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REGULATORY AND LEGAL FRAMEWORK FOR PERSONNEL MANAGEMENT IN THE SECURITY SERVICE OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to characterise the regulatory and legal framework for personnel management in the bodies and units of the Security Service of Ukraine. ***Results.*** Relying on the analysis of scientific views of scholars and provisions of current legislation, the article focuses on the issue that the regulatory framework for personnel management in the bodies and units of the Security Service of Ukraine consists of an extensive system of official legal regulations, such as the Constitution, legislative sources and by-laws. It is stated that certain problematic issues in the context of the topic presented in this paper are regulated rather superficially, in particular, the following issues are concerned: implementation of certain personnel procedures, such as the procedure for selection for service in the Security Service of Ukraine; forms and methods of activities of specially authorised entities in the field under study; training of future employees in higher education institutions. It is emphasised that the Law of Ukraine 'On Civil Service' defines the principles, legal and organisational framework for ensuring public, professional, politically impartial, efficient, citizen-oriented civil service which functions in the interests of the State and society, as well as the procedure for exercising by Ukrainian citizens the right of equal access to civil service based on their personal qualities and achievements. ***Conclusions***. It is concluded that that the regulatory framework for personnel management in the bodies and units of the Security Service of Ukraine consists of an extensive system of official legal regulations, such as the Constitution, legislative sources and by-laws. To date, their structure largely meets all the needs of regulatory framework for each of the three groups of Security Service of Ukraine's personnel: employees under employment contract, civil servants and military personnel. However, certain problematic issues in the context of the topic presented in this paper are regulated rather superficially, in particular, the following issues are concerned: implementation of certain personnel procedures, such as the procedure for selection for service in the Security Service of Ukraine; forms and methods of activities of specially authorised entities in the field under study; training of future employees in higher education institutions.

Key words: personnel, staff, officials, employees, Security Service of Ukraine, regulatory and legal framework.

1. Introduction

The activities of any public authorities, especially law enforcement bodies, are carried out exclusively on the basis of officially established regulatory and legal framework. Therefore, the regulatory framework for personnel management in the Security Service of Ukraine is a set of legal regulations that define the procedure, specifics, principles, participants, directions, structure, as well as other functional and legal issues of personnel management in the system of SSU bodies and units. As for the composition of such framework, it is quite special and atypical, as it does not relate directly to the activities related to the performance of the SSU's tasks and functions, but to a rather narrow type of internal organisational activity, in particular, personnel management.

Certain problematic aspects of the activities of the Security Service of Ukraine have been considered in scientific works by: O.M. Bandurka, O.P. Vasylenko, N.T. Honcharuk, M.I. Diachenko, L.S. Zemlianaya, O.P. Kovalenko, O.M. Kryvoruchko, O.S. Moroz, O.M. Muzychuk, V.V. Sokurenko, etc. However, despite the significant theoretical contribution, a number of issues remain unresolved in the scientific literature, including those related to the description of the regulatory and legal framework for personnel management in the bodies and units of the Security Service of Ukraine.

That is why, the purpose of the article is to characterise the regulatory and legal framework for personnel management in the bodies and units of the Security Service of Ukraine.

2. The essence and content of the regulatory and legal framework for personnel management in the bodies and units of the Security Service of Ukraine

To begin the research, it should be noted that it is expedient to reveal the essence and content of the regulatory framework for personnel management in the bodies and units of the Security Service of Ukraine through the analysis of legal regulations of different legal force. According to the Law of Ukraine 'On Lawmaking', a legal regulation is an official document adopted (issued) by a lawmaker in accordance with the procedure established by the Constitution of Ukraine and/or law in writing, which contains a provision(s) of law and is intended for repeated implementation. The legislation of Ukraine is an interconnected and organized system of regulatory legal acts of Ukraine and applicable international treaties. It is structured from instruments of higher legal force to instruments of lower legal force. The legislation of Ukraine includes: 1) the Constitution of Ukraine - the Basic Law of Ukraine; 2) laws; 3) by-laws: a) resolutions of the Verkhovna Rada of Ukraine containing legal provisions; b) decrees of the President of Ukraine containing legal provisions; c) resolutions of the Cabinet of Ministers of Ukraine containing legal provisions; d) orders of ministries containing legal provisions (hereinafter referred to as 'ministerial orders'); d) regulations of other state bodies containing legal provisions; e) resolutions of the Verkhovna Rada of the Autonomous Republic of Crimea, resolutions of the Council of Ministers of the Autonomous Republic of Crimea, orders of the ministries of the Autonomous Republic of Crimea containing legal provisions; f) orders of heads of local state administrations, orders of heads of structural units of local state administrations containing legal provisions; g) regulations of local self-government bodies containing legal provisions. International treaties in force, ratified by the Verkhovna Rada of Ukraine, are part of the legislation of Ukraine (Law of Ukraine On lawmaking, 2023). Therefore, according to the above-mentioned Law, each instrument has its own legal force - an attribute of legal regulations and the provisions of law established by them, which is the basis for determining the ratio of their mutual hierarchical subordination in the system of legal regulations, determined by a set of features arising from: 1) principles of the constitutional order in Ukraine; 2) competence and territorial jurisdiction of the lawmaker as defined by the Constitution of Ukraine and (or) the law; 3) other features defined by the Constitution of Ukraine and (or) the law (Law of Ukraine On lawmaking, 2023).

Obviously, not the entire range of legal regulations listed in the Law is included in the system of legal frameworks for personnel management in the SSU, but it is in view of the hierarchy presented in the document that the latter are most appropriately studied. In the context of our study, the first and central legal source is the Constitution of Ukraine, which is the main legal source of the national legal system in terms of and within which all social relations are regulated. As a legal basis for personnel management in the bodies and units of the Security Service of Ukraine, the Basic Law is distinguished by several points. First of all, it enshrines key, integral human and civil rights, which are freely exercised by SSU employees, and which cannot be restricted or violated, even taking into account the special purpose and status of the Service (Constitution of Ukraine, 1996).

The second point is that the Constitution defines the scope of direct activities of the SSU in Article 17 as follows: "Protecting the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security, shall be the most important function of the State and a matter of concern for all the Ukrainian people. The defence of Ukraine and protection of its sovereignty, territorial integrity and inviolability shall be entrusted to the Armed Forces of Ukraine. Ensuring the security of the State and protecting the State borders of Ukraine shall be entrusted to respective military formations and law enforcement bodies of the State, whose organisation and operational procedure shall be 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 public authorities or obstruct their activity. The State shall ensure social protection of citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations as well as members of their families. Establishment and operation of any armed formations not envisaged by law are prohibited in the territory of Ukraine. The location of foreign military bases in the territory of Ukraine shall not be permitted" (Constitution of Ukraine, 1996).

In addition, the Constitution regulates certain organisational and managerial aspects of the SSU's functioning related to the implementation of personnel management. In particular, the main legal document of the state establishes the powers of the Verkhovna Rada of Ukraine and the Parliament, which include:

to appoint and dismiss the Head of the Security Service of Ukraine upon the proposal of the President of Ukraine; to approve the general structure, number, and functions of the Security Service of Ukraine, the Armed Forces of Ukraine, other military formations established in accordance with the laws of Ukraine, and the Ministry of Internal Affairs of Ukraine (Constitution of Ukraine, 1996).

3. Legislative level of the regulatory framework for personnel management in the Security Service of Ukraine

Considering the legislative level of the regulatory framework for personnel management in the Security Service of Ukraine, it should be noted that the Labour Code regulates labour relations of all employees, contributing to the growth of labour productivity, improvement of the quality of work, increase in the efficiency of social production and, on this basis, the improvement of the material and cultural standard of living of employees, strengthening of labour discipline and gradual transformation of work for the benefit of society into the first vital need of every able-bodied person. The Code enshrines the rights and duties of employees under an employment contract and of the SSU as an employer; guarantees of working conditions; the basics of labour discipline; principles of building labour relations, etc. (Labour Code of Ukraine, 1971).

The Law of Ukraine 'On Civil Service' defines the principles, legal and organisational framework for ensuring public, professional, politically impartial, efficient, citizen-oriented civil service that functions in the interests of the state and society, as well as the procedure for exercising the right of equal access to civil service by Ukrainian citizens based on their personal qualities and achievements. The provisions of the Law define the legal regularities of the civil service in the activities of all government bodies, including the Security Service of Ukraine, and therefore the staffing of service processes in the SSU bodies and units is based on this legal instrument (Law of Ukraine On Civil Service, 2015).

The key legal regulation of the SSU is the Law of Ukraine 'On the Security Service of Ukraine'. The document regulates the general framework of the SSU, the system and organisation of its activities, the legal status of the SSU personnel, the rights, duties and powers of the agency, aspects of social protection of employees, control over the activities of the agency, etc. (Law of Ukraine On the Security Service of Ukraine, 1992). The main legal regulation is supplemented by the Law of Ukraine 'On the general structure and number of the Security Service of Ukraine', which clarifies the organisational and managerial model of the SSU (Law of Ukraine On the general structure and number of the Security Service of Ukraine, 2005).

Most SSU employees are military personnel, and therefore they are subject to legislation on military service and its management, namely the Law of Ukraine 'On military duty and military service' and the 'Disciplinary Statute of the Armed Forces of Ukraine'. The former document regulates the relations between the state and citizens of Ukraine in connection with their constitutional duty to protect the Motherland, independence and territorial integrity of Ukraine, and defines the general principles of military service in Ukraine (Law of Ukraine On military duty and military service, 1992). For its part, the Disciplinary Statute regulates the essence of military discipline, the duties of servicemen and servicewomen, as well as persons liable for military service and reservists during training (checking) and special meetings on its observance, the types of rewards and disciplinary sanctions, the rights of commanders to apply them, as well as the procedure for submitting and considering applications, proposals and complaints (Law of Ukraine On the Disciplinary Statute of the Armed Forces of Ukraine, 1999).

In addition to military regulations, SSU employees are subject to anti-corruption legislation, so personnel management shall be subject to the restrictions provided for. For example, the Law of Ukraine 'On Prevention of Corruption' defines the legal and organisational framework for the functioning of the corruption prevention system in Ukraine, the content and procedure for applying preventive anti-corruption mechanisms, and the rules for eliminating the consequences of corruption offences (Law of Ukraine On Prevention of Corruption, 2014).

The system of legal and regulatory frameworks for personnel management in the SSU bodies and units includes the Law of Ukraine 'On social and legal protection of servicemen and members of their families', which establishes the basic principles of public policy on social protection of servicemen and members of their families, establishes a unified system of their social and legal protection, guarantees favourable conditions for servicemen and members of their families in the economic, social and political sectors for the realisation of their constitutional duty to defend the Motherland and regulates relations in this field (Law of Ukraine On Social and Legal Protection of Military Personnel and Members of Their Families, 1991).

The next group of regulatory frameworks for personnel management in the SSU

bodies and units is made up of by-laws, that is, regulations adopted (issued) by the lawmaker on the basis of and in pursuance of the Constitution of Ukraine, the law, and international treaties in force and aimed at their implementation (Law of Ukraine On lawmaking, 2023).

The system of by-laws governing the SSU's activities has its own specifics, manifested in the fact that most issues, including personnel issues, are regulated by departmental documents of the Service, which have limited access, up to and including the classification of secrecy. As a result, there are problems with their scientific analysis. However, in this case, a rather narrow range of working issues arising in the context of the Service's current activities are regulated. Global issues of staffing are regulated by open bylaws of both the SSU and other authorities, such as Presidential Decree 'Issues of the Security Service of Ukraine' No. 1860/2005 of 27 December 2005, which clarified the organisational structure of the SSU and outlined its key components, SSU Order 'On approval of the Instruction on organisation of special training of Ukrainian citizens for admission to military service under contract in the Security Service of Ukraine' No. 603 of 30 November 2010, which defines the organisational and legal framework and methodology for special training of a certain category of candidates for service in the SSU, etc. (Decree of the President of Ukraine On the Issues of the Security Service of Ukraine, 2005; Order of the Security Service of Ukraine On approval of the Instructions on the organization of special training of citizens of Ukraine for admission to military service under a contract in the Security Service of Ukraine, 2010).

4. Conclusions

Therefore, the regulatory framework for personnel management in the bodies and units of the Security Service of Ukraine consists of an extensive system of official legal regulations, such as the Constitution, legislative sources and by-laws. To date, their structure largely meets all the needs of regulatory framework for each of the three groups of SSU personnel: employees under employment contract, civil servants and military personnel. However, certain problematic issues in the context of the topic presented in this paper are regulated rather superficially, in particular, the following issues are concerned: implementation of certain personnel procedures, such as the procedure for selection for service in the SSU; forms and methods of activities of specially authorised entities in the field under study; training of future employees in higher education institutions.

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НОРМАТИВНО-ПРАВОВІ ЗАСАДИ КАДРОВОЇ РОБОТИ В ОРГАНАХ І ПІДРОЗДІЛАХ СЛУЖБИ БЕЗПЕКИ УКРАЇНИ

Анотація. ***Мета*** статті полягає у тому, щоб надати характеристику нормативно-правовим засадам кадрової роботи в органах і підрозділах Служби безпеки України. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених та норм чинного законодавства, акцентовано увагу на тому, що нормативно-правові засади кадрової роботи в органах та підрозділах Служби безпеки України складаються із розгалуженої системи офіційних нормативно-правових актів, які включають в себе Конституцію, законодавчі та підзаконні джерела. Відзначено, що окремі проблемні питання в розрізі представленої роботі проблематики врегульовані досить поверхнево, зокрема це стосується питань: реалізації окремих кадрових процедур, а саме, порядку відбору на службу до Служби безпеки України; форм та методів діяльності спеціально уповноважених суб'єктів у досліджуваній сфері; підготовки майбутніх службовців у закладах вищої освіти. Наголошено, що Закон України «Про державну службу» визначає принципи, правові та організаційні засади забезпечення публічної, професійної, політично неупередженої, ефективної, орієнтованої на громадян державної служби, яка функціонує в інтересах держави і суспільства, а також порядок реалізації громадянами України права рівного доступу до державної служби, що базується на їхніх особистих якостях та досягненнях. ***Висновки.*** Зроблено висновок, що нормативно-правові засади кадрової роботи в органах та підрозділах Служби безпеки України складаються із розгалуженої системи офіційних державних актів, які включають в себе Конституцію, законодавчі та підзаконні нормативно-правові акти. Їх структура на сьогоднішній день, переважно, задовольняє всі потреби правового регулювання кожної із трьох груп кадрового складу Служби безпеки України: працівників за трудовим договором, державних службовців та військовослужбовців. Разом із тим, окремі проблемні питання в розрізі представленої роботі проблематики врегульовані досить поверхнево, зокрема це стосується питань: реалізації окремих кадрових процедур, зокрема порядку відбору на службу до Служби безпеки України; форм та методів діяльності спеціально уповноважених суб'єктів у досліджуваній сфері; підготовки майбутніх службовців у закладах вищої освіти.

Ключові слова: кадри, кадровий склад, службовці, працівники, Служба безпеки України, нормативно-правові засади.

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MAIN AREAS OF IMPROVING ADMINISTRATIVE AND REGULATORY FRAMEWORK FOR THE PROCEDURAL COMPONENT OF IMPLEMENTING GUARANTEES OF LEGALITY IN ACTIVITIES OF THE STATE BUREAU OF INVESTIGATIONS

Abstract. ***Purpose.*** The purpose of the article is to identify the main areas of improvement of the administrative and legal regulation of the procedural component of the implementation of guarantees of the legality of the activities of the State Bureau of Investigation. ***Results.*** The article identifies the general areas of improving administrative and regulatory framework for the procedural component of implementing guarantees of legality in activities of the State Bureau of Investigations: – improvement of administrative legislation on the use of control as an instrument of administrative and regulatory framework; – improvement of administrative legislation on the use of control as an instrument of administrative and regulatory framework; – digitalisation of the SBI's activities; – optimisation of the SBI's internal personnel policy; – improvement of the system of protection of the rights of witnesses involved in criminal proceedings; – improvement of law enforcement cooperation; – expansion of international cooperation. The following areas of optimisation of the SBI's internal HR policy are identified: – formation of a centralised system of professional development; – introduction of mechanisms for periodic certification of professional skills; – implementation of programmes to support the psycho-emotional health of employees, including regular testing or psychological counselling (especially important in martial law); – introduction of the principles of inclusiveness in HR policy. The focus is on improving the system of protection of the rights of witnesses involved in criminal proceedings through: – expanding administrative witness protection programmes, in particular, mechanisms for granting witnesses a special protection status and simplifying administrative procedures in the relevant programmes; – improving information security protection in the activities of the State Bureau of Investigation; – administrative provision of psychological support to witnesses; – the State Bureau of Investigation conducting information campaigns among the public to raise awareness of the importance of testifying and the risks involved. The areas of improving the interaction of law enforcement bodies to ensure the legality of the State Bureau of Investigation's activities are identified as follows: – development of mechanisms for interagency communication (through digitalisation of activities); – conducting interagency trainings and exercises; – exchange of practical experience; – creation of joint investigative teams; – development of special methods of interaction under martial law. ***Conclusions.*** A separate area is the expansion of international cooperation through: – the State Bureau of Investigation initiating joint projects within international organisations (Interpol, Europol, OSCE, NATO, etc.); – integration of the State Bureau of Investigation into international digital data exchange systems; – improvement of communication with international human rights organisations to ensure human rights in the course of investigations; – participation of the State Bureau of Investigation in international programmes, projects and conferences to study current transnational challenges in the field of law enforcement; – strengthening international cooperation of the State Bureau of Investigation in the field of financial monitoring (money laundering, terrorist financing, legalisation of illegal income, etc.); – development and implementation of interstate training programmes.

Key words: administrative jurisdiction, administrative law, administrative procedures, guarantees, legality, control, monitoring, principles, investigation.

1. Introduction

In recent years, Ukraine has carried out a number of reforms related to changes in the organisation and operation of public authorities, the judicial and law enforcement systems of the country. The further implementation of international standards in the field of protection of the rights and interests of citizens requires not only updating the legal framework, but also the creation of new public authorities. The activities of the State Bureau of Investigation, established at the state level to ensure the interaction of police forces and investigate crimes that pose a national threat, are all the more interesting. Given that a relatively short period of time has passed since the establishment of the State Bureau of Investigation (hereinafter - SBI), the issue of the establishment, activities and role of this body among other law enforcement agencies, including pretrial investigation bodies, is still insufficiently covered (Litvinova, 2022).

The activities of the State Bureau of Investigation have been the subject of scientific analysis by scholars such as: O. Drozd, O. Ilchenko, O. Kvasha, O. Klymchuk, O. Levkivska, I. Litvinova, O. Marchenko, E. Riepina, E. Skulysh, S. Slinko, O. Stepanov, R. Truba, O. Usatyi, A. Fantsevych, T. Yashchenko and others. However, the latest socio-political challenges in Ukraine have a negative impact on the activities of state law enforcement agencies, which requires relevant research in this area.

The purpose of the article is to identify the main areas of improving administrative and regulatory framework for the procedural component of implementing guarantees of legality in activities of the State Bureau of Investigations.

2. Directions for improving the administrative and legal regulation of the procedural component of the implementation of guarantees of the legality of the activities of the State Bureau of Investigation

In our opinion, the following general areas of improving administrative and regulatory framework for the procedural component of implementing guarantees of legality in activities of the State Bureau of Investigations should be identified:

– improvement of administrative legislation on the use of control as an instrument of administrative and regulatory framework;

– digitalisation of activities of the State Bureau of Investigations;

– optimisation of the SBI's internal personnel policy of the State Bureau of Investigations;

– improvement of the system of protection of the rights of witnesses involved in criminal proceedings;

– improvement of law enforcement cooperation;

– expansion of international cooperation.

