4 2024 (338)

ENTREPRENEURSHIP, ECONOMY and LAW

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

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

HELVETICA PUBLISHING HOUSE

LAND LAW

ADMINISTRATIVE LAW AND PROCESS

THEORY OF STATE AND LAW

CRIMINAL LAW

Monument to the Magdeburg Rights in Kyiv is on the cover

CRIMINOLOGY

JUDICIARY

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

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

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

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

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

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

The journal is recommended for printing and distributing over the Internet by the Academic Council of Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine (Minutes No. 16 dated 25.12.2024)

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

Passed for printing 26.12.2024. Format 70×108 1/16. Offset paper.
Offset printing. Conventional printed sheet 9,43. Published sheets 13,71.
Print run – 255 copies. Order No. 0126/056
Publisher: Publishing House "Helvetica"
6/1 Inglezi St., Odesa, 65101
Certificate of publishing business entity ДК № 7623 dated 22.06.2022

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

4 2024 (338)

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

ПІДПРИЄМНИЦТВО, ГОСПОДАРСТВО І ПРАВО

НАУКОВО-ДОСЛІДНИЙ ІНСТИТУТ ПРИВАТНОГО ПРАВА І ПІДПРИЄМНИЦТВА
ІМ. АКАДЕМІКА Ф. Г. БУРЧАКА НАПрН УКРАЇНИ

ЗЕМЕЛЬНЕ ПРАВО

АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС

ТЕОРІЯ ДЕРЖАВИ І ПРАВА

КРИМІНАЛЬНЕ ПРАВО

ГЕЛЬВЕТИКА
ВИДАВНИЧИЙ ДІМ

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

КРИМІНОЛОГІЯ

ПРОКУРАТУРА

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

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

Свідоцтво про державну реєстрацію друкованого засобу масової інформації серія КВ № 15779-4251ПР від 02.11.2009 р.
Журнал рекомендовано до друку та поширення через мережу Internet вченою радою Науково-дослідного інституту приватного права і підприємництва ім. академіка Ф. Г. Бурчака НАПрН України (Протокол № 16 від 25.12.2024 року)
Офіційний сайт: pgp-journal.kiev.ua

Підписано до друку 26.12.2024. Формат 70x108 1/16. Папір офсетний.
Друк офсетний. Ум. друк. арк. 9,43. Обл.-вид. арк. 13,71.
Тираж – 255. Замовлення № 0126/056
Видавець: Видавничий дім «Гельветика»,
65101, м. Одеса, вул. Інглезі, 6/1
Свідоцтво суб'єкта видавничої справи ДК № 7623 від 22.06.2022 р.

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

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2024.4.01

Vitalii Lutsenko,
Applicant Scientific Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, vitaliilutsenko@ukr.net
ORCID: orcid.org/0000-0002-3769-2679

THE CONCEPT OF STATE REGIONAL POLICY IN THE FIELD OF LAND RELATIONS

Abstract. ***Purpose.*** The purpose of the article is to define the concept of state regional policy in the field of land relations. ***Results.*** Based on the analysis of scholars' scientific views, it is argued that the sphere of land relations is extremely important for the state and society, as it concerns the use and preservation of national wealth and one of the most valuable resources – land, which is the main object of these legal relations. Scientific approaches to the interpretation of the category "state policy" are examined, which made it possible to formulate the author's definition of state regional policy in the field of land relations. It is emphasized that every state strives to preserve land and ensure its rational and efficient use. Obviously, Ukraine also pays particular attention to land issues, which constitutes a separate direction of state policy. It is established that state policy is one of the key forms of activity of public authorities; it arises as a response to social problems, needs and demands, and reflects the attitude of the ruling elite toward the realities and challenges of societal development, as well as its understanding of the range, content and depth of problems, and the ways and means of addressing them. ***Conclusions.*** It is concluded that state regional policy in the field of land relations may be defined as a set of measures (political-legal, organizational-administrative, law-enforcement, etc.) implemented by central and local public authorities and aimed at ensuring appropriate conditions for the formation, functioning, development and termination of these social relations at the level of individual regions. This policy is oriented, on the one hand, toward the effective implementation of the general principles of the central state policy in the field of land relations in specific regions, taking into account their natural-geographical, ecological, economic, demographic, cultural and other characteristics; and on the other hand, toward obtaining feedback from local authorities regarding the current state of this sphere, its urgent problems, needs and demands, as well as proposals for resolving relevant issues.

Key words: land, land relations, policies, state policy, regional policy.

1. Introduction

Land is an extremely important and valuable resource that has special social and economic significance for society, which is confirmed, in particular, by Article 14 of the Constitution of Ukraine, where land is defined as the nation's principal wealth under the special protection of the state (Constitution of Ukraine, 1996). The term "land" can be considered in various aspects – as one of the planets of the solar system, the globe, a component of the cosmic system, an object of natural origin, dry land, soil, etc. (Shulha, 2023). In any case, land is an object of close attention from the state and society, as well as from the international community as a whole. As noted by M.V. Shulha, land as a planet or the globe is an object of legal regulation in international law. Land may also be regarded as the environment in which humans and society live, which encompasses the terrestrial and air layers of the Earth, its subsoil, surface and landscape, flora and fauna. In this sense, land is an object of legal regulation in natural resource and environmental law (Shulha, 2023).

Given the above, it is evident that every state seeks to preserve land, ensuring its rational and efficient use. Naturally, Ukraine also pays special attention to land issues, which is reflected in a separate area of state policy. Issues related to the formation and implementation of state policy in various spheres of public life have repeatedly attracted the attention of scholars. In particular, these matters have been examined by O.I. Baik, U.P. Bobko, T.M. Brus, K.O. Vashchenko, O.L. Valevskyi, Yu.V. Kovbasiuk, O.P. Demianchuk, M.S. Dolynska, A.O. Dutko, O.V. Lavruk, N.M. Pavliuk, V.Ye. Romanov, I.V. Rozputenko, O.M. Rudik, O.V. Riabichko, Yu.P. Surmin, V.V. Tertychka and many others. Nevertheless, despite a considerable theoretical foundation, the issue of state regional policy in the field of land relations remains insufficiently explored in academic literature.

Therefore, the purpose of the article is to define the concept of state regional policy in the field of land relations.

2. Principles for Forming the Concept of "State Policy"

At the outset of this academic inquiry, it is important to note that the scholarly literature

contains a considerable number of approaches to defining the concept of state policy. Thus, O.P. Demianchuk emphasizes that state policy represents a program of actions aimed at solving a specific problem or a set of problems and achieving defined goals; a system of actions, regulatory measures, laws and financial priorities in a particular area, proclaimed by a public authority or its representatives (Demianchuk, 2000).

I.V. Rozputenko defines state policy as the actions of the system of state authorities carried out in accordance with established goals, directions and principles for solving a set of interrelated problems in a specific sphere of public activity. According to I.V. Rozputenko and O.V. Riabichko, state policy is a proposed course of governmental action intended to meet needs or seize opportunities and formulated with reference to expected outcomes and their impact on the current state of affairs, as well as the concrete resolution of problems (Surmin, Bakumenko, Mykhnenko, 2010).

