbitrariness, and as a crucial condition for the morality and effectiveness of law, law-making and law application" (Smorodynskyi, 2020).

I. Borovska refers to the principle of legal certainty as "a special principle that details the rule of law and consists of a set of requirements that can be grouped into: 1) requirements of law-making nature for legislation, according to which the court makes a decision, which consists of clarity, accessibility for understanding, unambiguity of the provision in the interpretation of its content, as well as predictability; 2) requirements of law application nature for certainty of court decisions, which are manifested in ensuring uniform application of the law by the court in similar legal relations in the course of civil proceedings, finality and permanence of the court decision; binding nature of court decisions, as well as clarity of the content of the court decision; 3) requirements for certainty of the court procedure" (Borovska, 2020).

According to D. Sukhanova, legal certainty is ensured by the requirements for legal definitions, in particular, "the definition must meet the requirements of clarity, certainty, completeness and unambiguity" (Sukhanova, 2023).

L. Bogacheva argues, "In a broad sense, the principle of legal certainty is a set of requirements for the organisation and functioning of the legal system in order to ensure a stable legal position of a person by improving the processes of law-making and law application. The principle of legal certainty is a type of general principles of law. It is reflected in the sources of EU law and is applied in the case law of the European Court, is common to the legal orders of EU member states and is becoming widespread in Ukrainian law" (Bohachova, 2013).

In its Decision No. 10-rp/2011 of 11 October 2011, the Constitutional Court of Ukraine pointed to "uncertainty in resolving the issue related to the time of delivery of the offender, which may lead to certain abuses by the relevant authorities in terms of establishing a possible term of restriction of a person's right to liberty, which, considering the time of delivery, may last longer than that specified in the law. The issue of the moment of sobering up a person who is intoxicated also remains unclear, which leads to uncertainty in establishing the total time of detention of such a person in the custody of the relevant bodies, which may also be the basis for certain abuses by them" (Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 50 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 263 of the Code of Ukraine on Administrative Offenses and Clause 5 of Part One of Article 11 of the Law of Ukraine "On the Police", 2011).

In the same Decision, the Constitutional Court of Ukraine points out the uncertainty of the legal terms of 'disobedience' and 'malicious disobedience' used in different codes. According to paragraph five of the Decision, 'the Code provides for liability for malicious disobedience to a lawful order or demand of a police officer, member of a public formation for the protection of public order and the state border, or a military serviceman (Article 185). Malicious disobedience is the refusal to comply with persistent, repeatedly repeated lawful demands or orders of a police officer in the performance of his/her duties, a member of a public formation for the protection of public order or a military serviceman in connection with their participation in the protection of public order, or a refusal expressed in a defiant manner that demonstrates clear disregard for persons protecting public order (paragraph two of item 7 of Resolu-

tion No. 8 of the Plenum of the Supreme Court of Ukraine of 26 June 1992 "On the application by courts of legislation providing for liability for encroachment on the life, health, dignity and property of judges and law enforcement officers"). The Constitutional Court of Ukraine proposes a definition of the legal term 'disobedience', in particular, it states that 'disobedience' means refusal to comply with or ignoring a certain requirement (Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 50 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 263 of the Code of Ukraine on Administrative Offenses and Clause 5 of Part One of Article 11 of the Law of Ukraine "On the Police", 2011). Accordingly, the court concludes that "From the analysis of the provisions of the Code, it appears that they provide for liability for disobedience of pedestrians to traffic control signals (part one of Article 127) and malicious disobedience to a lawful order or demand of a police officer, member of a public formation for the protection of public order and the state border, transport worker, military serviceman, employee of the State Border Guard Service of Ukraine. According to the Criminal Code of Ukraine, disobedience and malicious disobedience are also distinguished, in particular, Article 391 provides for liability for malicious disobedience to the requirements of the administration of a penitentiary institution, and Article 402, for disobedience as a crime against the established procedure for military service. Based on the analysis of Ukrainian legislation, the court concludes that 'with regard to the grounds for legal liability for certain acts, the legislator did not equate acts manifested in the form of disobedience and malicious disobedience" (Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 50 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of Article 263 of the Code of Ukraine on Administrative Offenses and Clause 5 of Part One of Article 11 of the Law of Ukraine "On the Police", 2011).

4. Conclusions

An in-depth understanding of legal terms contributes to legal literacy, which in turn facilitates access to legal resources, courts and other institutions. If terms are too complex or ambiguous, the ability of people to exercise their rights or protect their interests may be limited. Law application bodies, such as courts, law enforcement agencies, attorneys-at-law, must correctly interpret legal terms to ensure that the law is applied properly. Any misunderstanding of terms can lead to incorrect legal decisions.

Relying on the analysis of scientific works and views of scholars, we conclude that the importance of legislative consolidation of legal terms is as follows: 1) accuracy of legal documents; 2) unity in the interpretation of legal terms; 3) legal certainty.

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ЗАКОНОДАВЧЕ ЗАКРІПЛЕННЯ ЮРИДИЧНИХ ТЕРМІНІВ

Abstract. ***Purpose.*** Метою статті є дослідження значення законодавчого закріплення юридичних термінів. ***Results.*** У статті проведено дослідження значення законодавчого закріплення юридичних термінів. Установлено, що важливе значення законодавчого закріплення юридичних термінів полягає у єдності у тлумачення того чи іншого юридичного терміну. Уніфіковане розуміння термінології у своєму функціоналі матиме ефективне правове регулювання суспільних відносин, яке досягатиметься через відсутність непорозумінь, розбіжностей при реалізації та застосуванні норм права. Визначено, що єдність у тлумаченні юридичних термінів також запобігатиме неоднозначності, що може призвести до юридичних колізій і різних інтерпретацій одного й того ж поняття. Законодавче визначення дозволяє уникнути таких ситуацій і забезпечує єдине трактування термінів на всій території. Встановлено, що значення законодавчого закріплення юридичної термінології є основою правової визначеності, точності юридичних документів та єдності у тлумаченні юридичних термінів. Це важливо для ефективного функціонування правової системи, забезпечення справедливості та правового захисту, а також для гарантування рівних прав і обов'язків для всіх учасників правових відносин. ***Conclusions.*** Поглиблене розуміння юридичних термінів допомагає забезпечити правову грамотність населення, що в свою чергу сприяє доступу громадян до правових ресурсів, судів та інших інстанцій. Якщо терміни будуть занадто складними або невизначеними, це може обмежити можливість людей користуватися правами або захищати свої інтереси. Правозастосовні органи, такі як суди, правоохоронні органи, адвокати, мусять правильно тлумачити юридичні терміни, щоб забезпечити належне застосування норм права. Будь-яке невірне розуміння термінів може призвести до неправильних правових рішень. На основі аналізу наукових праць та поглядів вчених робимо висновок, що значення законодавчого закріплення юридичних термінів полягає у: 1) досягненні точності юридичних документів; 2) єдності у тлумаченні юридичних термінів; 3) досягненні правової визначеності.

Ключові слова: юридичний документ, юридичний термін, правова визначеність, юридична точність, тлумачення юридичних термінів, правове регулювання, якість законодавства.

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INTERACTION OF SOCIAL NORMS AND LEGAL CONSCIOUSNESS: TRANSFORMATION MECHANISMS, IMPACT OF SOCIAL CHANGES AND DEVELOPMENT PROSPECTS

Abstract. ***Purpose.*** The purpose of this article is to analyse the interaction of social norms and legal consciousness, to study the mechanisms of their transformation under the influence of modern social changes and to determine the prospects for the development of legal culture in a dynamic socio-political environment. ***Research methods.*** The research methodology is based on a comprehensive approach, which includes a review of scientific literature and regulatory documents, a comparative analysis of theoretical concepts, and the use of systematic and dialectical research methods. In addition, methods of empirical data analysis and statistical modelling are used to determine the impact of social change on the transformation of social norms and the formation of legal consciousness. ***Results.*** The study reveals that social norms are the basis of the legal system as they set standards of conduct and influence the formation of legal consciousness. Legal consciousness, which includes cognitive, emotional, behavioural and evaluative components, allows society to transform legal norms into concrete actions. The harmonisation of social norms with legal provisions contributes to the development of legal culture and the legitimacy of legislation. However, modern transformations, such as digitalisation, pandemics, and military conflicts, require constant adaptation of norms and legal consciousness to new conditions. The scientific novelty of the study is that it identifies new mechanisms for transforming norms under the influence of modern social changes, such as digitalisation, pandemics and military conflicts, and proposes innovative approaches to integrating social and legal aspects into the system of legal education. This contributes not only to the efficiency of regulating social relations, but also to the formation of a high legal culture, which is critical for ensuring stability, justice and social progress. ***Conclusions.*** The results of the study can serve as a basis for formulating strategies in the field of education, law enforcement and social development, promoting a harmonious combination of social and legal norms that ensures stability, justice and social progress in society. In particular, the data obtained enables to identify the mechanisms of transformation of legal consciousness in response to modern social changes, such as digitalisation, globalisation and social crises, which opens up prospects for adapting the legal system to new challenges.

Key words: social norms, legal consciousness, transformation mechanisms, social changes, digitalisation, regulatory framework, integration of norms, legal culture, legal education.

1. Introduction

Legal consciousness of an individual is a set of knowledge, ideas and emotions that determine his or her attitude to law and contribute to understanding its role in society. It is an integral part of social consciousness and closely interacts with other types of social norms, such as moral, religious, corporate and customary norms. It is this interaction that determines the level of legal culture in a society, influencing compliance with legal provisions or, conversely, their disregard.

Legal consciousness is shaped by moral norms, traditions and generally accepted social values. In communities with strong customary traditions, legal norms may play a secondary role, while in legal states, moral principles are often integrated into the legal system. Social norms can both support and hinder legal awareness. As a social phenomenon, law evokes different reactions: positive, negative or neutral. A positive attitude implies the recognition of the need to comply with legal norms and the perception of law as the main regulator of social relations. A negative attitude is expressed in the belief that law is irrelevant or superfluous, while a neutral attitude reflects indifference to legal norms and the activities of state institutions.

Changes in society affect the transformation of legal consciousness along with social norms, adapting them to new conditions, challenges and needs. Therefore, the study of the mechanisms of interaction between social norms and legal consciousness is of particular importance for improving legal policy, increasing the effectiveness of law enforcement and developing legal culture in modern society.

Social norms, legal consciousness and their interaction have been the subject of research by the following scholars: O. Holtsova, L. Zamorska, M. Cherkas, S. Nagorniak, N. Krestovska, L. Matvieieva and others.

2. The importance of social norms

Social norms play a fundamental role in the formation of legal consciousness, as they are the primary basis on which the legal system of a society is based. While social norms are general standards of conduct that regulate social relations, legal consciousness is a mechanism for an individual to comprehend and evaluate them.

The scholar O. Holtsova defines social norms as general rules that reflect the needs of social life and play a key role in people's practical activities. She emphasises that social norms are not only a measure of behaviour, but also the requirements that society puts forward to an individual, encouraging him or her to act in a certain way. The purpose of social norms is to regulate social relations by regulating people's activities. In this regard, any social norm is a criterion for assessing people's behaviour and a means of controlling their activities by society. Without norms, no practical activity of people is acceptable. The essence of a norm as a social phenomenon, according to the scientist, is a requirement addressed to people, to their social life. A norm requires that people's behaviour conform to it. This is an indication of what exactly people's behaviour should be in the opinion of society (Holtsova, 2013).

It should be noted that O. Holtsova emphasises that social norms not only regulate people's behaviour, but also determine the expectations and standards that society sets for its members. Legal consciousness develops through interaction with social norms, as they define the basic principles of justice, responsibility and social order. For example, legal norms often grow out of moral and customary norms, enshrining them at the official level. If social norms are not consistent with legal norms, this can lead to conflicts between the legal consciousness of individuals and the requirements of the law, which is especially noticeable during social transformations. In addition, legal awareness is not static - it is formed and changed under the influence of social norms that adapt to new living conditions. For example, current social trends, such as digitalisation or the fight for human rights, change perceptions of acceptable and desirable conduct, which is ultimately reflected in the legal system.

The researcher L. Zamorska emphasises that normativity is an inherent characteristic of the social sector, and argues that the emergence, development and existence of social norms are due to the objective need to regulate the connections, relations and interests that are constantly becoming more complex within the social system. She emphasises that normative regulation is an integral process of social life inherent in the entire history of human development. Moreover, the normativity of human social life is a fundamental condition for the functioning of the social system, as it is based on the natural laws of nature and society (Zamorska, 2010). Therefore, following the opinion of L. Zamorska, it can be stated that normativity is indeed a fundamental basis for the functioning of society. Social norms emerge as a response to the need to regulate social relations and ensure stability in collective interaction. They are guidelines that determine which actions are acceptable and which are unacceptable, thereby shaping the social conduct of individuals.

In this context, legal awareness plays an important role, reflecting the level of perception and understanding of legal norms in society. Since social norms include both moral, customary, religious and legal regulators, legal awareness is a key mechanism that ensures their integration and compliance. When social norms are consistent with legal requirements, this contributes to a high level of legal culture and lawful conduct. On the other hand, if social norms contradict the current legislation, legal nihilism may arise, that is, the devaluation of legal norms, which weakens their regulatory function. This is especially true in periods of social change, when normative foundations are transformed and legal consciousness needs to be adapted to new conditions.

3. The relationship between social norms and legal consciousness

We propose to study the relationship between social norms and legal consciousness through four main components, which include cognitive, emotional and behavioural aspects, as well as a mandatory evaluation element. Each of these components plays a key role in the implementation of the functions of legal consciousness.

The cognitive function of legal consciousness is manifested through its intellectual mechanisms that contribute to the formation of legal knowledge as a rational element of legal consciousness. The process of cognition of legal phenomena is a mental activity of various subjects, which proceeds in accordance with the principles of dialectical and formal logic. The basis of legal knowledge is legal concepts and categories, which are the internal structural component of legal consciousness (Cherkas, 2008). Social norms, being generally accepted rules of conduct, form the basis for the development of legal consciousness. They reflect the needs of social life and set the standards expected of individuals. Through the cognitive function of legal consciousness, these

norms are transformed into legal knowledge and beliefs that influence human behaviour in the legal field. Therefore, the cognitive function of legal consciousness not only promotes awareness of legal norms, but also ensures their integration into personal values and beliefs, which is necessary for the harmonious functioning of society.

The law-forming component reflects the emotional state of the future lawyer, in particular his or her emotions, feelings and experiences that form the emotional and ethical attitude to law and legislation. It serves as an indicator of the level of awareness of the need for social and legal activity, reflecting value orientations and motivation for professional activity in the legal field (Cherkas, 2014). Social norms, including moral, corporate, customary and religious norms, influence the formation of a lawyer's legal consciousness, promoting his or her professional responsibility and ethical choice. The interaction of the law-making component with social norms plays a crucial role in the process of legal education, since it is through the awareness of social values that a lawyer forms a personal attitude to law as a mechanism for ensuring social justice and law and order.

The behavioural component is a form of legal conduct of the future lawyer, which includes a set of skills for making legal decisions in both professional and personal situations, as well as the ability to protect the rights, freedoms and interests of clients (Cherkas, 2014). In addition, it is important that such conduct is consistent with generally accepted social norms and ethical standards that govern relationships in society. Adherence to social norms helps to build trust in the legal system, strengthens the role of the lawyer as an intermediary between the law and the public, and ensures the responsible application of legal knowledge to maintain stability, justice and harmony in society.

The evaluative function is a tool for analysing legal phenomena, which is inextricably linked to social norms. It is social norms that set the standards for the acceptability and effectiveness of legal conduct, influencing the way in which the behaviour of individuals, the functioning of legal norms and the activities of law enforcement agencies are assessed. Positive assessments tend to arise when the legal system is harmoniously integrated with established social values, which contributes to the maintenance of order and trust in the law. Negative assessments can be constructive when they are accompanied by suggestions for improving legal norms and practices, or destructive when the gap between the legal system and social expectations leads to its complete rejection (Nahorniak, 2016). Therefore, the evaluative function, viewed through the prism of social norms, becomes an important mechanism of dialogue between law and society, contributing to the development of a system that meets modern social requirements.

Analysing the relationship between social norms and legal consciousness through four main components - cognitive, emotional, behavioural and evaluative - it is important to emphasise the importance of social norms in the formation of legal consciousness. The cognitive component reflects the level of legal knowledge and understanding of norms that are acquired through education, social experience and legal practice. Social norms are the primary source that forms the idea of acceptable conduct. The emotional component determines an individual's attitude to the law. If legal norms are consistent with moral and social beliefs, a positive perception is formed, which strengthens trust in the legal system. If the norms contradict personal or social values, a negative or indifferent attitude towards them is possible. The behavioural component is manifested in compliance with or violation of legal norms. A high level of legal awareness promotes law-abidingness, while a low level or contradictions between norms can provoke deviant behaviour. The evaluative component determines how people perceive the legal system: as fair and necessary or imperfect and restrictive. High trust in the law ensures the stability of society, while a negative attitude can lead to legal nihilism.

In our opinion, the legal consciousness of citizens is closely related to changes in social norms caused by social transformations. Social transformations, such as economic crises, political reforms or cultural shifts, directly affect changes in social norms and, consequently, the legal consciousness of citizens. These changes can lead to a rethinking of established rules of conduct by society, which in turn affects the perception and understanding of law.

According to the Razumkov Centre, today we can observe the rapid re-industrialisation of developed countries on new technological foundations, such as 3D printing, robotics and renewable energy. The socio-economic impact of digitalisation is no less significant. The displacement of people from industry, agriculture and services will inevitably lead to large-scale changes in the structure of employment and social and labour relations. The global labour market is a complex dynamic system that is constantly being affected by information technology, changing the nature of work, its organisation and content. Automation processes, even if they are restrained by governments and society, will continue to gain momentum. In the long run, this may lead to the situation where only a few million highly skilled professionals will be enough to support the entire global production and logistics system, while a significant part of the workforce will remain unemployed (Digital economy: trends, risks and social determinants, 2020).

Undoubtedly, social transformations caused by technological progress affect changes in social norms and legal consciousness of citizens. Re-industrialisation and digitalisation change the labour market dramatically, redistributing

the role of people in economic processes. This necessitates a rethinking of not only labour relations but also the State's social responsibility towards citizens who may find themselves outside the economic system due to displacement by technology.

We believe that the main challenge is how society adapts to these changes. Public policy and regulatory frameworks determine whether these transformations will become a catalyst for progress and social welfare or whether they will only increase inequality and social instability. It is important not only to create new jobs, but also to create an adequate system of social protection, retraining and integration of people into the changed economy.

Automation and artificial intelligence will undoubtedly change the way we think about work, welfare and even social responsibility. In the face of these changes, the legal consciousness of citizens should also evolve, and the understanding of social justice, labour rights and state responsibility should remain in the focus of public attention.

The ongoing technological changes not only transform the economy and the labour market, but also have a significant impact on social norms and the legal consciousness of citizens. Automation, digitalisation, and the introduction of an unconditional basic income are causing a rethinking of traditional notions of labour, social responsibility, and the role of the State in ensuring the well-being of the population (Krestovska, Matvieieva, 2008).

Social norms are formed under the influence of real life conditions, and legal consciousness is their reflection in the legal system. For example, if society gradually accepts the concept of creative employment and flexible forms of work, this will affect labour law. On the other hand, strict regulation of technology may cause misunderstanding and resistance in society if citizens see it as a restriction of economic opportunities.

The COVID-19 pandemic has demonstrated how social norms can change rapidly under the pressure of external factors, with remote work becoming the new standard rather than the exception. At the same time, the legal consciousness of society must keep pace with these changes to ensure a fair balance between technological progress and social stability.

Military conflicts, in particular the Russian-Ukrainian war, have a significant impact on social norms and legal consciousness of Ukrainian society, causing both immediate and long-term changes in the behaviour and perception of law by citizens. During armed conflicts, traditional social norms can be transformed. For example, norms related to security, solidarity and mutual assistance become more pronounced as people unite in the face of a common threat. In addition, new norms adapted to the conditions of war may emerge that were not previously relevant. This includes a change in attitudes towards the roles of men and women, with women taking on responsibilities traditionally performed by men, or vice versa. Moreover, war exacerbates issues of gender equality and human rights. War can both strengthen and weaken the legal consciousness of citizens. On the one hand, it raises awareness of the importance of legal norms for ensuring order and justice. On the other hand, in times of chaos and instability, people may lose faith in the legal system, especially if it fails to ensure their basic rights and security.

In our research, we note that for the harmonious development of Ukrainian society, it is necessary to ensure the coordinated development of social norms and legal consciousness. This can be achieved by raising the level of legal literacy of citizens, which will contribute to the formation of responsible legal consciousness and compliance with social norms, as well as through the flexibility of legislation, which should respond promptly to changes in society and adapt its norms to new realities. In addition, active participation of citizens in decision-making processes through public dialogue will help to reconcile social norms with legal provisions, ensuring the legitimacy and effectiveness of legislation. These steps will contribute to strengthening legal consciousness and social cohesion in Ukraine.

4. Conclusions

To sum up, the social norms are the basis of the legal system as they set standards of conduct and influence the formation of legal consciousness. Legal consciousness, which includes cognitive, emotional, behavioural and evaluative components, allows society to transform legal norms into concrete actions. The harmonisation of social norms with legal provisions contributes to the development of legal culture and the legitimacy of legislation. However, modern transformations, such as digitalisation, pandemics, and military conflicts, require constant adaptation of norms and legal consciousness to new conditions. It is through a dialogue between the public and legal institutions that the effective integration of these norms is possible, which is the key to stability, justice and social progress in society.

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ВЗАЄМОДІЯ СОЦІАЛЬНИХ НОРМ І ПРАВОВОЇ СВІДОМОСТІ: МЕХАНІЗМИ ТРАНСФОРМАЦІЇ, ВПЛИВ СУСПІЛЬНИХ ЗМІН ТА ПЕРСПЕКТИВИ РОЗВИТКУ

Анотація. ***Мета.*** Метою даної статті є аналіз взаємодії соціальних норм і правової свідомості, дослідження механізмів їх трансформації під впливом сучасних суспільних змін та визначення перспектив розвитку правової культури в умовах динамічного соціально-політичного середовища. ***Методи дослідження.*** Методика дослідження базується на комплексному підході, який включає аналіз наукової літератури та нормативних документів, порівняльний аналіз теоретичних концепцій, а також використання системного та діалектичного методів дослідження. Крім того, застосовуються методи аналізу емпіричних даних та статистичного моделювання для визначення впливу суспільних змін на трансформацію соціальних норм і формування правової свідомості. ***Результати.*** Дослідження показало, що соціальні норми є основою правової системи, встановлюючи стандарти поведінки та впливаючи на формування правової свідомості. Правосвідомість, яка включає когнітивний, емоційний, поведінковий та оцінний компоненти, дозволяє суспільству перетворювати правові норми у конкретні дії. Гармонізація соціальних норм із правовими приписами сприяє розвитку правової культури та легітимності законодавства. Проте сучасні трансформації – цифровізація, пандемія, військові конфлікти – вимагають постійної адаптації норм і правової свідомості до нових умов. Наукова новизна дослідження полягає в тому, що воно виявляє нові механізми трансформації норм під впливом сучасних соціальних змін, таких як цифровізація, пандемія та військові конфлікти, та пропонує інноваційні підходи до інтеграції соціальних та правових аспектів у систему правового виховання. Це дозволяє не лише підвищити ефективність регулювання суспільних відносин, а й сприяти формуванню високої правової культури, що є критично важливим для забезпечення стабільності, справедливості та соціального прогресу. ***Висновки.*** Результати дослідження можуть служити основою для формування стратегій у сфері освіти, правозастосування та соціального розвитку, сприяючи гармонійному поєднанню соціальних і правових норм, що забезпечує стабільність, справедливість і соціальний прогрес у суспільстві. Зокрема, отримані дані дозволяють визначити механізми трансформації правової свідомості у відповідь на сучасні соціальні зміни, такі як цифровізація, глобалізація та соціальні кризи, що відкриває перспективи для адаптації правової системи до нових викликів.

Ключові слова: соціальні норми, правова свідомість, механізми трансформації, суспільні зміни, цифровізація, правове регулювання, інтеграція норм, правова культура, правове виховання.