3. Control over the use of budget funds and digitalization of the activities of the State Bureau of Investigation

Next, each of the above areas will be analysed. We propose to improve administrative legislation on the use of control as an instrument of administrative and regulatory framework by introducing the following amendments and additions to the current legislation:

1. Additional control over the use of budget funds by the State Bureau of Investigation should be ensured. Such control should be exercised by a special entity - the Accounting Chamber. For this purpose, we propose the following amendments to the Law of Ukraine 'On the State Bureau of Investigation': - to supplement part 6 of Article 23 as follows: '6. The Accounting Chamber shall control the SBI's spending of funds by conducting an audit once every two years.' (Law of Ukraine On the State Bureau of Investigation, 2015).

2. The control over the activities of the Public Control Council under the State Bureau of Investigation is imperfect. According to the internal regulations, the Public Control Council under the SBI should submit an annual report on its activities. However, the special Law of Ukraine 'On the State Bureau of Investigation' does not contain a corresponding provision. In order to introduce mandatory annual reporting by the Public Control Council under the State Bureau of Investigation, we propose the following amendments to the Law of Ukraine 'On the State Bureau of Investigation': - to supplement part 4 of Article 28 with the following wording: 'The Public Control Council under the State Bureau of Investigation shall prepare and publish a report on its activities for the previous year no later than 1 April on the official website of the State Bureau of Investigation under the heading "Public Control Council", in accordance with the requirements stipulated by the Regulation on the Public Control Council (Law of Ukraine On the State Bureau of Investigation, 2015).

With regard to the next area, that is, the digitalisation of the State Bureau of Investigation, the following areas of improving administrative and regulatory framework for the procedural component of implementing guarantees of legality in activities of the State Bureau of Investigations should be identified as follows: 1) creation of a digital space for interaction between public authorities, law enforcement bodies and litigants (optimisation of state registers, electronic document management, digital archiving, etc.); 2) implementation of administrative regula-

tions in digital form (digitisation of internal investigation regulations and control procedures, development of electronic algorithms for employees of the State Bureau of Investigation, etc.); 3) introduction of training programmes for SBI employees on the use of digital technologies in procedural activities; 4) equipping SBI structural units with modern technical means; 5) improving cybersecurity of SBI systems.

4. HR support and optimization of internal HR policy of the State Bureau of Internal Affairs

The next area is staffing of the SBI's activities, which is currently a holistic phenomenon requiring an appropriate level of administrative and regulatory framework. The need to improve the legal regulations and bylaws of Ukraine in this regard is caused by both the gaps in the current legislation prior to the SBI 'reset' reform and the results of this reform, which exacerbated the unresolved problems of staffing the Bureau or caused new problems of regulatory framework for this phenomenon. These and other problematic aspects of the SBI staffing, as well as the results of inconsistent and unbalanced work of the legislator over the past few years, justify the need for appropriate changes (Tymoshenko, 2020).

We argue that the areas of optimisation of the State Bureau of Investigation's internal HR policy should be: – formation of a centralised system of professional development; – introduction of mechanisms for periodic certification of professional skills; – implementation of programmes to support the psycho-emotional health of employees, including regular testing or psychological counselling (especially important in martial law); – introduction of the principles of inclusiveness in HR policy.

We have identified a separate area for improvement of the system of protection of the rights of witnesses involved in criminal proceedings. In our opinion, the main areas for improvement of administrative legislation related to the protection of witnesses' rights in criminal proceedings should be: – expanding administrative witness protection programmes, in particular, mechanisms for granting witnesses a special protection status and simplifying administrative procedures in the relevant programmes; – improving information security protection in the activities of the State Bureau of Investigation; – administrative provision of psychological support for witnesses; – conducting information campaigns among the public by the State Bureau of Investigation to raise awareness of the importance of testimony and the risks associated with it.

5. Law enforcement interaction and international cooperation

The interaction of law enforcement bodies is also imperfect. In our opinion, the priority areas of improving the interaction of law enforcement bodies to ensure the legality of the State Bureau of Investigation's activities should be as follows: – development of mechanisms for interagency communication (through digitalisation of activities); – conducting interagency trainings and exercises; – exchange of practical experience; – creation of joint investigative teams; – development of special methods of interaction under martial law.

The last area is the expansion of international cooperation through: – the State Bureau of Investigation initiating joint projects within international organisations (Interpol, Europol, OSCE, NATO, etc.); – integration of the State Bureau of Investigation into international digital data exchange systems; – improvement of communication with international human rights organisations to ensure human rights in the course of investigations; – participation of the State Bureau of Investigation in international programmes, projects and conferences to study current transnational challenges in the field of law enforcement; – strengthening international cooperation of the State Bureau of Investigation in the field of financial monitoring (money laundering, terrorist financing, legalisation of illegal income, etc.); – development and implementation of interstate training programmes.

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ОСНОВНІ НАПРЯМКИ УДОСКОНАЛЕННЯ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ПРОЦЕДУРНОЇ СКЛАДОВОЇ РЕАЛІЗАЦІЇ ГАРАНТІЙ ЗАКОННОСТІ ДІЯЛЬНОСТІ ДЕРЖАВНОГО БЮРО РОЗСЛІДУВАНЬ

Аготація. Мета статті полягає у тому, щоб визначити основні напрямки удосконалення адміністративно-правового регулювання процедурної складової реалізації гарантій законності діяльності Державного бюро розслідувань. ***Результати.*** У статті виділено загальні напрямки вдосконалення адміністративно-правового регулювання процедурної складової реалізації гарантій законності діяльності Державного бюро розслідувань: – вдосконалення адміністративного законодавства щодо використання контролю як інструменту адміністративно-правового регулювання; – цифровізація діяльності Державного бюро розслідувань; – оптимізація внутрішньо-кадрової політики Державного бюро розслідувань; – вдосконалення системи захисту прав свідків, які беруть участь у кримінальному провадженні; – покращення взаємодії правоохоронних органів; – розширення міжнародного співробітництва. Виділено напрямки оптимізації внутрішньо-кадрової політики Державного бюро розслідувань: – формування централізованої системи підвищення кваліфікації; – введення механізмів періодичної сертифікації професійних навичок; – впровадження програм підтримки психоемоційного здоров'я працівників, яка включатиме регулярне тестування або психологічні консультації (особливо важливо в умовах воєнного стану); – впровадження засад інклюзивності в кадрову політику. Акцентовано увагу на вдосконаленні системи захисту прав свідків, які беруть участь у кримінальному провадженні через: – розширення програм адміністративного захисту свідків, зокрема, механізмів для надання свідкам спеціального статусу захисту та спрощення адміністративних процедур у відповідних програмах; – покращення захисту інформаційної безпеки у діяльності Державного бюро розслідувань; – адміністративне забезпечення психологічної підтримки свідків; – проведення Державним бюро розслідувань інформаційних кампаній серед населення з метою підвищення обізнаності про важливість свідчення та ризики, пов'язані з цим. Виділено напрями покращення взаємодії правоохоронних органів для забезпечення гарантій законності діяльності Державного бюро розслідувань: – розробка механізмів міжвідомчої комунікації (завдяки цифровізації діяльності); – проведення міжвідомчих тренінгів та навчань; – обмін практичним досвідом; – створення спільних слідчо-оперативних груп; – розробка особливих методик взаємодії в умовах воєнного стану. ***Висновки.*** Окремим напрямом виділено розширення міжнародного співробітництва через: – ініціювання Державним бюро розслідувань спільних проектів у рамках міжнародних організацій (Інтерпол, Європол, ОБСЄ, НАТО тощо); – інтеграцію Державного бюро розслідувань в міжнародні цифрові системи обміну даними; – покращення комунікації із міжнародними правозахисними організаціями для забезпечення прав людини в процесі розслідувань; – участь Державного бюро розслідувань у міжнародних програмах, проєктах та конференціях щодо дослідження сучасних транснаціональних викликів у сфері правоохоронної діяльності; – посилення міжнародної співпраці Державного бюро розслідувань у сфері фінансового моніторингу (відмиванням грошей, фінансуванням тероризму, легалізація незаконних доходів тощо); – розробку та впровадження міждержавних програм підвищення кваліфікації.

Ключові слова: адміністративна юрисдикція, адміністративне право, адміністративні процедури, гарантії, законність, контроль, моніторинг, принципи, розслідування.

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COUNTERACTION BY SPECIAL LAW ENFORCEMENT UNITS TO SMUGGLING OF CULTURAL VALUES AND WEAPONS: EUROPEAN EXPERIENCE

Abstract. ***Purpose.*** The purpose of the article is a legal analysis of the positive European experience of counteraction by special law enforcement agencies to smuggling of cultural values and weapons. ***Results.*** Smuggling of cultural values and weapons is one of the most dangerous threats to international security. The loss of cultural objects weakens national identity and cultural heritage, while the illegal circulation of weapons contributes to conflicts, terrorism and crime. In this context, the study of legal regulations and the practice of law enforcement agencies of different countries allows us to identify effective mechanisms for combating these crimes and the possibility of their adaptation to national conditions. In European countries and the USA, the functions of counteraction are giving way to prevention, which is primarily aimed at using preventive measures with the subsequent elimination of causes and conditions using confidential assistance from citizens. ***Conclusions.*** Considering the analysed positive foreign experience of law enforcement agencies combating the smuggling of cultural values and weapons, a number of recommendations are proposed for law enforcement agencies combating the smuggling of cultural values and weapons in Ukraine: high-quality logistical and financial support; expanded cooperation: conclude new international agreements and strengthen information exchange between states; a national registry: develop a database of cultural values and objects at risk; strengthened border control: introduce specialised units at customs to check cultural values and weapons; training of personnel: conduct regular trainings and seminars for customs and law enforcement officers; facilitation of the return of valuables: simplify the procedures for the restitution of cultural objects for the countries from which they were illegally removed; use the latest information and analytical support to combat the smuggling of cultural values and weapons, especially artificial intelligence technologies, as well as creating joint automated information and search systems in the EU: "Weapons and ammunition smuggling" and "Cultural value smuggling".

Key words: smuggling, cultural values, weapons, ammunition, countermeasures, information and analytical support, foreign experience.

1. Introduction

The problem of smuggling is one of the primary tasks of the state in protecting its economic interests. Throughout the period of Ukraine's independence, a large number of exports and imports of goods have been detected. A particular danger for the state is that smuggling operations are committed with corruption by officials of state and local authorities. This affects domestic producers. Illegal imports of foreign goods reduce demand for Ukrainian products, leading to the liquidation of production facilities, a decrease in the competitiveness of Ukrainian enterprises in the domestic market and their relocation abroad. This may result in a reduction in the number of employees and a cut in their payroll. In addition, the results of such criminal activities have a negative impact on public relations in the field of protection of life and health of citizens in the case of smuggling of weapons and ammunition, nuclear materials and substances, drugs, alcohol, cigarettes, deprive citizens of the right to use cultural values, historical heritage of Ukraine (Kukshynova, Nosenko, 2021). An additional motivation for studying this problem is the fact that in the course of Ukraine's European integration, the system of combating smuggling should shift the focus of its work to interoperability with the security forces of the EU and NATO

countries, which, together with the above, makes the study of the regulatory framework for the interaction of security forces, judicial and law enforcement agencies of Ukraine in the performance of combat missions to combat smuggling quite relevant and worthy of attention of scholars and practitioners (Krylovetskyi, 2020).

Smuggling-related crimes cause significant damage to a country's economic system and seriously threaten the fundamental principles that guide any society. Smuggling undermines government revenues, increases the tax burden on official business entities, kills the need for investment and innovation, reduces the foreign currency that a country can earn from legal exports, and increases unfair competition in the market (Karafo, 2018).

It should be noted that the number of countries to which smugglers are trying to illegally move cultural values is constantly increasing. Recently, the export of antiques to Asian countries, in particular Japan, and to the Middle East has become a trend (Tuliantseva 2007). In connection with the above, it should be noted that in some countries national and international systems of accounting, coding and monitoring and disposal of cultural property have been successfully operating (including: Artefacts Canada, Cultural Heritage Inventory Management System (CHIMS), Sistema Informativo Generale del Catalogo (SIGEC), Archidoc, Mérimée, Palissy, Gioconda, Art Loss Register (ALR), Object ID, Checklist, VRA Core, Cataloging Cultural Objects - CCO, MIDAS, and others). Connecting to such systems enables to track the main changes that have occurred with cultural objects (displacement, theft, return) in an operational mode. In those countries where electronic systems for the registration of cultural property have already been implemented (in particular, Canada, the United States, Malta, Denmark, Italy, France, and the United Kingdom), no uniform approaches to their formation have been defined. Therefore, it is acceptable to adopt international best practices for Ukraine (Kniaziev, 2020).

Moreover, it should be noted that the five largest arms exporters in the world have remained constant. These are, of course, the United States, Russia, China, France and Germany, which account for 74% of international arms supplies, and the United States and Russia together account for 58%. As for imports, the largest arms buyers in 2011-2015 were India, Saudi Arabia, China, the UAE and Australia. Together, they received 34% of all arms imports. It should be noted that in 2011-2015, weapons were mainly imported to Asia and Oceania (46% of global imports), the Middle East (25%), Europe (11%), the Americas (9.6%) and Africa (8%). Between 2006-2010 and 2011-2015, arms imports in Africa increased by 19%, in Asia and Oceania by 26%, and in the Middle East by 61%. However, in the Americas, imports fell by 6%, and in Europe by 41%. The volume of the arms market in 2012-2016 increased by 8.4% compared to the previous five-year period. There was also an upward trend in the global arms market, after many years of decline in this sector (Zharovska, 2018).

When studying crime in its various manifestations, it should be noted that Ukraine is linked to global criminal markets through the following activities: 1) smuggling routes connecting Russia and Ukraine and passing through the occupied territories; 2) global smuggling hubs in Odesa and other ports on the Black Sea (currently, this area is 'frozen' due to Russia's large-scale invasion of Ukraine); 3) factories in Ukraine that produce prohibited export goods; 4) crimes related to human rights violations, namely, human trafficking, white slavery, migrant smuggling, etc. These areas of illegal activity are being handled by various criminal elements, including thieves in law, who are trying to retain criminal influence on the security situation in the southern region of Ukraine (Lutsenko, 2024).

For example, products of the excisable group, light industry, perfumes and cosmetics purchased abroad are smuggled into Ukraine and sold through commercial kiosks, markets, fictitious intermediary firms (used to reduce the profit of a legal company). The majority of the proceeds from such activities are converted into foreign currency through a network of currency exchange offices or money changers. If significant amounts of money are exchanged, they are deposited in cash into the accounts of fictitious business entities, which transfer them to the Ukrainian Interbank Exchange, where they buy foreign currency, allegedly to pay for imported goods. To facilitate smugglers, a network of fictitious commercial structures has already been formed in Ukraine that convert non-cash funds into cash, which scholars constantly draw the attention of law enforcement to (Predborskyi, 2005).

Therefore, in order to achieve and implement such changes to improve the situation, the state of countering smuggling abuses in foreign countries should be reviewed, their methods of combating smuggling should be familiarised, and some of them should be actively cooperated with: 'the problem that has not bypassed any country in the world has recently become a problem without borders due to global integration processes' (Bondarenko, Kuzmenko, 2021).

Furthermore, it should be noted that a survey of SSU employees found that 89% of respondents supported the position that Ukraine should adopt positive foreign experience in combating smuggling of cultural values and weapons. In addition, the survey revealed that practice of foreign law enforcement agencies (special services) and criminal legislation on counteraction to smuggling of cultural values and weapons in European countries should be studied in the following countries: the USA, Canada, Brazil, the UK, France, the Netherlands, Israel, Italy, Spain, Austria, Romania, Bulgaria, Latvia, Lithuania, Estonia, the Czech Republic, Germany, Georgia, Hungary, Poland, Finland, China, Turkey and India. A number of domestic scholars hold the same position.

Thus, the analysis of foreign experience today is a mandatory area of research in any field of science (Lozynska, 2016). It should also be noted that law enforcement bodies of Ukraine lack experience in combating smuggling of cultural values and weapons, and such activities require coordinated action of the latter at both the domestic and international levels. Therefore, international cooperation in combating cultural values and weapons is primarily driven by the need for law enforcement cooperation, as smuggling is committed by transnational organised criminal groups and such cooperation requires a systematic solution to urgent legal, organisational and tactical issues that provide favourable conditions for identifying and documenting all members of organised groups and other participants involved in this crime and other related ones.

As a result, the study of foreign experience in combating smuggling of cultural property and weapons is necessary in the analysis of international regulatory frameworks in general and the effective legal frameworks of individual States in this area under martial law, which has contributed to the relevance of the topic.

The issues of law enforcement agencies' counteraction to smuggling of cultural values and weapons have been studied by: O.S. Anhelovska, D.V. Babikov, I.M. Baziaruk, I.H. Berezhniuk, O.S. Bondarenko, V.V. Varava, V.I. Havryliuk, M.P. Danyliuk, V.I. Dykyi, V.I. Dubyna, H.P. Zharovska, V.P. Zhdanova, V.S. Kniaziev, I.V. Krasnytskyi, A.L. Krylovetskyi, V.V. Kuzmenko, O.O. Kukshynova, I.O. Lozynska, Yu.V. Lutsenko, S.O. Maksymenko, E.S. Moldovan, D.S. Nosenko, S.O. Pavlenko, M.L. Pohrebytskyi, O.I. Popivniak, V.A. Predborskyi, V.H. Sevruk, N.I. Smahlii, V.A. Suvorkin, S.O. Filippov, O.I. Kharaberiush, S.A. Shepetko, I.V. Shymonia, O.Yu. Shostko, O.V. Yurynets.

The purpose of the article is a legal analysis of the positive European experience of counteraction by special law enforcement agencies to smuggling of cultural values and weapons.

2. An analysis of the European experience in establishing criminal liability for smuggling shows

The European experience of establishing criminal liability for smuggling shows that in a number of developed countries with stable and powerful economies, emphasis is placed on the use of economic incentives to counter smuggling, given the high level of law-abidingness of business entities and citizens. Moreover, criminal liability for smuggling of goods, including excisable goods, is also among the levers of influence, in particular, in some EU countries, the criminal liability for smuggling is quite strict (Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine regarding the criminalization of smuggling of goods and excisable goods, as well as false declaration of goods, 2021). In this regard, S.O. Maksymenko argues that the European experience of criminalising smuggling reveals that in a number of developed countries with stable, strong economies, the emphasis is on using economic incentives to combat smuggling, given the high level of law-abidingness of businesses and citizens. In addition, criminal liability for smuggling of goods, including excisable goods, remains among the levers of influence, in particular, some EU countries (the Republic of Italy, the Republic of Lithuania, the Republic of Poland, Romania, the Slovak Republic, the Kingdom of Sweden, the Federal Republic of Germany, Hungary, etc.) provide for strict criminal liability for smuggling (Maksymenko, 2014).

According to the European Union police service Europol, OCGs operating in the EU include representatives of Turkey (drug and arms trafficking, money laundering, racketeering), Nigeria (human trafficking, drug trafficking, fraud), Morocco (cannabis trafficking, smuggling), fraud), Moroccans (cannabis trafficking, smuggling), Colombians (cocaine trafficking), Chinese (illegal migration), Vietnamese (illegal migration, smuggling of goods, general criminal services) (Shostko, 2007). Experts of the project 'Smuggling: To Criminalise or Not to Criminalise? A View from Border Volyn' project, based on the analysis of the experience of European countries, identify different types of liability in the EU: in the UK, smuggling is punishable by up to 7 years in prison; in Hungary, criminal liability arises after smuggling 15 cartons of cigarettes; in Romania, you can go to prison for transporting even one pack of smuggled cigarettes through the green corridor; In Slovenia, a smuggler can be imprisoned for 8

cartons of tobacco products; in Poland, the only penalty for cigarette smuggling is a fine, which ranges from 168 to 3360 Polish zlotys (45 to 900 USD) (Zakirova, 2021). In different EU countries, the threshold for the value of goods that triggers criminal liability varies significantly. For example, in Slovakia, this figure does not reach 300 euros, while in Portugal it is more than 50 thousand. Overall, border controls prevent less than half of all illegal movements (Maksymenko, 2014).