O.V. Lavruk, having analyzed numerous scholarly positions on the interpretation of the concept of state policy, concludes that the formation of state policy by public authorities constitutes a continuous cyclical process that includes a set of sequential actions, the interaction of various interconnected elements and institutions with their inherent functions and means of achieving final results (policy approval) (Lavruk, 2018). According to the scholar, politics is a special sphere of societal functioning, forming the basis for the exercise of state power and governance through the adoption and implementation of state-political decisions. Politics serves as a universal mechanism regulating human relationships associated with the exercise of state authority. Within the political sphere, processes also operate to ensure the formation of public authorities, the implementation of public administration, and the adoption and realization of the incremental model of public-administrative decision-making (Lavruk, 2018). Consequently, O.V. Lavruk summarizes that state policy is one of the essential components of societal functioning, since its measures aim to improve citizens' living standards and guarantee the social stability of the state and its regions. State policy, the researcher rightly observes, must possess a comprehensive character in terms of its functional orientation toward addressing interconnected political and socio-economic problems, responding promptly to transformational changes occurring within the state and society, and consistently remaining effective (optimal distribution of governmental powers among state bodies and organizations, structured quality of public-administrative decisions, goal-oriented tasks and measures), result-oriented and accepted by the population (Lavruk, 2018).

V.V. Tertychka maintains that the most optimal characteristic of state policy is the following: a relatively stable, organized and purposeful activity/inaction of state institutions, undertaken either directly or indirectly with regard to a particular problem or a set of problems affecting societal life (Tertychka, 2002). Justifying his position, the scholar lists several characteristic features of state policy, namely:

– state policy is not accidental or chaotic behavior of policy actors but a purposeful action/inaction designed to achieve specific goals (even though the declared goals are not always attained);

– policy encompasses not isolated abstract decisions but purposeful directions or patterns of action/inaction by state institutions and includes both policy development and its implementation;

– not all policy is implemented through state structures, as private organizations or individuals are often involved;

– state policy constitutes a response to societal demands or to the demands for action/inaction from policymakers, legislators, bureaucrats, interest groups, citizens, etc.;

– policy is the activity/passivity of state institutions rather than their plans (mere declarations);

– state policy may be positive when certain problems are resolved, or negative if through action/inaction the goals are not achieved or the opposite effect is produced;

– state policy is based on law and must therefore be legitimate;

– state policy rests on the state's monopoly on lawful coercion or force, meaning that state bodies use a range of instruments to achieve policy goals;

– it is important to distinguish between simple decisions and policy. Daily governmental decisions, driven both by policy and circumstances, may stimulate certain policy actions, but they do not constitute policy per se (Tertychka, 2002).

From the above, it becomes evident that state policy is one of the key forms of activity of public authorities, arising as a reaction to societal problems, needs and demands. It expresses the attitude of the ruling elite toward the realities and challenges of societal development and reflects its understanding of the range, content and depth of problems, as well as the means and methods for their resolution.

3. Features of Social Relations in the Sphere of Land Relations

Practically every sphere of social relations is, to one extent or another, subject to

the influence of the relevant public policy. A separate component of such policy is the sphere of land relations. Land relations are defined as social relations concerning the possession, use, and disposal of land (Land Code of Ukraine, 2001). Researchers note that land relations constitute social relations between subjects whose mutual rights and obligations regarding land are regulated by the norms of land law. According to M.V. Shulha, these relations have a volitional character, since before being formed they pass through human consciousness; the will of their participants is reproduced within legal relations (Shulha, 2023).

Social relations may arise between participants in connection with the implementation of legal imperatives and provisions regarding the use of land as an object of ownership of the Ukrainian people and as a component of national wealth under the special protection of the state. They also emerge in the context of exercising subjective land rights, reforming land relations, the rational use, restoration, and protection of land, the activities of state authorities and local self-government bodies in regulating land relations, and the protection of land rights, among other aspects (Shulha, 2023).

Thus, the sphere of land relations is extremely important for the state and society, as it concerns the use and preservation of national wealth and one of the most valuable resources – land, which is the primary object of these legal relations. The current Land Code of Ukraine does not provide a definition of "land"; instead, it merely states that the objects of land relations include land within the territory of Ukraine, land plots, and rights to them, including land shares (pai) (Land Code of Ukraine, 2001).

However, the Law of Ukraine *On Land Protection* contains the following definition of the term "land": the surface of the dry land with soil, minerals, and other natural elements that are organically integrated and function together with it (Law of Ukraine *On Land Protection*, 2003). A.M. Miroshnychenko notes that such an approach to interpreting land is somewhat narrow; however, this is precisely how the legislator understands land when referring to it as an object of land legal relations. According to the scholar, land is the most important part of the natural environment, characterized by space, relief, soil cover, subsoil, and waters; it is the principal means of production in agriculture and a spatial basis for the location of various branches of the national economy. The regulatory significance of such definitions is limited, yet they illustrate, at least to some extent, the meaning in which the term "land" is understood in land legislation (Miroshnychenko, 2011).

Without delving into the diversity of doctrinal approaches to defining land as an object of land relations, it may be concluded that its value and significance stem primarily from the fact that it constitutes the spatial basis of both the state as a whole and various forms of human settlement, and that it plays an enormous role – both spatial and resource-related – in the national economy. In this regard, M.V. Shulha rightly observes that land becomes an object of land relations in connection with the use of its beneficial properties, the appropriation of its products, and its use as a spatial basis (Shulha, 2023).

The exceptional importance of land as a means of production and a source of income, combined with the objective spatial limitations and exhaustibility of this resource, makes it an attractive and desirable object of ownership, possession, and use.

T.H. Tytarenko, analyzing the concept and substantive content of state policy on the regulation of land relations in Ukraine, notes that land policy can be characterized as the activities of state authorities in the field of land relations, aimed at the rational use and protection of land, ensuring the country's food security, and creating environmentally safe conditions for economic activity and human habitation. State policy in the field of land relations, Tytarenko argues, represents a multidimensional system of economic, organizational, and legal measures aimed at the development, improvement, or fundamental transformation of land relations in a direction prioritized by the state, implemented by public authorities to rationalize the use and protection of land, ensure food security, and create environmentally safe conditions for economic activity and living (Tytarenko, 2015). Accordingly, the objective of state policy on land relations is the achievement of rational land use and land protection, food security, and environmentally safe conditions for economic activity and habitation (Tytarenko, 2015).

The implementation of state policy in the sphere of land relations occurs at the national and regional levels. The Law of Ukraine *On the Principles of State Regional Policy* of 05 February 2015 No. 156-VIII defines state regional policy as a system of goals, measures, instruments, and coordinated actions of central and local executive authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies and their officials, aimed at ensuring a high quality of life throughout the entire territory of Ukraine, taking into account the natural, historical, ecological, economic, geographical, demographic and other features of regions, as well as their

ethnic and cultural identity (Law of Ukraine *On the Principles of State Regional Policy*, 2015).

A.V. Kinshchak argues that state regional policy is a set of organizational, legal, and economic measures implemented by the state in the sphere of regional development, taking into account the current socio-economic condition of regions and strategic goals. These measures are aimed at stimulating the effective development of the region's productive forces, the rational use of its resource potential, the creation of appropriate living conditions, the provision of environmental safety, and the improvement of the territorial organization of society. State regional policy, he emphasizes, constitutes an integral part of the national strategy for the economic and social development of Ukraine (Kinshchak, 2014).

According to O.P. Chelak, state regional policy is an essential component of the overall state policy. Its main task is to ensure the development of the country's territory in accordance with the adopted state strategy. Given that every region in the country is unique due to the structural heterogeneity of space – in natural-geographical, resource, economic, social, ethnic, and political aspects – any activity must be carried out with due regard to the spectrum of interests and specific characteristics of each region, as well as the priority problems present therein (Chelak, 2015).