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THE WAYS AND EXTENT OF CORRELATION BETWEEN HUMAN RIGHTS AND THE RIGHTS OF THE NATION

Abstract. ***Purpose.*** The purpose of the article is to analyse systematically the correlation between human rights and the rights of the nation, in particular, their legal content, limits and possibilities of reconciliation in the context of modern global and national challenges. ***Results.*** The article studies the correlation between human rights and rights of the nation in modern legal science and international legal order. The historical evolution of these concepts is examined, in particular, the development of human rights in the liberal tradition and the formation of the rights of the nation in the context of national sovereignty. The impact of globalisation processes, national liberation movements and international intervention on the exercise of these rights is analysed. It is proved that the absolute priority of human rights can lead to the devaluation of national identity, while the dominance of the rights of the nation can create risks for the rights of minorities. It is established that in the modern world it is necessary to find a balance between individual and collective rights. ***Conclusions.*** It is concluded that democratic States use different models of reconciliation of these rights, including federalism, which works effectively in Canada and Switzerland. However, it is shown that federalism cannot be mechanically transferred to Ukrainian realities due to the risks of territorial fragmentation and destabilisation. Given the unitarian nature of Ukraine's state structure, it is proposed to improve decentralisation as the best way to reconcile human rights and the rights of the nation. The role of international mechanisms, such as the ECHR and the Framework Convention for the Protection of National Minorities, in resolving possible conflicts between these rights is outlined. The risks of excessive autonomy of territories that can be used as instruments of external influence are considered. The author proposes measures to strengthen the institutional protection of national sovereignty and citizens' rights in Ukraine. The need to develop political and legal mechanisms considering both the principle of equality of citizens and guarantees of cultural and linguistic identity is proved. It is emphasised that the legal practice of developed democratic states demonstrates effective ways to reconcile these rights, but their implementation in Ukraine requires due regard for historical, political and security factors.

Key words: human right, right of the nation, people, nation, personality, rights and freedoms, identity.

1. Introduction

Correlation between human rights and the rights of the nation is one of the key theoretical and practical issues of modern legal science. On the one hand, human rights are recognised as universal and natural, which guarantees their inviolability regardless of territory, citizenship or nationality. On the other hand, the rights of the nation, which include the right to self-determination, preservation of cultural identity, language and state sovereignty, are important for the functioning of national communities and the building of a democratic state. In the current context of globalisation, regional conflicts and changes in the international legal order, the problem of balancing these rights is increasingly relevant.

The delineation and interaction of human rights and the rights of the nation have both legal and socio-political dimensions. The problem is exacerbated in the context of national liberation movements, ethnic conflicts, multiculturalism and integration processes in international law. Individual nation-states seek to strengthen their sovereignty and cultural identity, which can sometimes lead to restrictions on the rights of certain groups or minorities. In addition, international human rights practices may conflict with national legislation, creating tension between the principles of state sovereignty and international human rights standards.

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of certain groups or minorities. In addition, international human rights practices may conflict with national legislation, creating tension between the principles of state sovereignty and international human rights standards.

In view of the above, this study is of scientific relevance in the context of the need for a systematic analysis of the relationship between human rights and the rights of the nation in the context of modern challenges, in particular in the context of international law, European integration and national self-determination. Moreover, the study allows for a deeper understanding of the legal mechanisms that contribute to the harmonisation of these categories and the development of theoretical and legal foundations for the further development of national legislation and international law-making.

The problem of correlation between human rights and the rights of the nation is quite popular in modern legal science. The fundamental aspects of human rights and their legal support have been studied by P. Rabinovych. He was one of the first Ukrainian scholars to develop a terminological apparatus for analysing this phenomenon. Similarly, N. Onishchenko and V. Horbal studied the problem of harmonisation of human rights and the rights of the nation in the context of the rule of law, considering possible conflicts and ways to overcome them. The work by T. Popovych and A. Shavarin highlights the concept of the fourth generation of human rights, which includes bioethical, digital and environmental rights, and raises the question of their role in modern society.

Naturally, the problem of correlation between human rights and the rights of the nation has become widespread among foreign scholars. In this context, the scientific works by M. Budrzhes, R. Wats, S. Marks and others are worthy of attention.

In general, the developed theoretical framework enables to cover a wide range of issues - from the theoretical foundations of the relationship between human rights and the rights of the nation to their practical implementation in constitutional and international legal mechanisms. Ukrainian and foreign studies show that it is necessary to find a balance between individual and collective rights, especially in the context of modern globalisation challenges and political transformations.

The purpose of the article is to analyse systematically the correlation between human rights and the rights of the nation, in particular, their legal content, limits and possibilities of reconciliation in the context of modern global and national challenges. The study is aimed at identifying ways to harmonise individual rights and collective national interests, defining legal mechanisms for their coexistence and formulating theoretical and legal approaches to ensuring a balance between them in the context of the rule of law and international legal order.

2. The problem of correlation between the concepts of human rights and the right of the nation

The issue of correlation between human rights and the rights of the nation is one of the most important in modern legal science and international legal order. Human rights, as a universal category, are aimed at protecting individuals from any form of discrimination, ensuring dignity and freedom. In addition, the rights of the nation include aspects such as the right to self-determination, preservation of cultural identity, language, traditions and territorial integrity of the State. In the modern world, especially in the context of globalisation, national liberation movements and conflicts, the issue of reconciling these rights is increasingly relevant.

We consider it appropriate to specify the content of the concepts of human rights and the rights of the nation. Human rights have historically developed in the liberal tradition, starting with the legal acts of modern times, such as the Bill of Rights in the United States (1791) and the Declaration of the Rights of Man and of the Citizen (1789) in France. The universality of human rights was enshrined in the Universal Declaration of Human Rights of 1948 and a number of other international acts (Riaboshapchenko, 2021).

Human rights are universal rights inherent to all people regardless of race, gender, nationality, ethnicity, language, religion or any other status. They include the right to life, liberty, security of person, freedom from slavery and torture, freedom of thought and expression, and the right to work and education. These rights are inalienable and inviolable, meaning that they cannot be taken away or restricted without legal grounds. They provide protection against serious political, legal and social abuses (Marks Stephen, 2016). Human rights are moral principles or norms that set standards of human behaviour and are regularly protected by national and international law. They arise from human dignity and equality, defining the basic norms necessary for a life enjoyed with dignity. Human rights are universal, meaning that they apply to all people, regardless of their individual characteristics. They are the natural and inviolable ability of a person to act in accordance with his or her conscious will, to do anything that is not prohibited by law and does not harm others. Human rights include civil and political rights, such as freedom of speech and the right to a fair trial, as well as economic,

social and cultural rights, such as the right to education and healthcare (Rabinovych, 2015). They are the basis for ensuring freedom, justice and peace in the world.

Furthermore, the concept of the rights of a nation is based on the idea of national sovereignty, which was developed after the Peace of Westphalia (1648) and enshrined in the founding documents of the United Nations, in particular the UN Charter (1945), which contains the principle of equality of peoples and their right to self-determination.

In his speeches in 1999, UN Secretary-General Kofi Annan emphasised that human rights take precedence over state sovereignty (Horban, 2018). However, critics of this concept argue that contemporary international politics increasingly takes on the character of an 'interventionist human rights policy' that restricts the right of peoples to self-determination. A review of the history of political thought reveals two extreme positions on this issue: individualistic liberalism, characteristic of the Anglo-American legal system, and the collectivist model that developed in the French tradition. In the modern world, this balance is tilted in favour of human rights, which sometimes leads to excessive centralisation of power and increased bureaucracy.

Therefore, human rights are by their nature universal and individual, while the rights of the nation involve the protection of collective interests, including the right to self-determination, cultural identity and political autonomy. In the historical context, the concept of human rights developed mainly on the basis of liberal individualism, while the rights of the nation emerged as a reaction to imperial domination and colonial expansion. The main problem is that the dominance of collective rights over individual rights can lead to nationalism and discrimination against minorities, while the absolute priority of human rights can ignore the needs of national communities to preserve their identity.

One important aspect of this problem is the historical interaction of the concept of human rights with colonial policies, where the ideology of protecting individual rights was often used as a justification for interfering in the internal affairs of other states. Double standards in international law, when human rights are applied selectively, call into question the equality of peoples and contradict the principles of international justice (Popovych, Shavaryn, 2019). In modern democratic societies, it is necessary to consider not only the legal aspect of human rights, but also their interaction with the cultural, social and political heritage of individual nations.

In international law, human rights and the rights of the nation interact in several ways (in the context of our study, we consider the concept of nation to be identical to the concept of the right of the people of the State - author's note). First, the right of nations to self-determination is a collective right that can affect the realisation of individual human rights. Second, the realisation of the rights of a nation, for example, through the formation of an ethnic state, may cause conflicts with the principles of non-discrimination and minority rights (Rabinovych, 1992). Third, human rights guarantees often become the basis for international intervention in the internal affairs of states, which may conflict with the principle of state sovereignty.

The modern world faces a number of challenges in finding a balance between these two categories of rights. First, globalisation and international integration processes are expanding the requirements for universal human rights protection, which may be opposed by nation states seeking to preserve their identity. Second, migration processes and demographic changes necessitate addressing the rights of national minorities in states where they constitute a significant part of the population. This issue is particularly relevant for Europe, where the policy of multiculturalism is in conflict with traditional national models of statehood.

Third, the issue of the balance between human rights and the rights of the nation is acutely manifested in the context of national liberation movements and armed conflicts. On the one hand, the right of nations to self-determination is a recognised international norm, but its implementation may contradict the principle of territorial integrity of states. Examples include the conflicts in Catalonia, Kosovo or the Middle East, where national movements face resistance from state structures that invoke sovereignty and constitutional order.

3. Ways to address the problem of correlation between human rights and the rights of the nation

Ukraine can also serve as an example of a country that simultaneously protects human rights and the rights of the nation. In the context of the Russian aggression, the issue of national sovereignty and territorial integrity is directly linked to the rights of citizens to security, freedom and political self-determination. At the same time, it is important to respect the rights of national minorities, which is the duty of a democratic state.

The problem of the relationship between human rights and the rights of the nation can be resolved through the system of international and national regulatory frameworks. First, it is

important to apply the rule of law, which provides for the protection of both individual rights and the rights of national communities (Savchyn, 2015). In democratic states, human rights and the rights of the nation are exercised through the mechanisms of constitutional law, which enshrines equality of citizens, guarantees of cultural and linguistic identity, principles of decentralisation and participation in political life.

Second, international law offers mechanisms for the legal protection of human and national rights through the European Court of Human Rights (ECHR), the UN, the Council of Europe and other institutions. For example, the Framework Convention for the Protection of National Minorities (1995) sets standards for ensuring the rights of national communities within States (Framework Convention for the Protection of National Minorities, 1995).

Third, the legal practice of developed democracies demonstrates effective ways to reconcile these rights. Federalism models (e.g., in Switzerland and Canada) allow for a combination of human rights and collective rights of nations without threatening national unity. In the case of Canada and Switzerland, such a compromise between human rights and collective rights of nations was made possible due to the specific historical background, political culture and legal tradition of these states. Switzerland, for example, is a confederal state, where each canton has considerable autonomy with issues of linguistic, cultural and religious identity regulated at the local level (Watts, 2008). This has been made possible by a long historical process and the stability of state institutions that guarantee the equality of all citizens, regardless of their ethnicity or language. Similarly, in Canada, bilingualism and provincial autonomous rights are the result of a constitutional compromise between the English- and French-speaking populations, based on a deep legal tradition of constitutional federalism (Burgess, 2006).

However, this model is not universal and cannot be mechanically transferred to the Ukrainian context. First, Ukraine has a unitary state structure, which is a guarantee of its territorial integrity and political stability. The introduction of a federal model in Ukraine could lead to fragmentation of the state, strengthening of separatist movements and erosion of national unity, which has already been observed in the context of attempts by external forces to undermine the situation in certain regions (Savchyn, 2015).

Second, Ukraine's historical experience shows the danger of excessive autonomy of territories, which has often been used to undermine state sovereignty. The experience of autonomous units, such as the Autonomous Republic of Crimea, has demonstrated significant risks to national security, since such formations can become instruments of external influence. Unlike Canada or Switzerland, where federalism is the result of centuries of evolution, Ukraine lacks a tradition of stable federalist governance, which poses a threat of destabilising the political system if it is introduced.

Third, in the context of the aggression that Ukraine is experiencing, any attempts to strengthen regional autonomy could be used to legitimise separatist movements and external intervention. Ukraine still faces the problem of informational influence from states seeking to undermine its sovereignty, while federalism can create additional mechanisms for institutional weakening of state unity.

Fourth, Ukraine's current political culture does not yet have a sufficient level of political responsibility and institutional maturity for the effective functioning of a federalist system. In countries where federalism works well, there are stable democratic institutions that ensure a balance between central and regional authorities, while in Ukraine, the political elite at the regional level often uses power for corporate or oligarchic interests, which can lead to corrupt decentralisation.

In view of these factors, the federal model is not suitable for Ukraine, as it not only fails to guarantee effective reconciliation of human rights and collective rights of nations, but also poses a threat to national security, territorial integrity and political stability (Onishchenko, 2013). A more appropriate way would be to improve the existing model of a unitary decentralised state, which would ensure a balanced combination of human rights and the rights of nations without risking statehood.

4. Conclusions

Consequently, correlation between human rights and the rights of the nation is a complex but important issue of modern legal science. While individual rights cannot be exercised outside the context of national sovereignty and self-determination, the rights of the nation cannot ignore fundamental human rights. The best solution is to balance these two categories of rights through international legal mechanisms, constitutional recognition of equality of citizens and the creation of political models that guarantee both individual and collective rights.

In the context of current global challenges, such as migration processes, national liberation movements and conflicts, it is necessary to improve legal mechanisms to ensure the equal coexistence of these rights. Ukraine's experience of fighting for independence and preserving its cultural identity is a vivid example of how the rights of a nation can be integrated into the general human rights system without contradicting democratic standards and international law.

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СПОСОБИ І СТУПІНЬ СПІВВІДНОШЕННЯ ПРАВА ЛЮДИНИ І ПРАВА НАЦІЇ

Abstract. ***Purpose.*** Метою статті є системний аналіз співвідношення прав людини і прав нації, зокрема їхнього правового змісту, меж і можливостей узгодження в умовах сучасних глобальних і національних викликів. ***Results.*** У статті досліджується співвідношення прав людини та прав нації в сучасній правовій науці та міжнародному правопорядку. Розглянуто історичну еволюцію цих концепцій, зокрема розвиток прав людини у ліберальній традиції та формування прав нації в контексті національного суверенітету. Проаналізовано вплив глобалізаційних процесів, національно-визвольних рухів і міжнародного втручання на реалізацію цих прав. Доведено, що абсолютний пріоритет прав людини може призвести до знецінення національної ідентичності, тоді як домінування прав нації може створити ризики для прав меншин. Встановлено, що в умовах сучасного світу необхідно знайти баланс між індивідуальними та колективними правами. ***Conclusions.*** Зроблено висновок, що демократичні держави застосовують різні моделі узгодження цих прав, зокрема федералізм, який ефективно працює в Канаді та Швейцарії. Однак показано, що федералізм не може бути механічно перенесений в українські реалії через ризики територіальної фрагментації та дестабілізації. З огляду на унітарний характер державного устрою України запропоновано вдосконалення децентралізації як оптимального шляху узгодження прав людини та прав нації. Окреслено роль міжнародних механізмів, таких як ЄСПЛ і Рамкова конвенція про захист національних меншин, у вирішенні можливих колізій між цими правами. Розглянуто ризики надмірної автономізації територій, що можуть бути використані як інструменти зовнішнього впливу. Запропоновано заходи щодо посилення інституційного захисту національного суверенітету та прав громадян в Україні. Обґрунтовано необхідність формування політичних і правових механізмів, що враховують як принцип рівності громадян, так і гарантії культурної та мовної ідентичності. Підкреслено, що правова практика розвинутих демократичних держав демонструє ефективні способи узгодження цих прав, однак їхнє впровадження в Україні потребує врахування історичних, політичних та безпекових чинників.

Ключові слова: право людини, право нації, народ, нація, особистість, права і свободи, ідентичність.

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EVOLUTION OF ELECTORAL LEGISLATION IN 1917-1921

Abstract. ***Purpose.*** The purpose of the article is to analyse comprehensively the evolution of electoral legislation in the period from 1917 to 1921, in particular, the legal acts of the Central Rada, the Hetmanate, the Directory and the Western Ukrainian People's Republic, with a focus on the development of the ideas of democracy in the context of revolutionary transformations, and to identify the specific features of forming electoral institutions in the context of political changes, as well as to assess the significance of the historical and legal experience of this period for the modern electoral process and legal support of democratic principles in Ukraine. ***Results.*** The article argues that in the context of revolutionary transformations, Ukrainian governments, including the Central Rada, the Hetmanate of Pavlo Skoropadskyi, the Directory and the Western Ukrainian People's Republic (WUPR), developed their own electoral systems that reflected both national traditions and European democratic models. The suffrage of 1917-1921 demonstrated attempts to consolidate the principles of people's power, but its implementation was complicated by military operations, political instability and administrative restrictions. The study reveals that the electoral system of the Central Rada was the most democratic, as it provided for universal, equal, direct suffrage by secret ballot. It was based on the principles of parliamentarism and relied on European electoral standards. However, due to the difficult political situation, the implementation of electoral norms was limited. The Hetmanate's suffrage remained unfulfilled due to the authoritarian nature of the regime, which relied on centralised governance. The electoral system of the Directory was based on a class-based approach, which narrowed political competition and limited the participation of large segments of the population in elections. Instead, following the Austro-Hungarian legal tradition, the WUPR established democratic electoral procedures, including universal suffrage and proportional representation, which guaranteed the participation of all national groups. ***Conclusions.*** The results of the study reveal that the electoral legislation of the period of the Ukrainian Revolution of 1917-1921 had common features, in particular, the desire for democratic elections and attempts to form representative bodies of power, but differed significantly in terms of the level of electoral principles implementation. The analysis of the electoral legislation of the Ukrainian Revolution enables not only a better understanding of the historical background of the development of electoral processes in Ukraine, but also the use of this experience to improve modern electoral mechanisms and ensure democratic procedures in modern Ukraine.

Key words: electoral law, national law, Central Rada, Hetmanate, directorate, WUPR, statehood.

1. Introduction

The era of liberation campaigns in the early twentieth century was a crucial moment in the development of Ukrainian statehood, which, on the one hand, demonstrated the possibilities and potential for restoring sovereignty and developing the national system of law and legislation. It is natural that Ukrainian national governments, as a rule, replicated legal provisions, including electoral law, but in a short time formed their own electoral law provisions, which allow for the understanding of the overall level of development of the principles of democracy at that time. During 1917-1921, there were several attempts to introduce democratic electoral institutions in Ukraine, as reflected in the legislative acts of the Central Rada, the Hetmanate, the Directory and the Western Ukrainian People's Republic. Changes in the suffrage law reflected not only the political aspirations of the elites, but also social transformations that led to the activation of civil society. The development of electoral mechanisms in that period demonstrates attempts to combine pan-European democratic trends with national political and legal realities. The specificity of regulatory framework for the electoral process was its variability, which was explained by the change of state formations and the struggle for political legitimacy. The study of the historical and legal experience of the electoral legislation of 1917-1921 is important for the mod-

ern Ukrainian state-building, as it facilitates the analysis of the advantages and disadvantages of different electoral models. The experience of this period demonstrates the complexity of unifying electoral provisions and the need to adapt them to a specific political context. The analysis of the legal framework for the electoral process in the revolutionary era enables to understand the origins of the current problems of political representation and legitimacy of power. Historical and legal analysis of electoral legislation contributes to the development of effective mechanisms for ensuring a democratic electoral process in modern Ukraine.

Given the above, the study of the electoral legislation of 1917-1921 is not only of scientific but also of social relevance.

Over the past decades, the topic of studying the legal tradition of the development of electoral law in Ukraine has attracted the attention of researchers. The Ukrainian People's Republic (the period of the Central Rada and the Directory), the Hetmanate of Pavlo Skoropadskyi and the Western Ukrainian People's Republic were the subject of regular research. In this context, the scientific works by O. Bichek, M. Buchyn, V. Pavlenko, R. Pyrih, and others who analysed constitutional drafts and regulations of 1917-1921 should be considered worthy of attention. Although researchers of the 2000s made a significant contribution to the understanding of the electoral process during the Ukrainian National Revolution, this topic remains relevant and requires a new comprehensive analysis. An important prospect for further research is a comparative analysis of the electoral legislation of Ukrainian governments with European models of that time, which will allow to assess its democratic potential in the broader context of the development of parliamentarism.

The purpose of the article is to analyse comprehensively the evolution of electoral legislation in the period from 1917 to 1921, in particular, the legal acts of the Central Rada, the Hetmanate, the Directory and the Western Ukrainian People's Republic, with a focus on the development of the ideas of democracy in the context of revolutionary transformations, and to identify the specific features of forming electoral institutions in the context of political changes, as well as to assess the significance of the historical and legal experience of this period for the modern electoral process and legal support of democratic principles in Ukraine.

2. The development of electoral legislation during the national revolution

The electoral legislation of Ukrainian governments in 1917-1921 was formed in the context of political instability, changes in state formations and the absence of an established legal order. For each of the Ukrainian governments, there were objective and subjective conditions that determined the general nature of law-making. The objective factor was the process of state-building itself, when, given the prevalence of the ideas of autonomy, it was logical to recopy old legislation, and in the context of the development of a sovereign state, to create new legislation. Similarly, the absence of a universally recognised international status for Ukrainian state entities exacerbated the instability of the legal system and complicated the practical application of the electoral law. Subjective factors were the conditions of the military confrontation with the Bolsheviks in Naddnipranshchyna and the Poles in Galicia. The armed conflict did not facilitate the organisation of the electoral process. Revolutionary processes and military operations led to partial legal anarchy, which created obstacles to the formation of a sustainable electoral system.

The general features of the development of electoral legislation during the period of the national revolution are as follows:

– The Central Rada, relying on the previous electoral legislation of the Russian Empire, tried to develop democratic mechanisms of people's representation, which was manifested in the adoption of legislative acts on elections to the Ukrainian Constituent Assembly. The legal uncertainty of the status of the Ukrainian People's Republic and its relations with Russia complicated the process of formulating electoral norms, as the proclaimed independence contradicted the legal inheritance of imperial acts;

– The Hetmanate of Pavlo Skoropadskyi, focusing on preserving state order, did not continue the democratic reforms of the Central Rada, and the electoral legislation remained in the preparation stage;

– The Directory, having restored the republican system, returned to the principles of democracy, but the difficult military and political situation did not allow for the full implementation of electoral reforms;

– The Western Ukrainian People's Republic, being in a different legal tradition, inherited the electoral legislation of Austria-Hungary, which provided for representation by the curial system, but in the process of lawmaking sought to democratise it.

At the same time, some positive practices were observed, noteworthy in terms of analysing their vapour content, democratic nature and practical procedures for organising elections. In this context, efforts of the Central Council and the Ukrainian National Council of WUPR should be mentioned primarily.

Initially acting within the legal framework of the Russian Empire, the Central Rada had to

coordinate its legislative initiatives in the field of electoral law with the Provisional Government, which retained control over all-Russian electoral processes. Prior to the October 1917 upheaval, the UCR was largely limited to preparatory work, as the legal aspects of electoral legislation, including the definition of liability for electoral offences, remained within the competence of the Russian government. It was only after the removal of the Provisional Government and the establishment of Bolshevik rule in Petrograd that the Central Rada was able to independently develop electoral legislation to convene the Ukrainian Constituent Assembly. Since then, the electoral process in Ukraine has acquired real practical significance, which was reflected in the adoption of the Law on elections to the Constituent Assembly of the Ukrainian People's Republic on 16 November 1917 (Law on elections to the Constituent Assembly of the Ukrainian People's Republic. Main Commission on Elections to the Ukrainian Constituent Assembly, 1917), which provided for universal suffrage, equality of citizens and the democratic nature of voting, as well as the "Instructions for the use of Section One of the Law on Elections to the Constituent Assembly of the Ukrainian People's Republic."

These documents were the result of a long process that began in May 1917. In particular, on 21 May 1917, the ''Provisional Rules for the election of provincial and district zemstvo officials'' were approved, which regulated electoral procedures, the process of forming voter lists, election campaigning, voting mechanisms, counting of results and the procedure for appealing them (Pavlenko, 2014). An important democratic innovation of this document was the abolition of the property qualification, as well as the absence of restrictions on suffrage on ethnic or religious grounds, which distinguished it from the electoral acts of previous regimes.

An important step in the formation of the national institution of voters was the creation of a special commission on 9 August 1917 to develop electoral legislation. On 21 August, the Mala Rada approved two commissions, one of which was to define the competence of the Constituent Assembly, and the other to draft the electoral law itself. Based on the results of the work of these bodies, the Sixth General Meeting of the Central Rada adopted a resolution approving the main principles of electoral legislation and empowering the Minor Rada to finalise it. The draft of "The Law on elections to the Constituent Assembly of the Ukrainian People's Republic" was presented on 10 November 1917 by the head of the commission O. Sevriuk, and on 11 November the Central Rada approved the first section, and on 16 November, the second section of this law (Pavlenko, 2014).