In the UK, a specialised prosecutorial body, the Serious Fraud Office (SFO), has such powers, dealing with the most serious and complex cases of fraud, bribery and corruption at the highest level (Batyrhareieva, Holovkin, Novikov, 2020). Several bodies are involved in ensuring customs security in the UK, the main ones being Her Majesty's Revenue & Customs, the National Crime Agency, the UK Border Force, and the UK Visas and Immigration Agency (Popivniak, 2018).

Interestingly, unlike the United States, where the main task of the Customs and Border Protection Service is to protect citizens from external and internal threats, and the fiscal function is secondary, in the UK, as in China, the main goal of the Customs Service is to fill the budget, while the National Crime Agency is responsible for protecting people in this country from external threats. In addition to it, the British Border Force performs functions similar to the US Border Patrol, namely immigration and customs control, combating smuggling, and collecting customs duties. However, unlike in the US, this body is not a separate ministry, but a part of the Ministry of the Interior, similar to China. Therefore, the UK sees the main threats to customs security as financial losses to the budget and the security of its subjects from terrorist activities. Therefore, all the bodies that ensure the UK's customs security face the task of fiscal security (Lisnichenko, Plynokos, Halan, 2023).

It should be noted a thorough approach of the Dutch legislator to regulating liability for smuggling offences. The range of crimes envisaged by the Criminal Code of the Kingdom of the Netherlands of 1881 (hereinafter - the Dutch Criminal Code, we are talking about the current version of the Code) is quite wide: from acts that infringe on the foundations of credit and monetary relations to economic offences. For example, a person who imports counterfeit or falsified coins, government securities or banknotes into the European part of the Kingdom (directly to the Netherlands) is subject to criminal liability under Article 209 of the Dutch Criminal Code. The sanction is punishable by imprisonment for a term not exceeding 9 years or a fifth category fine. A person who imports coins with cut edges into the European part of the Kingdom under the guise of undamaged coins is liable under Article 211 of the Dutch Criminal Code. The punishment for this offence is imprisonment for a term not exceeding 8 years or a fifth category fine (Popivniak, 2018).

In France, customs and regulatory matters have always been one of the most important tools for implementing public policy, so the experience of general customs and regulatory framework and application of customs systems is of great importance in creating the legal basis for the customs union of European countries. France has joined the European Customs Union. Measures to centralise customs procedures have a significant impact on the customs administrative procedures for import operations in France. The Financial and Trade Licensing Service (SOFICO) and the Directorate General of Customs and Indirect Taxes are important (Yurynets, 2021).

In addition, in France, customs control over foreign trade entities is implemented in two areas: formal and fundamental control. At the moment of crossing the customs border, representatives of the French customs authorities fundamentally check about 5% of imports and 1% of exports of goods. The remaining 95% are subject to control within 1-3 years after the customs documents are issued (Kukshynova, Nosenko, 2021). According to the French Criminal Code, the types of criminal punishment are: 1) conviction with the imposition and execution (serving) of a sentence; 2) conviction with conditional non-execution (exemption from serving) of the sentence; 3) conviction with unconditional non-execution (exemption from serving) of the sentence; 4) conviction with conditional release from the sentence; 5) conviction without imposition of a sentence (Krasnytskyi, 2008).

It should be noted that Finland is the first successful example with an effective and clear system of combating smuggling and corruption due to a strong regulatory framework and the absence of serious gaps in the legislation. It is one of the least smuggled countries in the world. As a member of the EU, Finland is a party to all major EU regulations on fighting organised crime, which is a very important factor in its efforts to combat the spread of crime, including smuggling. However, the implementation of European laws in the domestic legal system of Finland is carried out very deliberately and carefully. A key principle of this process is the organic combination of Finnish national legislation with European legislation with minimal changes to the former (Bondarenko, Kuzmenko, 2021).

For example, the unit for combating organised crime in Italy is the Antimafia Investigation Division, in Israel - the Yahbal Unit for Combating Organised Crime and International Organised Crime (national unit for combating organised and international crime), in Romania - the Directorate General for Combating Organised Crime and Drugs of the Ministry of Administration and Interior of Romania. The Department for Combating Organised Crime of the Ministry of Internal Affairs of the Slovak Republic includes the following units: for criminal groups: combating terrorism; combating forgery of documents and securities; combating smuggling and corruption; regional departments. In countries such as Austria, Georgia, Latvia, Lithuania, Moldova, Germany, Poland, Czech Republic, Hungary and others, services and units for combating organised crime are part of the criminal police (Kharaberiush, 2015).

Organisationally, customs administrations are formed as separate agencies, as well as part of a joint customs and tax administration, which is the case in Ukraine. In 13 EU countries (Czech Republic, Republic of Poland, Romania, Bulgaria, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg, Slovenia, Sweden), customs administrations are separate agencies, usually under the control of the Ministry of Finance. In another 12 countries (Austria, Belgium, Denmark, Estonia, Hungary, Ireland, Latvia, the Netherlands, Portugal, the Slovak Republic, Spain, and the United Kingdom), customs administrations are part of a single tax and customs authority. However, the countries and the adopted model of customs administration organisation do not have a clear connection (Varava, 2017).

To combat smuggling and corruption during customs clearance, Belgium not only adheres to the traditional repressive approach of criminalising smuggling, but also cares about preventing it. Therefore, this problem is reflected in the COPERNIC reform, which stands for close financial control. By expanding concepts such as 'smuggling', 'corruption' and certain aspects of violation of customs rules in case of abuse of power, Belgium not only limited itself to the criminal aspect, but also left room for such concepts, which gradually led to the creation of the so-called conduct code (Bondarenko, Kuzmenko, 2021).

Since 2016, the regulatory framework for customs relations in Germany has been the Customs Code of the European Economic Community (hereinafter - EEC), adopted in 2013 (Varava, 2017). As of 1 January 2016, a new model of customs administration was introduced in Germany, with the General Customs Directorate (Generallzolldirektion) as the highest federal authority. In order to ensure customs security, federal legislation vests the German customs authorities with quite broad powers. In addition to collecting customs duties and controlling the movement of goods across the border, the customs authorities are also responsible for combating the smuggling of drugs, tobacco, alcohol, weapons and ammunition, as well as preventing and suppressing the financing of terrorism. Recently, combating illegal labour activities, the work of mobile customs groups to detect these activities, as well as detection of counterfeit goods when they are attempting to enter the territory of the European Union have become particularly important (Petrova, 2019).

The main legislative act regulating social and legal relations in the area under study in Germany is the Law on the Customs Criminal Police Office and Customs Investigation Authorities of 16 August 2002, known as the Law on the Customs Investigation Service (ZFdG) (hereinafter - the ZFdG Law). According to § 1 of this Law, the Customs Investigation Service consists of the Customs Criminal Police Office and the General Directorate of Customs Investigations, which is subordinated to the operational and investigative customs offices (Gesetz über das Zollkriminalamt und die Zollfahndungsämter, 2002). The Customs Criminal Police Department is the central body of the Customs Investigation Service and at the same time one of the Central Departments of the Customs Administration's information and communication system. Officials of this structural subdivision of the Customs Investigation Service are vested with the powers of investigative bodies and are investigators of the Prosecutor's Office (§16) (Moldovan, Zhdanova, 2020).

The German Customs Inspection Service consists of the Customs Criminal Police and eight subordinate customs inspection offices, dealing with everything from moderate crime to organised customs crime. Their main tasks are performed by customs control authorities, such as controlling tobacco and drug smuggling. The Customs Criminal Police serves as the central office and coordinates the activities of the Customs Investigation Unit. This also includes the administration of the so-called Information System for Customs Investigations (INZOLL). An electronic system that stores data on customs offences committed by customs authorities. The Customs Criminal Police initiates its own investigations only for especially grave crimes, such as the proliferation of weapons of mass destruction (Gesetz über das Zollkriminalamt und die Zollfahndungsämter, 2002).

In the course of combating smuggling, corruption and customs violations, some states promote the use of NGOs. For example, in Sweden, a non-governmental organisation Democratic Audit, established in 1994, is engaged in independent supervision of crime in various areas of public life. The organisation includes a large number of domestic political scientists, economists and other scholars. In addition to such supervision and supervision of the general democratic situation, this organisation specialises in the study of various special issues that directly affect combatting smuggling and corruption (Bondarenko, Kuzmenko, 2021).

A relatively new form of cooperation is the activities of the GUUAM Clubs, which have been established in such countries as Bucharest (Romania), Warsaw (Poland), Sofia (Bulgaria), and Tokyo (Japan). GUUAM is an open organisation for other states that share its goals and principles (Havryliuk, Dubyna, Danyliuk, 2007).

Cooperation of law enforcement agencies within the Organisation is carried out on the basis of the Agreement on Cooperation among the Governments of GUUAM Participating States in the field of combating terrorism, organised crime and other dangerous types of crime of 20 July 2002 and is actively implemented within the framework of the project of the Virtual Centre of the Interstate Information and Analytical System (VC/IAS) – an association of law enforcement and other state bodies of the GUUAM member states, designed to ensure communication, analysis and exchange of law enforcement information in real time, as well as to facilitate joint operations and coordination of investigations of the most dangerous crimes. The GUUAM Virtual Centre, in accordance with the norms of international law and national legislation of the member states, cooperates in the fight against smuggling and other customs offences (Havryliuk, Dubyna, Danyliuk, 2007).

3. Experience in implementing operational and investigative powers in the Republic of Poland

In the context of the study, the experience of exercising operational and investigative powers of the Ministry of Defence of the Republic of Poland is of particular interest. The Customs Service of the Republic of Poland (Służba Celna Rzeczypospolitej Polskiej) in the system of state authorities performs the role of a controller of international trade, a fiscal authority responsible for the calculation and collection of value added tax and excise duty, as well as the main fighter against smuggling and customs fraud (Moldovan, Zhdanova, 2020).

The organisational structure of the Polish customs system consists of the Department of Excise and Customs Tax, the Department of Customs Service, the Department of Customs Policy, the Department of Customs and Excise Control, which are structural elements of the Ministry of Finance of the Republic of Poland. The tasks of the Customs Service of the Republic of Poland include the implementation of the state customs policy, as well as other tasks, such as: control over compliance with customs law and other regulations related to the movement of goods across the border; collection of customs duties and other payments related to the movement of goods; tax control, collection of excise tax; cooperation in the implementation of common European policy; maintenance of statistics on internal trade between EU member states (INTRASAT); prevention of illegal export of cultural property; control over the legality of employment of foreigners; cooperation with customs authorities of other EU countries and international organisations (Berezhniuk, 2009). According to the figures cited by A. Butin in his analytical and advisory work entitled 'Is it necessary to criminalise smuggling of goods?', Poland provides for punishment for smuggling in the form of a fine or imprisonment. The threshold after which an administrative offence becomes a criminal offence is PLN 10,500 (about EUR 2,37 thousand). The fine can reach 20 million zlotys (about 4.5 million euros). In Germany, according to the expert, illegal import, export and transit of goods is considered a tax crime. The penalty for this crime may be a fine (from EUR 10,500 to EUR 250,000) or imprisonment for up to 5 years. Organising smuggling on a large scale can result in a 10-year prison sentence (Butin, 2020).

It should be noted that the operational and investigative powers of the Customs Service of the Republic of Poland are transformed into practical actions by officials of the relevant structural units. For example, one of the tasks of the Director of the Customs Chamber is to detect, prevent and combat fiscal offences and crimes and to bring to criminal liability the perpetrators of such offences within the limits set out in the Fiscal Criminal Code of the Republic of Poland (Article 19(1)), while the Head of the Customs Service is called upon to perform similar activities in the field of taxation (Article 20(1)) (Ustawa o Służbie Celnej, 2009). The scope of powers of the officials of the Customs Service of the Republic of Poland who perform customs control also includes the right to search premises with the use of technical devices and sniffer dogs, interview witnesses, conduct investigative experiments in justified cases, collect evidence, make video, audio and photo recordings,

and conduct direct prosecution of a suspect (Article 32(1), (4)). Officials of the so-called 'floating units' of the Customs Service also have the right to pursue ships on the water and stop them if they suspect that crew members or passengers have committed a crime (Article 47) (Ustawa o Służbie Celnej, 2009).

In 2000, Poland established the Central Bureau of Investigation (CBI), which is independent of the local police, although it has its own units in each region of the country. A well-known Polish criminologist W. Plawaczewski argues that the CBR is a mobile and efficient structure. The CBR is mainly engaged in three areas: a) combating organised crime and illegal acts that contribute to its prosperity (arms and explosives trafficking, extortion, etc.); b) crimes related to drug trafficking (production, smuggling, distribution); c) economic crimes (money laundering, fraud, corruption). The CBR is responsible for exchanging information with law enforcement agencies of other countries and Interpol (Shostko, 2009).

For example, with the support of Europol, a group of smugglers who supplied weapons, in particular to Ukraine, was detected in Poland. As part of a two-year investigation into the smuggling of weapons from Slovakia to Poland, Ukraine and Russia, a criminal group of 12 people was uncovered in Poland with the support of Europol. Earlier, nine Ukrainians were detained in the course of this investigation, the Europol press service said on Thursday. The organisation's press service reports, "According to the investigation, the organised criminal group smuggled weapons from Slovakia to Poland, Russia and Ukraine. The 96 seized firearms include revolvers, pistols, automatic rifles and handguns. Several thousand rounds of ammunition of various calibres and one hand grenade were also confiscated during the day's action. In addition, cash worth more than EUR 50,000, as well as 14 marijuana plants and some amphetamines were found during the search of the house." Europol detailed that this action was part of a larger two-year investigation conducted by the Polish Border Guard, which, in addition to today's confiscation, led to the seizure of almost 200 firearms, including the so-called Flaubert guns and almost 2,700 pieces of ammunition (With the support of Europol, a group of smugglers who were supplying weapons, in particular, to Ukraine, was uncovered in Poland, 2021).

In 1969, Italy created a team of carabinieri for the protection of cultural property, which searches for missing artefacts at home and abroad. An official international list of stolen paintings and works of art is periodically published. A register of such items is created not only by intergovernmental organisations and national authorities, but also by private individuals. For example, in 1991, a private international database was created to search for stolen works of art and antiques (Art Loss Register). It helped return about 1400 works of art to their rightful owners (Shymonia, 2021).

Therefore, having analysed the experience of European states on the subject of research, we should agree with the position of V. Varava that the customs administrations of the EU countries play a key role in preventing and combating offences related to the evasion of customs duties, excise duties and other taxes, as well as smuggling, drug trafficking, money laundering, illegal movement of individuals and goods across the customs border (Varava, 2017).

In addition, O.I. Haraberyush's position, with which we agree and support, that European and world practice suggests that where units for combating organised crime operate separately, in particular in the UK, France, Italy, the USA and other countries, the effectiveness of their activities is much higher. Therefore, international experience and the experience of Ukraine prove that it is important for effective counteraction to organised crime that the services involved in this counteraction are not part of the same block, but exist in parallel and independently of each other (Kharaberiush, 2015).

It is determined that the volume of smuggling of goods in most EU countries is much lower than in Ukraine. However, in developed countries such as France, Ireland and the United Kingdom (a former EU country), the volume of smuggling is several times higher than in Ukraine. Nevertheless, EU legislation is more stringent in punishing smugglers. The problems of updating technical means of customs control and increasing the motivation of customs authorities in the fight against smuggling remain unresolved (Naidenko, Hunko, Moskalenko, 2024).

Therefore, developed countries demonstrate effective examples of the creation and operation of specialised units that have a narrow specialisation in combating smuggling of cultural values and weapons. The key aspects of their activities are the use of modern technologies, in-depth professional training of personnel and close international cooperation.

• Italy: Carabinieri TPC (Cultural Heritage Protection Unit) Italy is a leader in the protection of cultural property thanks to the work of the Carabinieri TPC, established in 1969. This unit is responsible for the search, investigation and recovery of stolen cultural property. It maintains unique databases of stolen artefacts and actively cooperates with UNESCO, Interpol and museums around the world. Accord-

ing to the Italian authorities, Carabinieri TPC annually returns thousands of cultural objects.

• France: Central Office for the Fight against Trafficking in Cultural Goods (OCBC) The French Central Office for the Fight against Trafficking in Cultural Goods (OCBC) specialises in investigating complex cases involving cultural objects. They actively use the Interpol database, provide expert evaluation of confiscated objects and engage in international cooperation, including joint operations with neighbouring countries.

• European Union: Operation Pandora Under the auspices of Europol and Interpol, large-scale international operations are conducted to combat trafficking in cultural heritage. For example, Operation Pandora involved law enforcement from more than 30 countries and resulted in the seizure of thousands of cultural objects such as paintings, archaeological artefacts and weapons.

• Germany: Federal Criminal Police Bureau (BKA) The German BKA has specialised departments that investigate cases of arms and cultural property smuggling. One of their tools is cooperation with auction houses to identify illegally sold objects.

Special emphasis should be placed on foreign experience in the use of information and analytical support for combating smuggling of cultural property and weapons.

Law enforcement agencies of foreign countries widely use automated information retrieval systems that can significantly optimise the detection and investigation of crimes committed by members of organised groups. Considering foreign experience, the national identification information system should be based on a single technology that enables processing of a wide variety of information. Therefore, the introduction of the most modern techniques, means, methods and technologies for preventing, exposing and counteracting the activities of organised criminal groups into the practical activities of law enforcement agencies is essential. In the era of globalisation, increasing precedents for the use of artificial intelligence, and the rapid development of information and communication technologies, it is advisable to use modern integrated information and analytical bases to increase efficiency in the fight against organised crime, which will enable law enforcement practitioners to identify signs of organised crime and prevent such activities more promptly and objectively (Shepetko, 2017).

Therefore, it should be noted that, in general, several years ago it became apparent that the use of artificial intelligence technologies in various prevention strategies, including at the border, would facilitate rapid decision-making based on the analysis of huge amounts of information, which would ensure a quality of prevention that is otherwise unattainable. With regard to the significant cost of such developments, it is necessary to apply technological solutions that already allow achieving significant proactive results in crime prevention (Filippov, 2019).

Therefore, law enforcement bodies need to be re-equipped with more modern technical means of customs control, namely through artificial intelligence technologies, which should contribute to better control and counteraction to smuggling of goods and excisable goods. The National Revenue Strategy 2030 (2023) also provides for the upgrade of customs control equipment with a focus on new information technologies, but does not provide for direct measures to introduce artificial intelligence technology (Naidenko, Hunko, Moskalenko, 2024).

4. Conclusion.

To sum up, it should be noted that smuggling of cultural values and weapons is one of the most dangerous threats to international security. The loss of cultural objects weakens national identity and cultural heritage, while the illegal circulation of weapons contributes to conflicts, terrorism and crime. In this context, the study of legal regulations and the practice of law enforcement agencies of different countries allows us to identify effective mechanisms for combating these crimes and the possibility of their adaptation to national conditions.