4. Conclusions

Given the above considerations regarding the understanding of public policy in general and state land and regional policy in particular, state regional policy in the sphere of land relations may be defined as a set of measures (politico-legal, organizational-administrative, law-enforcement, etc.) implemented by central and local public authorities, aimed at ensuring appropriate conditions for the formation, functioning, development, and termination of these social relations at the level of individual regions. This policy is oriented, on the one hand, toward the effective implementation of the general principles of central state policy in the sphere of land relations within individual regions, taking into account their natural-geographical, ecological, economic, demographic, cultural, and other specific characteristics; and on the other hand, toward obtaining feedback from local authorities regarding the actual state of this sphere, its urgent problems, needs, demands, and proposals for addressing relevant regulatory challenges.

References

Chelak, O. P. (2015). *Rehionalna polityka yak skladova derzhavnoi polityky suchasnykh krain* [Regional policy as a component of state policy of modern countries]. *Aktualni problemy polityky*, (56), 211–219. (in Ukrainian).

Demianchuk, O. P. (2000). "Derzhavna polityka" ta "publichna polityka": variant perekhidnoho periodu ["State policy" and "public policy": A variant of the transitional period]. *Naukovi zapysky*, 18, 31–36. (in Ukrainian).

Kinshchak, A. V. (2014). *Derzhavna rehionalna polityka v Ukraini: terminolohichna nevyznachenist* [State regional policy in Ukraine: Terminological uncertainty]. *Derzhavne upravlinnia: udoskonalennia ta rozvytok*, (6), 1–4. (in Ukrainian).

Konstytutsiia Ukrainy vid 28.06.1996 [Constitution of Ukraine of 28.06.1996]. (1996). Retrieved from zakon.rada.gov.ua/laws/show/254к/96-вр (in Ukrainian).

Lavruk, O. V. (2018). *Sutnist poniattia derzhavnoi polityky* [The essence of the concept of state policy]. *Universytetski naukovi zapysky*, (3–4), 254–263. (in Ukrainian).

Miroshnychenko, A. M. (2011). *Zemelne pravo Ukrainy: pidruchnyk* [Land law of Ukraine: Textbook]. Kyiv: Alerta; TsUL. (in Ukrainian).

Shulha, M. V. (2023). *Zemelne pravo: pidruchnyk* [Land law: Textbook]. Kharkiv: Yurait. (in Ukrainian).

Surmin, Yu. P., Bakumenko, V. D., & Mykhnenko, A. M. (2010). *Entsyklopedychnyi slovnyk z derzhavnoho upravlinnia*[Encyclopedic dictionary of public administration]. Kyiv: NADU. (in Ukrainian).

Tertychka, V. (2002). *Derzhavna polityka: analiz ta zdiisnennia v Ukraini* [State policy: Analysis and implementation in Ukraine]. Kyiv: Osnovy. (in Ukrainian).

Tytarenko, T. H. (2015). Poniattia ta sutnist i zmist derzhavnoi polityky rehuliuvannia zemelnykh vidnosyn v Ukraini [The concept, essence, and content of state policy on land relations regulation in Ukraine]. *Derzhavne upravlinnia: udoskonalennia ta rozvytok*, (8), 1–3. (in Ukrainian).

Zakon Ukrainy "Pro okhoronu zemel": vid 19.06.2003 № 962-IV [Law of Ukraine "On Land Protection": dated 19.06.2003 No. 962-IV]. (2003). Retrieved from zakon.rada.gov.ua/laws/show/962-15 (in Ukrainian).

Zakon Ukrainy "Pro zasady derzhavnoi rehionalnoi polityky": vid 05.02.2015 № 156-VIII [Law of Ukraine "On the Principles of State Regional Policy": dated 05.02.2015 No. 156-VIII]. (2015). Retrieved from zakon.rada.gov.ua/laws/show/156-19 (in Ukrainian).

Zemelnyi kodeks Ukrainy: vid 25.10.2001 № 2768-III [Land Code of Ukraine: dated 25.10.2001 No. 2768-III]. (2001). Retrieved from zakon.rada.gov.ua/laws/show/2768-14 (in Ukrainian).

Віталій ЛУЦЕНКО
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, vitaliilutsenko@ukr.net
ORCID: *orcid.org/0000-0002-3769-2679*

ПОНЯТТЯ ДЕРЖАВНОЇ РЕГІОНАЛЬНОЇ ПОЛІТИКИ У СФЕРІ ЗЕМЕЛЬНИХ ВІДНОСИН

Анотація. ***Мета статті*** полягає у визначенні поняття державної регіональної політики у сфері земельних відносин. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених, аргументовано, що сфера земельних відносин є вкрай важливою для держави і суспільства, оскільки стосується використання та збереження національного багатства та одного із найціннішого ресурсу – землі, яка власне і є основним об'єктом цих правовідносин. Розкрито наукові підходи щодо тлумачення категорії «державна політика», що дало можливість сформулювати авторське визначення поняття державної регіональної політики у сфері земельних відносин. Наголошено, що кожна держава, прагне до збереження землі, забезпечення її раціонального та ефективного використання. Зрозуміло, що Україна також приділяє особливу увагу земельним питанням, на що спрямований окремий напрямок державної політики. З'ясовано, що державна політика є однією із ключових форм діяльності суб'єктів публічної влади, яка виникає як реакція на суспільні проблеми, потреби та запити і виражає ставлення правлячої еліти до реалій і викликів суспільного розвитку, характеризує розуміння нею кола, змісту та глибини проблем, шляхів і засобів їх розв'язання. ***Висновки.*** Зроблено висновок, що державну регіональну політику у сфері земельних відносин можна визначити як комплекс заходів (політико-правових, організаційно-управлінських, правоохоронних тощо), що здійснюються органами центральної та місцевої публічної влади, спрямованих на забезпечення належних умов для формування, протікання, розвитку та припинення зазначених суспільних відносин на рівні окремих регіонів і орієнтованих: з одного боку на ефективне впровадження загальних засад центральної державної політики у сфері земельних відносин у окремих регіонах з урахуванням їх природно-географічних, екологічних, економічних, демографічних, культурних та інших особливостей, а з іншого – на отримання зворотної реакції (відповіді) від місцевої влади щодо наявного стану зазначеної сфери, нагальних у ній проблем, потреб і запитів, а також пропозицій стосовно врегулювання відповідних проблемних питань.

Ключові слова: земля, земельні правовідносини, політики, державна політика, регіональна політика.

UDC 342.9:343.352
DOI https://doi.org/10.32849/2663-5313/2024.4.02

Emil Arutiunian,
PhD Candidate in Law Scientific Research Institute of Public Law,
2a H. Kirpa Street, Kyiv, Ukraine, 03035, arutiunian_emil@ukr.net
ORCID: *orcid.org/0000-0003-3774-1862*

ADMINISTRATIVE AND LEGAL RELATIONS IN COMBATING CORRUPTION AND THEIR PECULIARITIES

Abstract. ***Purpose.*** The purpose of the article is to determine the essence of administrative and legal relations in combating corruption and to reveal their specific features. ***Results.*** The article establishes that administrative and legal relations in combating corruption constitute a system regulated by the norms of administrative law of public-authority relations, predominantly executive-administrative, supervisory-control, and protective in nature, which arise between public administration entities, specially authorized anti-corruption bodies, and other holders of public powers, on the one hand, and public servants, officials, natural persons, and legal entities, on the other hand, in connection with the prevention, detection, documentation, and legal response to corruption-related and corruption offenses. Such legal relations are conditioned by the occurrence of specially defined legal facts (corruption risks, conflicts of interest, violations of anti-corruption restrictions, submission and verification of declarations, initiation of proceedings, etc.), are characterized by legal inequality of the parties and the possibility of unilateral authoritative initiative, and are aimed at ensuring the integrity of public service, transparency and accountability of administrative activities, protection of human and civil rights and freedoms, as well as restoration of the violated public interest through the application of a set of preventive, restrictive, supervisory, coercive, and liability measures consistent with national and European anti-corruption standards. It is clarified that administrative and legal relations are public-authority, hierarchical, and subordinate in nature, which is manifested in the legal inequality of the parties, unilateral initiation, and the possibility of exercising state coercion as a guarantor of legality. At the same time, they function not only as a form of implementation of state will but also as a legal mechanism for harmonizing the interests of the state and society, ensuring the coordinated functioning of the public administration system and the legal embodiment of the principles of legality, proportionality, accountability, and the rule of law. It is through the prism of administrative and legal relations that the actual content of administrative law as a regulator of public-authority activity is revealed, ensuring the organizational and legal stability of the state and the effectiveness of its administrative institutions. ***Conclusions.*** The article concludes that the main peculiarities of administrative and legal relations in combating corruption include: special anti-corruption normative determinacy; public-authority and multi-level subject composition; preventive and sanction-oriented functional focus; increased procedural formalization and supervisory-control nature; predominance of extrajudicial forms of implementation with guaranteed judicial oversight.