'The Law on elections to the Constituent Assembly of the Ukrainian People's Republic' played an important role in establishing a democratic form of government in the UPR, enshrining the basic principles of the electoral process. The document established universal, equal, direct suffrage by secret ballot, which was in line with the democratic standards of the early twentieth century. The specific feature of suffrage enforcement was the introduction of a proportional electoral system aimed at ensuring representation of different socio-political groups.

The law defined the participants in the electoral process, including election commissions, the procedure for their formation, competence and responsibility for compliance with electoral procedures. The document established a mechanism for the distribution of electoral districts and the number of parliamentary mandates, which contributed to the proportional representation of territorial communities. An important innovation was the enshrining of women's suffrage, which demonstrated the progressive nature of the UPR's electoral legislation compared to many European countries of the period.

The law contained provisions for monitoring the integrity of the electoral process, providing for procedures for appealing election results and liability for violations of suffrage. A special feature of regulating the electoral process was consideration of the multinational composition of the population, which was reflected in the electoral procedures and the possibility of political participation of representatives of different ethnic groups. The electoral process was organised in accordance with the principles of a parliamentary republic, where the Constituent Assembly was seen as the highest representative body of power, which was to determine the constitutional order of the UPR.

The adoption of this law was a significant step in the democratisation of the political system, the development of electoral law and the formation of republican traditions in Ukraine. The legislative consolidation of democratic procedures demonstrated the desire to build a legal state based on the principles of representative democracy, the rule of law and equality of citizens in the political process.

The Law on elections to the Constituent Assembly introduced effective mechanisms to prevent multiple voting, which contributed to increasing the transparency of the electoral process and preventing fraud (Pavlenko, 2014). Voters were provided with clear guarantees to challenge voter lists, make additions and corrections, and relevant changes were immediately recorded by the competent authorities

and published no later than two days before the election. The electoral process was clearly organised: each voter received a personalised ID card containing information on their personal data, voting location and registration number in the voter list, which provided an additional level of control and public oversight.

The "Instructions for the use of Section One of the Law on elections to the Constituent Assembly of the Ukrainian People's Republic" stated that the division into electoral districts remained the same as that determined for the All-Russian Constituent Assembly, and that electoral commissions were to be established "if possible" in each village (Constitution of the Ukrainian People's Republic (Statute on the State Structure, Rights and Freedoms of the UNR, 1918).

The adoption of the above-mentioned regulations was an important stage in the process of state-building, as the norms laid down in them determined the main parameters of the formation of the future parliament, laying down the foundations of electoral law that met European democratic standards. These ideas were further developed in the Constitution of the Ukrainian People's Republic, which proclaimed that power comes from the people and that the People's Assembly is the highest representative body elected on the basis of universal, equal, direct, secret and proportional voting [6, p. 30]. Parliamentary elections were to be held every three years at the rate of one deputy per 100,000 voters, and the legislative activity itself was based on professional principles: "Elections should be arranged so that one deputy shall be for about one hundred thousand people and that no one shall have a second vote in elections. In all other respects, the rules for elections to the National Assembly shall be established by law" (Constitution of the Ukrainian People's Republic (Statute on the State Structure, Rights and Freedoms of the UNR, 1918). The Constitution guaranteed the immunity of a deputy, which ensured the independence of parliamentary activity and its protection from political pressure. In fact, Article 21 of the UPR Constitution proclaimed that "all citizens of the UPR have the active and passive right to participate in elections, both to the legislative bodies of the UPR and to all elected bodies of local and civil self-government, when they reach the age of twenty by the day of the execution of the electoral act" (Constitution of the Ukrainian People's Republic (Statute on the State Structure, Rights and Freedoms of the UNR,1918).

3. Electoral legislation of the UPR and the Directory

Analysing the electoral legislation of the UPR, it can be concluded that its provisions met the high democratic standards of their time, ensuring the principles of democracy, openness of the electoral process and protection of political rights of citizens. An important feature of the electoral legislation was the removal of its ideological colouring, which distinguished it from the electoral acts of authoritarian regimes. The basis of suffrage law of the UPR was the philosophy of freedom, protection of human and civil rights, what made it progressive for the early twentieth century. Given these circumstances, the electoral legislation and constitutional foundations of the UPR can be seen as an important historical experience in the development of democracy and parliamentarism in Ukraine.

The specifics of applying the electoral legislation during the Hetmanate of Pavlo Skoropadskyi were marked by contradictory approaches to the formation of representative bodies and electoral procedures. After coming to power on 29 April 1918, the Hetman in his "Letter to All the Ukrainian People" declared his intention to issue a law establishing the procedure for elections to the Ukrainian Soym, but the actual implementation of this plan was postponed due to an agreement with the German command that provided for the refusal to convene the Constituent Assembly (Pavlenko, 2014). Despite official statements about the development of electoral legislation, the actual actions of the Hetman's government showed an attempt to eliminate elected local self-government bodies and replace them with an administrative system controlled by the central government. The "Draft Fundamental Laws of the Ukrainian State" laid down the concept of a hereditary constitutional monarchy, which provided for a significant limitation of parliamentarism and people's representation.

Only in the autumn of 1918, under pressure from the political opposition and due to weakening support from Germany, did the Hetman return to the idea of elections to the State Seym. The government proclaimed that the electoral law would be based on the principles of universal, equal, direct suffrage and secret ballot, and the Seym itself was to be given constituent functions (Pyrih, 2012). The attempts to introduce parliamentary principles at the end of P. Skoropadskyi's rule reflected the desire to legitimise the regime in the new political environment, when the monarchical nature of the government no longer had sufficient support. In general, the electoral legislation of the Hetmanate period was characterised by declarative promises of democratic reforms that were not implemented in practice due to the authoritarian nature of the regime and foreign policy restrictions.

The electoral legislation of the period of the Directory of the Ukrainian People's Republic was characterised by a combination of radical democratic principles and class restrictions, which distinguished it from the electoral systems of the Central Rada and the Hetmanate. The Declaration of the Directory of 26 December 1918 proclaimed a model of "dictatorship of the working people," which led to the introduction of a curial system of elections to the Labour Congress, where only "labour elements" – peasants, workers and labour intellectuals – were represented, while the big bourgeoisie and other 'parasitic classes' were deprived of voting rights. This approach contrasted with the electoral legislation of the Central Rada, which was based on the principles of universal suffrage without social restrictions, as well as with the Hetman's electoral reform projects, which envisaged the expansion of representative bodies, but within the monarchical model of government.

According to the "Instructions on elections to the Congress of the working people of Ukraine" of 5 January 1919, representation was distributed disproportionately: peasants received the largest number of mandates (377), while workers (118) and intellectuals (33) were allocated significantly fewer seats, and separate representation was given to railway and postal workers. The electoral system provided for a complex multi-level procedure, whereby peasants elected delegates through county meetings, and workers and the intelligentsia – through provincial meetings, which complicated the exercise of suffrage. The proclaimed democratic model actually limited electoral competition, as it excluded large segments of society from the political process, which did not meet the principles of a classical representative democracy. Compared to the electoral plans of the Hetmanate, which envisaged the election of the Seym in general elections after the 'stabilisation of the state', the electoral model of the Directory had more elements of direct democracy, albeit in a narrow social dimension (Buchyn, 2009).

Further attempts to reform the electoral system, in particular the draft of the Basic State Law of the Ukrainian People's Republic (1920), demonstrated a gradual abandonment of the class-based approach to the formation of representative bodies. This document restored universal, equal, direct and secret suffrage for all citizens, which brought it closer to the electoral principles of the Central Rada, but it never came into force due to unfavourable historical circumstances. In general, the electoral system of the Directory period was the result of socio-political compromises and instability, which did not allow it to fully function as an effective mechanism for the formation of democratic governance.

The electoral legislation of the Western Ukrainian People's Republic (WUPR) was characterised by clear regulatory framework for electoral procedures and democratic principles of formation of representative bodies of power. According to the "Provisional Basic Law" of 13 November 1918, the Ukrainian National Rada became the supreme legislative body, which was empowered until the election of the WUPR Seym. The legislation provided for elections to the Seym on the basis of universal, equal, direct suffrage by secret ballot, which was in line with European democratic standards of the time. The specific feature of the electoral process was the use of a national proportional representation system that guaranteed representation of all ethnic groups, including Ukrainians (160 deputies), Poles (33), Jews (27) and Austrians (6), which ensured ethno-political stability in the newly formed state (Bichek, 2007).

Unlike the Central Rada, which introduced universal suffrage without restrictions on social or property status, the WUPR electoral system had an element of proportional representation for national groups. However, the electoral model of the UPR Directorate, which operated in the Naddnipranshchyna, initially included class restrictions on the right to vote, allowing only "labour elements," such as peasants, workers and labour intellectuals, while the bourgeoisie and exploiting classes were excluded from the electoral process. The electoral system of Pavlo Skoropadskyi's Hetmanate remained uncertain, as elections to the Seym were never held, while the main focus was on strengthening the executive branch.

WUPR legislation also regulated the election of local authorities, providing for the election of community and county commissioners, which was intended to remove the Austrian administration and replace it with Ukrainian self-government. In April 1919, a separate electoral law was adopted that established the territorial division into Ukrainian, Polish, Jewish, and Austrian districts, which ensured political balance.

Therefore, the electoral legislation of the WUPR was marked by a high level of legal detail, democratic principles and attempts to create a representative system that could function in a multinational society.

4. Conclusions

Therefore, the electoral legislation of the Ukrainian governments in 1917-1921 was formed in the context of political instability, armed confrontation and lack of a well-established legal order, which significantly compli-

cated the process of democratic state-building.

Ukrainian national state entities took different approaches to the development of electoral legislation. For example, the Central Rada, guided by the principles of parliamentarism, adopted the "Law on elections to the Constituent Assembly of the Ukrainian People's Republic", which provided for universal, equal, direct suffrage and secret ballot, but the implementation of these provisions was complicated by the lack of time and the war with the Bolsheviks. Instead, P. Skoropadskyi's Hetmanate, while declaring its intention to establish a representative authority – the State Seym – never held elections, as the idea of strengthening the executive branch and centralising public administration prevailed in the country. The specific feature of the electoral legislation of the Directory of the UPR was the introduction of suffrage based on the class principle, which excluded significant social strata from the political process and significantly narrowed political competition. The electoral legislation of the Western Ukrainian People's Republic was distinguished by clear legal regulation and focus on democratic procedures. Unlike the Directory, the WUPR did not introduce social restrictions in electoral law, and its electoral legislation was based on the Austro-Hungarian legal tradition, which was much more stable.

A common problem for all Ukrainian governments was the lack of a stable state apparatus, the need to adapt electoral procedures to wartime conditions, and the low level of administrative control over the electoral process. Despite these difficulties, the Central Rada and the WUPR demonstrated the greatest commitment to democratic principles by introducing universal suffrage without social and property restrictions, which was in line with European standards of representative democracy in the early 20th century.

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ЕВОЛЮЦІЯ ВИБОРЧОГО ЗАКОНОДАВСТВА В 1917-1921 РОКАХ

Анотація. ***Мета.*** Метою статті є комплексний аналіз еволюції виборчого законодавства в період з 1917 до 1921 років, зокрема правових актів Центральної Ради, Гетьманату, Директорії та Західноукраїнської Народної Республіки, з акцентом на розвиток ідей народовладдя в умовах революційних трансформацій, виявлення особливостей формування виборчих інститутів у контексті політичних змін, а також оцінка значення історико-правового досвіду цього періоду для сучасного виборчого процесу та правового забезпечення демократичних принципів в Україні. ***Результати.*** У статті аргументовано думку, що в умовах революційних трансформацій українські уряди – Центральна Рада, Гетьманат Павла Скоропадського, Директорія та Західноукраїнська Народна Республіка (ЗУНР) – розробляли власні виборчі системи, що відображали як національні традиції, так і європейські демократичні моделі. Виборче право 1917-1921 років демонструвало спроби закрі-

плення принципів народовладдя, однак його реалізація була ускладнена воєнними діями, політичною нестабільністю та адміністративними обмеженнями. У ході дослідження встановлено, що виборча система Центральної Ради була найбільш демократичною, адже передбачала загальне, рівне, пряме виборче право при таємному голосуванні. Вона базувалася на принципах парламентаризму та спиралася на європейські виборчі стандарти. Однак через складну політичну ситуацію реалізація виборчих норм була обмеженою. Виборче право Гетьманату залишалося нереалізованим через авторитарний характер режиму, який робив ставку на централізоване управління. Виборча система Директорії ґрунтувалася на класовому підході, що звужувало політичну конкуренцію та обмежувало участь у виборах значних верств населення. Натомість ЗУНР, адаптувавши австро-угорську правову традицію, закріпила демократичні виборчі процедури, зокрема загальне виборче право та пропорційне представництво, що гарантувало участь усіх національних груп. ***Висновки.*** Результати дослідження свідчать, що виборче законодавство періоду Української революції 1917–1921 років мало спільні риси, зокрема прагнення до демократичних виборів та спроби формування представницьких органів влади, проте суттєво відрізнялося за рівнем реалізації виборчих принципів. Аналіз виборчого законодавства доби Української революції дозволяє не лише краще зрозуміти історичні передумови розвитку виборчих процесів в Україні, але й використати цей досвід для вдосконалення сучасних виборчих механізмів та забезпечення демократичних процедур у сучасній Україні.

Ключові слова: виборче законодавство, національне право, Центральна рада, Гетьманат, директорія, ЗУНР, державність.

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LAW ENFORCEMENT ACTIVITIES UNDER MARTIAL LAW: FEATURES, CHALLENGES AND STRATEGIC OBJECTIVES

Abstract. ***Purpose.*** The purpose of the article is to study the specific features of law enforcement under martial law in Ukraine, and to identify the key tasks and challenges faced by law enforcement bodies during this period. The article is aimed at analysing theoretical and practical approaches to understanding the concept of 'law enforcement' in the context of war, and also at identifying the differences between the functioning of the law-and-order system in peacetime and wartime. ***Results.*** The article analyses the specific features of law enforcement under martial law in Ukraine, its key tasks, challenges and transformations. The authors study the main approaches to the definition of the concept of 'law enforcement' in legal science, including the concepts proposed by Ukrainian researchers. The article focuses on the expansion of law enforcement functions during wartime as compared to peacetime. It is stated that in peacetime, law enforcement aims at maintaining law and order and protecting the rights of citizens, while in wartime its tasks are much broader. The specifics of law enforcement are considered, including coordination with military structures, organisation of checkpoints, evacuation of the population, documentation of war crimes, etc. The strategic importance of law enforcement for national security is emphasised. The article also draws attention to the problem of the lack of a well-established definition of the concept of 'law enforcement' in the context of wartime. ***Conclusions.*** It is proposed to adapt existing approaches to modern challenges. It is pointed out that the legal regime of martial law includes specific tasks for law enforcement agencies, such as countering terrorism and war crimes, maintaining public order and territorial integrity. It also discusses the need for effective legal regulation and a balance between security and human rights protection. In addition, in order to operate effectively in wartime, law enforcement bodies are required to be adapted to new challenges and function in close coordination with other state agencies. Traditional approaches to understanding the concept of 'law enforcement' need to be adapted to the realities of wartime, when the functions of law enforcement agencies are significantly expanded, and as a result, in addition to the classic tasks of ensuring law and order, law enforcement agencies are obliged to respond to specific challenges.

Key words: law enforcement bodies, martial law, legal regime, national security, law enforcement bodies, law and order, public safety, war crimes, coordination, challenges of war, legality, human rights.

1. Introduction

One of the key challenges faced by the modern state is ensuring public safety and maintaining law and order under martial law. Law enforcement activities, which are traditionally aimed at preventing crime and maintaining legal order, are of particular importance in times of war. The introduction of the legal regime of martial law in Ukraine was the result of the large-scale military aggression of the Russian Federation, which has dramatically changed the requirements for the functioning of law enforcement agencies. The state has faced the need to respond promptly to new challenges, which include not only maintaining public order, but also countering internal and external threats to national security.

Under these conditions, law enforcement has become one of the main elements of ensuring stability and protecting state sovereignty. Under martial law, the main tasks of law enforcement agencies include not only typical functions, such as preventing offences, suppressing them, and using state coercion or public influence on persons who have violated the public order established by law, but also specialised measures to detect and neutralise terrorist threats, war crimes, sabotage, etc. It is important to ensure effective coordination between law enforcement bodies and security forces, as only joint efforts

can guarantee an adequate level of protection of the state.

One of the key features of modern law enforcement is the need to combine preventive measures with a prompt response to new threats. In particular, an important role is played by combating crimes against the foundations of Ukraine's national security, which pose a significant threat to the state system. Among the main threats that require immediate response are those related to ensuring law and order, protection of human and civil rights and freedoms, countering the threats of martial law, and performing and facilitating the tasks assigned to the security and defence forces of Ukraine. That is why it is important not only to strengthen control over the observance of the law, but also to ensure effective protection of the rights and freedoms of citizens, even in difficult wartime conditions.

Particular attention should also be paid to cooperation with the public sector, as the involvement of society in maintaining order can significantly increase the effectiveness of law enforcement. In addition, the role of civil society organisations in monitoring human rights and controlling the activities of law enforcement bodies is increasing. All these aspects require new approaches from the state to the organisation of law enforcement, which should be adapted to the realities of wartime.

Therefore, law enforcement under martial law is not only a tool for maintaining law and order, but also an important element of national security. Its effectiveness depends not only on the stability of the internal situation, but also on the state's ability to counter external aggression. Successful implementation of these tasks is possible only if all state structures are clearly coordinated, new methods of work are introduced and active cooperation with the public is ensured. This approach will ensure not only the protection of the territorial integrity of Ukraine, but also the preservation of democratic values and the rights of citizens even in the most difficult times.

The study of the definition and features that are characteristic of law enforcement activities of internal affairs bodies can be found in the works by scholars such as: O. Bandurka, I. Borodin, O. Voluiko, O. Druchek, V. Opryshko, S. Rossokha, I. Solovievych, A. Tarasov, V. Tatsii, O. Tiurina, Yu. Shemshuchenko and others. However, the issue of defining the specific features of the activities of law enforcement bodies under martial law as actors of law enforcement in the country remains open.

The purpose of the article is to study the specific features of law enforcement under martial law in Ukraine, and to identify the key tasks and challenges faced by law enforcement bodies during this period. The article is aimed at analysing theoretical and practical approaches to understanding the concept of 'law enforcement' in the context of war, and also at identifying the differences between the functioning of the law-and-order system in peacetime and wartime.

2. Key features of law enforcement under martial law

Law enforcement under martial law is one of the key instruments for ensuring national security and stability in the state. Despite the fact that the concept of 'law enforcement' has long existed in the national legal science, this term has not yet been consistently interpreted. Modern approaches to the definition of this concept differ significantly depending on the context of application, which creates a certain scientific and practical problem, especially in the context of the emergency legal regime. In peacetime, law enforcement is traditionally seen as the activities of specially authorised state bodies aimed at maintaining law and order and protecting the rights of citizens. However, under martial law, this concept is significantly expanded to include new functions and tasks that go beyond the classical concepts.

According to O. Tiurina, law enforcement should be understood as a certain type of law enforcement, which is a specific form of implementation of law and is a form of active organisational and administrative activity of the competent authorities acting on behalf of the State under its powers (Tiurina, 2008).

In the Juridical Encyclopaedia, Yu. Shemshuchenko argues that 'law enforcement is a system of measures aimed at ensuring the implementation of the Constitution, laws and other regulations of the state. It is a means of strengthening law and order, ensuring the constitutional rights of citizens. It is carried out by law enforcement bodies and other state authorities, as well as public organisations. Law enforcement activities also include the cancellation of unlawful regulations, the recognition of laws and bylaws as unconstitutional by the Constitutional Court, etc. In Ukraine, the legal basis for law enforcement activities is the Constitution and other laws of the state. The relevant state bodies are obliged to perform these activities within their competence.' (Shemshuchenko, 2003).

In contrast, I. Solovievych argues in his study on the constitutional and legal aspects of state power in Ukraine and the place of law enforcement in it, the concept under study is defined as a type of organised and legal state activities of law enforcement bodies, mainly

based on coercion, performed by the competent authorities in a specially established form, the content of which consists in issuing (adopting) individually specific legal commands (state regulations) in order to counteract the occurrence and development of unlawful acts (misdeeds and crimes), neutralise and eliminate harmful effects (consequences), legal assessment of the act, ensuring the appropriate social result, etc. (Solovievych, 1997).

S. Rossokha quite briefly defines law enforcement as the activities of specially authorised state bodies enshrined in legal regulations to enforce the legal order on the basis of a balance of interests of the individual, society and the state (Rossokha, 2016).

Another interesting position is that of A. Kuchuk, who confidently distinguishes between 'law enforcement' and 'human rights activities' and specifies that protection is primarily related to prevention, deterrence of unlawful acts, and the need for protection arises when there are obstacles to the exercise of rights and freedoms or a threat of their violation (Kuchuk, 2007).

It is believed that law enforcement is characterised by the following features: its focus is on protecting the rights and freedoms of citizens, the rule of law, law and order and all public relations activities regulated by law; its conduct is based on and in accordance with the law and, mainly, in a proper procedural form; its implementation is usually based on legal means; it is conducted by a specially authorised person on a professional basis.

The purpose of law enforcement is to ensure the protection of the rights and freedoms of man and citizen, public order and security, maintenance of law and order and implementation of the rule of law. This goal is realised through a number of specific tasks, including: preventing violations of the law; preventing unlawful acts that threaten human security; detecting and suppressing offences and abuses; and deterring unjustified accusations against innocent persons; overseeing compliance with the law in the process of law enforcement; ensuring impartial execution of decisions provided for by law. These tasks are aimed at achieving harmony between law, order and human rights.

It is important to note that in times of war, law enforcement activities are transformed, gaining strategic importance for state security. The main problem is that traditional approaches to the definition of law enforcement do not fully consider the specifics of its implementation in wartime. During the martial law regime, the law enforcement system faces new challenges, which requires revision and adaptation of existing concepts, since ensuring law and order in the context of armed aggression has different priorities and methods compared to peacetime.

One of the key aspects is the coordination of law enforcement with the military agencies, which is atypical for peacetime. This interaction requires clear legal mechanisms and procedures that are not yet sufficiently developed in Ukrainian legislation. In addition, the absence of a unified approach to defining the functions of law enforcement in wartime makes it difficult to develop an effective strategy for fighting crime and ensuring public safety (Yunin, Shevchenko, 2023).

Another significant challenge is the problem of legal support for the activities of law enforcement bodies in emergency situations. Law enforcement should be based on clear legal principles, but under martial law, additional measures of state coercion are required. This raises the question of the balance between the need to ensure security and the observance of human rights and freedoms. Therefore, it is necessary to define the limits and criteria for the legitimacy of law enforcement actions in wartime.

Another important aspect is the problem of adapting the law enforcement system to new threats. Martial law poses specific challenges, such as an increase in terrorist acts, sabotage and war crimes. This requires not only advanced training of law enforcement officers, but also the creation of new units that would specialise in combating such threats (Shablystyi, Berezniak, Katorkin, 2023).

Another important problem is the issue of public control over the activities of law enforcement bodies in wartime. In times of war, the risk of violations of citizens' rights increases, so it is necessary to ensure effective mechanisms for monitoring compliance with the law by law enforcement officers. This will help maintain public trust in the law enforcement system and ensure the legitimacy of its actions.

Therefore, the absence of a well-established definition of the concept of 'law enforcement' under martial law is a serious scientific and practical problem that requires a comprehensive study. It is necessary to develop new approaches with due regard to the specifics of wartime, as well as to ensure effective legal regulation of law enforcement activities. This will create an efficient system that can effectively counter threats to national security and ensure the protection of citizens' rights even in the most difficult conditions.

3. Specifics of the definition of 'martial law'

According to the Law of Ukraine 'On Defence of Ukraine', martial law is a "special legal regime introduced in Ukraine or in certain areas of Ukraine in the event of armed aggres-

sion or threat of attack, threat to the state independence of Ukraine, its territorial integrity and provides for the granting of powers to the relevant state authorities, military command and local self-government bodies necessary to avert the threat and ensure national security, as well as temporary restrictions of constitutional rights and freedoms of man and citizen and rights and legitimate interests of legal entities caused by a threat, indicating the duration of these restrictions" (Law of Ukraine On the Defence of Ukraine, 1991). The statutory definitions of the legal regime of martial law in Ukraine enable to identify its key characteristics and specific features.

First, martial law is a special legal regime introduced throughout Ukraine or in certain regions in the event of open armed aggression or a real threat of attack, undermining state sovereignty or territorial integrity of the country.