It is established that in order to find the optimal models of the counteraction to smuggling, the foreign experience and structure of their special units for combating organised crime have been studied, and the structure of police departments of the USA, European and Asian countries has been analysed. Thus, comparing the experience of special police units in combating smuggling of weapons and ammunition in the USA, European and Asian countries, it should be noted that the approaches of law enforcement agencies are completely different in nature. For example, in European countries and the United States, the functions of counteraction give way to prevention, which is primarily aimed at using preventive measures with the subsequent elimination of causes and conditions with the use of confidential assistance from citizens. In contrast to European countries and the United States, Asian states strictly adhere to strict repressive measures. Legal acts, practice of foreign law enforcement agencies (special services) and criminal legislation on counteraction to smuggling of cultural values and weapons in European countries have been analysed. For example, a survey of SSU employ-

ees found that 89% of respondents supported the position that Ukraine should adopt positive foreign experience in combating smuggling of cultural values and weapons. The experience of foreign law enforcement agencies shows that a comprehensive approach, including regulatory frameworks, modern technology and international cooperation, is key to effective counteraction to smuggling of cultural property and weapons. Ukraine can adapt these methods to its own national circumstances.

Considering the analysed positive foreign experience of law enforcement agencies combating the smuggling of cultural values and weapons, a number of recommendations are proposed for law enforcement agencies combating the smuggling of cultural values and weapons in Ukraine: high-quality logistical and financial support; expanded cooperation: conclude new international agreements and strengthen information exchange between states; a national registry: develop a database of cultural values and objects at risk; strengthened border control: introduce specialised units at customs to check cultural values and weapons; training of personnel: conduct regular trainings and seminars for customs and law enforcement officers; facilitation of the return of valuables: simplify the procedures for the restitution of cultural objects for the countries from which they were illegally removed; use the latest information and analytical support to combat the smuggling of cultural values and weapons, especially artificial intelligence technologies, as well as creating joint automated information and search systems in the EU: "Weapons and ammunition smuggling" and "Cultural value smuggling".

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ПРОТИДІЯ СПЕЦІАЛЬНИМИ ПІДРОЗДІЛАМИ ПРАВООХОРОННИХ ОРГАНІВ КОНТРАБАНДІ КУЛЬТУРНИХ ЦІННОСТЕЙ ТА ЗБРОЇ: ЄВРОПЕЙСЬКИЙ ДОСВІД

Анотація. Метою статті є правовий аналіз позитивного європейського досвіду протидії спеціальними правоохоронними органами контрабанді культурних цінностей та зброї. ***Результати.*** Контрабанда культурних цінностей і зброї є одними з найбільш небезпечних загроз для міжнародної безпеки. Втрата культурних об'єктів послаблює національну ідентичність і культурну спадщину, тоді як нелегальний обіг зброї сприяє конфліктам, тероризму та злочинності. У цьому контексті дослідження нормативно-правових актів і практики правоохоронних органів різних країн дозволяє виявити ефективні механізми протидії цим злочинам та можливості їх адаптації до національних умов. У європейських країнах та США функції протидії поступаються місцем запобіганню, що впершу чергу направлене на використання саме запобіжних заходів з подальшим усуненням причин та умов із використанням конфіденційної допомоги громадян. ***Висновки.*** Ураховуючи проаналізований позитивний зарубіжний досвід протидії правоохоронними органами контрабанді культурних цінностей та зброї було запропоновано ряд рекомендацій щодо протидії правоохоронними органами контрабанді культурних цінностей та зброї в Україні: якісне матеріально-технічне та фінансове забезпечення; розширення співпраці: Укладання нових міжнародних угод і посилення інформаційного обміну між державами; створення національного реєстру: розробка бази даних культурних цінностей і предметів, що перебувають у зоні ризику; посилення контролю на кордонах: впровадження спеціалізованих підрозділів на митницях для перевірки культурних цінностей і зброї; навчання кадрів: проведення регулярних тренінгів і семінарів для працівників митних служб і правоохоронних органів; сприяння поверненню цінностей: спрощення процедур реституції культурних об'єктів для країн, звідки вони були незаконно вивезені; використання новітнього інформаційно-аналітичного забезпечення протидії контрабанді культурних цінностей та зброї, особливо це стосується технологій штучного інтелекту, а також створення спільних автоматизованих інформаційно-пошукових систем в ЄС: «Контрабанда зброї та боєприпасів» та «Контрабанда культурних цінностей».

Ключові слова: контрабанда, культурні цінності, зброя, боєприпаси, протидія, інформаційно-аналітичного забезпечення, зарубіжний досвід.

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TRANSFORMATION OF FUNCTIONS OF THE NATIONAL POLICE AS AN ENTITY ENSURING LAW AND ORDER UNDER MARTIAL LAW

Abstract. ***Purpose.*** The purpose of the article is to study the transformation of the functions of the National Police as an entity ensuring law and order under martial law. ***Results***. The scientific article studies the transformation of the functions of the National Police as an entity ensuring law and order under martial law. It is stated that at the legislative level, for the period of martial law in Ukraine, the range of powers of police officers has been temporarily expanded, and changes have been made to the procedure for performing police activities. Priority tasks in the activities of the National Police during the period of martial law are highlighted. It is established that the legislator has significantly expanded the powers of the National Police during martial law with the purpose of taking the necessary measures to normalise the situation under its service area as soon as possible, and to ensure and restore law and order and legality. The opinion on the introduction of such concepts as 'combat environment', 'combat situation', 'combat mode of operation of police units' in the context of the National Police's activities during martial law is supported. It is concluded that the activities of the National Police under martial law undergo profound changes, acquire new features, and undergo organisational restructuring. It is underlined that transformation of the functions of the National Police of Ukraine under martial law is aimed at expanding and developing the competence of the National Police, increasing the efficiency and effectiveness of its activities, accumulating forces and means of the National Police during emergency conditions, as well as achieving the main goal of the National Police, that is, ensuring the protection of human rights and freedoms, combating crime, and maintaining public security and order. ***Conclusions.*** It is determined that a characteristic feature of such transformations is the flexibility and adaptability of the National Police, which depends on the current operational situation, available forces and means, as well as on the influence of external factors and opportunities of the modern world, such as the development of technology.

Key words: law and order, entity ensuring law and order, police, function, competence, powers, martial law, transformation, police, MIA.

1. Introduction

The legal regime of martial law in Ukraine in connection with the armed conflict between Russia and Ukraine has become a decisive destabilising factor that has affected the development of legal relations between the state and society. There has been a transition to a military mode in various sectors of public life. The activities of the National Police have also undergone innovations, some previously unused methods and techniques have been developed, some functions have been expanded, the principles of respect for human rights and freedoms have been developed, and ensuring public safety and order has acquired new challenges, etc. The tasks assigned to the police by society under martial law have been implemented due to the creation of a legal framework and mechanisms for its administration. Moreover, the implementation of one of the main tasks of the police – ensuring law and order on the territory of Ukraine – has been developed under the new extraordinary conditions of society and has reached European standards of observance of human rights and freedoms.

The activities of the National Police in general and its individual types and areas have been repeatedly studied by foreign and domestic scholars. The specific features of the functioning of the National Police have been the focus of research interests of such scholars as V.V. Abroskin, O.I. Bezpalova, I.S. Drok, O.F. Kobzar,

R.V. Myroniuk, O.M. Muzychuk, H.V. Muliar, V.O. Neviadovskyi, A.A. Nikitin, V.V. Sokurenko and many others. However, the transformation processes of the National Police during the period of martial law have not been studied in general.The purpose of the article is to study the transformation of the functions of the National Police as an entity ensuring law and order under martial law.

2. Legal and regulatory framework for transforming the functions of the National Police

Since the beginning of the full-scale invasion of Ukraine by Russian troops in February 2022, law enforcement bodies have been operating under increased pressure due to the performance of both crime-fighting functions and tasks to repel and deter Russian armed aggression. The issues of ensuring public order and security, observance and protection of human rights, rights and freedoms of citizens have always been within the competence of national authorities. Meanwhile, the tasks to be solved regarding public order and security, especially under martial law, require coordinated actions of all actors of the national security and defence sector, with the National Police being one of the central actors. The National Police, as an entity that ensures law and order, has faced new challenges due to external emergencies.

However, Ukrainian legislation does not always keep pace with developments in society. We will analyse the provisions of two Laws of Ukraine that dealt with changes in the activities of the National Police under martial law: "On Amendments to the Laws of Ukraine "On the National Police" and "On the Disciplinary Statute of the National Police of Ukraine" in order to optimise the activities of the police, including under martial law" (The Law of Ukraine on Amendments to the Laws of Ukraine "On the National Police" and "On the Disciplinary Statute of the National Police of Ukraine" in order to optimize police activities, including during martial law, 2022); "On Amendments to the Law of Ukraine "On the legal status of a missing person" and other legislative acts of Ukraine on improving the legal regulation of social relations associated with the acquisition of the status of a person who has disappeared under special circumstances" (Law of Ukraine On Amendments to the Law of Ukraine "On the legal status of a missing person" and other legislative acts of Ukraine on improving the legal regulation of social relations associated with the acquisition of the status of a person who has disappeared under special circumstances, 2022). The main statements of these legal regulations in the context of the topic under study are as follows:

1. Temporary expansion of the range of police powers for the period of martial law in Ukraine, implementation of measures to ensure national security and defence, repulsion and deterrence of armed aggression of the Russian Federation and/or other states against Ukraine and 60 days afterwards, the list of which is provided for in Article 23 of the Law of Ukraine 'On the National Police' (Law of Ukraine on the National Police, 2015) (within the scope of competence, to carry out operational demining (detection, neutralisation and destruction of explosive objects with respect to which there are grounds to believe that they are objects, instruments or means of committing administrative or criminal offences); to organise work on granting, revoking and confirming police officers' access to special explosive works; to provide technical and forensic support for the inspection of the scene of an incident, including those related to fires and special explosive works on the facts of explosions, reports of detection of explosive objects, threat of explosion; to collect biometric data of persons, etc.)

2. Amendments to the procedure for police measures: police officers are entitled to check documents and record the data contained in the documents if a person has external features similar to those of a person who has unauthorisedly left a place of detention of prisoners of war; to stop vehicles if there is information indicating that the driver or passenger of the vehicle is a person who has unauthorisedly left a place of detention of prisoners of war; to use in their activities technical means such as unmanned aerial vehicles and special technical means to counteract their use; specialised software for analytical processing of photo and video information, including for identifying persons and vehicle licence plates; to use any means at hand, not only those special means provided for in Article 45 of the Law of Ukraine 'On the National Police'; to use coercive measures against persons participating in the armed aggression against Ukraine, without considering the requirements and prohibitions relating to the procedure for the use of coercive measures, the procedure for the use of special means and the procedure for the use of firearms (Law of Ukraine on the National Police, 2015).

3. Formulation of priority tasks in police activities

An analysis of the events that took place in the country during the period of martial law, as well as the powers defined by law, enables to identify priority tasks in the police activities:

– Prevent, suppress and eliminate acts of massive violation of public order and mass disorder on the territory of Ukraine (this task was especially important for the police at the beginning of the full-scale invasion, when looting was widespread, as well as during evacuation measures, including forced evacuation

in Donetsk, Zaporizhzhia, Luhansk, Kharkiv and Kherson regions);

– Record the facts of crimes committed on the territory of Ukraine by the military of the armed forces of the rf, rb and their accomplices;

– Repulse and protect against the armed aggression of the rf against Ukraine by ensuring public order and security. These functions are directly entrusted to the interregional territorial body of the National Police – the Special Police Department 'United Assault Brigade "Liut," which is directly involved in hostilities along the entire contact line. In addition, certain local police units that do not directly perform combat missions, but are involved in certain tasks related to overcoming the consequences of the terrorist actions of the aggressor state against the civilian population of Ukraine under martial law;

– Ensure public order during major accidents, catastrophes, toxic and radioactive contamination, as well as during the elimination of the consequences of hits by enemy long-range weapons on civilian objects on the territory of Ukraine;

– Develop further the use of unmanned aerial vehicles in the territorial units of the National Police. The armed conflict with the Russian Federation forces prompted the development of technologies and their active implementation in the activities of the National Police. The active use of unmanned aerial vehicles in the territorial units of the National Police is effective in many areas: reconnaissance and combat activities; aerial reconnaissance in support of special operations; ensuring public safety and order; searching for missing persons; documenting and recording criminal offences; creating a source of information during the investigation of especially grave crimes; creating high-quality maps and terrain diagrams during investigative and operational activities; traffic monitoring; control over the activities of participants in mass events when a large number of people gather in public places; ensuring surveillance of protected objects and persons subject to protection by the National Police of Ukraine; providing assistance to people in places inaccessible to police until additional forces arrive, etc;

– Strengthen the protection of objects of strategic importance and critical infrastructure. The new realities require the use of more forces and means to protect such facilities, as well as new methods and forms of activity;

– Ensure control and access control at checkpoints;

– Ensure public safety and order during the curfew, as well as respond to violations of state-imposed restrictions for this period;

– Organise accounting and application of control and supervisory measures for the objects of the permit system;

– Involve the National Police personnel in demining the de-occupied territories of Ukraine;

– Provide humanitarian assistance to civilians and ensure the livelihoods of the population.

This list is not permanent and may be supplemented in view of changes in the operational situation. It is the flexibility of the National Police forces to the operational situation that characterises the transformation processes of the National Police under martial law.

It should be noted that the effectiveness of the forms and methods of the National Police in the context of martial law largely depends on the adaptability of the forces and means of police bodies and units to the dynamic conditions of the state of emergency. Under such conditions, it is important to improve the forms and methods of the National Police, including in terms of interaction with communities.

The procedure for transferring the forces and means of the National Police to the enhanced version of service, both throughout Ukraine and in its separate territories, is established by law (Order of the Ministry of Internal Affairs of Ukraine on the approval of the Instructions on the procedure for transferring the bodies of the National Police of Ukraine to the enhanced version of official activity, 2015). Moreover, the personnel of the National Police should have appropriate training, proficiency, abilities and skills, the ability to attract additional forces, material and technical resources, and the integrated use of preventive, organisational, legal, tactical and strategic forms and methods of activity to normalise the operational situation as soon as possible. All of this was demonstrated in the early days of the full-scale armed conflict, as well as in the subsequent changes in the operational situation and the emergence of new extraordinary circumstances related to the conflict.

At present the legislator has significantly expanded the powers of the National Police during martial law with the purpose of taking the necessary measures to normalise the situation under its service area as soon as possible, and to ensure and restore law and order and legality.

In this regard, we have to agree with a group of scholars (O.M. Muzychuk, V.O. Neviadovskyi and V.O. Naida) who insist on the introduction of such concepts as 'combat environment' and 'combat situation' in the context of the National Police's activities during the introduction of martial law as states of objective reality, in which new organisational, logistical and technical directions are established under martial law (Muzychuk, Neviadovskyi, & Naida, 2023). In the activities of the National Police, the authors identify the category of 'combat mode of functioning of police units'

as a set of activities of police units under martial law (Muzychuk, Neviadovskyi, & Naida, 2023). The list of actions of the personnel under such a regime, including interaction with other agencies and the public, should be defined at the regulatory level to avoid situations where the lack of instructions from superiors on further actions of the National Police personnel leads to chaotic actions of police officers at different levels, destabilisation of the already emergency situation in society, and serious consequences for civilians and police officers.

4. Conclusions

To sum up, the activities of the National Police under martial law undergo profound changes, acquire new features, and undergo organisational restructuring. The transformation of the functions of the National Police of Ukraine under martial law is aimed at expanding and developing the competence of the National Police, increasing the efficiency and effectiveness of its activities, accumulating forces and means of the National Police during emergency conditions, as well as achieving the main goal of the National Police, that is, ensuring the protection of human rights and freedoms, combating crime, and maintaining public security and order. A characteristic feature of such transformations is the flexibility and adaptability of the National Police, which depends on the current operational situation, available forces and means, as well as on the influence of external factors and opportunities of the modern world, such as the development of technology.

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ТРАНСФОРМАЦІЯ ФУНКЦІЙ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ ЯК СУБ'ЄКТА ЗАБЕЗПЕЧЕННЯ ПРАВОПОРЯДКУ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. ***Мета*** наукової статті – дослідити трансформацію функцій Національної поліції як суб'єкта забезпечення правопорядку в умовах воєнного стану. ***Результати.*** Наукова стаття присвячена дослідженню трансформації функцій Національної поліції як суб'єкта забезпечення правопорядку в умовах воєнного стану. Констатовано, що на законодавчому рівні на період введення в Україні воєнного стану тимчасово розширено коло повноважень поліцейських, внесені зміни в порядок здійснення поліцейських заходів. Виділені пріоритетні завдання в діяльності Національної поліції в період дії правового режиму воєнного стану. З'ясовано, що законодавець суттєво роз-

ширив повноваження Національної поліції під час воєнного стану з метою якнайшвидшого вжиття необхідних заходів для нормалізації ситуації на території обслуговування, забезпечення та відновлення правопорядку та законності. Підтримана позиція про введення в обіг в контексті діяльності Національної поліції під час введення режиму воєнного стану таких понять, як «бойова обстановка», «бойова ситуація», «бойовий режим функціонування підрозділів поліції». Зроблено висновок про те, що діяльність Національної поліції в умовах воєнного стану зазнає глибинних змін, набуває нових особливостей, зазнає організаційної перебудови. Акцентована увага на тому, що трансформація функцій Національної поліції України в період дії воєнного стану спрямована розширення та розвиток компетенції Національної поліції, підвищення оперативності та ефективності її діяльності, акумулювання сил та засобів Національної поліції в період дії надзвичайних умов, а також спрямована на досягнення основної мети діяльності Національної поліції – забезпечення охорони прав і свобод людини, протидії злочинності, підтримання публічної безпеки і порядку. ***Висновки.*** Визначено, що характерною особливістю таких трансформацій вважаємо гнучкість та адаптивність діяльності Національної поліції, яка залежить від оперативної обстановки, що склалася, наявних сил та засобів, а також від впливу зовнішніх факторів та можливостей сучасного світу, наприклад, розвиток технологій.

Ключові слова: правопорядок, суб'єкт забезпечення правопорядку, поліція, функція, компетенція, повноваження, воєнний стан, трансформація, поліція, МВС.

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FORMATION OF MAIN AREAS OF IMPROVING ADMINISTRATIVE AND REGULATORY FRAMEWORK FOR OVERSIGHT AND CONTROL OF PUBLIC PROCUREMENT IN UKRAINE

Abstract. ***Purpose. Conclusions.*** The purpose of the article is to formulate the areas of improving the administrative and regulatory framework for oversight and control in the field of public procurement in Ukraine. ***Results.*** The relevance of the article is that after the declaration of Ukraine's independence, the issue of reforming the regulatory framework, including the public procurement sector, which is being reformed on a systematic basis, has arisen. In determining the legal framework for oversight and control of public procurement in Ukraine, this study uses a hierarchical factor to classify them and analyses them according to the following scheme: constitutional provisions, laws of Ukraine and bylaws. Oversight and control in any sector are necessary to prevent shortcomings, detect them as early as possible and warn of possible negative consequences. It is clear that punishment for shortcomings is not the goal of oversight and control in itself. ***Conclusions.*** It is concluded that the main areas of improving the administrative and regulatory framework for oversight and control of public procurement in Ukraine are as follows: 1) harmonisation of oversight and control should be directed towards increasing its transparency; 2) the principles of oversight and control in the field of public procurement are determined not only by the importance of the principles as the fundamentals of such activities, but also to a greater extent by their practical component - they are intended to ensure the effective implementation of tasks and goals in the field of public procurement by the state; 3) for the purpose of establishing fair rules of conduct for controlling bodies, it is necessary to develop and adopt a 'Code of Integrity in Public Procurement' for all participants in procurement, as well as for officials of controlling and supervising entities; 4) creation of a single centralised executive body in the field of procurement with a branched structure at the local level, which also facilitates controlling bodies to carry out various control and supervisory activities in this area; 5) using the existing practice of conducting certified training courses for civil servants, it is necessary to create certified training courses for civil servants and law enforcement agencies in oversight and control of public procurement; 6) eliminate duplication of functions and powers of law enforcement agencies and strengthen coordination between all parties involved in oversight and control of public procurement; 8) in order to apply administrative liability to officials in charge of oversight and control of public procurement, it is necessary to: 1) establish clear boundaries of oversight and control over the entire cycle of public procurement; 2) develop a system of effective and enforceable sanctions.