Key words: administrative and legal relations, administrative and legal instruments, interaction, public control, coordination, corruption, international cooperation, legal.

1. Introduction

The issue of administrative and legal support for combating corruption acquires particular relevance in the context of the formation of a rule-of-law state and the development of an effective public administration system. Corruption remains one of the most destructive threats to the functioning of the state apparatus, undermines the authority of public power, and reduces the level of public trust in state authorities and local self-government bodies. In this context, the study of administrative and legal relations arising in the process of combating corruption is a necessary prerequisite for the formation of effective legal regulation mechanisms in the sphere of public service, control, and liability of officials.

The relevance of this topic is also determined by the continuous evolution of Ukraine's administrative legislation, its adaptation to European legal standards, and the need to improve legal instruments for ensuring transparency and accountability of public authorities.

Administrative and legal mechanisms for preventing and combating corruption, the activities of specialized anti-corruption bodies, preventive and supervisory instruments, public oversight, and the formation of anti-corruption

policy have been the subject of research by such scholars as D. Andrieiev, M. Banchuk, O. Bezpalova, Yu. Belinskyi, D. Boichuk, V. Vasylevych, L. Velychenko, R. Voitovych, Ye. Hetman, S. Denysiuk, O. Zadorozhnii, V. Kolesnyk, M. Kulyk, R. Melnyk, M. Melnyk, L. Nalyvaiko, Yu. Nironka, O. Kharytonova, S. Tishchenkova, L. Usachenko, V. Fatkhutdinov, S. Khvostovtsov, N. Khrystynchenko, N. Chershova, V. Shkarupa, R. Shteba, O. Shostko, I. Yatskiv, and others.

The purpose of the article is to determine the essence of administrative and legal relations in combating corruption and to reveal their peculiarities.

2. Principles of the Functioning of State Authorities and Administration

In the context of reforming Ukrainian administrative law, changing its social purpose, and significantly expanding the range of relations regulated by this branch of law, a thorough study of the essence and content of modern administrative and legal relations directly related to the functioning of state authorities and administration becomes a pressing task. Updating the theoretical and methodological framework of administrative law science is today a necessary condition for the successful reform of administrative law as a fundamental branch of Ukrainian law (Averianov, 2003).

According to V. Kopieichykov and A. Kolodii, legal relations are social relations regulated by legal norms, the participants of which act as holders of mutual subjective rights and legal obligations ensured by the state (Kopieichykov, Kolodii, 2006). In turn, O. Skakun understands legal relations as volitional social relations regulated by legal norms and ensured by the state, which are expressed in a specific connection between authorized subjects (holders of subjective rights) and obligated participants (bearers of duties) of these relations (Skakun, 2010). A somewhat different position is taken by the authors of the textbook *General Theory of State and Law*, who state that legal relations are relations between people that represent the legal expression of economic, political, family, procedural, and other social relations, where one party, on the basis of legal norms, demands that the other party perform certain actions or refrain from them, while the other party is obliged to comply with these demands (Tsvik, Tkachenko, Bohachova, 2002).

The essence of administrative legal relations is seen in their interaction with real social relations, which constitute the content of administrative legal relations and exist as actual relations. Thus, administrative and legal relations are formed predominantly in a specific sphere of social life—the sphere of public administration—in connection with the exercise of functions by public administration bodies, that is, in the process of executive and administrative activity (Kolpakov, 1999). V. Averianov proposes to understand administrative and legal relations as social relations regulated by the norms of administrative law, in which their parties (subjects) are interconnected and interact through the exercise of subjective rights and obligations established and guaranteed by relevant administrative and legal norms (Averianov, 2004). According to I. Holosnichenko, administrative and legal relations constitute a system of rights and obligations of executive authorities, officials and civil servants, citizens, and other subjects, as well as the interconnections between them arising from the exercise of state executive power and responsibility in the sphere of public administration (Holosnichenko, Stakhurskyi, Zolotarova, 2005). O. Kharytonova, examining the conceptual foundations and legal nature of administrative and legal relations, defines them as relations regulated by legal norms that arise and exist between subjects of public law and are aimed at regulating social relations, ensuring public order, welfare, and security of citizens and society through the means of state coercion (Kharytonova, 2004).

Thus, administrative and legal relations should be regarded as a systemically organized set of social connections arising in the sphere of public administration on the basis of and within the limits of administrative and legal norms, within which subjects—holders of public authority and subordinate participants—exercise mutual subjective rights and legal obligations aimed at ensuring the proper functioning of the executive power mechanism, as well as the protection and realization of the rights, freedoms, and legitimate interests of natural and legal persons. These legal relations are characterized by a public-authority nature, manifested in the presence of a public administration body as a mandatory subject exercising authoritative and organizational influence on the behavior of the other party, thereby ensuring law and discipline in the sphere of public administration.

By their nature, administrative and legal relations are public-authority, hierarchical, and subordinate, which is expressed in the legal inequality of the parties, unilateral initiation, and the possibility of exercising coercion by the state as a guarantor of legality. At the same time, they function not only as a form of implementation of state will but also as a legal mechanism for harmonizing the interests of the state and society, ensuring the coordinated functioning of the public administration system

and the legal embodiment of the principles of legality, proportionality, accountability, and the rule of law. It is precisely through the prism of administrative and legal relations that the actual content of administrative law as a regulator of public-authority activity is revealed, ensuring the organizational and legal stability of the state and the effectiveness of its administrative institutions.

Scholar V. V. Halunko, in his work *Administrative and Legal Relations: An Algorithm for Studying Social Relations*, notes that legal facts in administrative and legal relations are formalized through the forms of activity of public administration (primarily through individual administrative acts and administrative contracts) and the methods of activity of public administration (primarily through administrative measures of encouragement, persuasion, and coercion). The author formulates the following conclusions regarding the algorithm for studying administrative and legal relations in certain branches (spheres, sectors):

1. the basis for studying any administrative and legal relations is an objective characterization of the relevant branch (sphere, sector of social life), through identifying objective grounds for their regulation by administrative law norms, developing a conceptual framework, and forming principles of public administration activity;

2. norms of administrative law, through their external expression in the sources of administrative law, ensure a balance between the interests of citizens' rights and freedoms and the public interest of the state and society; they consist of formalized domestic sources (laws of Ukraine, subordinate regulatory legal acts) and formalized international sources, certain judicial decisions of constitutional and administrative courts and the European Court of Human Rights, as well as non-formalized sources (legal doctrines);

3. when studying administrative and legal relations, attention should be paid to the general public legal personality of legal entities and the complex administrative legal personality (legal capacity, capacity to act, and delict capacity) of natural persons;

4. an integral element of the study of administrative and legal relations is the object of administrative and legal relations as a material or immaterial public good, as well as actions aimed at the use or protection of which the subjective rights and legal obligations of public administration are directed;

5. the content of administrative and legal relations is the interconnection of subjective public rights and legal obligations of the participants in administrative and legal relations enshrined in administrative law, where each subjective right established in an administrative legal norm corresponds to a specific legal obligation, and vice versa;

6. legal facts in administrative and legal relations are formalized through the forms of activity of public administration (primarily through individual administrative acts and administrative contracts) and the methods of activity of public administration (primarily through administrative measures of encouragement, persuasion, and coercion) (Halunko, 2017).