Second, the main feature of this regime is the transfer of part or all of the powers of governance from local administrations to military commanders, military administrations or local governments under the control of military structures.

Third, the activities of state bodies, military command and local self-government bodies under martial law are aimed at preventing or neutralising existing threats to the security of the state. This involves making decisions and implementing measures that are of a priority nature for the defence of the country.

Finally, the legal regime of martial law includes the possibility of temporary restrictions on certain rights and freedoms of citizens as defined by the Constitution of Ukraine. Such restrictions are imposed solely to ensure national security and are of an exceptional nature, which corresponds to the conditions of a state of emergency in the country.

Analysis of the concept of 'law enforcement' in the context of the legal regime of martial law in Ukraine should be based on two main approaches to its understanding. In a broad sense, this is a comprehensive activity of all state and non-state structures aimed at ensuring the observance of the rights and freedoms of citizens, maintaining law and order with due regard to the specifics and challenges of wartime. In a narrow sense, law enforcement covers the functioning of specially authorised bodies that act within the limits of the powers granted by law to ensure law and order, protect the rights of citizens and maintain public safety.

It is believed that the specifics of law enforcement activities under martial law are closely related to its general tasks, but have a number of differences due to the peculiarities of wartime. The main tasks of law enforcement bodies are:

1. Protect the constitutional order and state sovereignty of Ukraine.
2. Protect the rights, freedoms and legitimate interests of citizens and entities of all forms of ownership.
3. Maintain the territorial integrity and defence capability of the country.
4. Ensure public order and security.
5. Fight common criminal offences, war crimes and terrorist threats.
6. Eliminate conditions and causes that facilitate the commission of offences.

The differences in the implementation of these tasks during martial law are due to the need to perform specific functions, such as coordination with the military command and other structures of the Security and Defence Forces. Law enforcement agencies may act independently or in cooperation with military administrations to implement martial law measures. These measures are as follows: to organise and control checkpoints to ensure security at strategic facilities; to conduct evacuation measures to protect civilians; to check documents and vehicles to identify potential threats; to record and document war crimes for further investigation and prosecution; to counteract offences.

In other words, the activities of law enforcement bodies in peacetime are aimed at maintaining law and order, protecting the rights and freedoms of citizens, combating crime and ensuring public safety. For example, the police patrol the streets to prevent crime and respond to calls from citizens. In wartime, law enforcement activities are expanded to include coordination with the military, control of checkpoints and evacuation of the population. A special emphasis is placed on identifying sabotage groups and documenting war crimes. Therefore, the functions of law enforcement are being adapted to the realities of martial law, ensuring the protection of state security.

4. Conclusions

Therefore, law enforcement during martial law is a complex multifunctional mechanism that combines traditional tasks with specific wartime measures. It is aimed at maintaining law and order, protecting citizens and ensuring the security of the state, which requires maximum coordination, efficiency and compliance with the law from law enforcement bodies. Furthermore, such activities are strategically important in ensuring Ukraine's national security and stability.

The analysis of doctrinal positions on the definition of the concept of 'law enforcement' demonstrates that traditional approaches to its understanding need to be adapted to the realities of wartime, when the functions

of law enforcement bodies are significantly expanded, and as a result, in addition to the classic tasks of ensuring law and order, law enforcement bodies are obliged to respond to specific challenges.

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ПРАВООХОРОННА ДІЯЛЬНІСТЬ В УМОВАХ ВОЄННОГО СТАНУ: ОСОБЛИВОСТІ, ВИКЛИКИ ТА СТРАТЕГІЧНІ ЗАВДАННЯ

Abstract. ***Purpose.*** Метою статті є дослідження особливостей правоохоронної діяльності в умовах воєнного стану в Україні, визначення ключових завдань та викликів, що постають перед правоохоронними органами у цей період. Стаття спрямована на аналіз теоретичних і практичних підходів до розуміння поняття «правоохоронна діяльність» у контексті війни, а також на виявлення відмінностей між функціонуванням системи правопорядку в мирний і воєнний час. ***Results.*** Стаття присвячена аналізу особливостей правоохоронної діяльності в умовах воєнного стану в Україні, її ключових завдань, викликів і трансформацій. Автори розглядають основні підходи до визначення поняття «правоохоронна діяльність» у правовій науці, зокрема концепції, запропоновані українськими дослідниками. У статті акцентується увага на розширенні функцій правоохоронних органів під час війни порівняно з мирним часом. Зазначено, що у мирний період правоохоронна діяльність спрямована на підтримання правопорядку та захист прав громадян, тоді як у воєнний час її завдання значно ширші. Розглядається специфіка діяльності правоохоронних органів, яка включає координацію з військовими структурами, організацію блокпостів, евакуацію населення, документування воєнних злочинів тощо. Підкреслюється стратегічне значення правоохоронної діяльності для національної безпеки. Стаття також звертає увагу на проблему відсутності усталеного визначення поняття «правоохоронна діяльність» у контексті воєнного часу. ***Conclusions.*** Пропонуэться адаптувати існуючі підходи до сучасних викликів. Вказується, що правовий режим воєнного стану включає специфічні завдання для правоохоронних органів, такі як протидія тероризму та воєнними злочинами, підтримання громадського порядку і територіальної цілісності. Також обговорюється необхідність ефективного правового регулювання та балансу між безпекою і захистом прав людини. Також, для ефективної діяльності в умовах війни правоохоронні органи мають бути адаптовані до нових викликів і функціонувати в умовах чіткої координації з іншими державними структурами. Традиційні підходи до розуміння поняття «правоохоронна діяльність» потребують адаптації до реалій воєнного часу, коли функції правоохоронних органів значно розширюються, як наслідок окрім класичних завдань із забезпечення законності та правопорядку, правоохоронні структури зобов'язані реагувати на специфічні виклики.

Ключові слова: правоохоронна діяльність, воєнний стан, правовий режим, національна безпека, правоохоронні органи, правопорядок, громадська безпека, воєнні злочини, координація, виклики війни, законність, права людини.

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UKRAINE'S COOPERATION WITH INTERNATIONAL ORGANISATIONS IN PREVENTING CRIME DURING WARTIME

Abstract. ***Purpose.*** The purpose of this study is to theoretically analyse and consider the lines of Ukraine's international cooperation in preventing wartime crime. ***Results.*** In the article the main lines of cooperation with international organisations during c are considered. It is emphasized that Ukraine's cooperation with international organisations in the field of crime prevention is an important area of the State's activities, especially in the context of martial law and post-war recovery. Such cooperation includes legal, technical, analytical and organisational support aimed at combating transnational crime, corruption, terrorism, human trafficking, cybercrime and other threats. The process of globalisation and internationalisation of crime has led to a change in its nature and scope. Crime is no longer confined to the borders of individual states, but becomes global, which requires active cooperation between countries and international organisations to effectively combat such phenomena. During wartime, Ukraine has been actively cooperating with international organisations in several key areas: war crimes investigation and justice, humanitarian aid and human rights protection, fighting cybercrime and information warfare, financial support and policy on sanctions, and cooperation in the field of security and military assistance. ***Conclusions.*** It is concluded that improvement of Ukraine's cooperation with international organisations in combating crime is an important area of ensuring national security and the rule of law. In the context of globalisation and modern threats, Ukraine needs to intensify its cooperation with international organisations to effectively combat various types of crime, including terrorism, organised crime, human trafficking, corruption and other transnational crimes. Ukraine needs to ensure ongoing cooperation with INTERPOL to exchange information, search for internationally wanted persons and coordinate actions to combat transnational crime. This may include joint operations, training of personnel and the use of modern technology to monitor criminal activity. As part of the fight against organised crime and terrorism, Ukraine can intensify cooperation with Europol, which will enable to effectively counter these crimes in Europe and other parts of the world.

Key words: crime prevention, cooperation, International Criminal Court, criminal offences, cooperation, Europol, Eurojust.

1. Introduction

Ukraine's cooperation with international organisations in the field of crime prevention is an important area of the State's activities, especially in the context of martial law and post-war recovery. Such cooperation includes legal, technical, analytical and organisational support aimed at combating transnational crime, corruption, terrorism, human trafficking, cybercrime and other threats.

Global crime requires a comprehensive approach. International law enforcement cooperation enables states to combine their efforts to effectively combat crime. For Ukraine, it is important not only to adopt international standards, but also to implement them.

Nowadays, Ukraine closely cooperates with Europol and Interpol in the fight against organised criminal groups, cybercrime, terrorism, the FATF Group in combating money laundering, the OSCE in combating human trafficking, and GRECO (Group of States against Corruption) in anti-corruption reforms.

Equally important is Ukraine's cooperation with international organisations in the field of preventing war crimes committed by the aggressor country on the territory of Ukraine. For example, in the investigation of war crimes and crimes against humanity, Ukraine cooperates with the International Criminal Court, the UN, the OSCE and other organisations to document and investigate war crimes committed by the Russian military. Therefore, in order to improve Ukraine's cooperation with international institutions in crime prevention, scientific substantiation and practical improvement are required.

The scholars of the modern period who study the legal aspects of international cooperation in the fight against crime, including the functioning of international courts, include primarily M.V. Buromenskyi, O.I. Vynohradov, O.H. Volevodz, V.M. Volzhenkin, L.N. Halenska, H.V. Didkivska, V.M. Dremina, N.V. Dremina-Volok, T.S. Havrysh, N. A. Zelinska, I.I. Karpets, O.V. Kasyniuk, N.M. Kipnis, M.M. Korkunov, M.I. Kostenko, S.A. Lobanov, I.I. Lukashuk, V.T. Maliarenko, I.S. Marusin, F.F. Martens, V.V. Milinchuk, I.S. Nurullaiev, V.P. Panov, M.I. Pashkovskyi, V.P. Pylypenko, M.I. Smirnov. O.I. Rabtsevych and others, as well as foreign experts, such as M.C. Bassiouni, H.D. Vabres, M.S. Galvo, D.H.A. Derby, Y. Dinstein and others. However, certain aspects of this problem remain insufficiently studied and require further scientific substantiation, especially in the context of russia's full-scale reprisal on the territory of Ukraine and the commission of war crimes by the Russian military.

The purpose of this study is to theoretically analyse and consider the lines of Ukraine's international cooperation in preventing wartime crime.

2. The role of international cooperation in the fight against crime

International cooperation in the fight against crime is a coordinated activity of States, international organisations and bodies aimed at preventing, suppressing and solving crimes, and bringing those responsible for them to justice. It should be noted that Ukraine's cooperation with international organisations is critical to preventing crime in times of war. Ukraine receives significant support in investigating war crimes, countering terrorism, human trafficking, cybercrime and corruption. Further strengthening of international cooperation will be key to bringing perpetrators to justice and ensuring accountability.

The process of globalisation and internationalisation of crime has led to a change in its nature and scope. Crime is no longer confined to the borders of individual states, but becomes global, which requires active cooperation between countries and international organisations to effectively combat such phenomena.

International terrorism is usually global in nature, as terrorist groups often operate in several countries, using transnational networks to organise attacks. Wars, armed conflicts, political instability and social injustice are often used by terrorists to increase the effectiveness of their attacks. This poses a challenge to the international community to create joint mechanisms to prevent and respond to terrorist threats. The spread of corruption, drug trafficking, terrorism and other forms of organised crime poses the risk of large sums of money being moved illegally through international financial and economic systems. International efforts, such as measures to combat money laundering, aim to uncover such schemes and bring justice.

Trafficking in human beings becomes more and more global, in particular due to migration flows and social and economic instability, which facilitates the exploitation of vulnerable populations. The international community fights trafficking in human beings by coordinating law enforcement activities, establishing specialised support centres for victims and developing legislative initiatives. International drug trafficking is a serious threat to the security, economic development and health of nations. International organisations, such as the United Nations Office on Drugs and Crime (UNODC), coordinate the fight against drug trafficking through joint action by states and law enforcement agencies.

Corruption is another international crime that impedes the effective development of states and reduces trust in state institutions. International initiatives, in particular through the UN Convention against Corruption, facilitate the exchange of information and coordination of actions in the investigation and prosecution of corrupt practices.

The establishment of the International Criminal Court was a significant step in the development of international justice and combating international crimes. Initially, the ICC had limited jurisdiction, but its scope has gradually expanded to include new categories of crimes, such as crimes of aggression and war crimes, allowing the court to exercise broader control over global violations of international humanitarian law.

As global threats grow and international legal provisions expand, the role of the ICC and similar institutions becomes increasingly important. The ICC provides an opportunity to bring to justice those who commit international crimes, even if they are outside national jurisdictions. This is especially important when crimes cross state borders and cannot be effectively investigated at the national level alone.

In the context of globalisation, all these crimes pose threats to global security and stability. Global justice instruments are needed to effectively combat such threats. The establishment of supranational justice institutions such as the ICC, as well as international cooperation in the fight against transnational crime, is an integral part of this process. Supranational justice bodies allow for greater effectiveness in combating global crime by using mechanisms that go beyond national legal systems.

3. Міжнародні конвенції та угоди щодо міжнародного співробітництва

Nowadays, international cooperation is based on a number of international conventions and agreements that directly address a wide variety of crimes, for example:

The Rome Statute of the International Criminal Court (1998) is the main document governing the investigation of war crimes, crimes against humanity and genocide (Law of Ukraine on Ratification of the Rome Statute of the International Criminal Court, 2024).

The UN Convention against Transnational Organised Crime (Palermo Convention, 2000) is an international mechanism for combating organised crime, human trafficking, illicit arms trafficking and the financing of terrorism (Law of Ukraine on Ratification of the UN Convention against Transnational Organized Crime, 2004);

The UN Convention against Corruption (2003) aims to prevent, detect and punish corruption offences, including money laundering and bribery (Law of Ukraine on Ratification of the UN Convention against Corruption, 2006).

The Council of Europe Convention on Cybercrime (Budapest Convention, 2001) is an international agreement to combat cybercrime, including hacking, fraud, child pornography and copyright infringement (Law of Ukraine on the ratification of the Council of Europe Convention on Cybercrime, 2005).

International Convention for the Suppression of the Financing of Terrorism (1999) - establishes mechanisms for financial control and sanctions against individuals and organisations involved in terrorist acts (Law of Ukraine on Ratification of the International Convention for the Suppression of the Financing of Terrorism, 2002).

The European Convention on Mutual Assistance in Criminal Matters (1959, amended in 2001) provides mechanisms for international cooperation in the investigation and prosecution of criminals (Law of Ukraine on the ratification of the European Convention on Mutual Assistance in Criminal Matters, 1998).

The Council of Europe Convention on Action against Trafficking in Human Beings (2005) regulates measures to prevent trafficking in human beings and protect victims (Law of Ukraine on the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, 2010).

The fight against crime requires international coordination and cooperation between states. The main areas of such cooperation include:

1. Exchange of information, which includes the exchange of operational, forensic and legal data between law enforcement agencies of different countries, the use of international databases (e.g. Interpol, Europol).

2. Response to requests for operational and investigative measures. This includes joint investigations, surveillance of suspects, combating cybercrime, and monitoring financial flows that may be related to illegal activities.

3. Provision of legal assistance in criminal cases, including the transfer of evidence, interrogation of witnesses and suspects, and legal support for investigative actions in an international format.

4. Extradition of criminals, that is, the extradition of persons suspected or convicted of crimes for prosecution or enforcement of sentences and cooperation through international agreements (e.g., the European Convention on Extradition).

5. Conclusion of international treaties to combat criminal offences, in particular, to combat human trafficking, drug trafficking, terrorism and corruption.

6. Development of international provisions in the field of criminal justice, namely the definition of standards for the protection of human rights in criminal proceedings and harmonisation of national legislation in accordance with international standards.

7. Recognition and enforcement of judgements of foreign courts.

8. Joint research and exchange of experience and material, technical and expert assistance (Lehan, 2021).

International cooperation is a key tool in the fight against crime, as many crimes have a cross-border nature (cybercrime, financial fraud, terrorism). Therefore, effective interaction between states in the field of law enforcement is essential for ensuring global security (Anistratenko, Hrytsiuk, 2022).

During wartime, Ukraine has been actively cooperating with international organisations in several key areas: war crimes investigation and justice, humanitarian aid and human rights protection, fighting cybercrime and information warfare, financial support and policy on sanctions, and cooperation in the field of security and military assistance.

Ukraine cooperates with several organisations to investigate and prevent war crimes. The International Criminal Court investigates war crimes and crimes against humanity committed on the territory of Ukraine. The UN Human Rights Council documents violations of international humanitarian law. The European Court of Human Rights considers Ukraine's claims against Russia for human rights violations. Moreover, the Hague International Prosecutor's Office assists in collecting evidence of crimes of genocide and aggression.

As part of humanitarian aid, the UN and its agencies (UNHCR, WHO, UNICEF, UNDP) provide assistance to refugees, displaced persons, the wounded, and provide medicines and food. The International Committee of the Red Cross is engaged in the exchange of prisoners, the search for missing persons, and access to prisoners of war, while the International Organization for Migration (IOM) helps displaced persons and combats human trafficking.

In the fight against cybercrime and information warfare, Ukraine cooperates with Europol and Interpol, in particular, in identifying cyber threats and tracking Russian agents. The NATO Cooperative Cyber Defence Centre of Excellence (CCDCOE) supports Ukraine in strengthening cybersecurity, while Freedom House and Amnesty International monitor disinformation and crimes against freedom of speech.

In the field of security and military assistance, Ukraine cooperates with NATO, which provides military equipment, weapons, and training to the Ukrainian military. The Ramstein Contact Group for Ukraine's Defence coordinates international military support. The OSCE monitors the security situation and documents war crimes.

4. Conclusions

To fight crime more effectively, Ukraine needs to integrate more actively into the international system of law enforcement cooperation. This requires:

1) Strengthening cooperation with Interpol, Europol, the UN, and the OSCE;

2) Improving extradition, legal assistance, and information exchange;

3) Introducing modern technologies to combat cross-border crime and cyber threats.

Moreover, improvement of Ukraine's cooperation with international organisations in combating crime is an important area of ensuring national security and the rule of law. In the context of globalisation and modern threats, Ukraine needs to intensify its cooperation with international organisations to effectively combat various types of crime, including terrorism, organised crime, human trafficking, corruption and other transnational crimes.

Ukraine needs to ensure ongoing cooperation with INTERPOL to exchange information, search for internationally wanted persons and coordinate actions to combat transnational crime. This may include joint operations, training of personnel and the use of modern technology to monitor criminal activity. As part of the fight against organised crime and terrorism, Ukraine can intensify cooperation with Europol, which will allow it to effectively counter these crimes in Europe and other parts of the world.

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СПІВРОБІТНИЦТВО УКРАЇНИ З МІЖНАРОДНИМИ ОРГАНІЗАЦІЯМИ У ЗАПОБІГАННІ ЗЛОЧИННОСТІ ПІД ЧАС ВІЙНИ

У статті розглянуто основні напрями співробітництва з міжнародними організаціями під час війни. Наголошено, що співпраця України з міжнародними організаціями у сфері запобігання злочинності є важливим напрямом діяльності держави, особливо в умовах воєнного стану та відновлення після війни. Така співпраця охоплює правову, технічну, аналітичну та організаційну підтримку, спрямовану на боротьбу з транснаціональною злочинністю, корупцією, тероризмом, торгівлею людьми, кіберзлочинністю та іншими загрозами.

Процес глобалізації та інтернаціоналізації злочинності привели до зміни її характеру та масштабів. Злочинність більше не обмежується кордонами окремих держав, а набуває глобальних форм, що потребує активної співпраці між країнами та міжнародними організаціями для ефективної боротьби з такими явищами.

Під час війни Україна активно співпрацює з міжнародними організаціями у кількох ключових напрямах: а саме розслідування воєнних злочинів та правосуддя, гуманітарна допомога та захист прав людини, боротьба з кіберзлочинністю та інформаційною війною, фінансова підтримка та санкційна політика та співпраця у сфері безпеки та військової допомоги.

Зроблено висновок, що удосконалення взаємодії України з міжнародними організаціями у протидії злочинності є важливим напрямом забезпечення національної безпеки та верховенства права. У контексті глобалізації та сучасних загроз Україні необхідно активізувати співпрацю з міжнародними організаціями для ефективної боротьби з різноманітними видами злочинності, зокрема тероризмом, організованою злочинністю, торгівлею людьми, корупцією та іншими транснаціональними злочинами.

Україні необхідно забезпечити постійну співпрацю з Інтерполом для обміну інформацією, пошуку осіб, що перебувають у міжнародному розшуку, і координації дій щодо боротьби з транснаціональною злочинністю. Це може включати спільні операції, навчання персоналу та використання сучасних технологій для моніторингу злочинної діяльності. У рамках боротьби з організованою злочинністю та тероризмом Україна може активізувати співпрацю з Європолом, що дозволить ефективно протидіяти цих злочинам у Європі та інших частинах світу.

Ключові слова: запобігання злочинності, співробітництво, Міжнародний кримінальний суд, кримінальні правопорушення, співпраця, Європол, Євроюст.

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SUBJECT MATTER OF PROVING IN CRIMINAL OFFENCES COMMITTED BY MEDICAL PROFESSIONALS

Abstract. ***Purpose.*** The purpose of the article is to establish the circumstances to be established in criminal offences committed by medical professionals. ***Results.*** The article focuses on the circumstances to be proved in the course of investigation of criminal offences committed by medical professionals. It is indicated that the process of investigation in criminal proceedings is inextricably linked to the process of proving, which is actually its basis. This is due to the fact that the criminal process is aimed at identifying and investigating both material and ideal traces of a criminal offence, which is the essence of proving. The concept of proving, as a rule, does not cause significant debate and is interpreted as a set of actions aimed at identifying, collecting, securing, examining, verifying and evaluating evidence and its procedural sources to substantiate conclusions. It is found that the concept of the subject matter of proving, although it has different formal definitions, retains unity in content. Some scholars interpret the subject matter of proving as a set of circumstances stipulated by the criminal procedure law, the establishment of which is necessary to resolve applications or reports of a criminal offence, proceedings in general or a court case at the stage of execution of a sentence, as well as to apply preventive measures during pre-trial investigation or trial. Other scholars define the subject matter of proving as a system of circumstances that reflect the characteristics and connections of the event that are essential for the proper investigation of criminal proceedings and the implementation of the tasks of criminal proceedings in each case. ***Conclusions.*** It is concluded that the circumstances to be established as an integral element of the forensic methodology for investigating criminal offences, in particular those committed by medical professionals, allow for a more efficient and targeted determination of the amount of information required, and for examining the relevant materials, assessing their legality and sufficiency. This contributes to determining the focus of further investigation and making procedural decisions at various stages of the criminal process with the least amount of time and effort.

Key words: subject matter of proving, medical professionals, investigation, criminal offences, circumstances to be established.

1. Introduction

The process of investigation in criminal proceedings is inextricably linked to the process of proving, which is actually its basis. This is due to the fact that the criminal process is aimed at identifying and investigating both material and ideal traces of a criminal offence, which is the essence of proving. The concept of proving, as a rule, does not cause significant debate and is interpreted as a set of actions aimed at identifying, collecting, securing, examining, verifying and evaluating evidence and its procedural sources to substantiate conclusions. The purpose of this process is to establish the objective truth and to make a lawful, justified and fair decision on its basis (Kovalenko, 2006).

The main purpose of criminal procedural proving is to establish the circumstances relevant to criminal proceedings. This task is achieved if the pre-trial investigation identifies all the facts and circumstances relevant to the determination of the truth with sufficient completeness and reliability. The totality of such facts and circumstances constitutes the subject matter of proving in criminal proceedings (Stakhivskyi, 2005).

The subject matter of proving and the content of the circumstances to be established in criminal proceedings have been widely studied by both Ukrainian and foreign scholars in the field of criminal procedure and forensics, including Yu.P. Alenin, V.P. Bakhin, V.I. Halagan, V. H. Honcharenko, Yu.M. Hroshevyi, V.K. Lysychenko, H.A. Matusovskyi, V.T. Nor, V.A. Pohoretskyi, M.V. Saltevskyi, S.S. Cherniavskyi, V.Yu. Shepitko and others. In general, modern research is aimed at improving the process of proving in proceedings related to

the professional activities of medical professionals, in particular by clarifying concepts, analysing the specifics of the evidence base and developing recommendations for practice.

The purpose of the article is to establish the circumstances to be established in criminal offences committed by medical professionals.

2. Determination of the range of circumstances to be established during the investigation of criminal proceedings

Scholars have analysed the categories of circumstances that need to be clarified, calling them circumstances to be proved or established. In order to clarify these concepts, it is advisable to analyse the concepts set out in a modern explanatory dictionary of the Ukrainian language. It defines the term "to establish" as "to discover or assert something by substantiating it" (Busel, 2003), and "to clarify" as "to investigate, make something clear; to determine or establish something on the basis of certain data, signs, etc." (Busel, 2003).