Key words: public procurement procedure, budget funds, public finance management, competitive environment, competitive bidding.

1. Introduction

After the declaration of Ukraine's independence, the issue of reforming the regulatory framework, including the public procurement sector, which is being reformed on a systematic basis, has arisen. In determining the legal framework for oversight and control of public procurement in Ukraine, this study uses a hierarchical factor to classify them and analyses them according to the following scheme: constitutional provisions, laws of Ukraine and bylaws. Oversight and control in any sector are necessary to prevent shortcomings, detect them as early as possible and warn of possible negative consequences. It is clear that punishment for shortcomings is not the goal of oversight and control in itself.

2. Principles of oversight and control in the field of public procurement in Ukraine

All over the world, states with different forms of government exercise control and influence the formation of relations in society, while the nature of oversight and control and the activities that accompany it indicate the nature of state power and its orientation, compliance with the proclaimed democratic principles of development (Kirika, 2012).

The public procurement system - its control, improvement, and reform - is one of the most important areas of the modernisation of economic policy in general. Procurement accounts for a significant portion of the state budget expenditures, so the use of an inefficient public procurement system leads to significant cost overruns (Recommendation of the OECD Council on public procurement, 2016).

Over recent years, Ukrainian legislation has undergone many fundamental changes in the procurement sector. Paper-based government tenders have been replaced by the ProZorro electronic public procurement system. The media started talking about efficient and transparent procurement, creating a competitive environment and focusing on preventing corruption in this sector. However, the electronic procurement system can only ensure the safety and proper protection of information, as well as the exchange of data and documents, and has no impact on the corruption component. In fact, the updated law has not solved the key problem of transparency of procurement in Ukraine and does not ensure rational and efficient use of budget funds. The most common grounds for rejection of tender proposals by contracting authorities are: "non-compliance of the tender proposal with the terms of the tender documentation." Since the Procuring Entity develops and approves the tender documentation directly and then assesses the compliance of tender proposals with the terms of the tender documentation, this ground is a universal one for abuse by the Procuring Entity, which is interested in reducing the number of tenderers without any grounds for corruption schemes. According to ProZoro's analytics module, procurement procedures suspended by appeals account for only 0.6% of the total number of procedures. The low percentage indicates that the administrative appeal system is not effective, and the lack of guidance on the application of rules and best practices in public procurement contributes to violations in public procurement. At this stage of the public procurement reform in Ukraine, the creation and development of the e-procurement system, preparation of the relevant regulatory framework, establishment of requirements for structuring and standardisation of information at all stages of public procurement, ensuring equal access to electronic technologies used for public procurement procedures have been completed. (Levchenko, 2018).

As for the improvement of administrative and regulatory framework for oversight and control in the field of public procurement, it should be noted that this framework includes a system of measures: institutional, legislative and executive.

At the present stage, the instability of legislation is one of the main problems of the public procurement system, which leads to ambiguous interpretation of the principles and rules of public procurement and ineffective law enforcement. Therefore, one of the areas of improving the administrative and regulatory framework for oversight and control in the field of public procurement is to ensure predictability and stability of the regulatory framework through harmonisation of national legislation with EU rules, adaptation of key concepts and notions and bringing procurement procedures in line with international standards (Resolution of the Cabinet of Ministers of Ukraine On the Strategy for Reforming the Public Procurement System ("Roadmap"), 2016).

First and foremost, the harmonisation of oversight and control activities should be aimed at increasing their transparency. After all, transparency of activities means not only their 'transparency', but also that such activities are understandable to most stakeholders.

The term 'transparency' usually covers all aspects of the organisation and activities of a modern state - from the procedure for forming state bodies to the procedure for adopting and publishing texts of laws for a wide range of readers, from biographies of candidates for positions in the state apparatus to media coverage of all the details of their tenure. It is obvious that the transparency of a state institution such as oversight and control is an important part of the system of state and legal values in the modern world. In other words, transparency of the authorities implies informing the public about all the processes in the government bodies (Resolution of the Cabinet of Ministers of Ukraine On the Strategy for Reforming the Public Procurement System ("Roadmap"), 2016).

Ukrainian legal and social practice has developed certain forms of public control over oversight and control of public procurement: transparency of the procurement procedure; public awareness of the mechanism of the procurement process, of the decisions made, of the purpose of the monitoring procedure, as well as publicity and openness of the entire process. Together, all of this constitutes openness and transparency

of oversight and control in the field of public procurement (Lukash, 2019).

The work in the field of public procurement requires highly qualified oversight and control by the officials and imposes a huge responsibility. On the one hand, their activities are subject to close scrutiny by the public and the media, and on the other hand, they are subject to various influences from procurement participants who are dissatisfied with the 'attention' of the controlling authorities. Therefore, everyone is interested in having clear procurement rules and procedures in place to ensure their own professional safety. In addition to establishing clear and transparent procurement rules, an important area of the administrative and regulatory framework for oversight and control of public procurement is the establishment of fair rules of conduct for controlling authorities. For example, back in 1976, the Federal Procurement Institute was established in the United States to train and improve the skills of employees in this profile, and given the 'sensitivity' of the position of a public procurement officer, the US Congress established requirements for the integrity of this category of employees (standards of ethical behaviour) in 1988 (Brodovska, 2016).

Therefore, in our opinion, it is necessary to develop and adopt a 'Code of Integrity in Public Procurement' for all procurement participants, as well as for officials of oversight and control entities.

Public procurement in Ukraine is carried out on a decentralised basis. The system covers about 15,000 customers of various levels. Specifically, the decentralised model ensures that the needs of local communities and end users of procured goods and services are met, and that local producers are supported and encouraged to participate in public procurement. At the same time, modern international practice effectively uses the centralised procurement model, which is characterised by a reduction in total costs in the system (Resolution of the Cabinet of Ministers of Ukraine On the Strategy for Reforming the Public Procurement System ("Roadmap"), 2016). For example, an analysis of public procurement in the United States has shown the effectiveness of creating a single centralised procurement authority with a branched local structure. This also facilitates the controlling authorities to conduct various control and supervisory activities in this sector.

Thus, the use of a centralised model with optimal preservation of the advantages of the decentralised model, which is currently in place, will contribute to standardisation, professionalisation, legal certainty and the introduction of flexible methods of oversight and control in the field of public procurement (Resolution of the Cabinet of Ministers of Ukraine On the Strategy for Reforming the Public Procurement System ("Roadmap"), 2016).

One of the important tasks of the institutional reform of public procurement is to professionalise this procurement. This will help improve the quality and manageability of public procurement procedures, ensure budgetary savings, strengthen the accountability of customers and allow the integration of the public procurement function into the overall public finance management system. Practitioners consider professionalisation of public procurement as a necessary component of adaptation to international standards and optimisation of public procurement. This process should be combined with in-depth training of both specialists involved in public procurement and control and supervisory authorities based on the use of modern methods and technologies (Selivanova, 2017).

One of the areas of the public procurement reform strategy is the development of a system of professional training of public procurement specialists and professionalisation of the public procurement sector. Professionalisation of the public procurement sector is a prerequisite for the adaptation of international standards in Ukrainian procurement practice. The main goal of professionalising public procurement is to build a highly professional public procurement market. This will allow the public procurement sector to move to a higher level - a level where effective planning is carried out and goods, works and services of the required quality are purchased in a timely manner (Selivanova, 2017).

The Public Governance Committee in the OECD Council Recommendations on Public Procurement stated that Adherents, when developing their national requirements in the field of professionalisation of public procurement, should: 1) Ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools, for example, sufficient staff in terms of numbers and skills, recognition of public procurement as a specific profession, certification and regular trainings, integrity standards for public procurement officials and the existence of a unit or team analysing public procurement information and monitoring the performance of the public procurement system; 2) Provide attractive, competitive and merit-based career options for procurement officials, through the provision of clear means of advancement, protection from political interference in the procurement pro-

cess and the promotion of national and international good practices in career development to enhance the performance of the procurement workforce; 3) Promote collaborative approaches with knowledge centres such as universities, think tanks or policy centres to improve skills and competences of the procurement workforce. The expertise and pedagogical experience of knowledge centres should be enlisted as a valuable means of expanding procurement knowledge and upholding a two-way channel between theory and practice, capable of boosting application of innovation to public procurement systems (Recommendation of the OECD Council on public procurement, 2016).

It should be noted that in the field of public procurement professionalisation, it is planned to introduce the qualification of 'Specialist in Public Procurement' at various levels. At the same time, qualification requirements will be established for persons who will be involved in the relevant procurement functions for customers at various stages of procurement (in particular, financial planning, preparation of specifications of the subject of procurement, marketing, organisation of procurement procedures, legal support of the public procurement process, contractual work) (Selivanova, 2017).

2. Fundamentals of oversight and control in the field of public procurement in foreign countries

Using the US experience of certification based on the established qualification requirements for officials of control and supervision entities in the field of public procurement and creating conditions for their professional growth during their tenure, it is necessary to introduce state certification of specialists in oversight and control in the field of public procurement in Ukraine. For its part, using the technical support of various international institutions, to create, on the basis of postgraduate education centres of higher education institutions, advanced training courses for employees of bodies and institutions engaged in oversight and control in the field of public procurement. Moreover, advanced training courses for civil servants, local government officials, and representatives of the authorities responsible for organising and implementing procurement of goods, works and services have been established at a number of educational institutions and are successfully operating.

For example, the National Agency of Ukraine on Civil Service has established centres for retraining and advanced training of employees of state authorities, local self-government bodies, state-owned enterprises, institutions and organisations. In addition, the Knowledge Management Portal is an educational platform for professional training of civil servants, heads of local state administrations, their first deputies and deputies, and local self-government officials (Increasing the level of professional competence in the field of public procurement? 2020), which regularly publishes information on various types of training courses, including those on public procurement.

Therefore, using the existing practice of conducting certified training courses for civil servants, it is necessary to create certified training courses for civil servants and law enforcement agencies in oversight and control of public procurement

In addition to the professionalisation of oversight and control in public procurement, practitioners and academics argue that the current system of state and municipal control in procurement is not coordinated, with no clear division of powers between the controlling bodies while some of them are enshrined in different bylaws. In practice, these circumstances do not always allow organising effective and efficient oversight and control activities. Therefore, we propose to regulate the issues of both state and public control at the legislative level and finally adopt the Law of Ukraine "On Public Control in Ukraine" and develop and adopt the Law of Ukraine "On Public Audit in Ukraine." In the Law "On Public Control in Ukraine," the procedures for appealing against the actions and decisions of officials in administrative and judicial proceedings should be defined and clearly prescribed.

For example, in the Austrian legislation, namely subpara. 6 of Art. 354 of the Law of Austria "On Public Procurement," a complaint to the Federal Administrative Court against actions and decisions of public procurement officials shall specify "the rights in respect of which the applicant claims that violations (objections) have been found, as well as the evidence on which the allegation of unlawfulness of actions and decisions is based" (Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Bundesvergabegesetz, 2018). In other words, the complaint shall contain specific facts of abuse or violations, and not just information that members of the public believe that the public procurement was conducted with violations. This prevents the procurement process from being delayed and reduces the risk of abuse by civil society organisations.

Iryna Bykovska, Deputy Head of the Policy Division of the Department of Public Procurement, pointed out these abuses and argued that the introduction of a fee for filing a complaint with the appeal body would help to remedy the situation. She emphasised that "since the so-called tender trolls file complaints not

to restore justice and protect their rights, but to delay the procurement procedure, influence the decision of the Procuring Entity and achieve satisfaction of their interests. However, we know that in the procurement sector you can find not only unscrupulous Bidders, but also unscrupulous Procuring Entities, and when they see that so-called 'not their' Bidders have come to the tender, they can cancel the procurement procedure, and Bidders cannot challenge this fact" (Hruba, 2020).

In addition, the Law of Ukraine 'On the Basic Principles of State Oversight (Control) in the Field of Economic Activities' should be amended as follows: 1) to amend the title of the law by replacing it with 'On the Fundamentals of Public Oversight and Control in the Field of Economic Activities'; 2) to define: the concept and types of oversight and control; the actors (principles, tasks and their powers); and the qualification requirements for oversight and control officials.

The next area of improving the administrative and regulatory framework for oversight and control in public procurement is to eliminate duplication of functions and powers of law enforcement agencies. Duplication can be eliminated by developing and adopting a joint order 'On Interaction between Law Enforcement Bodies in the Field of Prevention and Counteraction to Offences in Public Procurement', which would clearly define the rights, duties, powers and responsibilities of law enforcement officers in the field of public procurement. Therefore, ensuring the proper level of coordination of internal control tools (including financial control, internal audit and administrative control), external control and audit, staffing of the relevant units and their functional integration will optimise 1) the monitoring of the functioning of the public procurement system; 2) reliability of reporting on violations; 3) system of channels for reporting reasonable suspicions of violations of applicable laws and regulations; 4) legislative and regulatory policy on public procurement; 5) oversight and control in line with national priorities; 6) independent assessment of oversight and control activities.

Handle complaints in a fair, timely and transparent way through the establishment of effective courses of action for challenging procurement decisions - the next area of improving the administrative and legal support for oversight and control in the procurement sector. This procedure is necessary to correct defects, prevent wrong-doing and build confidence of bidders, including foreign competitors, in the integrity and fairness of the public procurement system. Additional key aspects of an effective complaints system are dedicated and independent review and adequate redress (Recommendation of the OECD Council on public procurement, 2016).

4. Specific features of regulatory and legal framework for oversight and control in the field of public procurement in Ukraine

The legislation of Ukraine provides for legal liability of civil servants, including disciplinary, administrative, material and criminal liability, as necessary. Civil servants are liable for violations of the law and official discipline, failure to perform or improper performance of their official duties (Khomyk, 2016).

The provisions of Law of Ukraine 'On Public Procurement' No. 922-VIII of 25 December 2015, namely Article 44, stipulate that authorised persons, officials of procuring entities, officials and members of the appeal body, officials of the Authorised Body, officials of the central executive body implementing public policy on state financial control, officers (officials) of the bodies that provide treasury services for budget funds (servicing bank) shall be liable for violation of the requirements established by this Law and regulations adopted pursuant to this Law, in accordance with the laws of Ukraine (Law of Ukraine On Public Procurement, 2015). However, the law does not specify what types of liability and for what specific actions they will be held liable.

The Code of Ukraine on Administrative Offences No. 8073-X of 7 December 1984 reveals the conditions for bringing officials to administrative liability for violations of procurement legislation by tenderers. In particular, Art. 164-14 of the CAO stipulates that "Violation of the procedure for determining the subject of procurement; untimely provision or failure to provide clarifications by the customer on the content of the tender documentation; tender documentation is not drawn up in accordance with the requirements of the law; the amount of the tender offer security set out in the tender documentation exceeds the limits established by law; failure to publish or violation of the terms of publication of procurement information; failure to publish or violation of the procedure for publishing information on procurement carried out in accordance with the provisions of the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus Disease (COVID-19)"; failure to provide information, documents in cases stipulated by law; violation of the terms of consideration of the tender proposal - shall entail imposition of a fine on officials (officers), authorised persons of the customer in the amount of one hundred tax-free minimum incomes of citizens" (Code of Ukraine on Administrative Offenses, 1984).

Therefore, officials of the control and oversight bodies are not administratively liable for violations of the public procurement legislation and there is virtually no practice of bringing them to criminal liability for such violations.

In our opinion, it is necessary to amend Article 164-14 of the CAO and supplement it with parts 7 and 8. Thus, part 7 should be worded as follows: "Failure to provide, or untimely provision by officials of the Accounting Chamber, the Antimonopoly Committee of Ukraine, the central executive body implementing public policy on state financial control, of information necessary for risk assessment in the field of public procurement, or provision of knowingly false information to the authorised body regulating and implementing public policy on procurement, shall result in a fine on officials in the amount of two hundred tax-free minimum incomes. As for Part 8 of Article 164-14 of the CAO, it should be amended as follows: "Failure of the persons referred to in part seven of this article to take measures in the field of oversight and control provided for by law shall entail a fine on officials in the amount of three hundred tax-free minimum incomes."

Thus, in order to apply administrative liability to officials of oversight and control activities in the field of public procurement, it is necessary to: 1) establish clear lines for oversight of the public procurement cycle; 2) develop a system of effective and enforceable sanctions.

Such sanctions should be in proportion to the degree of wrong-doing to provide adequate deterrence without creating undue fear of consequences or risk-aversion in the procurement workforce or supplier community (Recommendation of the OECD Council on public procurement, 2016).

5. Conclusions

As a result, the analysis of the current state of oversight and control in the field of public procurement in Ukraine has enabled to identify areas of improving the administrative and regulatory framework for implementing such activities and to state the following: 1) harmonisation of oversight and control should be directed towards increasing its transparency; 2) the principles of oversight and control in the field of public procurement are determined not only by the importance of the principles as the fundamentals of such activities, but also to a greater extent by their practical component - they are intended to ensure the effective implementation of tasks and goals in the field of public procurement by the state; 3) for the purpose of establishing fair rules of conduct for controlling bodies, it is necessary to develop and adopt a 'Code of Integrity in Public Procurement' for all participants in procurement, as well as for officials of controlling and supervising entities; 4) creation of a single centralised executive body in the field of procurement with a branched structure at the local level, which also facilitates controlling bodies to carry out various control and supervisory activities in this area; 5) using the existing practice of conducting certified training courses for civil servants, it is necessary to create certified training courses for civil servants and law enforcement agencies in oversight and control of public procurement; 6) eliminate duplication of functions and powers of law enforcement agencies and strengthen coordination between all parties involved in oversight and control of public procurement; 8) in order to apply administrative liability to officials in charge of oversight and control of public procurement, it is necessary to: 1) establish clear boundaries of oversight and control over the entire cycle of public procurement; 2) develop a system of effective and enforceable sanctions.

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ФОРМУВАННЯ ОСНОВНИХ НАПРЯМІВ УДОСКОНАЛЕННЯ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ЗДІЙСНЕННЯ КОНТРОЛЬНО-НАГЛЯДОВОЇ ДІЯЛЬНОСТІ У СФЕРІ ПУБЛІЧНИХ ЗАКУПІВЕЛЬ В УКРАЇНІ

Анотація. ***Мета*** статті полягає у формуванні напрямів удосконалення адміністративно-правового регулювання здійснення контрольно-наглядової діяльності у сфері публічних закупівель в Україні. ***Результати.*** Актуальність статті полягає в тому, що після проголошення незалежності України постало питання реформування нормативно-правової бази, зокрема й сфери публічних закупівель, реформування якої здійснюється на систематичній основі. При визначенні правових засад забезпечення контрольно-наглядової діяльності у сфері публічних закупівель в Україні використано ієрархічний чинник для їх класифікації та здійснено аналіз за наступною схемою – конституційні норми, закони України і підзаконні акти. Контрольно-наглядова діяльність в будь-якій сфері необхідна, щоб не допускати прорахунків, по можливості завчасно їх виявляти та попереджати про можливі негативні наслідки. Зрозуміло, що покарання за вчиненні прорахунки не є самоціллю контрольно-наглядової діяльності. ***Висновки.*** Зроблено висновок, що основними напрями удосконалення адміністративно-правового регулювання здійснення контрольно-наглядової діяльності у сфері публічних закупівель в Україні є: 1) гармонізація контрольно-наглядової діяльності повинна відбуватися в бік збільшення її транспарентності; 2) визначення принципів здійснення контрольно-наглядової діяльності у сфері публічних закупівель зумовлена не тільки значенням принципів як основних засад здійснення вказаної діяльності, а в більшій мірі вони стосуються практичної складової – вони покликані забезпечити ефективне виконання державою завдань і цілей у сфері публічних закупівель; 3) встановлення доброчесних правил поведінки контролюючих органів необхідно розробити та прийняти «Кодекс доброчесності у сфері публічних закупівель» для всіх учасників закупівель, а також для посадових осіб суб'єктів контрольно-наглядової діяльності; 4) створення єдиного централізованого органу виконавчої влади у сфері закупівель з розгалуженою структурою на місцях, що в свою чергу також спрощує органам контролю проводити різні контр-

ольно-наглядові заходи у вказаній сфері; 5) використовуючи існуючу практику проведення сертифікованих курсів підвищення кваліфікації для державних службовців необхідно створити сертифіковані курси підвищення кваліфікації для державних службовці та правоохоронних органів контрольно-наглядової діяльності у сфері публічних закупівель; 6) усунення дублювання функцій і повноважень у правоохоронних органів та посилення координації між усіма суб'єктами контрольно-наглядової діяльності у сфері публічних закупівель; 8) для застосування адміністративної відповідальності до посадових осіб контрольно-наглядової діяльності у сфері публічних закупівель необхідно: 1) встановити чіткі межі контрольно-наглядової діяльності за здійсненням всього циклу публічних закупівель; 2) розробити систему дієвих і реалізованих на практиці санкцій.