3. Peculiarities of the Regulatory and Legal Framework for the Prevention of and Counteraction to Corruption

O. O. Onyshchuk, in his work *Administrative and Legal Relations in the Field of Prevention of and Counteraction to Corruption*, noted that, in accordance with the subject matter of modern administrative law, administrative and legal norms—aimed at ensuring the rights and freedoms of the individual and the citizen—regulate, in the sphere of prevention of and counteraction to corruption, relations between:

1. entities that implement measures aimed at preventing and counteracting corruption and entities held liable for corruption-related offenses;

2. superior and subordinate bodies and officials of entities implementing measures aimed at preventing and counteracting corruption. The author argues that a common feature of all types of administrative and legal relations in the sphere of administrative and legal prevention of and counteraction to corruption is that at least one of the parties is an entity vested by the state with authoritative competence to implement preventive and counteractive measures (Onyshchuk, 2010).

O. O. Onyshchuk emphasizes that administrative and legal relations in the sphere of prevention of and counteraction to corruption are characterized by the following features:

1. they are inextricably linked to administrative and legal norms, the external manifestation of which is the system of anti-corruption legislation, and arise and are implemented exclusively on their basis;

2. their primary purpose is to ensure the rights and freedoms of the individual and the citizen, as well as the normal functioning of civil society and the state;

3. they regulate social relations between entities implementing measures aimed at preventing and counteracting corruption and entities held liable for corruption-related offenses;

4. a leading feature of administrative and legal relations is their public nature, as they arise on the initiative of the entity implementing measures aimed at preventing and counter-

acting corruption, without requiring the consent of the other party;

5. administrative and legal relations are predominantly managerial (authoritative-administrative): in a narrow sense, entities implementing measures aimed at preventing and counteracting corruption are endowed with authoritative competence, while entities held liable for corruption-related offenses are obliged to comply with their lawful requirements; at the same time, under a broad approach, the parties to administrative and legal relations always possess subjective rights and bear legal obligations that are interrelated—each subjective right of one party corresponds to a legal obligation of the other, and vice versa;

6. they have a conscious and volitional character, as the state expresses its will through the adoption of relevant administrative and legal norms, while participants in these relations exercise their will, are aware of the significance of their actions, and may bear responsibility for them;

7. administrative and legal relations are protected by the state, which facilitates the exercise of subjective rights and legal obligations and, in the event of a violation, brings the guilty person to administrative or other legal liability (Onyshchuk, 2010).

A. A. Prykhodko, in his work *The Theoretical Essence of Administrative and Legal Relations in the Field of Prevention of and Counteraction to Corruption in Ukraine under Conditions of European Integration*, concludes that administrative and legal relations in the sphere of prevention of and counteraction to corruption in Ukraine under conditions of European integration constitute a type of public-law relations between individuals and public administration, between authorized public authorities horizontally and/or vertically, between public organizations and holders of public authority, as well as between subjects of corrupt practices and authorized representatives of public authorities. The emergence of such relations is conditioned by the existence of sanctioning, protective, safeguarding, guarantee, and/or other administrative norms regulating the procedure for their interaction when circumstances activating such relations arise. According to the author, administrative and legal relations in the sphere of prevention of and counteraction to corruption in Ukraine under conditions of European integration are heterogeneous, multifaceted, and diverse in nature. Their conceptual features vary depending on their object-subject composition and substantive characteristics. The unifying factor of all such relations is their functional orientation in a global sense—namely, the eradication of corruption manifestations in Ukraine in order to enable the state to claim potential membership in the European Union (Prykhodko, 2020).

4. Conclusions

Thus, administrative and legal relations in combating corruption constitute a complex of public-authority relations regulated by the norms of administrative law, predominantly executive-administrative, supervisory-control, and protective in nature, which arise between subjects of public administration, specially authorized anti-corruption bodies, and other holders of public powers, on the one hand, and public servants, officials, natural persons, and legal entities, on the other hand, in connection with the prevention, detection, documentation, and legal response to corruption-related and corruption offenses. Such legal relations are conditioned by the occurrence of specially defined legal facts (corruption risks, conflicts of interest, violations of anti-corruption restrictions, submission and verification of declarations, initiation of proceedings, etc.), are characterized by legal inequality of the parties and the possibility of unilateral authoritative initiative, and are aimed at ensuring the integrity of public service, transparency and accountability of administrative activity, protection of human and civil rights and freedoms, as well as restoration of the violated public interest through the application of a set of preventive, restrictive, supervisory, coercive, and liability measures consistent with national and European anti-corruption standards.

In our view, the main peculiarities of administrative and legal relations in combating corruption are as follows:

1. **Special anti-corruption normative determinacy**, which consists in the fact that these legal relations arise, develop, and terminate on the basis of a specialized body of anti-corruption legislation (restrictions on multiple employment and combination of positions, prevention of conflicts of interest, financial control, ethical standards, etc.), which establishes a specific administrative and legal regime for preventing and responding to corruption and determines not only general but also enhanced requirements for the status, conduct, and liability of participants in public service.

2. **Public-authority and multi-level subject composition**, manifested in the formation of anti-corruption legal relations with the participation of an extensive system of public authority entities, including bodies of general competence, specially authorized anti-corruption bodies, internal units for the prevention and detection of corruption, local self-government bodies, disciplinary and ethics commissions. In all cases, one of the parties is invariably

a holder of public authority exercising managerial influence on behalf of the state or a territorial community.

3. **Preventive and sanction-oriented functional focus**, which distinguishes these relations from "classical" managerial legal relations, as in the field of combating corruption a single legal relation combines preventive elements (assessment of corruption risks, control of declarations, settlement of conflicts of interest), regulatory elements (establishment of rules of conduct, restrictions, and prohibitions), and protective-sanctioning elements (imposition of administrative, disciplinary, and, in certain cases, other forms of legal liability), resulting in an increased level of legal intensity and consequentiality of such relations.

4. **Increased procedural formalization and supervisory-control character**, which lies in the fact that administrative and legal relations in combating corruption unfold within strictly regulated administrative procedures (verification of declarations, lifestyle monitoring, internal investigations, inspections of compliance with anti-corruption restrictions), accompanied by the recording of legal facts, procedural time limits, grounds, and decision-making criteria, thereby necessitating heightened attention to evidentiary standards, transparency of public administration actions, and the availability of mechanisms for challenging administrative decisions.

5. **Predominance of extrajudicial forms of implementation with guaranteed judicial oversight**, since the majority of managerial decisions in the field of combating corruption are adopted by public administration bodies in an administrative (internal organizational) manner—through the issuance of individual administrative acts, response measures, and disciplinary decisions—while remaining subject to mandatory judicial review.

References

Averianov, V. B. (2003). Reforming Ukrainian administrative law: The need to rethink theoretical postulates. *Actual Problems of State and Law*, 19, 6–9 (in Ukrainian).