We believe that the concept of 'establishment' is broader. In our scientific article, we will use the term 'circumstances to be established', covering not only the circumstances provided for by the criminal procedure law, but also those which should be investigated depending on the specific situation in the course of investigation of certain categories of criminal proceedings.

Determination of the range of circumstances to be established during the investigation of criminal proceedings is an important point. As noted by the prominent criminalist O.N. Kolesnichenko, before considering the use of means, techniques and methods of investigation, it is necessary to clearly define the range of tasks and circumstances that need to be established (Kolesnychenko, 1967).

One of the points of debate among the scientific community is the specification of the place and role of the circumstances to be established in the system of criminological methodology, namely their comparison with criminological description. Most of the authors support the perspective that the circumstances to be established in criminal proceedings and the criminological description should be distinguished, since these are different but interrelated elements. In the study of improving the methodology of investigation of various types of criminal offences, V.I. Halagan argues that the criminological description of criminal offences and the circumstances to be established are two separate but interdependent components of the methodology (Halahan, 2003).

However, alternative perspectives of scholars are also distinguished, who do not support the separation of circumstances to be established from criminological characteristics, saying that these circumstances are a form of criminalistic information of a reference nature that is necessary for the investigator and prosecutor to organise criminal prosecution.

We are convinced that the criminological description and the circumstances to be established in the course of criminal proceedings are significantly different categories. Following the perspective on the need to identify the circumstances to be established in criminal proceedings, it can be stated that these are systematic factual data based on the rules of criminal and criminal procedure law. They are part of the subject matter of proving, but also go beyond it, and their failure to establish prevents a comprehensive and complete investigation of the subject matter of proving, which is necessary for an effective investigation and trial of the case.

We support V.V. Tishchenko's view that within the methodology of investigation of certain types of criminal offences, the circumstances to be established have a criminalistic aspect. It consists in the fact that these circumstances are components of the work related to the commission of a criminal offence, which, in turn, have a close relationship with each other. Thanks to these connections, the investigator can, having established one or more circumstances of a criminal offence, draw conclusions about other still unknown details of the event, perpetrators, their goals, motives and form of guilt (Tishchenko, 2003).

We believe that the specific determination of the scope of these circumstances in each particular criminal proceeding will contribute to the completeness, purposefulness and objectivity of the resolution of the circumstances of a criminal offence. Intentional expansion of the scope of the subject matter of proving may cause unjustified delays in the pre-trial investigation and trial. However, excessive narrowing of the scope of the circumstances to be proved inevitably causes incompleteness and even one-sidedness of the investigation (Kobernyk, Sehai, Stryzha, Tsymbal, 1986).

According to part 1 of Article 91 of the CPC of Ukraine, the following aspects are subject to proving in criminal proceedings:

1) The event of the criminal offence (time, place, manner and other circumstances of its commission);

2)The guilt of the accused, the form of guilt, the motive and purpose of the criminal offence;

3) The type and amount of damage caused, as well as procedural costs;

4) Circumstances that affect the severity of the criminal offence, characterise the defendant, mitigate or aggravate the punishment, exclude criminal liability or serve as grounds for closing the proceedings;

5) Circumstances that may be grounds for exemption from criminal liability or punishment;

6) Facts confirming that money, valuables or other property obtained as a result of a criminal

offence or used to commit it are subject to special confiscation;

7) Circumstances that are grounds for applying criminal law measures to legal entities (Criminal Procedure Code of Ukraine, 2012).

In scientific sources, the concept of the subject matter of proving, although it has different formal definitions, retains unity in content. Some scholars interpret the subject matter of proving as a set of circumstances stipulated by the criminal procedure law, the establishment of which is necessary to resolve applications or reports of a criminal offence, proceedings in general or a court case at the stage of execution of a sentence, as well as to apply preventive measures during pre-trial investigation or trial.

Other scholars define the subject matter of proving as a system of circumstances that reflect the characteristics and connections of the event that are essential for the proper investigation of criminal proceedings and the implementation of the tasks of criminal proceedings in each case.

3. Key elements of criminal offences committed by medical professionals

In order to determine a clear scope of circumstances to be established in the investigation of a particular criminal offence, it is necessary to determine detailed facts, with due regard to the provisions of the Criminal Code of Ukraine, the specifics of the criminal offence, the investigative situation and other factors. According to the authors of scientific papers, such facts serve as a method of determining the unknown parts of the subject of proof, which are characterised by a natural relationship with the already known ones. Their existence is established by analysing a criminal offence from a forensic perspective, and depending on the situation, each circumstance is either subject to establishment or performs a heuristic function. Therefore, the subject matter of proving is an integral system that reflects a socially dangerous act as a complex social phenomenon. The connection within the elements of the subject matter of proving is established by the nature of the criminal offence, the characteristics of the perpetrator, and is manifested in the integrity of the system.

Scholars propose to detail the circumstances to be established during the investigation by the elements of a criminal offence, grouping them into:

1) The object of the criminal offence.

2) Objective side of the criminal offence, which covers the place, time, causes of the criminal offence, nature and amount of damage, causal link between the criminal offence and damage, circumstances that contributed to the criminal offence.

3) The perpetrator of a criminal offence, that is, the description of the person who committed it.

4) The subjective side of a criminal offence, which includes the issue of guilt, its form and motives (Tishchenko, 2003).

L. H. Dunaievska in her study of criminal offences committed by medical professionals suggests that the circumstances to be established should include:

1) Correctness and timeliness of medical measures in terms of their compliance with generally accepted rules.

2) The occurrence of socially dangerous consequences, such as death or harm to health.

3) The causal link between the actions of a medical professional and the negative consequences.

4) Professional, social and criminological descriptions of a medical professional.

5) Identification of the causes and conditions that contributed to the criminal offence and the necessary measures to eliminate them (Dunaievska, 2006).

Based on the above points of view, in the investigation of criminal offences committed by medical professionals, it is advisable to group the circumstances as follows:

1) Circumstances of the criminal offence: time, place, method of preparation, commission and concealment of the criminal offence, tools and traces of the criminal offence.

2) Circumstances related to the victim.

3) Circumstances related to the perpetrator.

4) Causal relationship: compliance of medical measures with the rules, causes of the criminal offence, relationship between actions and consequences, relationship between the victim and the perpetrator.

5) Other circumstances: the type and amount of damage, factors mitigating or aggravating the punishment, excluding liability or justifying the closure of proceedings.

The legal obligation to provide assistance by medical professionals is based primarily on the provisions of the Fundamentals of Legislation of Ukraine on Healthcare, which defines the right of a person to engage in medical activities, provided that this person has a certain special education and meets the qualification requirements established by the state. Further regulatory frameworks for medical activities are defined depending on the specific field of medicine through clinical protocols (e.g., protocols for the specialty of surgery approved by Order of the Ministry of Health of Ukraine No. 297 of 2 April 2010, or Clinical Protocol "Comprehensive care during unwanted pregnancy" approved by Order of the Ministry of Health of Ukraine No. 1177 of 31 December 2010), as well as regulations and job descriptions that govern the activities of medical professionals depending on their job responsibilities.

Therefore, medical activities can be considered lawful only if they comply with the rules set out in medical scientific practice, medical practice and specific regulations. Moreover, it shall be in accordance with the Constitution

of Ukraine, the Fundamentals of Legislation of Ukraine on Healthcare, applicable standards, protocols and instructions that outline the legal basis for the provision of medical care. According to scholars, not only the availability of specific knowledge is of legal significance, but also its insufficiency or non-application of the knowledge and skills that a medical professional is obliged to possess and use to assist the victim.

In order to assess the legitimacy of the actions of medical professionals, the investigator shall first collect information on the time of medical assistance, namely:

a) the place and time of medical activities;

b) the content and scope of medical care, including the history taken, assessment of the results of examination, laboratory tests, etc., as well as the course of treatment determined on the basis of these data;

c) the number and positions of medical professionals involved in the treatment process.

The investigator shall investigate thoroughly the circumstances related to the time of the criminal offence, in particular, the moment of initial provision of medical care and the time when the person's health was harmed (before treatment began; after the start of general medical care, but before the application of measures determined by the diagnostic picture; or after the relevant set of medical actions). It is important to establish the moment of the beginning and end of a criminal offence, considering its characteristics and stages of implementation, as this will affect the qualification. Criminal offences committed by healthcare professionals are, from the objective perspective, criminal offences with material elements, which is the basis for determining the fact of serious consequences for the life or health of the victim.

After establishing the number and status of the entities that treated the victim, their job descriptions should be reviewed and attached to the criminal case file. Similarly, the investigator should analyse the collected factual data on the circumstances of the treatment, comparing it with the relevant standards and clinical protocols for the treatment of the diagnosis of the victim. At this stage, it is advisable to invite a specialist who will be able to assess the diagnostic and therapeutic measures used by the medical staff and compare them with the recommendations of medical theory and medical practice.

The determination of the causes of health damage is complicated by the fact that treatment is usually a multi-component process. Harm can arise from a combination of minor mistakes made by several healthcare professionals that together have caused negative consequences.

One of the key elements of any criminal offence is the existence of a causal link. In case of detection of criminal offences committed by healthcare professionals, it is necessary to establish a link between the actions of a particular healthcare professional and the damage caused. Criminal law distinguishes between direct and indirect causation. In the context of illegal medical activities, both types of connection may be present.

Additional difficulties arise if treatment and the onset of harm are separated in time or were carried out by several employees. The treatment process usually includes the following steps: collecting data about the patient, determining the diagnosis, selecting and implementing treatment activities, and establishing the place and time of care. In such cases, the existence of a causal link for each action and their complex as a whole should be separately checked, as well as how each action affected the outcome, which greatly complicates the investigation process.

In order to establish causation, it is important to develop investigative versions of the source of the patient's pathological condition that led to an unfavourable treatment outcome. In this process, it is advisable to involve medical experts, as the investigator cannot make assumptions about such cases on his or her own.

In order to determine the degree of guilt of the suspect and the motives for his or her actions, it is necessary to establish who directly performed the medical procedures and who is obliged by law to provide medical care: a medical professional or another entity. If the treatment was carried out by a person who is not a medical professional, data should be collected on the person's identity, education, marital status, educational institution or place of employment, position held, characteristics from the company or place of residence, health status, etc.

If the guilty person is a medical professional, it is necessary to find out: the level of education and specialisation; whether the person is entitled to engage in medical activities; whether he or she acted within the scope of his or her authority or exceeded it; length of service; whether his or her actions are governed by the relevant regulations; whether there have been previous cases of improper performance of duties and what measures were taken as a result of such cases; the presence of guilt in the form of criminal arrogance or negligence.

4. Conclusions

Therefore, the circumstances to be established as an integral element of the forensic methodology for investigating criminal offences, in particular those committed by medical professionals, allow for a more efficient and targeted determination of the amount of information required, and for examining the relevant materials, assessing their legality and sufficiency. This contributes to determining the focus of further investigation and making procedural decisions at various stages of the criminal process with the least amount of time and effort.

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ПРЕДМЕТ ДОКАЗУВАННЯ У КРИМІНАЛЬНИХ ПРАВОПОРУШЕННЯХ, ВЧИНЕНИХ МЕДИЧНИМИ ПРАЦІВНИКАМИ

Abstract. ***Purpose.*** Метою статті є встановлення обставин, що підлягають встановленню у кримінальних правопорушеннях, вчинених медичними працівниками. ***Results.*** Стаття присвячена обставинам, що підлягають доказуванню при розслідуванні кримінальних правопорушень, що вчинені медичними працівниками. Вказано, що процес розслідування кримінального провадження нерозривно пов'язаний із процесом доказування, який фактично є його основою. Це зумовлено тим, що кримінальний процес спрямований на виявлення та дослідження як матеріальних, так і ідеальних слідів кримінального правопорушення, що й складає суть доказування. Поняття доказування, як правило, не викликає значних дискусій і трактується як сукупність дій із виявлення, збирання, закріплення, дослідження, перевірки та оцінки доказів і їхніх процесуальних джерел для обґрунтування висновків. З'ясовано, що поняття предмета доказування хоча й має різні формальні визначення, однак зберігає єдність за змістом. Одні науковці трактують предмет доказування як сукупність обставин, передбачених кримінальним процесуальним законом, встановлення яких є необхідним для вирішення заяв чи повідомлень про кримінальне правопорушення, провадження в цілому або судової справи на стадії виконання вироку, а також для застосування профілактичних заходів у ході досудового розслідування чи судового розгляду. Інші науковці дають визначення предмета доказування, називаючи його систему обставин, що віддзеркалюють характеристики та зв'язки події, що є суттєвими для належного розслідування кримінального провадження та реалізації завдань кримінального провадження у кожному визначеному випадку. ***Conclusions.*** Зроблено висновок, що обставини, що підлягають встановленню, як складовий елемент криміналістичної методики розслідування кримінальних правопорушень, зокрема тих, що вчиняються медичними працівниками, дозволяють більш ефективно й цілеспрямовано визначати обсяг необхідної інформації, досліджувати відповідні матеріали, оцінюючи їхню законність і достатність. Це сприяє визначенню напрямів подальшого розслідування та прийняттю рішень процесуального характеру на різних стадіях кримінального процесу з найменшими витратами часу й зусиль.

Ключові слова: предмет доказування, медичні працівники, розслідування, кримінальні правопорушення, обставини, що підлягають встановленню.

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DETERMINANTS OF DRAFT EVASION DURING MOBILISATION IN UKRAINE: CRIMINOLOGICAL APPROACH

Abstract. ***Purpose.*** The purpose of the article is to identify and analyse the main determinants of draft evasion during mobilisation in Ukraine, and also to develop scientifically based recommendations for improving the system of prevention of this type of offence. ***Results.*** The article studies the criminological aspects of draft evasion in the context of mobilisation in Ukraine. Based on a comprehensive analysis of socio-legal, economic, psychological and institutional factors, the author identifies the main determinants of the increase in cases of draft evasion. The legal nature of this offence is analysed in the context of national legislation and international standards. The official statistics are studied, the socio-demographic profile of offenders is determined, and the relationship between the level of evasion and socio-economic indicators in different regions of Ukraine is established. A system of preventive measures aimed at minimising this phenomenon is proposed. It is proved that the legal mechanisms for responding to cases of draft evasion should be improved and coordination between law enforcement bodies, military commissariats and local self-government bodies should be strengthened. ***Conclusions***. The study of the determinants of draft evasion during mobilisation in Ukraine enables to make the following conclusions: draft evasion is a complex socio-legal phenomenon caused by a set of interrelated factors: socio-legal, economic, psychological and institutional; a significant geographical differentiation of cases of draft evasion is observed with the highest rates in the western and central regions of Ukraine; several types of draft evaders can be distinguished: "instinctive," "rational," "opportunistic," "ideological" and "deviant"; effective counteraction to draft evasion requires a comprehensive approach that includes measures at the general social, specialised criminological and individual levels; promising areas for improving the system of combating draft evasion are the creation of a unified state register of persons liable for military service, the introduction of electronic military tickets, the development of a system of incentives for voluntary military service and a gradual transition to a professional army.

Key words: draft evasion, mobilisation, determinants of crime, criminological characteristics, military service, national security, regulatory framework, preventive measures, criminal liability, socio-psychological factors.

1. Introduction

The large-scale armed aggression against Ukraine has necessitated general mobilisation and drafting of citizens for military service. In such circumstances, the problem of draft evasion becomes particularly acute and urgent, as it threatens the national security of the state, reduces the mobilisation potential and negatively affects defence capabilities. The criminogenic situation related to draft evasion is characterised by a significant increase in the number of relevant criminal offences, as well as a high level of latency of this phenomenon.

A scientific consideration of the determinants of draft evasion during mobilisation enables not only to understand the causes and conditions of the relevant offences, but also to develop effective mechanisms to counteract this phenomenon. In the national criminological science, the issues related to draft evasion during mobilisation have been studied by scholars such as O.M. Dzhuzha, V.V. Stashys, V.Ya. Tatsii ,V.I. Shakun, O.O. Kvasha, M.I. Khavroniuk, but no comprehensive study of the determinants of this type of offence in the context of modern challenges and threats has been conducted.

The purpose of the article is to identify and analyse the main determinants of draft evasion during mobilisation in Ukraine, and also to develop scientifically based recommendations for improving the system of prevention of this type of offence.

2. Draft evasion during mobilisation

Avoidance of military service during mobilisation is considered a serious criminal offence

in Ukraine. This provision is enshrined in Article 336 of the Criminal Code, which provides for a sentence of imprisonment for a period of three to five years. The legal system treats such actions not just as a violation of administrative provisions, but as a threat to national security, as they directly affect the state's ability to form an army in a critical period. The specific feature of this offence is the purposefulness of actions, that is, a deliberate refusal to fulfil the constitutional duty to defend the country, which distinguishes it from other offences in the military sector.

The legal status of mobilisation evasion is twofold. The first aspect relates to the violation of army recruitment procedures, which wreaks havoc on the management of the Armed Forces. The second, much more important, is related to the weakening of the state's defence capability, especially during active hostilities. Due to this dual danger, the legislator has to qualify such actions as socially harmful and apply harsh sanctions. In addition, criminal liability is enhanced in wartime, which reflects the priority of national security over individual interests (Volodavska, 2015).

Practice shows a variety of schemes used by citizens to avoid conscription. The most commonly recorded method is failure to appear at military registration and enlistment offices after receiving a call-up notice, accounting for over 40% of registered cases. Many offenders try to obtain illegal medical certificates by falsifying diagnoses or bribing doctors. Uncontrolled travel abroad remains a popular method, often under the guise of labour migration or recreation. Some citizens resort to changing their place of residence without notifying the military registry, creating artificial obstacles to their search. A separate category includes attempts to obtain illegal deferrals on the grounds of marriage, caring for sick relatives or studying, although in most cases these grounds have no real basis.

Recent statistics show an explosive increase in the number of criminal cases under Article 336. While 245 cases were recorded before Russia's full-scale invasion in 2021, in 2022 this figure increased 23 times to 5647 episodes. The first half of 2023 showed a double increase compared to the previous year – 9879 criminal proceedings. Such dynamics directly correlate with the overall escalation of the conflict and the army's increasing need for personnel. Moreover, experts indicate that the real scale of the problem may exceed official data due to the difficulty of identifying all the facts of evasion (Official website of the State Penal Service of Ukraine, 2024).

The geography of offences reveals an interesting pattern. The highest rates were recorded in the western regions (Ivano-Frankivsk, Lviv, Ternopil) and central regions (Kyiv, Vinnytsia, Cherkasy). For example, in Lvivska oblast, 1,287 cases were opened in the first quarter of 2023, while in Kharkivska oblast, only 94 cases were opened. This disparity is explained by several factors. First, in the frontline areas, a significant number of men have either already been mobilised or have voluntarily joined the territorial defence. Second, the evacuation of the population from the combat zones has led to the concentration of conscripts in safe regions. Third, sociologists note a difference in civic consciousness: in the eastern regions, which are constantly under threat, the level of patriotism and sense of personal responsibility is higher.

The social portrait of a typical evader includes a number of characteristic features. The riskiest group is men aged 25-35 - this age group accounts for 68% of all those brought to justice. About 75% have secondary specialised education, only 12% have higher education. Interestingly, 60% of offenders are married and have children, which may indicate economic motives for evasion (fear of losing a source of income for the family). Despite popular belief, only 35% of evaders have no previous experience of military service. On the contrary, 41% of them participated in the ATO/JFO, which may indicate psychological trauma or loss of motivation after the first experience (Criminal Code of Ukraine of April 5, 2001 No. 2341-III, 2001).

A comprehensive approach is required to analyse the reasons for this phenomenon. Legal factors include the contradictory nature of certain provisions of the law. For example, more than 20 categories of deferrals exist, many of which allow for subjective interpretation. Economic motivations are often linked to the fear of losing a job or the ability to support a family, especially among private sector representatives, where mobilisation means the termination of business. Psychological barriers include both fear of death and distrust of the command due to high-profile cases of incompetence. Institutional problems are manifested in the corruption of military registration and enlistment offices, where some officials issue fictitious documents for money.

The situation is further complicated by demographic features. According to the State Statistics Service, the number of men of conscription age (18-60 years old) as of 2023 is about 6 million. However, the actual mobilisation reserve is much smaller, with no more than 2-2.5 million people with disabilities, chronic illnesses and other limitations. This puts an extraordinary strain on the conscription system, forcing military enlistment offices to work in emergency mode, leading to mistakes and creating new conflicts.

The effectiveness of the fight against evasion depends on the synchronisation of efforts between different institutions. The Prosecutor's Office emphasises the need to automate the registration process: introduce a single electronic database of conscripts, integrate it with the Ministry of Internal Affairs, the State Tax Service and local authorities. Law enforcers propose to increase liability for document forgery as only 7% of such cases currently result in actual imprisonment. Sociologists insist on developing a targeted patriotic campaign, as polls show that 54% of evaders do not feel personally responsible for the defence of the state. Economists propose compensation mechanisms for the families of those mobilised, ranging from preferential loans to job security.

Along with repressive methods, experts recommend revising the very philosophy of mobilisation. The experience of NATO countries shows that raising the prestige of military service through social benefits, professional training and career guarantees reduces the number of evaders. In Ukraine, only 15% of citizens believe that the state takes proper care of veterans, which is a key factor in shaping negative attitudes towards mobilisation (Official website of the Ministry of Defense of Ukraine, 2023).

Therefore, the problem of draft evasion during mobilisation is a multilevel phenomenon that combines legal, economic and socio-psychological aspects. Its solution requires not only enhanced control and punishment, but also systemic changes in approaches to motivating citizens, improving the quality of military service and creating social support mechanisms. Recent statistics clearly show that traditional methods are losing their effectiveness in a protracted war, forcing the search for innovative solutions at the intersection of law, economics and social policy.

An important factor is also the low level of legal awareness and legal culture of the population, as well as the lack of awareness of the legal consequences of draft evasion. In particular, many conscripts do not realise that failure to report to a territorial recruitment and social support centre (hereinafter referred to as the TCR and SS) without valid reasons may already be considered a criminal offence.

Unclear legal provisions on the definition of valid reasons for failure to appear under a call also create grounds for abuse. According to Part 2 of Article 22 of the Law of Ukraine 'On Mobilisation Training and Mobilisation', the following are considered valid reasons for the failure of conscripts to arrive at the enlistment offices within the time limit set by the head of the relevant TCR and SS: an obstacle of a natural disaster, illness of the conscript that prevented him from personally arriving at the call, death of a close relative or close person. However, in practice, there are difficulties in proving the existence of these circumstances, which leads to uneven application of the law (Law of Ukraine On Mobilization and Demobilization: dated October 14, 1992 No. 1932-XII, 1992).

Economic factors play a significant role in shaping the motivation for draft evasion. The low level of financial support for military personnel compared to the average salary in the civilian sector, especially in large cities, encourages potential conscripts to seek ways to avoid military service. According to sociological surveys, about 42% of respondents cite the economic factor as the main reason for draft evasion.

In addition, for many conscripts who are the sole breadwinners in their families, mobilisation means a significant reduction in family income and a deterioration in their financial situation. Despite the legislative guarantees of social protection for military families, in practice, the mechanisms for providing such assistance are not effective enough, and the amount of such assistance is insufficient to ensure a normal standard of living.

An important economic factor is also the loss of jobs and career prospects for those called up for military service. In the absence of effective mechanisms to preserve jobs and protect the labour rights of those mobilised, many employers find ways to terminate employment with such employees, which creates additional incentives for draft evasion.

The psychological factors of draft evasion are primarily related to the fear of combat, the risk of injury or death. According to research, about 65% of draft evaders cite fear of death or injury as the main motive for their actions. The information background plays an important role, in particular, reports in the media and social media about high casualties among military personnel.

The psychological readiness of citizens for military service is also significantly influenced by information about unsatisfactory logistical support of military units, cases of violation of the rights of servicemen, problems with medical care for the wounded, etc. Such information, even if it is exaggerated or distorted, forms a negative attitude towards the prospect of military service.

Psychological determinants also include pacifist beliefs and religious views of some conscripts. Although Ukrainian legislation provides for the possibility of alternative (non-military) service for persons whose religious beliefs do not allow them to use weapons, the mechanism for exercising this right in the context of mobilisation is not sufficiently regulated. The influ-

Table 1

Comparison of the average salary of military personnel and the average salary in the civilian sector (in UAH)

Category.	Remuneration of military personnel	Average salary in the civilian sector	Difference (%)
Enlisted personnel	20500	24800	-17.3
Non-commissioned officer staff	25700	29400	-12.6
Junior officer personnel	31200	35800	-12.8
Senior officers	38600	41200	-6.3

Source: data from the Ministry of Defence of Ukraine and the State Statistics Service of Ukraine, 2023.

ence of family circumstances on the decision to evade conscription cannot be ignored. Pressure from relatives, especially wives and mothers, is often a decisive factor. According to surveys, about 38 per cent of those who evaded conscription stated that they did so under the influence of family members.