Ключові слова: процедура публічних закупівель, бюджетні кошти, управління державними фінансами, конкурентне середовище, конкурсні торги.

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ADMINISTRATIVE LEGISLATION ON PREVENTION AND COUNTERACTION OF DISCRIMINATION BASED ON GENDER IDENTITY IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to provide a modern formal and legal analysis of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine. ***Results.*** The article provides a legal analysis of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine. It is determined that the system of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine consists of: - the Constitution of Ukraine; – laws of Ukraine that define the specifics of prevention and counteraction of discrimination, as well as the legal status and operational tools of actors involved in prevention and counteraction of discrimination on the basis of gender identity; - by-laws, among which strategic regulations are essential; - international standards for prevention and counteraction of discrimination in society. It is revealed that the administrative legislation of Ukraine is based on the fundamental principles of equality and inadmissibility of discrimination enshrined in the Constitution of Ukraine, with a combination of general legal guarantees of equality before the law with special measures to prevent and combat discrimination, including discrimination based on gender identity. It is established that Ukrainian legislation currently actively integrates gender equality issues into legal regulation, including mandatory mechanisms for gender impact assessment and ensuring equal opportunities for women and men in all areas, including education, employment or public administration, within the framework of administrative law. ***Conclusions.*** It is specified that the particularity of administrative legislation of Ukraine is the existence of mechanisms for administrative liability for manifestations of violence or discrimination based on gender or gender identity, which provides for administrative penalties and measures of organisational and legal influence. It is revealed that the implementation of the gender equality and anti-discrimination policy is largely ensured by by-laws which practically regulate the procedure for implementing gender approaches in public legal relations. It is established that the administrative legislation of Ukraine is supported by medium- or long-term state strategies aimed at reducing the gender gap, eliminating discriminatory barriers and raising public awareness of human rights.

Key words: administrative jurisdiction, administrative legislation, administrative and regulatory framework, administrative relations, administrative procedures, struggle, gender, discrimination, prevention, identity.

1. Introduction

The armed aggression of the Russian Federation against Ukraine and the temporary occupation of the Autonomous Republic of Crimea by the Russian Federation, as well as the full-scale invasion of the territory of Ukraine by Russian troops in 2022, in particular from the territory of the Republic of Belarus, leads to deaths and poses various security risks for women and men. However, statistical data on the number of killed soldiers and civilians, prisoners, hostages, missing persons, and those forcibly transferred to the temporarily occupied territories and territories under the jurisdiction of the aggressor state, disaggregated by gender, are not available. The challenges also include inequality in access to decision-making and resources for women and men, as well as stereotypes about the social roles of women and men in public and political life, which negatively affects women's representation and participation in such processes (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022).

The problem of discrimination based on gender identity is closely linked to the low level of public awareness of gender issues, insufficient legal framework and widespread stereotypes about social roles. In this context, administrative legislation plays a special role, being a key instrument for regulating social relations, including providing mechanisms for preventing and combating discrimination.

Special issues of administrative and regulatory framework for preventing and combating discrimination in Ukraine have been studied by the following scholars: O. Bezpalova, A. Borovyk, N. Derevianko, A. Druzenko, O. Drozd, A. Dovgopol, V. Honcharov, N. Hridina, O. Kravchenko, V. Lazariev, N. Liakh, O. Perunova, A. Sobakar, R. Shapoval, H. Shevchuk, O. Shevchenko, V. Chernenko, I. Fedorovych, Y. Yurynets, and others.

However, the facts of discrimination in Ukraine, unfortunately, do exist, while the corresponding response to such socially negative phenomena is carried out in the plane of administrative and regulatory framework, which makes the scientific challenge relevant.

The purpose of the article is to provide a modern formal and legal analysis of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine.

2. Prevention and counteraction of discrimination

Section II of the Constitution of Ukraine is entitled 'Human and Citizen's Rights, Freedoms and Duties' and sets out the principles of anti-discrimination and guarantees the principle of equality in society, in particular:

- All people shall be free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable (Article 21 of the Constitution of Ukraine);

– Citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics. Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and remuneration for it; by taking special measures for the protection of work and health of women; by establishing pension privileges; by creating conditions that make it possible for women to combine work and motherhood; by adopting legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other privileges to pregnant women and mothers (Article 24 of the Constitution of Ukraine);

– Citizens shall have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to the bodies of State power and local self-government. Citizens shall enjoy equal rights of access to the civil service and to the service in local self-government bodies (Article 38 of the Constitution of Ukraine);

– Everyone shall have the right to work, including a possibility to earn a living by labour that he freely chooses or to which he freely agrees. The State shall create conditions for citizens that will make it possible to fully realise their right to work, guarantee equal opportunities in the choice of profession and of types of labour activities, and implement programmes for vocational education, training, and retraining of personnel according to the needs of society (Article 43 of the Constitution of Ukraine) (Constitution of Ukraine, 1996).

The Special Law of Ukraine 'On Ensuring Equal Rights and Opportunities for Women and Men' is aimed at achieving parity between women and men in all spheres of social life by ensuring equal rights and opportunities for women and men, eliminating discrimination based on gender and applying special temporary measures aimed at eliminating the imbalance between the opportunities for women and men to exercise equal rights granted to them by the Constitution and laws of Ukraine (Law of Ukraine On Ensuring Equal Rights and Opportunities of Women and Men, 2005). Another special law in this field is the Law of Ukraine 'On the Principles of Prevention and Counteraction of Discrimination in Ukraine', which defines the organisational and legal framework for preventing and combating discrimination in order to ensure equal opportunities for the exercise of human and civil rights and freedoms (Law of Ukraine On the Principles of Preventing and Counteracting Discrimination in Ukraine, 2012).

Other administrative legislative enactments include those that define

- Specifics of prevention and counteraction of discrimination in certain areas of regulatory framework (for example, the Law of Ukraine 'On Education' (2017), 'On Employment of the Population' (2012), etc;)

– Legal status and operational tools for actors involved in preventing and combating discrimination based on gender identity (e.g., the Law of Ukraine 'On the National Police' (2015) etc.

An important part of administrative legislation is the Code of Administrative Offences,

which provides for administrative liability for committing gender-based violence and defines referral to a programme for a person who has committed domestic or gender-based violence as a measure of liability, in particular, in the case of domestic violence or gender-based violence, the court, when deciding on the imposition of a penalty for an administrative offence, has the right to simultaneously decide on the referral of the perpetrator of domestic violence or gender-based violence to a programme for such persons provided for by the Law of Ukraine 'On preventing and combating domestic violence' or the Law of Ukraine 'On ensuring equal rights and opportunities for women and men' (Code of Ukraine on Administrative Offenses, 1984).

3. By-laws regulating the implementation of prevention and counteraction of discrimination as part of administrative legislation

By-laws are also an important component of administrative legislation to prevent and combat discrimination based on gender identity in Ukraine, for example, to create a system to ensure gender equality in all spheres of social life and to overcome discrimination: the Cabinet of Ministers of Ukraine adopted Resolution No. 930 of 9 October 2020 'Some issues of ensuring equal rights and opportunities for women and men' (Official Gazette of Ukraine, 2020, No. 84, p. 2697), which approved standard regulations on the responsible unit for ensuring equal rights and opportunities for women and men and on the advisor on ensuring equal rights and opportunities for women and men, preventing and combating gender-based violence; the Instruction on integration of gender approaches in drafting legal regulations (Order of the Ministry of Social Policy No. 86 of 7 February 2020) was approved, establishing general requirements for the application of gender approaches in drafting legal regulations to implement the provisions of the Law of Ukraine 'On ensuring equal rights and opportunities for women and men'; Methodological Recommendations for assessing the gender impact of sectoral reforms (Order of the Ministry of Social Policy No. 257 of 14 April 2020) were approved, setting out an algorithm for assessing the likely and/or existing impact of sectoral reforms on the situation of different groups of women and men, etc. (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022).

The bylaws include strategic regulations, for example, the State Strategy for ensuring equal rights and opportunities for women and men for the period up to 2030, approved by the Cabinet of Ministers of Ukraine on 12 August 2022, No. 752, focuses on uniting society in understanding the values of human rights and freedoms, that are provided and protected based on the principles of equality and non-discrimination for all women and men, boys and girls, to consolidate the actions of central and local executive authorities and local self-government bodies, international organisations, social partners, public associations, other representatives of civil society, institutions, establishments and organisations of various sectors, the private sector, etc. to implement international and national commitments to ensure equal rights and opportunities for women and men for sustainable development of the state in all areas (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022). Another instrument is the Concept of Communication in the Field of Gender Equality, approved by the Cabinet of Ministers of Ukraine on 16 September 2020, No. 1128-r, which aims to create a future in which every woman and man living in Ukraine enjoys equal rights and opportunities necessary for full participation in all spheres of public life, without discrimination, violence and exploitation (Resolution of the Cabinet of Ministers of Ukraine On Approval of the Concept of Communication in the Field of Gender Equality: approved by Resolution of the Cabinet of Ministers of Ukraine, 2020).

In addition, the Cabinet of Ministers of Ukraine approved the National Strategy for bridging the gender pay gap for the period up to 2030, dated 15 September 2023, No. 815-r, which was developed to ensure a systematic and steady reduction of the gender pay gap between women and men for work of equal value; as evidence of Ukraine's adherence to the principle of ensuring equal rights and opportunities for women and men in the field of remuneration, proclaimed as part of joining the Biarritz Partnership for Gender Equality and the International Coalition for Equal Pay (EPIC); to promote the implementation of the 2013 recommendations of the Council of the Organisation for Economic Co-operation and Development on ensuring gender equality in education, employment and entrepreneurship in terms of remuneration for women and men. The goal of the Strategy for bridging the gender pay gap until 2030 is to achieve a sustainable reduction of the gender pay gap by 2030 by creating favourable conditions and developing effective mechanisms to ensure progress in this field (Order of the Cabinet of Ministers of Ukraine On approval of the National Strategy for bridging the gender pay gap for the period until 2030, 2023).

With regard to the role of international regulatory framework, Ukrainian legislation provides that if an international agreement of Ukraine, consented to be bound by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by the Law of Ukraine 'On ensuring equal rights and opportunities for women and men', the rules of the international agreement shall apply (Law of Ukraine On Ensuring Equal Rights and Opportunities of Women and Men, 2005). Over the past decades, Ukraine has made significant progress in ensuring equal rights and opportunities for women and men in all areas and has acceded to all major international treaties on gender equality and women's rights, including the Beijing Declaration, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, relevant International Labour Organisation conventions, and the Convention on the Rights of Persons with Disabilities. Ukraine is a party to key international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms. In 2020-2021, Ukraine received official status as a member of international initiatives such as the Biarritz Partnership and the Coalition for the Advancement of Gender Equality, joined the International Coalition for Equal Pay (EPIC), and joined the Friends of Women, Peace and Security, demonstrating its commitment to implementing UN Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) та 2493 (2019) (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022). An important part of international regulatory framework is the provisions set out in International Labour Organisation Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, International Labour Organisation Convention No. 111 concerning Discrimination (Employment and Occupation), and International Labour Organisation Convention No. 156 concerning Equal Treatment and Equal Opportunities for Men and Women Workers: Workers with Family Responsibilities, the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, etc. (Order of the Cabinet of Ministers of Ukraine On approval of the National Strategy for bridging the gender pay gap for the period until 2030, 2023).

4. Conclusions

Therefore, the following conclusions can be drawn regarding the legal analysis of administrative legislation on prevention and counteraction of discrimination on the basis of gender identity in Ukraine:

– the system of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine consists of: - the Constitution of Ukraine; – laws of Ukraine that define the specifics of prevention and counteraction of discrimination, as well as the legal status and operational tools of actors involved in prevention and counteraction of discrimination on the basis of gender identity; - by-laws, among which strategic regulations are essential; - international standards for prevention and counteraction of discrimination in society;

– the administrative legislation of Ukraine is based on the fundamental principles of equality and inadmissibility of discrimination enshrined in the Constitution of Ukraine, with a combination of general legal guarantees of equality before the law with special measures to prevent and combat discrimination, including discrimination based on gender identity;

– Ukrainian legislation currently actively integrates gender equality issues into legal regulation, including mandatory mechanisms for gender impact assessment and ensuring equal opportunities for women and men in all areas, including education, employment or public administration, within the framework of administrative law;

– the particularity of administrative legislation of Ukraine is the existence of mechanisms for administrative liability for manifestations of violence or discrimination based on gender or gender identity, which provides for administrative penalties and measures of organisational and legal influence;

– implementation of the gender equality and anti-discrimination policy is largely ensured by by-laws which practically regulate the procedure for implementing gender approaches in public legal relations;

– the administrative legislation of Ukraine is supported by medium- or long-term state strategies aimed at reducing the gender gap, eliminating discriminatory barriers and raising public awareness of human rights;

– harmonisation with international standards in the field of human rights and gender equality is a separate area of development of administrative legislation of Ukraine, which indicates the state's desire to achieve high

standards of human rights protection, with the formation of a new concept of administrative law to regulate the prevention and combating of discrimination.

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АДМІНІСТРАТИВНЕ ЗАКОНОДАВСТВО ЩОДО ЗДІЙСНЕННЯ ЗАПОБІГАННЯ ТА ПРОТИДІЇ ДИСКРИМІНАЦІЇ ЗА ОЗНАКОЮ ГЕНДЕРНОЇ ІДЕНТИЧНОСТІ В УКРАЇНІ

Анотація. ***Мета*** статті полягає у тому, щоб здійснити сучасний формально-юридичний аналіз адміністративного законодавства щодо здійснення запобігання та протидії дискримінації за ознакою гендерної ідентичності в Україні. ***Результати.*** У статті здійснено юридичний аналіз адміністративного законодавства щодо здійснення запобігання та протидії дискримінації за ознакою гендерної ідентичності в Україні. Визначено, що система адміністративного законодавства щодо здійснення запобігання та протидії дискримінації за ознакою гендерної ідентичності в Україні складається із: – Конституції України; – законів України, які визначають особливості запобігання та протидії дискримінації, та правовий статус та оперативний інструментарій суб'єктів запобігання та протидії дискримінації за ознакою гендерної ідентичності; – підзаконного регулювання, серед яких вагому роль відіграють акти стратегічного характеру; – міжнародних стандартів запобігання та протидії дискримінації в суспільстві. Розкрито, що адміністративне законодавство України базується на фундаментальних принципах рівності та неприпустимості дискримінації, закріплених у Консти-

туції України, з поєднанням загальних правових гарантій рівності перед законом із спеціальними заходами запобігання та протидії дискримінації, включаючи дискримінацію за ознакою гендерної ідентичності. Виявлено, що законодавство України нині активно інтегрує питання гендерної рівності в правове регулювання, серед яких у межах адміністративного права встановлено обов'язкові механізми оцінювання гендерного впливу та забезпечення рівних можливостей для жінок і чоловіків у всіх сферах, включаючи освіту, зайнятість або публічне управління. ***Висновки.*** Зазначено, що особливістю адміністративного законодавства України є наявність механізмів притягнення до адміністративної відповідальності за прояви насильства чи дискримінації за ознакою статі чи гендерної ідентичності, що передбачає адміністративні стягнення та заходи організаційно-правового впливу. Розкрито, що реалізація політики гендерної рівності та боротьби з дискримінацією значною мірою забезпечується підзаконними актами, якими практично врегульовується порядок впровадження гендерних підходів в суспільні правовідносини. Виявлено, що адміністративне законодавство України підтримується середньостроковими або довгостроковими державними стратегіями, спрямованими на зменшення гендерного розриву, усунення дискримінаційних бар'єрів та підвищення рівня обізнаності суспільства про права людини.

Ключові слова: адміністративна юрисдикція, адміністративне законодавство, адміністративне регулювання, адміністративні правовідносини, адміністративні процедури, боротьба, ґендер, дискримінація, запобігання, ідентичність.

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FORMALIZATION OF CONTENT REQUIREMENTS FOR A NORMATIVE LEGAL ACT

Abstract. Purpose. The article aims to elucidate the formalization of content requirements for normative legal acts and their significance in legislative drafting activities. **Results.** The author has analyzed the main doctrinal approaches to understanding the system of legislative drafting techniques. An examination of the draft laws "On Laws and Legislative Activities" and "On Normative Legal Acts" is conducted. The role of methodological recommendations in normative regulation is highlighted, which for a long time were the only acts that statutorily consolidated the tools of legislative drafting techniques. The importance of adopting the Law of Ukraine "On Law-Making Activities" is noted in the context of the normative consolidation of legislative drafting tools. **Conclusions**. The normative consolidation of legislative drafting tools is crucial for creating an effective domestic legal system. It is observed that there have been numerous attempts in the Ukrainian legal environment to adopt a law regulating law-making activities. The initial versions of draft laws established only formal requirements for normative legal acts (structural and requisite rules). Special emphasis is placed on content requirements. The Law of Ukraine "On Law-Making Activities" establishes (in Article 34) content requirements for normative legal acts. These can be divided into four groups: the first group—requirements concerning legal norms; the second group—terminological rules; the third group—rules for writing numerals; the fourth group—requirements regarding the content criteria that a normative legal act should meet overall. A positive aspect is the establishment of a Unified Glossary of Legal Terms. All this will contribute to enhancing the quality of normative legal acts, which will have a positive effect on the legal system as a whole.

Key words: lawmaking, normative legal act, law, legal certainty, content of a normative legal act.

1. Introduction. Normative legal acts (hereinafter – NLA) are crucial for an efficient domestic legal system, and their quality will always be the center of doctrinal discussion among rulemaking developers. Adopting new draft laws has caused a great demand for changes in various spheres of public life (social, economic, anti-corruption, etc.). The request for harmonization of the domestic legal system with the law of the European Union (hereinafter referred to as the EU) is also crucial. An essential factor affecting the drafting of a high-quality NLA is the legislative drafting technique. For more than 30 years (since gaining independence and till the present), doctrinal works discuss the issue of improving legislative drafting tools.

There are several reasons for such improvement: firstly, developing NLAs of the highest quality (or other law sources, depending on the legal system) will always be the focus of lawyers, regardless of the legal system's perfection. The adoption of a poor-quality NLA necessitates repeated amendments or even replacing it with another NLA that creates an additional burden on the parliament; secondly, the harmonization of national legislation to acquis communautaire ("acquired by the community"), which covers EU legislative acts, international agreements, declarations, resolutions, etc.; thirdly, high-quality NLAs improve law enforcement, ensuring their practical effectiveness.