Averianov, V. B. (2004). *Administrative law of Ukraine: Academic course*. Kyiv: Yuridychna Dumka (in Ukrainian).

Halunko, V. V. (2017). Administrative and legal relations: An algorithm for the study of social relations. *Scientific Notes of Kirovohrad State University*, 1, 4–11 (in Ukrainian).

Holosnichenko, I. P., Stakhurskyi, M. F., & Zolotarova, N. I. (2005). *Administrative law of Ukraine: Basic concepts*. Kyiv: HAN (in Ukrainian).

Kharytonova, O. (2004). *Administrative and legal relations: Conceptual principles and legal nature* (Extended abstract of Doctoral dissertation). Odesa (in Ukrainian).

Kolpakov, V. K. (1999). *Administrative law of Ukraine*. Kyiv: Yurinkom Inter (in Ukrainian).

Kopieichykov, V., & Kolodii, A. (2006). *Jurisprudence*. Kyiv: Yurinkom Inter (in Ukrainian).

Onyshchuk, O. O. (2010). Administrative and legal relations in the field of prevention of and counteraction to corruption. *State and Law*, 49, 213–215 (in Ukrainian).

Prykhodko, A. A. (2020). The theoretical essence of administrative and legal relations in the field of prevention of and counteraction to corruption in Ukraine under the conditions of European integration. *Colloquium-Journal*, 8, 47–49 (in Ukrainian).

Skakun, O. (2010). *Theory of law and state*. Kyiv: Alerta; KNT; TsUL (in Ukrainian).

Tsvik, M., Tkachenko, V., & Bohachova, L. (2002). *General theory of state and law*. Kharkiv: Pravo (in Ukrainian).

Еміль Арутюнян,
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, arutiunian_emil@ukr.net
ORCID: *orcid.org/0000-0003-3774-1862*

АДМІНІСТРАТИВНО-ПРАВОВІ ВІДНОСИНИ З ПРОТИДІЇ КОРУПЦІЇ ТА ЇХ ОСОБЛИВОСТІ

Анотація. ***Мета статті*** полягає у тому, щоб визначити сутність адміністративно-правових відносин з протидії корупції та розкрити їх особливості. ***Результати.*** У статті визначено, що адміністративно-правові відносини з протидії корупції - це врегульований нормами адміністративного права комплекс публічно-владних, переважно виконавчо-розпорядчих, контрольно-наглядових та охоронних взаємозв'язків, що виникають між суб'єктами публічної адміністрації, спеціально уповноваженими антикорупційними органами, іншими носіями публічних повноважень, з одного боку, та публічними службовцями, посадовими особами, фізичними і юридичними особами - з іншого, у зв'язку із запобіганням, виявленням, фіксацією та правовим реагуванням на корупційні та пов'язані з корупцією правопорушення. Такі правовідносини обумовлені настанням спеціально визначених юридичних фактів (корупційні ризики, конфлікт інтересів, порушення антикорупційних обмежень, подання та перевірка декларацій, ініціювання проваджень тощо), характеризуються

правовою нерівністю сторін та можливістю односторонньої владної ініціативи, спрямовані на забезпечення доброчесності публічної служби, прозорості й підзвітності управлінської діяльності, захисту прав і свобод людини та громадянина, а також на відновлення порушеного публічного інтересу шляхом застосування комплексу превентивних, обмежувальних, контрольних, примусових і відповідальних заходів, що узгоджуються з національними та європейськими стандартами протидії корупції. З'ясовано, що адміністративно-правові відносини мають публічно-владний, ієрархічний та підпорядкований характер, що виявляється у правовій нерівності сторін, односторонній ініціативі виникнення та можливості реалізації примусу з боку держави як гаранта законності. Водночас вони виступають не лише формою реалізації державної волі, а й правовим механізмом гармонізації інтересів держави та суспільства, забезпечуючи узгоджене функціонування системи публічного управління і правове втілення принципів законності, пропорційності, відповідальності та верховенства права. Саме через призму адміністративно-правових відносин виявляється реальний зміст адміністративного права як регулятора публічно-владної діяльності, що забезпечує організаційно-правову стабільність держави та ефективність її управлінських інститутів. ***Висновки.*** У статті сформовано, що основними особливостями адміністративно-правових відносин з протидії корупції є: 1) спеціально-антикорупційна нормативна детермінованість; 2) публічно-владний та багаторівневий суб'єктний склад; 3) превентивно-санкційна функціональна спрямованість; 4) підвищена процедурна формалізованість і контрольно-наглядовий характер; 5) переважання позасудових форм реалізації при гарантованому судовому контролі.

Ключові слова: адміністративно-правові відносини, адміністративно-правові інструменти, взаємодія, громадський контроль, координація, корупція, міжнародне співробітництво, правова допомога, правове забезпечення, правоохоронні органи, протидія корупції, суб'єкти.

UDC 351.746.1:342.9:351.86(477)
DOI https://doi.org/10.32849/2663-5313/2024.4.03

Vitalii Zhalubak,
PhD in Law, Senior Lecturer at the Department of Critical Infrastructure Protection, National Academy of the Security Service of Ukraine, Mykhaylo Maksymovycha Street, 22, Kyiv, Kyiv region, 03022, zhalubak_vitalii@ukr.net
ORCID: *orcid.org/0000-0002-7812-7103*

THE LEGAL STATUS OF THE SECURITY SERVICE OF UKRAINE IN THE CONTEXT OF COUNTERINTELLIGENCE ACTIVITIES IN CONTEMPORARY CONDITIONS

Abstract. ***Purpose.*** The purpose of the article is to determine the legal status of the Security Service of Ukraine, in particular with regard to the implementation of counterintelligence activities, as well as to define its role and place within the system of public authorities under current conditions. ***Results.*** The article provides a comprehensive analysis of the legal status of the Security Service of Ukraine as a special state body authorized to conduct counterintelligence activities in the context of modern security challenges. The legal status of the Security Service of Ukraine is considered as a systemic set of normatively defined tasks, functions, powers, and duties enshrined in national legislation, the implementation of which is aimed at ensuring state and national security, protecting the constitutional order, sovereignty, and territorial integrity of Ukraine. It is substantiated that the legal status of the Security Service of Ukraine determines the specificity of its organizational and legal nature and defines the special character of counterintelligence activities, which include the collection, analysis, generalization, and use of information, as well as counteraction to intelligence and subversive activities of foreign special services, terrorist and other threats to national security. The article identifies key features characterizing the special legal status of the Security Service of Ukraine in the field of counterintelligence activities, in particular its affiliation with special bodies endowed with law enforcement functions, the exercise of activities strictly within the limits of the law and accountability to public authorities, as well as the possession of special powers necessary to fulfill the tasks assigned to it in the field of state security. ***Conclusions.*** Emphasis is placed on the preventive and protective nature of the counterintelligence activities of the Security Service of Ukraine aimed at preventing, detecting, and suppressing unlawful encroachments on state sovereignty, the constitutional order, defense capability, and other vital interests of the state, and it is concluded that there is a need for further improvement of the regulatory framework governing the legal status of the Security Service of Ukraine, taking into account the transformation of threats to national security and the contemporary conditions of functioning of the security and defense sector.

Key words: state security, threats, counterintelligence activities, national security, legal status, special body, special powers, terrorism.

1. Introduction

The study of the essence and specific features of the legal status of the bodies of the Security Service of Ukraine (hereinafter – the SSU) is of fundamental importance, as it allows, on the one hand, at the level of scientific and theoretical generalizations, a more comprehensive examination of the peculiarities of their structure and functioning, and, on the other hand, the proposal of such a model for enshrining the legal status of the SSU bodies in regulatory legal acts that would ensure the highest efficiency of their activities. A clear definition of all elements of legal status also contributes to strengthening legality and discipline in the functioning of the state mechanism in general and the bodies of the SSU in particular (Ponomarov, 2012).