3. Shortcomings in the work of the TRC and SS as a condition for draft evasion during mobilisation

Institutional determinants are related to shortcomings in the organisation of the work of the TCR and SS, law enforcement bodies and the judiciary. In particular, insufficient coordination of various state institutions, the lack of a unified electronic database of persons liable for military service, bureaucracy and corruption in military commissariats create an enabling environment for draft evasion. One of the key institutional factors is corruption in the system of military commissariats. According to law enforcement data, between 2022 and 2023, more than 600 criminal proceedings were opened on the facts of receiving undue benefits by TCR and SS employees for assistance in draft evasion. Corruption schemes allow wealthy citizens to avoid military service, which increases social injustice and undermines trust in the mobilisation system. Another important institutional factor is the ineffectiveness of the system of searching for and prosecuting draft evaders. In particular, the lack of proper cooperation between the TCR and SS, the National Police and the State Border Guard Service makes it difficult to identify and detain offenders. According to the Office of the Prosecutor General, only about 15% of criminal proceedings opened under Article 336 of the Criminal Code of Ukraine result in the submission of an indictment to court.

The analysis of statistical data reveals significant regional differences in the number of cases of draft evasion. In particular, the highest rates are observed in Lvivska, Zakarpatska, Chernivetska, Ivano-Frankivska and Kyivska oblasts, while the lowest rates are observed in Donetska, Luhanska, Kharkivska and Zaporizka oblasts. This geographical disparity is due to a number of factors, including: geographical remoteness from the combat zone, socio-economic development of the region, ethno-cultural characteristics, and the presence of borders with other states. In particular, in the border regions, an additional factor contributing to draft evasion is the possibility of illegal border crossing to avoid military service.

This is especially true in Zakarpatska oblast, where the number of cases of evasion per 10,000 men of military age is almost three times higher than the average for Ukraine. This may be due to the ethnic characteristics of the region, in particular, the presence of a significant number of people with dual citizenship (Ukraine and Hungary, Ukraine and Romania, etc.) who use this fact to avoid military service.

The analysis of criminal proceedings and the results of sociological research suggests that there are several types of persons who evade military service during mobilisation:

1. The "instinctive type" – individuals who evade conscription due to fear of death, injury or psychological trauma. This type is characterised by an internal struggle between a sense of duty and an instinct for self-preservation, which is usually resolved in favour of the latter.

2. The "rational type" – individuals who make decisions about evasion based on a rational analysis of costs and benefits. They are characterised by comparing the risks of military service with the risks of criminal prosecution, economic losses due to service with possible sanctions, etc.

3. The "opportunistic type" - persons who have no fundamental objections to military service but use any available opportunities to avoid it (medical contraindications, corruption schemes, travelling abroad, etc.).

4. The "ideological type" – individuals who evade conscription due to ideological, religious or moral beliefs, such as pacifism, religious dogmas prohibiting violence, etc.

5. The "deviant type" - individuals with antisocial attitudes who systematically violate various legal provisions, and draft evasion is

Table 2

Number of cases of draft evasion during mobilisation in the regions of Ukraine (2023)

Oblast	Number of registered cases	Number of cases per 10,000 people of conscription age	Percentage of the national figure
Lvivska	1234	17.8	12.5
Zakarpatska	987	21.4	10.0
Chernivetska	745	19.6	7.5
Ivano-Frankivska	712	16.3	7.2
Kyivska	689	10.9	7.0
Odeska	645	9.8	6.5
Dnipropetrovska	589	6.7	6.0
Vinnitska	534	9.4	5.4
Ternopilska	512	15.7	5.2
Khmelnytska	478	11.2	4.8
Cherkaska	423	9.8	4.3
Poltavska	387	8.5	3.9
Rivnenska	356	9.2	3.6
Volynska	334	9.5	3.4
Zhytomyrska	312	7.6	3.2
Mykolaivska	287	7.2	2.9
Sumska	245	6.8	2.5
Kirovograd	212	6.5	2.1
Zaporizka	156	3.2	1.6
Kharkivska	132	2.1	1.3
Donetska	87	1.4	0.9
Luhanska	54	1.1	0.5
Khersonska	No data available	No data available	No data available
Autonomous Republic of Crimea	No data available	No data available	No data available

Source: Office of the Prosecutor General of Ukraine, 2023.

only one manifestation of their deviant behaviour.

The distribution of draft evaders by these types is uneven. According to the study, the most numerous are the "instinctive" (about 40%) and "rational" (about 35%) types, while the "ideological" and "deviant" types are in the minority (about 10% and 5% respectively).

The development of an effective system aimed at preventing draft evasion during mobilisation in Ukraine requires a comprehensive analysis of the causes of this phenomenon and the implementation of measures at various levels. These measures can be divided into three categories: general social, special criminological and individual. Below is a unique interpretation of the text with an emphasis on preserving the key ideas, presented in natural language.

General social level. At this level, efforts are focused on creating an enabling environment for service and fostering a positive attitude towards it:

• Social protection improvement. Financial support for servicemen and their families should be increased, jobs and salaries should be guaranteed, and assistance should be provided to families of mobilised personnel to reduce their domestic difficulties.

• Promotion of patriotism. Through information campaigns, the importance of service in defending the country should be promoted by demonstrating real success stories and positive experiences of the military.

• Legal education. Citizens should have their obligations, rights and the consequences of draft avoidance explained to them in an accessible way to increase their responsibility and awareness.

• Fight against corruption. Transparency in the work of military commissariats should be ensured by introducing digital tools for accounting and strengthening control over compliance with the law.

Special criminological level. This level involves improving the legal and organisational mechanisms to prevent evasion:

• Updated legislation. It is important to clearly define the rules for selecting conscripts, the conditions for deferrals or exemptions from service, and the procedure for notifying citizens.

• Cooperation between agencies. Military commissariats, police, and border guards should establish close cooperation to quickly identify and prosecute draft evaders.

• Digital database. A unified electronic register of persons liable for military service would help keep track of citizens and make it more difficult for them to avoid service.

• Electronic summonses. The digital notification system will simplify the process of serving summonses and reduce the possibility of ignoring them.

• Control of medical examinations. Improving the procedures for examining conscripts will make it impossible to falsify their health status to obtain an exemption from service.

Individual level. The emphasis here is on working with individuals who are prone to evasion: psychological support. Those who are afraid of service or combat should be counselled and helped to overcome their fear; personal explanations. Each potential recruit should be explained in detail what awaits those who evade and what benefits are available to them from legal service.

Alternative options. For those with moral or religious convictions, participation in rear tasks such as medical care or logistics could be offered.

Future steps. The following ideas are proposed for long-term improvement of the system of preventing evasion: a unified register (creation of a nationwide database using modern technologies will simplify accounting and reduce corruption risks); e-tickets (military documents with biometrics will make it impossible to counterfeit and use other people's data); motivation to serve (volunteers can be encouraged with benefits, such as study, work or housing programmes); training (military commissariat staff need quality training and raising professional standards); a flexible approach (conscription should be adapted to the abilities and characteristics of individuals to make better use of their potential and reduce the desire to avoid service); a professional army (a gradual transition to contract service will reduce dependence on conscription and meet modern military standards).

This multifaceted approach will not only reduce the number of evaders but also increase the effectiveness of mobilisation, considering both the social and personal aspects of the process.

4. Conclusions

The study of the determinants of draft evasion during mobilisation in Ukraine enables to make the following conclusions:

1. Draft evasion is a complex socio-legal phenomenon caused by a set of interrelated factors: socio-legal, economic, psychological and institutional. The most significant among them are fear of combat, insufficient material support for servicemen, corruption in the system of military commissariats and imperfect legal regulation of the draft procedure.

2. A significant geographical differentiation of cases of draft evasion is observed with the highest rates in the western and central regions of Ukraine. This is due to a number of factors, including geographical remoteness from the combat zone, socio-economic development of the region, ethno-cultural characteristics, and the presence of borders with other states.

3. Several types of draft evaders can be distinguished: "instinctive," "rational," "opportunistic," "ideological" and "deviant." The first two types are the most common, indicating the prevalence of fear and rational motives in the structure of evasion motivation.

4. Effective counteraction to draft evasion requires a comprehensive approach that includes measures at the general social, specialised criminological and individual levels. Key areas include improving the system of social protection for servicemen, strengthening coordination between various state institutions, introducing modern information technology into the registration and conscription process, and individual work with people prone to evasion.

5. Promising areas for improving the system of combating draft evasion are the creation of a unified state register of persons liable for military service, the introduction of electronic military tickets, the development of a system of incentives for voluntary military service and a gradual transition to a professional army.

The results of the study can be used to improve the legal framework for mobilisation and conscription, develop comprehensive programmes to prevent draft evasion, and improve the efficiency of law enforcement agencies and military commissariats.

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ДЕТЕРМІНАНТИ УХИЛЕННЯ ВІД ПРИЗОВУ НА ВІЙСЬКОВУ СЛУЖБУ ПІД ЧАС МОБІЛІЗАЦІЇ В УКРАЇНІ: КРИМІНОЛОГІЧНИЙ ПІДХІД

Abstract. ***Purpose.*** Метою статті є визначення та аналіз основних детермінант ухилення від призову на військову службу під час мобілізації в Україні, а також розробка науково обґрунтованих рекомендацій щодо удосконалення системи запобігання цьому виду правопорушень. ***Results.*** У статті досліджуються кримінологічні аспекти ухилення від призову на військову службу в умовах мобілізації в Україні. На основі комплексного аналізу соціально-правових, економічних, психологічних та інституційних чинників визначено основні детермінанти, що зумовлюють зростання випадків ухилення від призову. Проаналізовано правову природу даного злочину в контексті національного законодавства та міжнародних стандартів. Досліджено офіційну статистику, визначено соціально-демографічний профіль правопорушників та встановлено взаємозв'язок між рівнем ухилень та соціально-економічними показниками в різних регіонах України. Запропоновано систему превентивних заходів, спрямованих на мінімізацію даного явища. Обґрунтовано необхідність удосконалення правових механізмів реагування на випадки ухилення від призову та посилення координації між правоохоронними органами, військовими комісаріатами та органами місцевого самоврядування. ***Conclusions***. Проведене дослідження детермінант ухилення від призову на військову службу під час мобілізації в Україні дозволяє зробити такі висновки: ухилення від призову є складним соціально-правовим явищем, зумовленим комплексом взаємопов'язаних факторів: соціально-правових, економічних, психологічних та інституційних; спостерігається значна географічна диференціація випадків ухилення від призову з найвищими показниками у західних та центральних областях України; серед осіб, які ухиляються від призову, можна виділити кілька типів: "інстинктивний", "раціональний", "опортуністичний", "ідейний" та "девіантний"; ефективна протидія ухиленню від призову потребує комплексного підходу, що включає заходи на загальносоціальному, спеціально-кримінологічному та індивідуальному рівнях; перспективними напрямами вдосконалення системи протидії ухиленню від призову є створення єдиного державного реєстру військовозобов'язаних, впровадження електронних військових квитків, розробка системи стимулів для добровільного проходження військової служби та поступовий перехід до професійної армії.

Ключові слова: ухилення від призову, мобілізація, детермінанти злочинності, кримінологічна характеристика, військова служба, національна безпека, правове регулювання, превентивні заходи, кримінальна відповідальність, соціально-психологічні чинники.

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TEMPORARY ACCESS TO OBJECTS AND DOCUMENTS IN CRIMINAL PROCEEDINGS UNDER ARTICLE 210 OF THE CRIMINAL CODE OF UKRAINE: A CRIMINALISTIC PERSPECTIVE

Abstract. ***Purpose.*** The aim of this scientific article is to highlight the criminalistic aspects of temporary access to objects and documents during the investigation of the misappropriation or misuse of budgetary funds. ***Results.*** This study examines the criminalistic approach to conducting temporary access to objects and documents in criminal proceedings related to the misapplication of public budget resources. Given the complexity of financial schemes and the potential for data falsification, the acquisition of reliable evidence is a key objective of the investigation. One of the most critical mechanisms in this process is temporary access to items and documents, which enables the collection of physical evidence, the establishment of violations, and the confirmation or refutation of the commission of a criminal offense. The article analyzes scholarly opinions and current legislation regarding the procedural aspects and execution of temporary access measures, emphasizing their importance in building a comprehensive body of evidence in cases involving breaches of budgetary legislation. It identifies documents that may serve as material evidence in criminal proceedings and stresses the necessity of accessing electronic information systems, computer systems or their components, and mobile devices. Special attention is given to the involvement of expert specialists in cases involving large volumes of documentation, particularly over extended periods. Examples from law enforcement practice are provided. ***Conclusions.*** The article concludes that temporary access to documents remains a vital tool in the fight against financial offenses. It allows for the timely acquisition of crucial financial documentation, which is essential for forming an evidentiary base. Without proper access to such documents, confirming or refuting instances of unlawful use of public funds would be impossible, thereby significantly complicating the investigation. Effective implementation of this legal measure contributes to greater transparency in investigations and ensures an adequate level of justice. Further research into this issue may enhance the legal mechanisms for document acquisition and improve the efficiency of criminal prosecution in the area of budgetary offenses.

Key words: temporary access to objects and documents, pre-trial investigation, measures to ensure criminal proceedings, budgetary criminal offenses, misuse of funds, public finances, expert specialist, samples for forensic examination.

1. Introduction

The effective investigation of criminal offenses related to the misappropriation or misuse of public funds largely depends on the timely access to relevant documents. Given the complexity of financial schemes and the potential for data falsification, obtaining a reliable body of evidence is a key objective of the investigation. One of the most important tools in this process is temporary access to objects and documents, which enables the collection of physical evidence, the establishment of facts regarding violations, and the confirmation or refutation of the occurrence of a criminal offense.

Temporary access to objects and documents plays a crucial role in investigating criminal offenses involving the misuse of budgetary funds. This procedural measure allows investigators of the National Police of Ukraine to obtain vital financial and accounting documentation that may contain information about the flow of public funds, potential violations, and abuses. Through the analysis of such documentation, investigators can establish facts of misappropriation, identify individuals involved in unlawful financial activities, and confirm or deny the elements of a criminal offense.

The foundation of this scientific article lies in the existing research dedicated to procedural

actions and methodologies for investigating economic crimes, including the academic contributions of K.V. Antonov, V.P. Bakhin, V.I. Vasylchuk, A.F. Volobuiev, I.V. Hora, V.V. Darahan, O.O. Dudorov, O.H. Kalman, N.I. Klymenko, Ye.D. Lukianchykov, H.A. Matusovskyi, O.V. Pchelina, M.V. Saltevskyi, R.L. Stepaniuk, V.V. Tishchenko, K.O. Chaplynskyi, S.S. Cherniavskyi, Yu.M. Chornohus, V.Yu. Shepityko, M.H. Shcherbakovskyi, P.V. Tsymbal, among others. However, the conducted research in this area requires revision to meet the needs of today's legal and economic realities.

The aim of this article is to present the criminalistic aspects of temporary access to objects and documents in the investigation of the misuse of budgetary funds.

2. Temporary Access to Documents as an Urgent Measure to Secure Criminal Proceedings

Temporary access to documents is governed by the provisions of the Criminal Procedure Code of Ukraine (particularly Articles 159–166) and serves as an effective means of collecting evidence in criminal proceedings concerning violations of budgetary discipline. Its application involves a petition submitted by an investigator, prosecutor, or defense party to a court, justifying the need for obtaining documents and the possibility of their seizure. At the same time, such access must meet the criteria of proportionality and legality to avoid infringing upon the rights of individuals and institutions in possession of the relevant materials.

In the context of investigating budget-related criminal offenses, researchers define temporary access to documents as an urgent measure for securing criminal proceedings, typically carried out at the initial stage of investigations into violations of budgetary legislation *(Pohoretskyi, Vakulik, Serhieieva, 2014)*.

This mechanism is especially important in criminal proceedings qualified under Article 210 of the Criminal Code of Ukraine, which addresses the misuse of budgetary funds. In such cases, financial documents, bank statements, contracts, and payment orders can play a decisive role in proving or disproving a person's guilt. These documents help establish the transfer of funds, assess the compliance of financial operations with adopted decisions, and identify possible violations, including the absence of actual work performed or evidence of falsification. For instance, the analysis of banking transactions may reveal the transfer of funds to shell accounts, which can be key evidence in such proceedings *(Marynych, 2023)*. Financial reports may indicate unlawful expenditure write-offs, contracts and payment orders can prove the legitimacy of expenses, and work completion reports can demonstrate the reality of the services rendered or work performed. Special attention should be paid to agreements and contracts concerning the allocation of subventions, as well as decisions by local self-government bodies regarding their distribution, since these mechanisms are often used for abuses *(Bespalko, 2023)*.

Based on the informational relevance of documents to the investigation of budget-related crimes, scholars categorize them into several groups:

1. Normative legal acts defining the rules for the formation, distribution, and use of budgetary funds (not subject to seizure, but studied by investigators and used during investigative actions);
2. Planning documents determining the grounds, scope, distribution, and purpose of budgetary allocations;
3. Documents defining the official position and competence of the public official who is a subject of the crime;
4. Documents establishing the legal status and funding sources of the enterprise, institution, or organization where the offense occurred;
5. Accounting and financial reporting documents;
6. Documents confirming the conclusion of specific contracts and serving as grounds for payment;
7. Treasury (banking) documents;
8. Documents related to treasury bill settlements;
9. Draft notes and unofficial correspondence of public officials relevant to criminal proceedings (e.g., workbooks, notebooks, etc.);
10. Normative or administrative acts that unlawfully alter the budget's revenues and expenditures, issued by or approved under the authority of an official;
11. Documents related to the adoption and registration of such normative or administrative acts;
12. Other documents that may serve as sources of evidentiary information in specific cases of investigating budgetary violations *(Pohoretskyi, Vakulik, Serhieieva, 2014)*.

In this category of criminal proceedings, there is a need for temporary access not only to economic documents verifying certain financial transactions, but also to information held by telecommunications operators and providers within their transmission networks *(Yaroshenko, 2022)*.

Temporary access to electronic information systems, computer systems or their components, and mobile communication terminals is conducted through copying data from these systems without their physical seizure *(Criminal Procedure Code of Ukraine, 2012)*.

S. S. Cherniavskyi notes that in such cases, the investigator (or prosecutor) may obtain information regarding:

1. Communication records, subscriber data, and details of telecommunications services, including the services used, their duration, content, and transmission routes;
2. Identifying features of terminal telecommunications equipment (subscriber number, SIM card, IMEI, MAC, IP address, etc.);
3. Historical location of identified telecommunications equipment (based on azimuth) within specific base station coverage areas at specific times;
4. Names and other identifying information of telecommunications service subscribers;
5. Transmission routes of information (regardless of the network type);
6. Outgoing connections (numbers dialed, even if no connection was established);
7. Incoming connections (numbers of incoming calls, even if no connection was established);
8. Start, end, and duration of completed connections without disclosing the content of the communication;
9. Actual destination and intermediate subscriber number in cases of call forwarding *(Cherniavskyi, 2013)*.

The procedure for obtaining temporary access must comply with the principles of legality and proportionality. Since this measure restricts the rights of document owners, it can only be carried out based on a court decision. The effectiveness of this mechanism depends on the quality of the motions submitted by investigative bodies, as the court assesses their justification before issuing a decision.

To obtain temporary access to such documents, an investigator or prosecutor must prepare a well-reasoned petition to the court. This petition must clearly specify the documents being requested, their significance to the criminal proceedings, and the grounds suggesting potential violations. If document falsification is suspected, access to the originals will allow for verification of signatures, seals, and dates. The court, upon reviewing such a petition, evaluates its appropriateness and, if satisfied, compels the relevant institution or individual to provide access to the requested documentation.

3. Specifics of Implementing the Provisions of the Criminal Procedure Code of Ukraine

In practice, the implementation of the provisions of the Criminal Procedure Code (CPC) of Ukraine presents a number of challenges. This issue is also the subject of ongoing academic debate. Criminal offenses committed by officials typically occur over a certain period of time, meaning they are of a continuing nature. An investigator cannot initially determine the precise time frame for which accounting documents need to be seized. Therefore, it is often necessary to seize accounting records within their legally mandated retention period (usually three years), while the specific period of the offense may only be established after a forensic economic examination. Subsequently, part of the documentation will be recognized as physical evidence, while the rest will be returned to the holder due to its lack of evidentiary value.

However, if all the documents are not seized at once, officials involved in the offense—who often remain employed at the enterprise during the pre-trial investigation—may destroy or alter them, thus compromising the investigation. At the same time, the investigator is effectively unable to prove to the court that there is a real threat of such documents being altered or destroyed, because without first seizing the accounting records, it is often impossible even to identify all officials who may be involved in the crime *(Shendryk, 2022)*.

One proposed solution to this issue is to involve a specialist during the execution of temporary access to items and documents. However, scholars note that during this procedure, the institution or organization is only required to provide the documents explicitly listed in the court ruling. The specialist can assess only those documents and advise the investigator accordingly. This is in contrast to a search, where the investigator may broaden the scope of the search and insist on seizing other relevant documents *(Bidniak, Bidniak, Chaplynskyi, 2021)*.

Moreover, researchers highlight that if the person in possession of the documents refuses to comply with the court's order, the investigator is forced to interrupt the process and submit a new motion to the investigating judge to obtain a search warrant. This causes delays, and during the time required to obtain a new ruling, the evidence may be destroyed. Therefore, it would be reasonable to amend the CPC to include a provision that allows an immediate search to be conducted if the person in possession of the documents refuses to comply with the court's decision on temporary access *(Ptushkin, 2018)*.

Conversely, some researchers argue that temporary access to documents is a key mechanism to prevent their destruction or concealment. This is especially relevant in cases involving public funds, where information may be intentionally altered or destroyed to cover up evidence of wrongdoing. Therefore, obtaining documents quickly ensures their preservation in their original state and supports the objectivity of the pre-trial investigation *(Kushnir, 2014)*.

However, this viewpoint is not universally accepted. A survey we conducted among investigators of the National Police of Ukraine revealed that in practice, nearly all investigators encountered situations in which physical evidence was destroyed after the issuance of a court ruling on temporary access, for various reasons.

It is well established that temporary access to items and documents is a vital procedural tool for obtaining samples for forensic examinations. Judicial practice illustrates numerous cases in which this mechanism allowed investigative bodies to gather the necessary evidence to confirm or refute illegal activities.

For example, in 2018, an investigator from the Murovanokurylovetsky Division of the Mohyliv-Podilskyi District Police Department in Vinnytsia Oblast submitted a motion for temporary access to additional documents in a criminal proceeding concerning the misappropriation of educational subvention funds. During the investigation, a court-appointed expert requested additional documentation necessary for conducting a forensic economic examination. To verify whether the funds were misused, and to facilitate the examination, the investigator requested access to documents including the Comprehensive Education Development Program of Murovanokurylovetsky District for 2012–2017, the Program and Plan for Use of Educational Subvention Funds from the State Budget for 2015–2017, budget requests, estimates, monthly expenditure plans, budget allocation limit notices, income and expenditure reports for the general fund, and memorial orders with supporting primary documentation. These documents were needed to trace fund movements, assess the justification of expenses, and confirm the legality of their use. The court granted the motion, enabling the investigator to obtain key evidence *(Court decision No. 139/41/18, 2018)*.

Such judicial and investigative cases demonstrate that temporary access to documents enables investigators to quickly obtain documentary evidence, conduct the necessary expert examinations, and minimize the risk of destruction or falsification of financial records. Effective use of this mechanism contributes to establishing the truth in criminal proceedings and bringing perpetrators to justice.

However, there is an unfortunate practice in which courts initially grant investigators access only to copies of documents, without considering the need—outlined in scientific and methodological recommendations—for original documents in handwriting or signature analyses. As a result, investigators are often forced to reapply to the court for access to the originals, effectively repeating the procedure and wasting valuable time *(Shendryk, 2022)*.

4. Conclusions

In conclusion, temporary access to documents remains a vital tool in combating financial offenses. It enables the timely acquisition of necessary financial documentation, which is critically important for building an evidentiary foundation. Without proper access to documents, it would be impossible to confirm or refute instances of unlawful use of state resources, significantly complicating the investigation process. The effective use of this mechanism contributes to enhancing the transparency of investigations and ensures an appropriate level of justice. At the same time, further research into this issue may help improve the legal mechanisms for obtaining documents and increase the effectiveness of criminal prosecution in the field of budget-related offenses.