One of the ways to determine the tools of legislative drafting methodology includes a division into requirements for the content and forms of a normative legal act. As for the requirements for the NLA form, a certain consensus was reached (requirements for the structure, details), and the situation with core requirements for the NLA content is different. Thus, I.V. Mishchuk attributes to the latter systemic coherence, compliance with public needs and relevance, validity, unambiguity of provisions, and logical nature (Mishchuk, 2021, p. 94). S. Pohrebniak, analyzing the principle of legal certainty, divides the requirements for NLA into content-related and procedural. He considers the following content-related: acts should be comprehensible (accessible) and con-

sistent and offer a complete settlement of public relations, preventing gaps. Such acts should also prohibit ample discretionary powers of state bodies (Pohrebniak, 2005, p. 46). Taking into account the above classifications, it can be concluded that the problem of pluralism becomes particularly relevant in the context of the normative consolidation of content requirements.

2. The trend of normative consolidation of content requirements. The separation of content requirements can be traced back to the early 1990s. Undoubtedly, the driving force was the transformation of the domestic legal system, which required changes in many legal institutions. The above led to the adoption of many new NLAs and amendments to existing ones. In order to unify the rules for NLA formulation, a kind of "law on laws" was needed, which would regulate law-making activities. Realizing that each convocation of the parliament tried to offer its version of the specific law. The relevant periods can be divided into three stages of attempts to adopt a "law on laws":

The first stage – 1991–2000. At that time, a draft Law of Ukraine "On Laws and Legislative Activity" (Draft Law of Ukraine "On Laws and Legislative Activity, 1994) was submitted, which had a rather narrow subject of regulation since it covered only activities related to the law as the main NLA in Ukraine. As for rulemaking tools, it is possible to specify only Art. 28 "Basic requirements for the law. The language of the law". Content requirements can be attributed to Part 2 of the relevant article, which states that the law shall not have provisions contradicting the Constitution. The formal requirements are rendered somewhat better in this draft law. Thus, Art. 28 contains a set of requirements related to the draft law's structure: title; division into structural units (articles and sections). And as for the language requirements, it declares that the draft law should be in the state language. At the same time, there are no remarks about the terminology and speech style. In addition, the draft law was also criticized at the doctrinal level. Thus, referring to the fact that the draft law was vetoed by the President and one of the reasons was its "non-compliance with the requirements of legal drafting methodology", O.I. Yushchyk, (Yushchyk, 2005, p. 48) believed that the relevant comment was not due to the status of the President. Following the article by O.I. Yushchyk, the draft law tried to focus on such a classification of laws that would be based on legal force (division into constitutional and ordinary, adopted in an all-Ukrainian referendum).

The second stage–2001–2010. During that period, a draft Law of Ukraine "On Normative Legal Acts" (Proekt Zakonu Ukrainy "Pro normatyvno-pravovi akty" No. 1343, 2008) was submitted on the legislative initiative of MP R.M. Zvarych and an alternative draft Law of Ukraine "On Normative Legal Acts" (Proekt Zakonu Ukrainy "Pro normatyvno-pravovi akty" No. 1343-1, 2008) – on the legislative initiative of MP O.M. Lavrynovych. In addition, in 2010 Yu.R. Miroshnychenko also submitted a draft Law "On Normative Legal Acts" (Proekt Zakonu Ukrainy "Pro normatyvno-pravovi akty" No. 7409, 2010). It is essential to note that the draft Law No. 1343-1 had a fairly progressive, at that time, component of content requirements for NLAs. Thus, Part 3 of Art. 9 of the draft Law indicates the general requirements for a normative legal act: to meet the scope of the subject of legal regulation; not to duplicate the rules of law contained in other normative legal acts, etc. It is also worth mentioning the extensive system of formal requirements: Art. 10 "Structure of the law", Art. 12 "Structure of the subordinate legal act", Art. 13 "Details of the normative legal act", Art. 14 "Title of the normative legal act", Art. 15 "Preamble of the normative legal act", etc. The draft Law "On Normative Legal Acts" No. 7409 proposed a similar system of content requirements with a slight difference: it was supplemented by para. 6 in Part 3 of Art. 9, which states that a normative legal shall be clear, precise, comprehensible, concise, brief, and consistent. The relevant provision is well-correlated with legal certainty as an element of the rule of law (Bidzilia, 2022, pp. 80–81). Formal requirements are enshrined under a similar principle as in the previous law: Art. 10 "Structure of the law", Art. 12 "Structure of the subordinate legal act", etc. According to V.M. Kosovych, the legislation on normative legal acts should comprise norms that lay the groundwork for the content of normative documents, namely in terms of general and logical requirements for NLAs, principles of law, legal definitions, legal constructions, legal presumptions, fictions, and axioms (Kosovych, 2016, p. 43). Despite the positive trends enshrined in the law in Section 3 "Legal drafting methodology", the content requirements take a back-scratcher compared to the formal requirements.

The third stage – the adoption of the 2023 Law of Ukraine "On Law-Making Activities" (Zakon Ukrainy "Pro pravotvorchu diialnist", 2023) – marked a fresh start in the development of legal drafting techniques. In addition to the formal rules of legal drafting methodology, which are provided in Art. 32 "Structure of a normative legal act", Art. 33 "Designation of structural elements of a normative legal act", Art. 35 "Language and style of a normative legal act", Art. 36 "Details of a normative legal

act", Art. 37 "Title of a normative legal act", Art. 38 "Preamble of a normative legal act", etc., the Law contains a specialized article devoted to the content of NLAs: Art. 34 "Requirements for the content of a normative legal act". Unlike the previous acts, which remained drafts, the already adopted Law enshrined content requirements at the regulatory level. It is worthwhile to mention that although the Law is valid, it will come into force one year after the termination or cancellation of martial law in Ukraine – para. 4 of Transitional provisions of the Law.

3. Normative consolidation of content requirements: general theoretical analysis. Even before the adoption of the Law "On Law-Making Activities" (2023), the requirements of legislative drafting techniques were specified in the methodological recommendations. Thus, in "Methodological recommendations for the development of draft laws and compliance with the requirements of legislative drafting techniques" (Metodychni rekomendatsii, 2000), content requirements are available in section 1 "General provisions": para. 2 p. 2, which states that laws shall comply with the Constitution; not directly, but indirectly, p. 4 highlights the importance of harmonizing the draft with existing laws; para. 1 p. 5 focuses on the need to take into account the norms of existing international treaties. Cases from other guidelines can be given. For example: "Methodological recommendations for the development of draft laws and compliance with the requirements of legislative drafting techniques" approved by the order of the State Water Management Service of Ukraine dated January 12, 2004, No. 4 (Methodological recommendations, 2004); "Methodological recommendations for the preparation and execution of draft laws of Ukraine, normative legal acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry of Emergency Situations and compliance with the rules of legislative drafting techniques" approved by the order of the Ministry of Emergency Situations dated December 10, 2007, No. 851 (Methodical recommendations, 2007); "Requirements for legislative drafting techniques in the development of orders in the Ministry of Health of Ukraine" approved by the order of the Ministry of Health of Ukraine dated February 2, 2010, No. 68 (Requirements for legislative drafting techniques, 2010).

The presence of many methodological recommendations of various relevant ministries may indicate that there was a necessity for regulatory consolidation of the requirements of legislative drafting techniques at the legislative level. In this context, the experience of Azerbaijan, where the Law on Normative Legal Acts was adopted at the level of a constitutional act, sparks interest (see: Draft opinion of Venice Commission, 2009, p. 2). But whether the profile law regulating law-making activities must have constitutional status is still in doubt.

The situation has changed in the domestic legal system when the draft law "On Law-Making Activities" was submitted to the Verkhovna Rada. It is important to note that when the relevant Law was the draft law, the set of content requirements was sufficiently narrowed compared to the adopted Law. Content requirements that were provided for in Art. 26 of the draft law concerned only the requirements for legal norms. At the same time, the tools related to legal norms were not sufficiently specified. It just stated that the norms should meet the following requirements: content clarity, unambiguous understanding, predictability of the consequences of implementation; consistency with other norms of law. In the current Law, the article regulating content requirements is significantly expanded. Thus, Art. 34 of the Law "On Legislative Activity" establishes a set of rules (requirements) that can be divided into four groups: the first group refers to the rules of law; the second group – the rules of terminology; the third group – the rules for writing numerals; the fourth group– the content criteria to be met by the regulatory legal act.

Content requirements for legal rules. A legal rule is the smallest and holistic entity in the system of law. At the doctrinal level, theory of law has never had problems with the concept, general features, and the structure of legal rules, but the Law "On Law-Making Activities" enshrined the following concept at the normative level: "a legal rule is a generally binding formally defined rule of conduct governing public relations, which is protected and provided by the State" (Art. 8). In the context of legislative drafting techniques, it essential to note that according to p. 1 of Art. 34 of the Law, the norms of law contained in NLAs shall meet such requirements as: unambiguity of understanding (clarity, accuracy, accessibility for understanding and implementation); predictability of the results of their implementation; their compliance with normative legal acts of higher legal force and consistency with normative legal acts of equal legal force; uniformity of the terminology used; affinity and logical sequence of presentation. These requirements for legal rules are consistent with the rule of law, namely its element of legal (juridical) certainty.

Analyzing legal certainty, O. Tomkina holds that legal rules set forth in NLA should be clear and comprehensible, avoid different interpretations, have mechanisms for their implementa-

tion, as well as allow legal entities to foresee legal consequences of the implementation of legal rules (Tomkina, 2022, p. 117). The Constitutional Court of Ukraine (hereinafter referred to as the CCU) often expresses its position on the relevant issue in its decisions. Therefore, the CCU in its decision as of February 27, 2018 (sub-item 4.3 of p. 4) states that legal certainty provides that norms should be comprehensible and accurate, as well as aimed at ensuring constant predictability of situations and legal relations. It is marked that after the introduction of taxation of pensions in the legislation of Ukraine since July 1, 2014, the Verkhovna Rada of Ukraine made three amendments within two years, because of which citizens did not have certainty about their legitimate expectations and the stability of legal regulation in this area (Rishennia KSU, February 27, 2018). In general, such requirements for norms are well-consistent with the principle of the rule of law. Violation of these requirements degrades the norm's quality, which spawns the instability of a normative legal act and the need to amend it, or even replace it with a new NLA. It is also important to refer to the practice of the European Court of Human Rights (hereinafter referred to as the ECHR). Thus, in the decision in the case of Amuur v. France of 25 June 1996, the ECtHR holds that legislation must be sufficiently accessible and precise in order to avoid any risk of arbitrariness (Case of Amuur v. France, 1996). It is difficult to disagree as the implementation of accessibility and accuracy of legislation will directly depend on the criterion of accessibility and accuracy of the norms. As you can see, the requirements regulated by the legislator in the Law "On Law-Making Activities" correspond to the legal certainty and practice of the CCU and the ECHR.

Terminology rules. The Law "On Law-Making Activities" (Art. 34) includes an individual part devoted to terminology. There is no doubt that a good deal of human activity necessitates the elaboration of regulations that would govern various areas, and the use of terms is indispensable. The definition is intended to render content of the relevant term or concept. V.M. Kosovych reckons that legal definitions are used by rule makers to interpret terms, a certain understanding of which determines the relevant legal effects (Kosovych, 2015, pp. 153–154). In the above mentioned "Methodological recommendations for the development of draft laws and compliance with the requirements of legislative drafting techniques" (2000), terms and language tools hold a separate place. As for terms, it is established that the definition of terms shall meet the meaning intended by literary critics, scientists and lawyers attach and shall be unified throughout the text of the law. It is appropriate to follow the principle of "one concept – one term", at least within one institution.

In the context of the Law "On Law-Making Activities", there is as a positive aspect of the creation of a Unified Glossary of Legal Terms, which is provided for in p. 5 of Art. 35 of the Law. The relevant provision of the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) "On the Functioning of the Unified Glossary of Legal Terms" No. 577 dated May 17, 2024 (Postanova KMU, 17.05.2024) is already in force. This will contribute to the unity of legal terminology that will improve the effectiveness of the legal system as a whole.

Rules for writing numerals. Part 3 of Art. 34 of the Law "On Law-Making Activities" presents the rules concerning the uniformity of writing numerals. It appears the most dubious part of the article that deals with content requirements. These rules are rather technical. In general, the nature of content requirements is determined by their direct impact on the application and implementation of legal rules, and the relevant provision is designed to improve the formal side of a legal act.

Content criteria to be met by a normative legal act. Part 4 of Art. 34 of the Law "On Law-Making Activities" specifies the content qualities a normative legal act must comply with: to cover its scope; to be free of legal norms that contradict the Constitution of Ukraine and normative legal acts of higher legal force and (or) do not comply with the legal rules of normative legal acts of equal legal force; to be free of redundant legal norms, as well as not to repeat the norms of other normative legal acts; to be free of legal norms that are not consistent with each other.

However, the above provision of the Law raises many questions because there is a repetition of para. 3 of p. 1 and para. 2 of p. 4 of this Article. Thus, in para. 3 p. 1, the requirements for norms establish that they shall comply with acts of higher legal force and be consistent with normative legal acts of equal legal force, and a similar provision in para. 2 of p. 4 of the same article (Art. 34) stipulates that a normative legal act shall not contain norms that contradict the Constitution and normative legal acts of higher legal force and (or) are not consistent with the rules of normative legal acts of equal legal force. In fact, the provision enshrined in para. 3 of p. 1 is sufficient. It would be logical to set out the provisions of para. 3 and para. 4 of p. 4 of this Article in p. 1 (but without duplication). The provision provided for in para. 1 of p. 4 of Art. 34 of the Law "On Law-Making Activities" – a normative legal act shall cover its scope – seems the most appropri-

ate. The corresponding requirement will minimize legal gaps that will improve predictability in law enforcement. Therefore, the full coverage of the regulatory legal act's scope will reduce the potential abuses of legal entities.

4. Conclusions. The formalization of content requirements for normative legal acts passed its evolutionary path. Certain trends were evident in the draft Law of Ukraine "On Laws and Legislative Activity". Positive aspects in the context of content requirements were available in many draft Laws of Ukraine "On Regulatory Acts", which consolidated a separate section of legal drafting techniques. However, the legislator focused on requirements for the form of a normative legal act (structural and requisite rules).

The normative consolidation of legal drafting techniques has long remained at the level of methodological recommendations of some executive bodies. Such recommendations did not have the legal force that could regulate law-making activities at the proper level.

The adoption of the Law of Ukraine "On Law-Making Activities" became a new stage in the normative consolidation of content requirements. The Law consolidated the content requirements for a normative legal act in Art. 34. In fact, the article names clear requirements for legal rules (that, undoubtedly, is a positive aspect): the unambiguity of their understanding (clarity, accuracy, accessibility for understanding and implementation); predictability of the results of their implementation; their compliance with normative legal acts of higher legal force and consistency with normative legal acts of equal legal force, etc. These requirements for legal rules are well-harmonized with the element of the rule of law – legal certainty. Terminological rules are well-regulated: unification of terminology; consistency of terminology. As for the article's shortage: Part 3 establishes the rules for writing numerals, which (rules) are rather more technical; p. 4 contains some duplication with p. 1 on the compliance of norms. Therefore, these provisions require further doctrinal study.

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НОРМАТИВНЕ ЗАКРІПЛЕННЯ ЗМІСТОВИХ ВИМОГ ДО НОРМАТИВНО-ПРАВОВОГО АКТА

Анотація. ***Мета.*** Метою статті є висвітлення нормативного закріплення змістових вимог до нормативно-правового акта та їх значення в нормопроєктній діяльності. ***Результати.*** Проаналізовано основні доктринальні підходи для розуміння системи засобів нормопроєктної техніки. Здійснено аналіз законопроєктів «Про закони і законодавчу діяльність», «Про нормативно-правові акти». Висвітлено роль методичних рекомендацій у нормативному регулюванні, які тривалий час були єдиними актами, які нормативно закріплювали інструментарій нормопроєктної техніки. Констатовано важливість ухвалення Закону України «Про правотворчу діяльність» у контексті нормативного закріплення засобів нормопроєктної техніки. ***Висновки.*** Нормативне закріплення інструментарію нормопороєктної техніки має важливе значення для створення ефективної вітчизняної правової системи. Зауважено, що в українському правовому середовищі було чимало спроб прийняти закон, який регулював би правотворчу діяльність. Перші редакції проєктів законів закріплювали хіба формальні вимоги до нормативно-правового акта (структурні і реквізитні правила). А особлива роль належить саме змістовим вимогам. Так, Законом України «Про правотворчу діяльність» закріплено (у ст. 34) змістові вимоги до нормативно-правового акта. Їх можна поділити на чотири групи: перша група – вимоги, що стосується норм права; друга група – термінологічні правила; третя група – правила написання числівників; четверта група – вимоги щодо того, яким змістовим критеріям повинен відповідати нормативно-правовий акт загалом. Позитивним аспектом є закріплення Єдиного глосарія правових термінів. Усе це сприятиме підвищенню якості нормативно-правового акта, що позначиться на правовій системі загалом.

Ключові слова: правотворчість, нормативно-правовий акт, закон, юридична визначеність, зміст нормативно-правового акта.

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INDIVIDUAL PROBLEMS OF COMPETITION BETWEEN FORGERY IN OFFICE AND OTHER ELEMENTS OF CRIMINAL AND ADMINISTRATIVE OFFENSES

Abstract. The publication was prepared **in order to** highlight the concerns related to the competition of forgery in office with the elements of other criminal and administrative offenses. By relying on the cases of criminal law competition of forgery in office with specific offenses, the author proves that the causes of ensuing problematic issues are the absence of a common terminological (conceptual) framework used in lawmaking and the legislator's disregard (or ignorance) of the existing criminal law regulation in the relevant area when establishing criminal liability for certain criminal offenses, the subject matter of which are documents. Following the analysis, the author shares original findings about settling the identified issues that may become the subject of scientific discussion. The publication is based on general scientific and specific **methods** of scientific knowledge, mainly the following ones: analysis (when comparing criminal and administrative offenses with forgery in office – the elements of each of such offenses were studied separately); synthesis (used in the determination and analysis of common elements of forgery in office with criminal and administrative offenses); comparative method (necessary to identify common and distinctive features of criminal and administrative offenses). For the first time, the publication comprehensively covers the problematic issues of competition of forgery in office with other elements of criminal and administrative offenses, systematizes approaches to their settling, and outlines areas for improving the law on criminal liability, in particular, for committing forgery in office. According to the **research findings**, **conclusions** are formulated: alternative forms of action, which constitute the objective aspect of forgery in office, can neutralize the presence of special (regarding forgery in office) norms, causing the need to qualify the committed as a set of criminal offenses; not only the type and amount of punishment but also the presence of criminal liability for forging may depend on the kind of official document that is the subject of forgery in office.

Key words: forgery in office, components of criminal offense, competition, qualification.

1. Introduction

In law enforcement activities, the presence in the components of criminal offenses of similar signs of the actus reus of forgery in office poses a question to the subject of law enforcement of which provision of the law on criminal liability to apply. Moreover, the legislator enshrines administrative liability for forging certain documents that expands the above problem in law enforcement. In this context, the conclusion of Navrotskyi V.O. is quite apt: numerous errors made during criminal law qualification are due to the incorrect settlement of the issues of crimes' division – the misunderstanding of the difference between individual criminal offenses, the inability to justify this difference in procedural documents, and thereby explain the reasons for qualification change (Navrotskyi, 2009, 213).