The issue of the legal status of the Security Service of Ukraine has repeatedly been the subject of scientific analysis in the works of domestic scholars. In particular, certain aspects of the organizational and legal foundations of the SSU's activities, its place within the system of public authorities, and the specifics of the exercise of its powers were studied by R.F. Baranetskyi, O.V. Brusakova, Yu.V. Harust, O.V. Hridin, O.Ye. Kahlynskyi, M.M. Karpenko, Ye.V. Kobko, A.V. Kumeiko, V.S. Stepanovskyi, M.M. Shvaika, and other researchers. These works formulated theoretical approaches to understanding the legal status of the SSU, ana-

lyzed its normative consolidation, and outlined problematic issues of legal regulation of the Service's activities.

A significant contribution to the development of this issue was made by representatives of the departmental scientific school, whose works examined the legal status of the Security Service of Ukraine through the prism of tasks related to ensuring state security and conducting counterintelligence activities. Such researchers include O.P. Yermenchuk, S.I. Kondratov, A.V. Nosach, D.M. Pavlov, O.S. Peliukh, P.P. Pidiukov, S.S. Telenyk, O.M. Yurchenko, and others. Their scientific achievements contributed to a deeper understanding of the specifics of the legal position of the SSU, the determination of the content of its special powers, and the identification of directions for improving the legal support of state security bodies.

At the same time, an analysis of scientific sources indicates that, under conditions of transformation of the security environment, complication of political, economic, and social processes, as well as the constant growth of threats to the national security of Ukraine, particularly in the context of the armed aggression of the Russian Federation, certain aspects of the legal status of the Security Service of Ukraine remain debatable. This primarily concerns the determination of the content and limits of the counterintelligence component of its activities, as well as the adaptation of the legal framework for the functioning of the SSU to new challenges and threats. In this regard, further scientific research into this issue is objectively necessary, relevant, and of significant theoretical and practical importance.

Based on the analysis of general and special legislation, scholarly positions, and the practical activities of relevant actors within the state system, the article aims to determine the legal status of the Security Service of Ukraine, in particular with regard to the conduct of counterintelligence activities, as well as its role and place within the system of public authorities under current conditions.

2.The Security Service of Ukraine as a Structural Element of the System of State Security Bodies

The system of state security should function as an integrated complex of public authorities that closely interact both with each other and with other state bodies and various public organizations, including those that implement state tasks of an information-analytical, scientific, social, socio-political, and other nature. Such a system should, first, promptly identify and forecast threats to nationwide interests, including crisis and other negative trends and processes (of political, social, technogenic, and other origin), as well as purposeful actions of external and internal origin (that is, certain encroachments on public goods) capable of harming the interests of the state and individual citizens. Second, it should ensure the implementation of measures aimed at preventing, localizing, or neutralizing potential and real threats to the country and society, as well as facilitate the adoption of necessary legislative, administrative, economic, informational, and other decisions intended to safeguard national interests. Third, it should directly counter threats to the security of the state and their carriers (sources), using the full available range of military, operational-search, criminal-procedural, emergency-rescue, technical-organizational, and other means of influence.

In addition, the Security Service of Ukraine, as a distinct structural element of the system of state security bodies, should function as a special service that meets the standards of a civilized European state, is prepared for reform, and is open to oversight, including by civil society organizations, when democratic civilian control over the activities of the Security Service of Ukraine becomes permanent, systemic, and effective (Kumeiko, 2016).

The powers of the Service are undergoing transformation both in view of reform processes aimed at building a national special service modeled on those of states with developed democratic traditions and in light of present-day realities, which place on the agenda the need to address new tasks in the field of national security. The practical aspects of the Service's activities, including the emergence of new areas of operation, require appropriate correlation and a solid legal framework to ensure their effective implementation.

The legal status of the Security Service of Ukraine as a subject of public authority is currently enshrined not only in the **Law of Ukraine "On the Security Service of Ukraine"**, which constitutes a special legislative act regulating its activities (defining its foundations, principles, system and organization, personnel structure, powers of bodies and officers, as well as the system of control and supervision over the Service's activities), but also in a number of other legislative acts that establish the legal bases for the Service's activities in relevant areas within the scope of powers defined by such acts.

The rights of the bodies and officers of the Security Service of Ukraine, granted to them for the fulfillment of their assigned duties in accordance with the provisions of the **Law of Ukraine "On the Security Service of Ukraine"**, are set out in Article 25 of the Law (Law of Ukraine *On the Security Service of Ukraine*, 1992).

Other legislative acts that determine the legal status of the bodies and officers of the Security Service of Ukraine include the following:

– **Law of Ukraine "On National Security of Ukraine"** – establishes the legal foundations and principles of state policy in the fields of national security and defense and defines the role and place of the Security Service of Ukraine within these fields. Pursuant to Article 19 of this Law, the Security Service of Ukraine is a state body of special purpose with law enforcement functions that ensures state security in the following areas: 1) counteraction to intelligence and subversive activities against Ukraine; 2) combating terrorism; 3) counterintelligence protection of state sovereignty, the constitutional order and territorial integrity, defense and scientific-technical potential, cybersecurity, information security of the state, and critical infrastructure facilities; 4) protection of state secrets (Law of Ukraine *On National Security of Ukraine*, 2018).

– **Law of Ukraine "On Counterintelligence Activities"** – defines the status of the Security Service of Ukraine as a "specially authorized state authority in the field of counterintelligence activities" (Article 5), specifies the grounds for conducting such activities, outlines their basic principles, functions, and powers, as well as the social and legal guarantees of the Service's officers engaged in counterintelligence. The Law provides that, in accordance with Part 2 of Article 7, the bodies, units, and officers of the Security Service of Ukraine, for the purpose of fulfilling the tasks defined by the Law and subject to the existence of the grounds provided for in Paragraph 1 of Article 6 thereof, are vested with the relevant rights (Law of Ukraine *On Counterintelligence Activities*, 2002).

– **Law of Ukraine "On Operational and Investigative Activities"** – includes the Security Service of Ukraine among the bodies authorized to carry out operational and investigative activities and, in accordance with Article 6, defines the grounds for conducting such activities. Article 8 of the Law establishes the list of rights of operational units engaged in operational and investigative activities (Law of Ukraine *On Operational and Investigative Activities*, 1992).

– **Law of Ukraine "On Combating Terrorism"** – designates the Security Service of Ukraine as the main body in the nationwide system for combating terrorist activity (Article 4), details its powers in this area (Article 5), defines the grounds, conditions, and other aspects of conducting anti-terrorist operations (Chapter III), and establishes the principles of international cooperation in combating terrorism (Chapter VII) (Law of Ukraine *On Combating Terrorism*, 2003).

– **Law of Ukraine "On State Secrets"** – defines the Security Service of Ukraine as a specially authorized state body in the field of protection of state secrets (Article 5) and in the formation of the Code of Information Constituting State Secrets (Article 12); regulates the procedure for activities related to state secrets, secrecy regimes, and authorizes the Service to exercise control over the state of protection of state secrets in all public authorities (Article 37) (Law of Ukraine *On State Secrets*, 1994).

In general, it should be noted that the legal status of the Security Service of Ukraine is, to a greater or lesser extent, reflected in a significant number of legislative acts, which is explained by the multifaceted nature of the tasks in the performance of which the Service is involved, including those related to the conduct of the full-scale Russian-Ukrainian war and the introduction of the legal regime of martial law in the country.