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ТИМЧАСОВИЙ ДОСТУП ДО РЕЧЕЙ ТА ДОКУМЕНТІВ У КРИМІНАЛЬНИХ ПРОВАДЖЕННЯХ ЗА СТ. 210 КК УКРАЇНИ: КРИМІНАЛІСТИЧНИЙ АСПЕКТ

Abstract. ***Purpose.*** Метою наукової статті є висвітлення криміналістичного аспекту тимчасового доступу до речей та документів під час розслідування нецільового використання бюджетних коштів. ***Results.*** У науковій статті досліджено криміналістичний аспект проведення тимчасового доступу до речей та документів у кримінальних провадженнях за фактами нецільового використання бюджетних коштів. Враховуючи складність фінансових схем та можливість фальсифікації даних, отримання достовірної доказової бази є ключовим завданням слідства. Одним із найважливіших механізмів у цьому процесі є тимчасовий доступ до речей і документів, який дозволяє отримати речові докази та встановити факти порушень та підтвердити чи спростувати наявність кримінального правопорушення. Проаналізовано думки вчених та чинне законодавство щодо особливостей процесуального оформлення та проведення тимчасового доступу до речей та документів, окреслено значення цього заходу забезпечення кримінального провадження для формування системи доказів за фактами, пов'язаних із порушенням бюджетного законодавства. Зазначено документи, що можуть бути речовими доказами у кримінальному провадженні, а також акцентовано на необхідності тимчасового доступу до електронних інформаційних систем, комп'ютерних систем або їх частин, мобільних терміналів. Наголошено на особливостях залучення спеціалістів у випадках вилучення великої кількості документації, особливо за певний період часу. Наведено приклади з правозастосовної практики. ***Conclusions.*** Зроблено висновок, що тимчасовий доступ до документів залишається важливим інструментом у боротьбі з фінансовими правопорушеннями. Він дозволяє оперативно отримати необхідну фінансову документацію, що є критично важливою для формування доказової бази. Без належного доступу до документів було б неможливо підтвердити або спростувати факти неправомірного використання державних ресурсів, що значно ускладнило б розслідування. Його ефективне застосування сприяє підвищенню прозорості розслідувань та забезпечує належний рівень правосуддя. Водночас, подальше дослідження цього питання може допомогти вдосконалити правові механізми отримання документів та підвищити ефективність кримінального переслідування у сфері бюджетних правопорушень.

Ключові слова: тимчасовий доступ до речей та документів, досудове розслідування, засоби забезпечення кримінального провадження, бюджетні кримінальні правопорушення, нецільове використання, бюджетні кошти, спеціаліст, зразки для експертизи.

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FORENSIC ANALYSIS OF THE PREPARATORY STAGE OF INTERROGATION OF VICTIMS AND WITNESSES DURING INVESTIGATION OF CRIMES COMMITTED BY TRANSNATIONAL ORGANISED CRIMINAL GROUPS

Abstract. Purpose. The purpose of the article is to make a forensic analysis of the preparatory stage of interrogation of victims and witnesses during the investigation of crimes committed by transnational organised criminal groups. **Results.** The article focuses on some aspects of investigation of crimes committed by transnational organised criminal groups. Based on the review of scientific literature, organisational and preparatory interrogation measures are formulated and characterised. The author emphasises that at the initial stage of investigation of crimes committed by transnational organised criminal groups, interrogation is a rather important procedural action. This aspect is due to a number of factors, such as: victims and witnesses in many cases provide information about the crime and the identity of the perpetrator; this information is the basis for the entire criminal proceedings; based on the testimony of these persons, it is possible to plan further procedural actions. Since a large amount of data remains in people's memory, it is worth using in the investigation of a certain category of unlawful acts. ***Conclusions.*** It is noted that organisational and preparatory measures are important for the effective and successful conduct of interrogation. Based on the analysis of the respondents' questionnaires, the following organisational and preparatory measures for the interrogation of victims and witnesses are identified, namely: to study of the available materials of criminal proceedings comprehensively and thoroughly; to establish the existing investigative situation; to find out the circle of persons to be interrogated; to identify the interrogated person; to formulate a list of specific questions to be asked of the interrogated person; to determine the time and place of the interrogation; to determine the method of summoning for interrogation; to form a range of participants in the interrogation (defence counsel, representative); to select criminal proceedings materials and material evidence to be presented to the interrogated person during the procedural action; to select and prepare scientific, technical and forensic means of its recording; to determine the tactics to be used for the most effective implementation of the procedural action; to draw up an interrogation plan. Some of them are described in the article.

Key words: transnational organised criminal group, criminal offences, victim, witness, investigation, investigative (search) actions, investigation planning, interrogation, organisational and preparatory measures.

1. Introduction

At the initial stage of investigation of crimes committed by transnational organised criminal groups, interrogation is a rather important procedural action. This aspect is due to a number of factors, such as: victims and witnesses in many cases provide information about the crime and the identity of the perpetrator; this information is the basis for the entire criminal proceedings; based on the testimony of these persons, it is possible to plan further procedural actions. Since a large amount of data remains in people's memory, it is worth using in the investigation of a certain category of unlawful acts. Furthermore, organisational and preparatory measures are essential for the effective and successful conduct of interrogation. Considering the above, it became necessary to study this issue.

The following national and foreign scholars who have focused their research on the development of certain aspects of the interrogation should be noted: V.P. Bakhin, V.D. Bernaz, P.D. Bilenchuk, V.K. Veselskyi, A.F. Volobuiev, M.V. Danshin, M.M. Yefimov, V.S. Kuzmichov, V.H. Lukashevych, B.Ye. Lukianchykov, Ye.D. Lukianchykov, S.Yu. Petriaiev,

S.M. Stakhivskyi, M.V. Saltevskyi, V.M. Tertyshnyk, K.O. Chaplynskyi, V.Y. Shepitko, M.O. Yankovyi 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 make a forensic analysis of the preparatory stage of interrogation of victims and witnesses during the investigation of crimes committed by transnational organised criminal groups.

2. The importance of interrogation

To begin with, we rely on the statement of K.O. Chaplynskyi that "...interrogation is the most common investigative action by which information about the criminal activity of certain persons is collected. At the same time, interrogation is one of the most difficult investigative actions. Suspects (accused) are not interested in full and comprehensive disclosure and investigation of the crime, which cannot but affect the credibility of their testimony. Therefore, in order to successfully conduct interrogation and obtain positive results, investigators must have knowledge of the laws of thinking, logical methods and techniques, patterns of psychology and tactical interrogation techniques developed in forensic science" (Chaplynskyi, 2006). Considering this procedural action as part of the category of criminal proceedings under study, it should be noted that the legislator, unfortunately, has not provided a clear definition of this term. Only part 1 of Article 224 of the CPC of Ukraine specifies that "...interrogation is conducted at the place of pre-trial investigation or in another place by agreement with the person who is to be interrogated. Each witness is interrogated separately, without the presence of other witnesses" (Criminal Procedure Code of Ukraine, 2012). Therefore, we will try to formulate the definition of interrogation on our own, based on the works of scholars.

For example, M. O. Yankovyi defines it as follows: "...a process of specific verbal interaction with an interrogated person regulated by the criminal procedure law, during which the investigator (prosecutor, judge), using legal practical techniques and methods of psychological influence, receives from the interrogated person and records in the protocol oral information about the circumstances known to him/her that are relevant to the investigation of the crime" (Yankovyi, 2007).

According to A. F. Volobuiev and M. V. Danshyn, it is defined as follows: "...an investigative action that consists in obtaining, in accordance with the procedure established by the criminal procedure law, testimony from persons who have information relevant to establishing the truth in criminal proceedings" (Volobuiev, Stepaniuka, Maliarovoi, 2018).

According to V. K. Veselskyi, "...this is an investigative (search) action, the content of which is to obtain testimony from a person who has information relevant to the criminal offence under investigation. Interrogation can be described as the process of transferring information about the criminal offence under investigation, related circumstances and people. This information comes to the interrogated person at the moment of perception of certain phenomena or objects, is remembered and then reproduced and passed on to the investigator during the interrogation" (Piaskovskyi, 2020). These definitions emphasise the following aspects: regulatory framework of criminal procedure legislation; obtaining information from persons who possess it through verbal interaction; and the use of tactics.

Based on the above positions, the author's definition of interrogation is an investigative (search) action regulated by criminal procedure legislation, which is an information and psychological process of communication between an authorised person and a person who probably has certain information about an event for the effective conduct of criminal proceedings.

According to K. Chaplynskyi, the tasks of interrogation are as follows: "... to obtain evidence in a criminal case; to establish the objective truth in the case; to verify investigative versions proposed at the initial stage of the investigation; to establish factual data on the preparation, commission and concealment of crimes by members of criminal groups and their leaders; to establish the circumstances that facilitated or impeded the commission of the crime (in particular, the presence of gunners; the use of corrupt ties with representatives of state power and administration, law enforcement agencies, etc.); to collect information about the identity of the leader of the criminal group and their members, as well as their connections (not necessarily criminal); to take preventive measures to educate citizens, etc." (Chaplynskyi, 2009). In our opinion, the full implementation of these tasks will fully ensure the effective conduct of the procedural action under study.

The interrogation, like any other procedural action, has three stages: organisational and preparatory, working (direct conduct) and recording of its results. In the course of investigation of crimes committed by transnational organised criminal groups, these components of a particular procedural action do not lose their importance. Therefore, when working on the organisational and preparatory measures for a certain

procedural action, we should first determine their list.

For example, criminalists of the Dnipro school identified the following: "...a complete, comprehensive and thorough study of the criminal proceedings; determination of the subject of interrogation and the current investigative situation; determination of the circle of persons to be interrogated; determination of the sequence of interrogations; study of the identity of the offender; selection of material evidence and other materials to be presented to the interrogated; determination of the time of interrogation; determination of the method of summoning for interrogation; determination of the place of interrogation; determination of tactics to be used during interrogation and preparation of scientific and technical means of recording it; determination of participants in interrogation; ensuring favourable conditions for interrogation, with due regard for the need to ensure the safety of its participants; planning of interrogation" (Chaplynskyi, 2014).

A.F. Volobuiev identifies the following among them: thorough, complete and comprehensive study of the criminal proceedings; determination of the order of interrogation (i.e., the circle of persons to be interrogated and the sequence of their interrogation); obtaining information about the interrogated person; familiarisation with some special issues; invitation of persons whose participation in the interrogation is mandatory; planning the interrogation; determining the time and place of interrogation; preparation of the workplace for interrogation (Volobuiev, 2001).

Furthermore, a group of criminalists from the Kyiv school state that "...preparation for interrogation includes: collection of initial data; tactical support for interrogation; selection of time and place of interrogation; determination of the method of summons for interrogation; technical support for interrogation; preparation of a plan of investigative (search) action" (Piaskovskyi, 2020).

3. Preparatory measures for the interrogation of victims and witnesses

Based on the analysis of the respondents' questionnaires, the following organisational and preparatory measures for the interrogation of victims and witnesses during investigation of crimes committed by transnational organised criminal groups, are identified, namely:

– Study of the available materials of criminal proceedings comprehensively and thoroughly – 85 %;

– Establish the existing investigative situation – 62 %;

– Find out the circle of persons to be interrogated –100 %;

– Identify the interrogated person – 92 %;

– Formulate a list of specific questions to be asked of the interrogated person – 78 %;

– Determine the time and place of the interrogation – 56 %;

– Determine the method of summoning for interrogation – 42 %;

– Form a range of participants in the interrogation (defence counsel, representative) – 48 %;

– Select criminal proceedings materials and material evidence to be presented to the interrogated person during the procedural action – 71 %;

– Select and prepare scientific, technical and forensic means of its recording – 69 %;

– Determine the tactics to be used for the most effective implementation of the procedural action – 92 %;

– Draw up an interrogation plan – 34 %.

The first and foremost step is to study the criminal proceedings. In this regard, a group of researchers argue that "...a targeted study of the proceedings enables to establish the circle of persons to be interrogated, determine the subject of interrogation, and formulate questions to the interrogated. The study of the proceedings should begin with the primary data underlying the decision to enter information into the Unified Register of Pre-trial Investigations. In this context, interesting information for interrogation can be obtained from the explanations of the interrogated person, which reflect his or her position and attitude to what happened, and such explanations often contain data that help to direct the course of the interrogation and verify the information obtained from the interrogated person. Examining the case file involves analysing the data contained in the investigative reports, which allows for the identification of contradictions or gaps in certain circumstances. The analysis of the results of investigative actions such as inspection of the scene and search is important in the process of studying the materials of the proceedings. Their study can be useful for putting forward versions of the mechanism of the crime and the perpetrators" (Lukianchykov, Lukianchykov, Petriaiev, 2017). According to Yu. Chaplynska, preparatory measures can "...identify existing gaps, disagreements and contradictions between the participants in the process and timely address them" (Chaplynska, 2013).

After the above measure, it is necessary to move on to the next one – the formulation of a list of specific questions to ask the interrogated person. Based on the monographic work of K.O. Chaplynskyi (2009), the following questions can be identified to ask victims and witnesses of the category of crimes under study, namely:

– What data caused the criminals to have an unlawful intention;

– What information is available about the object of the offence, the motive for the offence and the attitude to the criminal consequences;

– What information about the identity of the offender can be provided (leader of the criminal group, its member, role in the OCG, relationship with the victim or witness);

– What are the methods of preparation, direct commission and concealment of organised criminal activity;

– What were the circumstances (time, place, conditions) of the unlawful act;

– What was the physical and psychological state of the perpetrator at the time of the unlawful act and afterwards;

– What conditions favoured or hindered the commission of the offence;

– How the OCG was created and the nature of its illegal activities;

– Whether there were corrupt links and connections with other OCGs, if so, what kind of connections;

– Whether there were ways to counteract the pre-trial investigation and influence victims, witnesses and group members who give truthful testimony, if so, what they were;

– What information is available on the availability of weapons, communications and technical equipment of the OCG members.

It is also worth remembering that the accuracy of the victim's or witness's testimony is affected by a number of subjective and objective factors. In this regard, we advocate M.M. Yefimov's assessment of the following factors: "...the state of intoxication; the rapid course of the event; the crowd of people there; family or friendship with the suspect; the intention to take revenge on the offender; the desire to exaggerate the damage caused, etc. Therefore, when interrogating victims in hooliganism cases, their state of mind must be considered. After all, agitated victims should be given the opportunity to calm down. At the first interrogation, it is advisable to find out who they had told about the incident before they were interrogated, which will help to verify other testimonies" (Yefimov, 2015).

In addition, it should be emphasised that victims and witnesses, on the one hand, have a significant amount of information about the unlawful act, and on the other hand, due to various factors, may not provide it. Considering the above, L.D. Udalova emphasises that "...communication during interrogation is complicated by the fact that interrogation is a specific form of communication, in the course of which citizens who are in the field of pre-trial investigation and court proceedings come into direct contact with representatives of investigative and judicial authorities who are vested with power" (Udalova, 2003). Therefore, the authorised person should establish psychological contact with the victim or witness from the very first moment of communication and then maintain it.

Regarding the time of interrogation, we agree with Ye.D. Lukianchikov, who states that "...a summons for interrogation may take place in conditions of limited information about a person, so it is difficult to predict his or her possible intentions and actions. Therefore, the decision to summon for interrogation and the choice of the means of summoning is made in conditions of tactical risk. Therefore, the investigator, given certain data, must predict the undesirable behaviour of the person summoned for interrogation" (Lukianchykov, 2003).

4. Conclusions

To sum up, it should be noted that organisational and preparatory measures are important for the effective and successful conduct of interrogation. Based on the analysis of the respondents' questionnaires, the following organisational and preparatory measures for the interrogation of victims and witnesses are identified, namely: to study of the available materials of criminal proceedings comprehensively and thoroughly; to establish the existing investigative situation; to find out the circle of persons to be interrogated; to identify the interrogated person; to formulate a list of specific questions to be asked of the interrogated person; to determine the time and place of the interrogation; to determine the method of summoning for interrogation; to form a range of participants in the interrogation (defence counsel, representative); to select criminal proceedings materials and material evidence to be presented to the interrogated person during the procedural action; to select and prepare scientific, technical and forensic means of its recording; to determine the tactics to be used for the most effective implementation of the procedural action; to draw up an interrogation plan. Some of them are described.

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КРИМІНАЛІСТИЧНИЙ АНАЛІЗ ПІДГОТОВЧОГО ЕТАПУ ДОПИТУ ПОТЕРПІЛИХ І СВІДКІВ ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПОВАННЯМИ

Annotation. ***Purpose.*** Метою статті є здійснення криміналістичного аналізу підготовчого етапу допиту потерпілих та свідків під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупованнями. **Results.** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі опрацювання наукової літератури сформульовані та охарактеризовані організаційно-підготовчі заходи допиту. Автор акцентує увагу на тому, що на початковому етапі розслідування злочинів, вчинених транснаціональними організованими злочинними угрупованнями, досить вагомою процесуальною дією є допит. Даний аспект пояснюється рядом факторів, як-от: потерпілі та свідки в багатьох випадках надають інформацію стосовно події злочину та особи злочинця; вказані відомості є базою для всього кримінального провадження; виходячи з показань зазначених осіб можливо спланувати подальші процесуальні дії. Оскільки в пам'яті людей зостається досить великий об'єм даних, які варто застосовувати під час розслідування визначеної категорії протиправних діянь. ***Conclusions.*** Зазначено, що організаційно-підготовчі заходи відіграють важливе значення для ефективного та успішного проведення допиту. На основі аналізу анкетування респондентів встановлено наступні організаційно-підготовчі заходи до проведення допиту потерпілих та свідків, а саме: всебічне та ретельне опрацювання наявних матеріалів кримінального провадження; встановлення наявної слідчої ситуації; з'ясування кола осіб, які підлягають допиту; вивчення особи допитуваного; формулювання переліку конкретних питань, які необхідно поставити допитуваному; визначення часу та місця проведення допиту; визначення способу виклику на допит; формування кола учасників допиту (захисник, представник); підбір матеріалів кримінального провадження та речових доказів для пред'явлення допитуваному під час проведення процесуальної дії; підбір і підготовка науково-технічних та техніко-криміналістичних засобів його фіксації; визначення тактичних прийомів, які потрібно використати для найбільш ефективного здійснення процесуальної дії; складання плану допиту. Надано характеристику окремим з них.

Ключові слова: транснаціональне організоване злочинне угруповання, кримінальні правопорушення, потерпілий, свідок, розслідування, слідчі (розшукові) дії, планування розслідування, допит, організаційно-підготовчі заходи.

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THE CONCEPT AND LEGAL NATURE OF PROVIDING FREE JURIDICAL AID BY ATTORNEYS-AT-LAW

Abstract. ***Purpose.*** The purpose of the article is to define the concept and to reveal the legal nature of providing free juridical aid by attorneys-at-law. ***Results.*** Relying on the analysis of scientific views of scholars, the article argues that it is more appropriate to use the term 'juridical' rather than 'legal' aid, since the latter is directly related to the provisions of law, legislation under which such aid is provided. The author offers an original definition of the concept of 'provision of free juridical aid by attorneys-at-law.' The key factors characterising the legal nature of providing free juridical aid by attorneys-at-law are highlighted. It is established that in the course of regulating social relations which arise and develop in connection with the provision of free juridical aid by attorneys-at-law, the actors authorised by the State apply the provisions of law of various branches - administrative law, criminal law and criminal procedure law, civil law and civil procedure law, economic law and economic procedure law, etc. ***Conclusions.*** It is concluded that the provision of free juridical aid by attorneys-at-law should be understood as the professional practice of attorneys-at-law regulated by the provisions of current national legislation and guaranteed by the State to provide legal services at the expense of the sources of financing established by law, which ensures protection of the rights, freedoms and interests of a person in a difficult legal situation, in accordance with the conditions and grounds clearly defined by law and free of charge for such a person. The legal nature of free legal aid is characterised by the following factors: it is in the process of formation and development, which is associated with the gradual replacement of the institution of legal aid by the institution of juridical aid provision; the grounds and procedure for providing free juridical aid are regulated by a significant number of legal regulations which together determine the legal basis for the functioning of this field of social relations; the activities of attorneys-at-law in providing free juridical aid are professional and guaranteed by the State; the provision of free juridical aid is financed from the sources of funding determined by law; the rights, freedoms and interests of a person in a difficult legal situation are protected in accordance with the conditions and grounds clearly defined by law; the provision of free juridical aid is free of charge for the person receiving it; the state establishes a system of legal guarantees for the provision of free juridical aid by attorneys-at-law; the provision of free juridical aid by attorneys-at-law has its own institutional component as a system of participants in these social relations.

Key words: legal nature, free juridical aid, attorney-at-law, regulatory framework.

1. Introduction

According to Basic Law of Ukraine, a human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Moreover, human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State (Constitution of Ukraine, 1996). It should be noted, however, that the mere enshrining of guarantees of individual rights, albeit in the provisions of an act of the highest legal force, is not enough. It is necessary to develop effective mechanisms for the protection and defence of individual rights, freedoms and interests, as well as to establish and arrange for the functioning of effective institutions for their restoration in case of unlawful encroachments. One of such institutions is undoubtedly the institution of juridical aid provided by lawyers, which, in cases provided for by the current national legislation, is free of charge.

The essence, features and significance of juridical aid provision have been studied in the works by many legal scholars, such as: V.V. Berch, V.V. Dzhuska, V.V. Zaborovskyi, M.T. Lodzhuk, O.V. Martovytska, O.M. Muzychuk, V.S. Nalyvaiko, M.M. Pohrebniak, V.B. Pchelin, O.V. Tarashchuk and others. The works by these scholars have contributed to the improvement of both theoretical and practical principles of providing juridical aid to

persons in need. However, the administrative and legal guarantees of the provision of juridical aid by attorneys-at-law have been studied in a fragmentary manner, as part of the solution of broader legal issues. Moreover, the issues of the essence of the concept and the legal nature of the provision of juridical aid by attorneys-at-law have received almost no attention. In addition, it should be noted that the current national legislation defining the legal basis for the functioning of this sector of public relations has been significantly updated, which is, inter alia, due to the introduction of the legal regime of martial law in connection with russia's armed aggression against our country. That is why, today, the issues of defining the essence of the concept and the legal nature of the provision of free juridical aid by lawyers are of particular importance.

Therefore, the purpose of the article is to define the concept and to reveal the legal nature of providing free juridical aid by attorneys-at-law.

2. The essence of the concept of "juridical aid"

To begin with, it should be noted that today the essence of the concept of 'juridical aid' is revealed in the provisions of the current national legislation, but, in our opinion, in an ambiguous way. For example, the content of the right to free juridical aid, the procedure for exercising this right, actors, grounds and procedure for providing free juridical aid, and state guarantees for providing free juridical aid are defined in the provisions of the Law of Ukraine 'On Free Legal Aid' of 2 June 2011. According to the above-mentioned legal act, Article 1, part 1, clause 1, free juridical aid is juridical aid guaranteed by the State and fully or partially provided at the expense of the State Budget of Ukraine, local budgets and other sources (Law of Ukraine On Free Legal Aid, 2011). This suggests that the legislator defines the essence of free juridical aid as juridical aid, that is, the essence of the phenomenon is revealed through the same phenomenon, which is a rather wrong approach.

Consequently, judicial aid is activities that cover all of the above components of judicial services, which is no longer consistent with the legislator's position on understanding the essence of certain types of free judicial aid, which he defines not as a relevant service, but as a state guarantee. According to Law of Ukraine 'On Free Legal Aid', Article 7, part 1, free primary judicial aid is a type of state guarantee that consists in informing a person about his/her rights and freedoms and obligations, the procedure for their implementation and enforcement, restoration of rights in case of their violation and the procedure for appealing against decisions, actions or inaction of state authorities, local self-government bodies, officials and employees. On the other hand, Article 13 of the above-mentioned law states that free secondary judicial aid is a type of state guarantee, which consists in creating equal opportunities for access to justice and includes the following types of legal services: defence; representation of the interests of persons entitled to free secondary judicial aid in courts, other state bodies, local self-government bodies, before other persons; drafting of procedural documents (Law of Ukraine On Free Legal Aid, 2011).