It is possible to solve these problems in law enforcement primarily after analyzing and comparing objective and subjective signs of specific actus reus of criminal offenses (sometimes of administrative offenses). The outcomes of such comparison further contribute to establishing the correlation between the compared elements of criminal offenses and deciding which legal norm to apply. As a rule, when studying problems of the correlation between components of criminal offenses in the science of crim-

inal law, it concerns the competition of criminal law norms and the correlation of related components of criminal offenses. As for the distinction between these two concepts, when examining actus reus for bringing a knowingly innocent person to criminal liability, Skrypnyk K.Yu. cites related and competing elements of criminal offenses provided for in Arts. 364, 365, 372 of the Criminal Code (Skrypnyk, 2022, p. 208) without focusing on the discrepancy in these concepts. Other scholars argue for differences in competition and related criminal offenses. Thus, according to Marin O.K., the competition of criminal law norms should be understood as the presence in criminal law of at least two norms aimed at resolving one issue, or an atypical situation in law enforcement, e.g., two (or more) functionally related criminal law norms in effect may be applied in the criminal law assessment of one socially dangerous act (Marin, 2001, p. 52). In turn, L.P. Brych holds that related components of criminal offenses are ones that form a pair (group), each of which has signs that fully or partially coincide in content with the features of other corpus delicti that is part of the pair (group) (in addition to the common object, causal relationship, common features of the subject of a criminal offense's components, and guilt) and, at the same time, each of which contains at least one feature that differs in content with the corresponding features of other elements of the pair (group), which mutually exclude each other's presence in the components of crimes they are inherent to (Brych, 2013, p. 224).

The science of criminal law considers the competition of general and special norms, whole and part, and competition of special norms, the most common types of competition of criminal law norms.

In solving certain problems of competition of forgery in office, it is important for us, first of all, to justify the solution of each problematic issue, and not to try to deepen the scientific discussion on the differences in the ratio of criminal law norms. It should be noted that for such justification, we rely on the current Criminal Code of Ukraine (hereinafter referred to as CC) (in particular, Section VII of the General Part of CC, which regulates the plurality of criminal offenses), legal opinions of the Supreme Court, and resolutions of the Plenum of the Supreme Court of Ukraine (hereinafter referred to as RPSCU) (for example, sub-paras. 10 – 12 of para. 10 of RPSCU dated 04.06.2010 No. 7 "On the practice of applying by courts of criminal law on the repetition, aggregation and recurrence of crimes and their legal consequences"; para. 12 of RPSCU dated 07.02.2003 No. 2 "On judicial practice in cases of crimes against life and health").

2. Competition between the elements of criminal offenses provided for in p. 1 of Art. 358 and p. 1 of Art. 366 of CC

It is conventional for the science of criminal law to settle the competition of the elements of criminal offenses provided for in p. 1 of Art. 358 of CC and p. 1 of Art. 366 of CC through the competition rules of general (p. 1 of Art. 358 of CC) and special (p. 1 of Art. 366 of CC) norms (Andrushko, Honcharenko, Fesenko, 2008; Tatsii, Pshonka, Borysov, 2013; Pietkov, Zhuravlov, Drozd, 2024).

At the same time, we believe that comparing all mandatory signs of the main composition of forgery in office with forgery committed by a common subject (p. 1 of Art. 358 of CC) does not lead to the above unconditional conclusion given the following: 1) the subject of forgery in office is an official document, while the subject of forgery per se is: a) a certificate, another official document; b) seals, stamps, letterheads of enterprises, institutions or organizations, regardless of the form of ownership; c) other official seals, stamps, letterheads; 2) singled out part of the subject of a criminal offense under p. 1 of Art. 358 of CC, namely, an official document, we can see that, unlike p. 1 of Art. 366 of CC in which an official document has the features specified in the note to Art. 358 of CC, in the first case, the concept of an official document is additionally endowed with the following characteristics: a) issued or certified by an enterprise, institution, organization, individual entrepreneur, notary, state registrar, entity of the state registration of rights, a person authorized to perform state functions for registration of legal entities, individual entrepreneurs and public formations, a state executor, a private executor, an auditor, or another person who is entitled to issue or certify such documents; b) grants rights or releases from obligations; 3) the objective aspect of forgery in office consists in committing one of four forms of alternative actions: drawing up a knowingly false official document, issuing a knowingly false official document, entering into an official document knowingly false information, other forgery of an official document. And the disposition of p. 1 of Art. 358 of CC provides for the commission of the following alternative forms of actions: forgery of an official document, sale of such a document, production of forged seals, stamps or forms, their sale; 4) singled out part of the objective aspect of a criminal offense under p. 1 of Art. 358 of CC, namely the forgery of an official document, the question arises of the ratio of the act's scope in this provision and in p. 1 of Art. 366 of CC; 5) the subjective aspect of the forgery composition is characterized by mandatory elements of guilt (in the form

of direct intent) and purpose (use of an official document by a forger or another person) compared to forgery in office which does not provide for a purpose (both in general and in the specified expression) as a mandatory element of a criminal offense.

Thus, as for the comparison of the subject of criminal offenses provided for in p. 1 of Art. 366 of CC and p. 1 of Art. 358 CC: 1) in the second case, the subject is wider in scope and its part, which is not covered by an official document, does not enshrines a special provision if an official commits the relevant act; 2) the disposition of p. 1 of Art. 358 of CC characterizes an official document through unjustifiably different terminology when formulating the features of an official document, which in some cases could be regarded as identical (for example, when formulating the document's source in p. 1 of Art. 358 of CC, the set of subjects differs from that specified in the note to the same article: in p. 1 of Art. 358 of CC, the word "person" is used, and "citizen" – in the note etc.), in others – could not (in particular, in p. 1 of Art. 358 of CC, an official document is characterized by "issuance or certification", and forgery in office – by "drawing up, issuance or certification", as indicated in the note to Art. 358 of CC; according to p. 1 of Art. 358 of CC, an official document grants rights or releases from obligations, while in the elements of forgery in office it confirms or certifies certain events, phenomena or facts that have caused or are capable of causing legal consequences, or creates the possibility of being used as evidence in law enforcement activities).

As a result, comparing the elements of criminal offenses provided for in p. 1 of Art. 358 of CC and p. 1 of Art. 366 of CC indicates a conditional nature of considering their interrelation as a general and special norm. Conditions concern the differences in the subject (its type and features), the objective aspect (namely, the forms of action) and the subjective aspect (namely, the purpose) of these criminal offenses, and not only the subject of these criminal offenses (general in p. 1 of Art. 358 of CC and special (pts. 3, 4 of Art. 18 of CC) and in p. 1 of Art. 366 of CC).

The above proves at least the erroneousness of the generally accepted correlation of the mentioned articles of the law on criminal liability as general and special norms, and as a maximum – the harmfulness (for rulemaking and law enforcement) of using different words (terms) and different meanings of the same words in the formulation of criminal law norms in similar situations.

3. Competition of forgery in office with other related norms

Analysis of the elements of criminal offenses under p. 2 of Art. 372 and p. 1 of Art. 409 of CC confirms that their objective aspect fully covers any form of actions constituting forgery in office, and the subject is an official. In particular, Opanasenko V.I. holds that forgery of documents is fully covered by p. 2 of Art. 372 of CC and does not require additional qualifications under Art. 366 of CC (Opanasenko, 2019, p. 131). We fully agree with the above statement, since the ratio has the nature of "whole-part": forgery in office is a "part", i.e., it is fully covered by the elements of another criminal offense, which determines independence in such cases from a separate qualification of the offense committed as forgery in office. The objective aspect of forgery in office is "absorbed" by the corpus delicti of the above criminal offenses because the legislator uses such wording as "artificial creation of evidence" (also used in p. 2 of Art. 383 of CC), "falsification", which denote the broader concepts which embrace the commission of any form of official forgery. Similarly, action denoted in p. 1 of Art. 409 of CC by the term "forgery" implies any form of actions listed in p. 1 of Art. 366 of CC. Consequently, it is quite obvious that there is no additional need to qualify actions as forgery in office.

4. Correlation of forgery in office with other special criminal law norms

The current Criminal Code contains a set of actus reus of criminal offenses toward which forgery in office can act as a general rule, thereby creating competition between general and special rules. At the same time, the corresponding competition can be called competition between special rules, if the rule provided for in p. 1 of Art. 358 of CC is considered general in all cases under study.

Thus, such a type of competition includes the correlation of forgery in office with 1) the main elements of criminal offenses with a special subject (incl. officials from among those specified in pts. 3, 4 of Art. 18 of CC), the objective aspect of which enshrines the commission of one or more forms of action, which is an element of forgery in office towards a limited number of official documents (p. 3 of Art. 220-1, p.1 of Art. 223-1, p. 2 of Art. 358, pts. 1, 2 of Art. 366-2 of CC); 2) qualified elements of criminal offenses, the objective aspect of which enshrines the commission of one or more forms of action that is an element of forgery in office, involving the qualifying feature "commission by an official using his/her official position" (p. 4 of Art. 158-3, p. 2 of Art. 205-1).

In the mentioned criminal offenses, the objective side involves "entering" inaccurate information (data) into an official document, with the exception of p. 4 of Art. 158-3 of CC, which includes forgery among other things. Consequently, the vast majority of special

criminal law rules are special only toward one of the four possible forms of actions, the commission of which means official forgery.

The above implies the first problem of the relevant type of competition: the commission of any other form of official forgery than that specified by a special norm – even if the subject and other signs of criminal offense fully comply with the special norm – requires additional (individual) qualification of action as forgery in office. For instance, if an official commits forgery (as indicated, for example, in the title of Art. 205-1 of CC) defined by the above norms of CC of an official document in any other form than "entering" (for example, "issuing" or "certifying" an official document), there are no grounds for qualifying actions under a special rule (that is, actions shall be qualified under the relevant part of Art. 366 of CC), which obviously does not meet the objective for which special rules established criminal liability.

In addition, the main elements of criminal offenses concerned specify the subject of official forgery in the form of entering knowingly false information from among those specified by special legislation (for example, the Law of Ukraine "On Capital Markets and Organized Commodity Markets", the Regulation on the Procedure for the Issue of Shares, Registration and Cancellation of Registration of Share Issuance, approved by the decision of the National Securities and Stock Market Commission dated November 22, 2023, No. 1308, and others), belonging to officials and official documents, respectively. This, in turn, necessitates not only the determination of each special violator of criminal offenses and their subject but also the need for their verification by the criteria specified in pts. 3, 4 of Art. 18 of CC and the note to Art. 358 of CC, respectively.

Special attention should be paid to the correlation of forgery in office with a criminal offense under p. 1 of Art. 223-1 of CC. For example, Volynets R.A. highlights that at the stage of submitting documents to the specific body, they contain knowingly false information and such actions may be qualified as a completed attempt to commit a crime under Art. 223-1 of CC; such that come within a crime under p. 1 of Art. 366 of CC; a violation of the procedure for issuing securities (p. 1 of Art. 163 of the Code of Ukraine on Administrative Offenses (hereinafter referred to CUAO). The scientist believes that such actions should be qualified under p. 1 of Art. 366 of CC but does not provide any arguments (Volynets, 2018, p. 191). However, the issues under consideration are somewhat broader and are related to options for criminal law qualification in the case if the amount of damage does not reach the amount specified in p. 1 of Art. 223-1 of CC; it is caused to another person than determined by this norm, or the amount of damage reaches serious consequences (p. 2 of Art. 366 of CC). In our opinion, competition is settled in the following way: 1) if pecuniary damage is lower than specified in p. 1 of Art. 223-1 of CC, there is no criminal liability for entering knowingly false information by an authorized person in the documents submitted for registration of the securities issue; 2) if pecuniary damage is caused not to the securities investor but to another person, regardless of its extent, there is no criminal liability for entering knowingly false information by an authorized person in the documents submitted for registration of the securities issue. Such conclusions should be made given that the legislator put the protection of documents submitted for registration of security issuance in a separate criminal law regulation; if they contain false information in the above and similar cases, there are no grounds for qualification under p. 1 of Art. 366 of CC, as well as under p. 2 of Art. 366 of CC, if pecuniary damage caused by such actions lead to serious consequences. Such a conclusion is also supported by punishment, which is softer under p. 1 of Art. 223-1 of CC compared to p. 1 of Art. 366 of CC.

In law enforcement activities, forgery in office can compete with some other elements of criminal offenses (in particular, committed by a general or special subject, not exclusively by an official, etc.). Thus, the competition of elements of criminal offenses should be considered not only by comparing the actions within a set of facts of criminal offenses but also by combining them with other legal facts (Shapchenko S.D. drew attention to the corpus delicti of a criminal offense as the construction of an information and evaluation model of factual circumstances – action combined with other legal facts) (Shapchenko, 2009, p. 243). Such competing elements of criminal offenses include those committed by a common subject (p. 1 of Art. 199, p. 1 of Art. 200, p. 1 of Art. 224, p. 1 of Art. 318 of CC) and a special subject (p. 1 of Art. 384 of CC). If the subject of these criminal offenses meets the criteria of pts. 3, 4 of Art. 18 of CC, and the target – a note to Art. 358 of CC, the relevant actions (only those that are identical) do not require additional qualification under the relevant part of Art. 366 of CC, that is, the rules for applying a special norm are in force.

5. Correlation of forgery in office with other criminal offenses

The objective aspect of certain criminal offenses implies the commission of acts in relation to the same target as in the commission of forgery in office, which, as a rule, do not over-

lap in their scope with direct forms of forgery in office. Such criminal offenses include, in particular, those that provide for liability for: 1) committing an act in the form of "submission", "provision" to a designated body or person of an official document (or information in an official document) with inaccurate data (p. 1 of Art. 158, p. 1 of Art. 159-1, p. 1 of Art. 209-1, p. 1 of Art. 222, p. 1 of Art. 232-2, pts. 1, 2 of Art. 351, p. 1 of Art. 351-1 of CC); 2) committing an act in the form of "notification" to a body or person of inaccurate (false) information (p. 1 of Art. 259, p. 1 of Art. 383, p.1 of Art. 400-1 of CC). The content of these articles of CC does not allow stating unambiguously or assuming reasonably that in such cases the process of submission (or provision) of the document or notification covers, for example, the introduction of false information into it. In our opinion, in such cases, forgery in office requires an individual qualification for a set of criminal offenses.

At the same time, there are elements of criminal offenses, the objective aspect of which does not provide for the commission of any form of forgery in office, although the "forgery" term or similar one is used in the construction of the corpus delicti of the relevant criminal offense (in particular, Arts 201, 201-1, 201-3, 201-4, 206-2, 233, 305, 332-2 of CC). In such cases, forgery in office requires a separate criminal law qualification in combination with other (abovementioned) criminal offenses.

In addition, a set of CC articles employ such words as "forgery", "falsification", etc., but they relate to the commission of specific actions toward different objects than official documents (for example, p. 1 of Art. 263-1, p. 1 of Art. 265, p. 1 of Art. 321-1, p. 3 of Art. 361, p. 1 of Art. 362 of CC).

6. Correlation of forgery in office with certain administrative offenses

The objective aspect of certain administrative offenses involves the commission of an act in the form of forgery of a specific official document or a group of such documents, for example: p. 1 of Art. 135-1 (act – "production", subject matter – "tickets, other travel documents, documents for the carriage of goods, postage paid, labeled products, international coupons for reply, identity cards for international postal exchange"), pts. 4, 5, 6, 8, 9, 10 of Art. 96 (act – "provision of inaccurate data", subject matter – "notification of the beginning of preparatory/construction work", "declaration of object readiness for operation", "act of object readiness for operation"), p. 8 of Art. 164 (act –"provision of inaccurate information in the document", subject matter – "notification of the commencement of economic activity"), p. 1 of Art. 164-12 (act – "inclusion of inaccurate information in the document", subject matter – "budget request"), p. 1 of Art. 164-18 of CUAO (act – "provision of knowingly false information", subject matter – "application for termination of copyright and (or) related rights violations").

According to Miskiv D. M. & Hazdaika-Vasylyshyn I. B., deliberate introduction by the declaration subject of knowingly false information into the declaration of a person authorized to perform the functions of the state or local self-government shall be qualified as forgery in office, not as an administrative offense under p 4 of Art. 172-6 of CUAO, if such data differ from reliable information at the amount of up to 500 subsistence rates for able-bodied persons (Miskiv, Hazdaika-Vasylyshyn, 2022, p. 109).

At the same time, in a similar legal situation, guided by the principle of legal certainty, the Supreme Court in its resolution No. 727/5768/18 as of 15.02.2021 concluded that the provision of false data in the declaration of object readiness for operation under the circumstances established by the courts indicates the absence of elements of forgery in office and the presence of elements of the administrative offense provided for in p. 13 of Art. 96 of CUAO.

Competition of forgery in office with certain administrative offenses creates problems: 1) related to the difference in the variants of legal qualification of an act under the norms of CUAO or CC due to different sanctions (type and extent of punishments and penalties); 2) vague interpretation and application of p. 6 of Art. 3, Art 11 of CC, p. 2 of Art. 9, Art. 253 of CUAO; 3) various legal consequences (including those provided for in Arts. 69, 75 of CC, the Law of Ukraine "On Combating Corruption", etc.), which occur depending on: a) the qualification of action as a criminal or administrative offense; b) the qualification of action as a corruption, corruption-related criminal offense, or corruption-related administrative offense or as a criminal or administrative offense that does not belong to such.

In our opinion, cases which contain objective and subjective signs of the corpus delict of forgery in office but illegal acts are committed against a particular official document, any forgery form of which constitutes the objective

aspect of an administrative offense regardless of any other mandatory signs of the corpus delicti of such an administrative offense, the relevant act cannot be qualified as forgery in office (even in cases which lack additional mandatory signs of an administrative offense (for example, purpose), a sufficient number of certain quantitative indicators of the subject matter of an administrative offense, etc.). Singling out a specific official document or a group of such documents as the subject of actions identical in content to the forms of forgery in office, the legislator "derived" these documents from the legal protection of the norm provided for in Art. 366 of CC.

As N. O. Antoniuk rightly notes, the differentiation of criminal liability by constructing special norms should be based on considering, first of all, a significant change in the social danger of the act committed, given the corresponding differentiating sign, the prevalence of such acts, and the timeliness of introducing appropriate amendments (Antoniuk, 2023, p. 418). At the same time, the above comparisons of forgery in office with administrative offenses indicate that none of these criteria is obviously available when it comes to forgery in office.

7. Conclusions

The above problems caused by the competition of forgery in office with other criminal and administrative offenses make it possible to formulate at least the following conclusions: 1) comparing forgery in office with other criminal offenses, it is necessary to primarily proceed from the fact that its main elements are characterized by the subject matter – an official document, the objective aspect – action in the form of "compilation", "issuance", "introduction", "other kind of forgery", the subject – an official, the subjective aspect – guilt in the form of direct intent; 2) the presence in the competing CC norms of all of these forms of actions (if there are other signs of the element of forgery in office) excludes the qualification of the committed as forgery in office, and vice versa, if the disposition of the competing norm does not enshrine a certain form of the committed act of forgery in office, then it shall be qualified under the relevant part of Art. 366 of CC where it is not covered by the relevant norm; 3) an act that contains all the signs of forgery in office but committed toward a certain official document, the encroachment of which is singled out as a separate criminal or administrative offense, is qualified exclusively by the rule of CC or CUAO, which provides for such a special offense; 4) in some cases, the type of official document affects the criminalization of the act or the type and extent of punishment for forgery of the relevant document; 5) the imperfection of legal regulation of CC and CUAO at the stage of establishing responsibility for a certain offense has the consequence: a) the creation of unnecessary special rules by criminalizing the forgery of a certain document, which has already been and remains criminally punishable; b) the lack of consistency in the types and extent of punishments; c) the designation of essentially the same actions with different terms (words) that denote different, not always the same "processes" or forms of forgery in office; 6) the current state of legal regulation casts doubt on the existence of specific criminal law norms (in particular, Art 366 of CC); 7) the issues raised are the subject of scientific discussion and require further scientific development.

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