The analysis of the above legislative provisions regarding the general understanding of the essence of judicial aid, including free of charge, reveals that the legislator is inconsistent, since in some cases it indicates that it is a set of legal services, and in others it is a state guarantee. Moreover, if we consider juridical aid as a set of legal services, some of its free varieties will not include all of them, which will also contradict its original meaning. In case we consider juridical aid purely as a state guarantee, it should be noted that it itself includes a set of legal guarantees designed to ensure both its proper implementation by lawyers and its receipt by its addressees. That is, the State guarantee does not refer to the provision of free juridical aid, but to the right to receive it. For example, the legislator himself in part 1 of Article 3 of the Law of Ukraine 'On Free Legal Aid' establishes that the right to free juridical aid is the ability of a citizen of Ukraine, a foreigner, a stateless person, including a refugee or a person in need of additional protection, guaranteed by the Constitution of Ukraine, to receive free primary juridical aid in full, as well as the ability of a certain category of persons to receive free secondary juridical aid in cases provided for by law (Law of Ukraine On Free Legal Aid, 2011). It follows that the provision of free juridical aid is a practice guaranteed by the State.

In this context, M.V. Stamatina argues that the concept and essence of free legal aid in Ukraine can be revealed as a professional practice of relevant specialists guaranteed by the State to provide legal services free of charge aimed at realisation and protection of rights, freedoms and legitimate interests of persons who have applied for assistance (Zaborovskyi, 2016). In this case, in contrast to the legislator's approach to defining the essence of judicial aid, we believe that it is quite successful to emphasise its free-of-charge nature, rather than to indicate specific sources of its financial support. Nevertheless, in our opinion, this approach has a number of drawbacks. In particular, the author does not indicate that the grounds and procedure for

such assistance are regulated by the provisions of the current national legislation, which, given that this category is legal, is unacceptable.

In addition, it should be noted that not in all cases the persons requesting for the provision of free legal aid are those who need it. For example, as established in part 1 of Article 52 of the Criminal Procedure Code of Ukraine of 13 April 2012 (hereinafter - the CPC of Ukraine), the participation of a defence counsel is mandatory in criminal proceedings concerning particularly serious crimes. In this case, the participation of a defence counsel is ensured from the moment a person acquires the status of a suspect (Criminal Procedure Code of Ukraine, 2012). Moreover, the analysis of the provisions of Article 23 of the Law of Ukraine 'On Free Legal Aid' suggests that the provision of free secondary judicial aid is terminated by the decision of the centre for the provision of free legal aid if a person refuses to receive free secondary judicial aid, except in cases where the participation of a defence counsel (attorney-at-law) is mandatory (Law of Ukraine On Free Legal Aid, 2011). In other words, a definition of the essence of free juridical aid should not focus on its recipients as persons who have applied to a lawyer for it, since in cases provided for by law such assistance is mandatory.

Therefore, it should be noted that a deeper and more detailed understanding of the essence of the concept under study will be possible by defining the legal nature of free juridical aid. In this regard, it should be noted that the professional literature reasonably notes that the term 'legal nature' is frequently used in legal literature, since legal nature is inherent in all legal phenomena, but what is meant by legal nature is mostly not disclosed by researchers (Bondarev, 2018). That is, the legal nature of the phenomenon, in the case of the provision of juridical aid by attorneys-at-law, can be determined by identifying its characteristic features which indicate its place, role and purpose among the array of similar phenomena and processes. According to D. Prytyka, the essence of any legal institution is its service role and the methods by which this role is manifested. That is why, according to the scholar, the legal nature refers to the specific features of legal phenomena which characterise their place in the legal superstructure (Prytyka, 2003). Moreover, it should be noted that the features that determine and indicate the legal nature of the relevant phenomenon may be both positive and, in some cases, negative, which is especially evident in the legal nature of the provision of juridical aid by attorneys-at-law.

3. The legal nature of judicial aid

One of the main features indicating the legal nature of providing free juridical aid by attorneys-at-law is actually the legal framework, that is, a set of legal regulations which determine the grounds and procedure for the functioning of this field of social relations. Moreover, the analysis of such framework may be retrospective in nature, given another, no less significant aspect of the legal nature which should be considered when studying the essence of the relevant legal phenomenon. In this context, it would be appropriate to cite the statement of M. Ye. Hryhorieva, who emphasises that the conclusion about the legal nature should be based on the analysis of the relevant legal provision, its place in the system of legislation, on clarifying the correlation of this provision with other provisions and institutions, and the concept under study - with related legal concepts and principles of law. In case the concept under study is enshrined in law, it is natural and appropriate to study the 'past', the history of legislative development in order to trace the origin, formation and development trends of the provision and the concept enshrined in it (Hryhorieva, 2007).

Thus, emphasising the importance of judicial aid, scholars of law reasonably emphasise its fundamental nature in the context of proper protection of rights, freedoms and interests of man and a citizen. For example, M.T. Lodzhuk, in a study of the forms of legal aid in legal clinics in Ukraine, argues that legal aid is one of the most important legal remedies, a necessary element of the mechanism for ensuring the rights and freedoms of man and a citizen. According to the scholar, this is due to the fact that the objective difficulties of an ordinary citizen who does not have special legal knowledge and skills to effectively use legal means to realise and protect their interests give rise to the need for the assistance of a professional lawyer (Explanatory note to the draft Law of Ukraine on amendments to the Constitution of Ukraine (regarding justice), 2015). We strongly agree with the scientist, but we cannot but note that he uses the category 'legal' instead of 'judicial'. Moreover, today such cases are still quite common, which, in our opinion, is primarily due to the imperfection of national legislation regulating the provision of legal aid, including free of charge, which is manifested, in particular, in the ambiguous use of conceptual and categorical apparatus. From the perspective of a semantic analysis of the above category, it should be noted that a large explanatory dictionary of the modern Ukrainian language notes that the word 'legal' should be used in reference to law, that is, a just social order and legislation chosen by the people; a system of generally binding rules (norms) of conduct established or sanctioned by the State, which express the will of the ruling class or the entire people or legislation; a form

of legislation implemented by the state, depending on the social structure of the country; interests of a certain person, social group, etc, based on the law, religious postulates, ancient customs, etc.; protection of interests and opportunities of a person to participate in something, to appeal against something, etc., stipulated by a resolution of the state, institution, etc. (Busel, 2009).

Relying on the above arguments, it is more appropriate to use the term 'juridical' rather than 'legal' aid, since the latter is directly related to the provisions of law, legislation under which such aid is provided. Moreover, the word 'jurist' in the pages of a large explanatory dictionary of the modern Ukrainian language is used in the sense of a lawyer, a specialist in jurisprudence. Whereas the word 'juridical' means the same as legal, that is, related to legislation, legal provisions and their practical application; connected with the study and scientific development of law studies, jurisprudence; having an official right to something; connected with the study and scientific development of law studies, jurisprudence; intended for training lawyers (Busel, 2009).

In other words, the category "juridical," unlike "legal," is more subjective, since its use is associated with the characteristics of a certain person, that is, a jurist. It follows that the amendments introduced by the Law of Ukraine 'On amendments to the Constitution of Ukraine (regarding justice)' (2016) in terms of correcting the conceptual and categorical apparatus were quite justified. However, such changes mostly concerned constitutional provisions, while the rest of the legislation defining the grounds and procedure for exercising the right to free juridical aid still used the term "legal aid."

The analysis of the provisions of current legislation enables to state that the institution of free juridical aid has not received its proper consolidation in the provisions of national legislation which constitute the regulatory framework for the functioning of the field of public relations under study. It should be noted that such a framework is one of the leading factors determining the legal nature of the provision of free juridical aid by attorneys-at-law, as it establishes both the grounds and procedure for its provision, as well as other equally important rules of conduct for the subjects of such social relations. That is why, first of all, we traced the historical path of formation and development of the institution under study, which, inter alia, enables to identify the following features of the legal nature of the provision of free juridical aid by attorneys-at-law: it is in the process of formation and development due to the gradual replacement of the institution of legal aid by the institution of juridical aid provision; the grounds and procedure for providing free juridical aid are regulated by a significant number of legal regulations, which together determine the legal basis for the functioning of this field of social relations.

In view of the last of the above features that determine and indicate the legal nature of the provision of free juridical aid by attorneys-at-law, it is necessary to emphasise such a feature as the sectoral affiliation of the provisions. According to A.A. Koreniuk, the legal nature of the phenomenon is, nevertheless, an issue of the sectoral affiliation of the provisions that regulate these relations in order to determine which provisions are 'responsible' for regulating a certain group of social relations (Koreniuk, 2019). In this regard, the analysis above reveals that in the course of regulating social relations which arise and develop in connection with the provision of free legal aid by attorneys-at-law, the actors authorised by the State apply the provisions of law of various branches - administrative law, criminal law and criminal procedure law, civil law and civil procedure law, economic law and economic procedure law, etc. Furthermore, we believe that the field of social relations under study is most subject to the regulatory influence of administrative and legal provisions, which also indicates the specific legal nature of the provision of free juridical aid by attorneys-at-law.

4. Conclusion

Therefore, as follows from the analysis of the above material, the professional practice of attorneys-at-law regulated by the provisions of current national legislation and guaranteed by the State to provide legal services at the expense of the sources of financing established by law, which ensures protection of the rights, freedoms and interests of a person in a difficult legal situation, in accordance with the conditions and grounds clearly defined by law and free of charge for such a person. The legal nature of free legal aid is characterised by the following factors: it is in the process of formation and development, which is associated with the gradual replacement of the institution of legal aid by the institution of juridical aid provision; the grounds and procedure for providing free juridical aid are regulated by a significant number of legal regulations which together determine the legal basis for the functioning of this field of social relations; the activities of attorneys-at-law in providing free juridical aid are professional and guaranteed by the State; the provision of free juridical aid is financed from the sources of funding determined by law; the rights, freedoms and interests of a person in a difficult legal situation are

protected in accordance with the conditions and grounds clearly defined by law; the provision of free juridical aid is free of charge for the person receiving it; the state establishes a system of legal guarantees for the provision of free juridical aid by attorneys-at-law; the provision of free juridical aid by attorneys-at-law has its own institutional component as a system of participants in these social relations.

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ПОНЯТТЯ ТА ПРАВОВА ПРИРОДА НАДАННЯ БЕЗОПЛАТНОЇ ПРАВНИЧОЇ ДОПОМОГИ АДВОКАТАМИ

Abstract. ***Purpose.*** Мета статті полягає у визначенні поняття та розкрити правову природу надання безоплатної правничої допомоги адвокатами. ***Results.*** У статті, спираючись на аналіз наукових поглядів вчених, аргументовано, що більш доречно вживати термін «правнича», а не «правова», адже останній пов'язаний безпосередньо з нормами права, законодавством, на підставі й у порядку якого така допомога надається. Запропоновано авторське визначення поняття «надання безоплатної правничої допомоги адвокатами». Виділено ключові чинники, які характеризують правову природу надання безоплатної правничої допомоги адвокатами. З'ясовано, що при здійсненні правового регулювання суспільних відносин, що виникають і знаходять свій розвиток у зв'язку з наданням адвокатами безоплатної правничої допомоги, уповноважені державою суб'єкти застосовують норми права, що належать до найрізноманітніших галузей – адміністративного права, кримінального та кримінального процесуального права, цивільного та цивільного процесуального права, господарського та господарського процесуального права тощо. ***Conclusions.*** Зроблено висновок, що

під наданням безоплатної правничої допомоги адвокатами слід розуміти регламентовану приписами чинного національного законодавства, професійну, гарантовану державою діяльність адвокатів щодо надання за рахунок визначених законодавством джерел фінансування правничих послуг, що забезпечує захист прав, свобод та інтересів особи, яка перебуває у складній правовій ситуації, відповідно до чітко окреслених законодавством умов та підстав та на безоплатній основі для неї. Правову природу надання безоплатної правової допомоги характеризують наступні чинники: перебуває в стадії свого становлення та розвитку, що пов'язано з поступовою заміною інститутом надання правничої допомоги інституту надання правової допомоги; підстави та порядок надання безоплатної правничої допомоги регламентовано значною кількістю нормативно-правових актів, що в сукупності визначають правові засади функціонування даної сфери суспільних відносин; діяльність адвокатів щодо надання безоплатної правничої допомоги є професійною і гарантованою державою; фінансування надання безоплатної правничої допомоги здійснюється за рахунок визначених законодавством джерел фінансування; захист прав, свобод та інтересів особи, яка перебуває у складній правовій ситуації, здійснюється відповідно до чітко окреслених законодавством умов та підстав; надання безоплатної правничої допомоги здійснюється на безоплатній основі для особи, яка її отримує; державою закріплюється система юридичних гарантій надання безоплатної правничої допомоги адвокатами; надання безоплатної правничої допомоги адвокатами має власну інституційну складову як систему суб'єктів даних суспільних відносин.

Ключові слова: правова природа, безоплатна правнича допомога, адвокат, правове регулювання.

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EUROPEAN REQUIREMENTS IN THE SYSTEM OF REGULATORY AND LEGAL FRAMEWORK FOR STATE SUPERVISION OF ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES AND OFFICIALS

Abstract. Purpose. The purpose of the article is to consider the issue of defining within the system of such framework the European requirements established for the proper exercise of state supervision of the activities of local self-government bodies and officials. ***Results.*** The article considers the issues of defining within the system of regulatory and legal framework the European requirements established for the proper exercise of state supervision of the activities of local self-government bodies and officials. It is specified that the regulatory framework can be generally defined as a set of legal provisions enshrined in the Constitution, laws and bylaws which establish the regulatory fundamentals of a certain area of public relations, set out the principles, procedure of functioning and competence of the relevant entities, and also guarantee the observance of law and order. International requirements within their framework are a special element, as formalisation is not enough to assert that the national system of state supervision meets generally accepted European standards. ***Conclusions.*** It is established that the European Charter of Local Self-Government stipulates that state supervision should be legally regulated, implemented in compliance with the principle of proportionality and aimed primarily at ensuring legality. In addition, other European acts (Recommendations of the Council of Europe, the White Paper on European Governance, etc.) emphasise the need for public supervision, accountability and efficiency of local authorities. Although most of the international requirements are already enshrined in domestic legislation, that is, they are part of the system of regulatory frameworks for state supervision of the activities of local self-government bodies and officials, further work on optimising the content of the regulatory body of domestic legislation is relevant, appropriate and even necessary. In particular, the issues of legislative conflicts and clarification of supervision mechanisms, including in the aspect of strengthening the legal role of the institution of public participation, should find their regulatory solution.

Key words: state supervision, international requirements, local democracy, local self-government, regulatory framework, organisation and functioning, management of local affairs.

1. Introduction

The fact that state supervision of the activities of local self-government bodies and officials has its regulatory framework, beginning, basis, foundation, and the like is indisputable. Scholars use the categories of 'foundations,' 'basis' and 'principles' (traditionally, as synonyms) to refer to them (Boniak, 2015). However, a semantic analysis of these words shows that the content of these categories should be distinguished (Boniak, 2015), although there is still no single generally accepted definition (Halahan, Pysmennyi, 2013).

M. Shaternikov argues that the word foundations in the modern Ukrainian language is interpreted through the philosophical encyclopaedic meaning mainly as a sufficient or necessary condition for something (Shaternikov, 2015). In addition, D. Koshykov argues that the concept of 'legal framework' is understood by scholars in several aspects: 1) as a system of legal regulations governing a certain sphere of social relations or functioning of their actors; 2) as provisions of law establishing certain rules of activity of participants in social relations contained in legal regulations; 3) as guiding fundamentals (principles) of relevant activities of individual bodies enshrined in the provisions of relevant laws and regulations (Koshykov, 2020).

Therefore, the regulatory framework can be generally defined as a set of legal provisions enshrined in the Constitution, laws and bylaws which establish the regulatory fundamentals of a certain area of public relations, set out the principles, procedure of functioning

and competence of the relevant entities, and also guarantee the observance of law and order.

Since the content and structure of the regulatory framework directly affect the effectiveness of regulating the relevant area, we believe it is important to consider the issues of defining within the system of regulatory and legal framework the European requirements established for the proper exercise of state supervision of the activities of local self-government bodies and officials.

The level of development of this issue by domestic scholars is sufficiently high, as evidenced by the existence of numerous scientific studies on the issues of regulatory framework for supervision of the activities of local self-government bodies in Ukraine. However, despite the significant scientific achievements, a number of unresolved issues remain, including the effectiveness of existing regulations in the current security environment and updated public demands caused by the European integration vectors of development.

2. European provisions on administrative supervision of the activities of local self-government bodies

It should be noted that, in general, the conceptual framework for the construction and functioning of the local self-government system is defined and set out in international acts to which Ukraine has acceded. These are the World Declaration of Local Self-Government and the European Charter of Local Self-Government. The World Declaration of Local Self-Government was developed by the World Association of Local Governments. This Association is called the International Union of Local Authorities. The World Declaration of Local Self-Government was adopted at the 27th International Congress of the International Union of Local Authorities on 23-26 September 1985 (Zvizdai, 2015), and the European Charter of Local Self-Government on 15 October 1985. In other words, these two documents were developed and adopted almost simultaneously, and therefore it is clear that to a large extent their main provisions coincide.

Thus, the European Charter of Local Self-Government in Article 8 "Administrative supervision of local authorities' activities" states that:

"1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect" (European Charter of Local Self-Government, 1985).

The analysis of this European provision leads to the following interim conclusions:

– First, administrative supervision of local self-government bodies' activities should be exercised exclusively within the limits provided for by the Constitution and laws, which guarantees predictability and legitimacy of its implementation;

– Second, administrative supervision of local self-government bodies' activities has its own specific purpose – its main goal is to ensure compliance with the law and constitutional principles in the activities of local self-government bodies. Moreover, in some cases, it may include an assessment of the expediency of performing delegated tasks, which emphasises its multifunctional nature;

– Third, it is extremely important to adhere to the fundamental principles of its implementation, among which the principle of proportionality is the leading one, since the control measures should be in proportion to the protection of the public interest, which helps to balance the autonomy of local self-government with the need for state intervention (this means preventing excessive pressure on local authorities by controlling bodies);

– Forth, from the above provision, the need to comply with the principle of limited interference can be distinguished as an independent requirement. Administrative supervision itself should not violate the independence of local self-government bodies, but only guarantee their activities within the legal framework;

– Fifth, the legal environment for the implementation of these activities should comply with international obligations, in particular the principles enshrined in the European Charter of Local Self-Government, and take into account the best practices applicable in the EU.

In addition to the above-mentioned European Charter of Local Self-Government, the EU has adopted the following legal acts: Recommendation No. R(97)7 of the Committee of Ministers of the Council of Europe on local public services and the rights of users of their services; White Paper on European Governance; Recommendation No. 61 (1999) of the Congress of Local and Regional Authorities of the Council of Europe.

In accordance with Recommendation No. R(97)7 of the Committee of Ministers of the Council of Europe on local public services and the rights of users of their services, in order to find more efficient management methods, a requirement for better control over public expenditure is established (Recommendation no. R (97) 7 of the Committee of Ministers to member states on local public services and the rights of their users. Council of Europe, 1997). Furthermore, the document states that all important social and administrative services should be subject to a periodic evaluation of user satisfaction, followed by public discussion of the findings of this evaluation (Monitoring the activities of local self-government bodies (foreign experience), 2017). This underlines the importance of citizen engagement in evaluating the performance of local authorities.

3. European standards for improving administrative supervision of local self-government bodies

The European Governance A White Paper (European Commission, 2001) identifies the main areas for improving the work of European institutions, in particular by involving the public in monitoring their work. In their activities, European institutions at the state and local levels rely on principles of good governance, such as openness, participation, accountability, effectiveness and coherence (Monitoring the activities of local self-government bodies (foreign experience), 2017). This proves that the European approach to state control is aimed not only at verifying legality, but also at promoting good governance through the involvement of civil society.

The experience of independent oversight is described in Recommendation 61 (1999)1 on the role of local and regional mediators/ombudsmen in defending citizens' rights (1999) of the Congress of Local and Regional Authorities of the Council of Europe. Given the growing complexity of administrative systems and the workload of administrative courts, Congress supported the creation of an ombudsman's office and the introduction of local and regional ombudsmen (Monitoring the activities of local self-government bodies (foreign experience), 2017). Again, this is in line with the pan-European trend of strengthening mechanisms for protecting the rights of citizens in their relations with local authorities.

Therefore, the European approach to state supervision of local self-government is a comprehensive one, based on the principles of efficiency, transparency, accountability and public participation. Its full implementation in Ukraine can help improve the mechanisms of state control, strengthen legal protection of citizens and improve the quality of services provided by local governments.

It should be noted that when comparing the provisions of the Law of Ukraine "On Local Self-Government in Ukraine" with the provisions of the European Charter of Local Self-Government, the latter regulates the mechanisms of state supervision more thoroughly. While national legislation focuses mainly on issues of legality, the European Charter of Local Self-Government also provides for the possibility of monitoring the expediency of exercising delegated powers.

Moreover, the European Charter of Local Self-Government is formally part of Ukrainian legislation and should be directly applied in real life. In fact, the situation here is not so optimistic for a number of reasons: first, the definitions of local self-government in the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine" and the Charter differ to some extent. Second, having ratified the Charter, the Ukrainian parliament did not determine whether or not it should be extended to local self-government bodies such as rayon and oblast radas. This failure to define leads to constant discussions about the inconsistency of our realities with the Charter, since rayon and oblast radas do not have their own executive bodies, as provided for in Article 3(2) of the Charter. In Europe, such issues do not arise, as the oblast and rayon levels are part of the regional self-government system, which is not covered by the Charter. In Ukraine, however, both rayon and oblast radas are referred to as "local self-government bodies." Accordingly, the basic principles of the Charter should be taken into account at both the national and local levels when drafting new laws or making decisions by local governments (Zvizdai, 2015).

Therefore, the study concludes with the statement that the regulatory framework for exercising state control over the activities of local self-government bodies in Ukraine requires further improvement in accordance with European standards.

4. Conclusion.

The European Charter of Local Self-Government stipulates that state supervision should be legally regulated, implemented in compliance with the principle of proportionality and aimed primarily at ensuring legality. In addition, other European acts (Recommendations of the Council of Europe, the White Paper on European Governance, etc.) emphasise the need for public supervision, accountability and efficiency of local authorities.

Although most of the international requirements are already enshrined in domestic legislation, that is, they are part of the system

of regulatory frameworks for state supervision of the activities of local self-government bodies and officials, further work on optimising the content of the regulatory body of domestic legislation is relevant, appropriate and even necessary. In particular, the issues of legislative conflicts and clarification of supervision mechanisms, including in the aspect of strengthening the legal role of the institution of public participation, should find their regulatory solution.

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ЄВРОПЕЙСЬКІ ВИМОГИ В СИСТЕМІ НОРМАТИВНО-ПРАВОВИХ ЗАСАД ЗДІЙСНЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ДІЯЛЬНІСТЮ ОРГАНІВ І ПОСАДОВИХ ОСІБ МІСЦЕВОГО САМОВРЯДУВАННЯ

Abstract. ***Purpose.*** Мета статті полягає у здійсненні розгляду проблематики визначення в межах системи таких засад європейських вимог, що встановлюються для належного здійснення державного контролю за діяльністю органів і посадових осіб місцевого самоврядування. ***Results.*** Стаття присвячена розгляду проблематики визначення в межах системи нормативно-правових засад європейських вимог, що встановлюються для належного здійснення державного контролю за діяльністю органів і посадових осіб місцевого самоврядування. Уточнено, що нормативно-правові засади загалом можна визначити як сукупність правових норм, закріплених у Конституції, законах та підзаконних актах, які встановлюють основи правового регулювання певної сфери суспільних відносин, закріплюють принципи, порядок функціонування та компетенцію відповідних суб'єктів, а також гарантії дотримання законності й правопорядку. Міжнародні вимоги у їхніх межах є особливим елементом, адже формального закріплення замало, щоб стверджувати про відповідність національної системи державного контролю загальноприйнятим європейським стандартам. ***Conclusions.*** З'ясовано, що Європейська хартія місцевого самоврядування встановлює, що державний контроль має бути законодавчо врегульованим, здійснюватися з дотриманням принципу пропорційності та спрямовуватися передусім на

забезпечення законності. Крім того, інші європейські акти (Рекомендації Ради Європи, «Біла книга європейського врядування» тощо) підкреслюють необхідність громадського контролю, підзвітності та ефективності діяльності місцевої влади. І попри те, що більшість міжнародних вимог так чи інакше вже має нормативне закріплення в актах вітчизняного законодавства, тобто є частиною системи нормативно-правових засад здійснення державного контролю за діяльністю органів і посадових осіб місцевого самоврядування, подальша робота над оптимізацією змісту нормативного масиву вітчизняного законодавства є актуальною, доречною та навіть необхідною. Зокрема мають знайти своє нормативне вирішення питання наявності законодавчих колізій, уточнення механізмів контролю, зокрема і в аспекті посилення правової ролі інституту громадської участі.

Ключові слова: державний контроль, міжнародні вимоги, місцева демократія, місцеве самоврядування, нормативно-правові засади, організація та функціонування, управління місцевими справами.