It should also be taken into account that, given the specific nature of the activities of a special service, a significant number of legal acts regulating the activities of the Security Service of Ukraine are classified and are not made publicly available, as noted by V.S. Stepanovskyi (Stepanovskyi, 2023).

In accordance with current legislation, the Security Service of Ukraine is a state body of special purpose with law enforcement functions that ensures the state security of Ukraine and is subordinated to the President of Ukraine. Within the limits of its statutory competence, the Security Service of Ukraine is entrusted with the protection of state sovereignty, the constitutional order, territorial integrity, scientific-technical and defense potential of Ukraine, lawful interests of the state, and the rights of citizens from intelligence and subversive activities of foreign special services, encroachments by individual organizations, groups, and persons, as well as ensuring the protection of state secrets. The tasks of the Security Service of Ukraine also include the prevention, detection, suppression, and investigation of criminal offenses against peace and security of mankind, terrorism, and other unlawful acts that directly pose a threat to the vital interests of Ukraine (Law of Ukraine *On the Security Service of Ukraine*, 1992).

In essence, as noted above, the Security Service of Ukraine is a subject of ensuring national security, which is correspondingly determined and guaranteed by its legal status.

3. Specific Features of the Legal Status of the Security Service of Ukraine

M.M. Karpenko defines the administrative and legal status of the bodies of the Security Service of Ukraine as a set of areas of competence, powers (rights and duties), guarantees of activity, and responsibility enshrined in the current legislation of Ukraine, which enable them to act as participants in administrative and legal relations in the field of ensuring the state security of Ukraine. The structure of the administrative and legal status of the bodies of the Security Service of Ukraine consists of target-oriented, organizational, and competence-based blocks (elements). It also includes guarantees of the activities of the bodies of the Security Service of Ukraine, as well as the liability of their personnel (Karpenko, 2014).

The first element comprises the legally enshrined purpose of establishment and tasks of the body. The second element includes the regulatory framework governing the organization of activities of the bodies of the Security Service of Ukraine, their internal structure, personnel composition, subordination, and related issues. The third element consists of a set of authoritative powers with respect to specific areas of competence of the Security Service of Ukraine. The rights and duties of the bodies of the Security Service of Ukraine, as defined by current legislation, are exercised by them within administrative and legal relations of a law enforcement nature.

Within such relations, the bodies of the Security Service of Ukraine act as representatives of the state and on its behalf, for which purpose they are vested with special authoritative powers enabling them to exert influence on non-subordinate entities. The activities of the bodies of the Security Service of Ukraine are expressed, inter alia, in such a form of administrative activity as the issuance of normative and individual administrative acts. Their personnel are entitled to apply administrative preventive measures, general and special measures of administrative restraint, as well as measures to ensure proceedings in cases of administrative offenses. While performing their official duties, employees of the Security Service of Ukraine act as representatives of public authority, operate on behalf of the state, and are under its protection. The inviolability of their person, as well as their honor and dignity, is protected by the current legislation of Ukraine (Karpenko, 2014).

A.V. Kumeiko considers the administrative and legal status of the Security Service of Ukraine as a subject of combating crime to be a set of tasks, powers, and functions enshrined in the norms of administrative law, with which this body is endowed in accordance with a defined scope of administrative legal personality in the relevant sphere, and for the improper performance of which the Service bears legal responsibility established by current national legislation. The scholar identifies the main features that were characteristic of the Security Service of Ukraine when it functioned as a law enforcement body of special purpose, namely: the existence of a special legal status; diversity of specific forms and methods of activity; polarity of principles of official activity; the extreme nature of practical work; procedural independence; the possibility of cooperation with foreign intelligence and security services; and the existence of special competence to restrict human and civil rights and freedoms (Kumeiko, 2016).

Thus, the legal status of the Security Service of Ukraine should be understood as a complex of legal provisions that define, within the framework of national legislation, its functions, powers, and duties, the implementation of which in practical activities must ensure an appropriate level of national security and the effective performance of counterintelligence tasks. The legal status determines the specific aspects of the activities of the Security Service of Ukraine, including the collection, analysis, and processing of information, as well as the protection of constitutional values and the sovereignty of the state.

With regard to the legal status of the Security Service of Ukraine in the context of counterintelligence activities, pursuant to the **Law of Ukraine "On Counterintelligence Activities"**, it is, as noted earlier, an authorized state authority in the field of counterintelligence activities (Law of Ukraine *On Counterintelligence Activities*, 2002).

The functions of the bodies, units, and officers of the Security Service of Ukraine engaged in counterintelligence activities are determined by the **Law of Ukraine "On the Security Service of Ukraine"** (Law of Ukraine *On the Security Service of Ukraine*, 1992).

For the purpose of fulfilling the tasks defined by law in the course of counterintelligence activities, the bodies, units, and officers of the Security Service of Ukraine are entitled to:

1. conduct counterintelligence searches and operational and investigative measures using operational and operational-technical forces and means, interview persons with their consent, and use their voluntary assistance;

2. identify, record, and document, overtly and covertly, intelligence, terrorist, and other encroachments on the state security of Ukraine, maintain operational records thereof, and conduct visual surveillance in public places using photo, film, and video recording, optical and radio devices, and other technical means;

3. conduct counterintelligence operations and relevant operational and operational-tech-

nical measures aimed at preventing, timely detecting, and suppressing intelligence and subversive, terrorist, and other unlawful activities detrimental to the state security of Ukraine;

4. maintain overt and covert full-time and non-staff personnel, establish enterprises, institutions, and organizations for the purpose of conspiracy, and use documents concealing the identity or departmental affiliation of personnel, premises, and vehicles of bodies and units engaged in counterintelligence activities;

5. request, collect, and study, where legally prescribed grounds exist, documents and information characterizing the activities of enterprises, institutions, and organizations, as well as the lifestyle of individuals, sources and amounts of their income, in order to prevent and suppress intelligence, terrorist, and other unlawful encroachments on the state security of Ukraine;

6. exclusively for the purpose of preventing, timely detecting, and suppressing intelligence, terrorist, and other encroachments on the state security of Ukraine, obtain information in the interests of counterintelligence on the basis of an appropriate counterintelligence case;

7. detain persons and hold them in specially designated places for this purpose;

8. exclusively for the purpose of suppressing intelligence, terrorist, and other unlawful encroachments on the state security of Ukraine, as well as when pursuing persons suspected of such activities, freely enter and remain at any time on the territory and premises of state authorities and their structural subdivisions, local self-government bodies, enterprises, institutions, and organizations regardless of ownership form, and enter guarded military facilities in accordance with the established procedure;

9. remain, in coordination with the heads of state border protection bodies of the State Border Guard Service of Ukraine, for the purpose of implementing counterintelligence measures within the border strip, controlled border area, at border crossing points, and in the territorial sea of Ukraine;

10. in urgent cases during the conduct of counterintelligence measures, freely use communication facilities belonging to enterprises, institutions, and organizations, and communication facilities belonging to citizens—with their consent—with subsequent reimbursement of expenses upon their request;

11. in the interests of ensuring state security and fulfilling counterintelligence tasks, organize, coordinate, and conduct scientific and scientific-technical research, establish relevant scientific institutions and interagency coordination and advisory bodies in accordance with the procedure established by the legislation of Ukraine;

12. store, carry, apply, and use weapons and special means, apply measures of physical coercion in accordance with the laws of Ukraine and other legislative acts, and transport weapons and special means on all types of transport;

13. exercise the rights provided for by the laws of Ukraine "On the Security Service of Ukraine", "On State Secrets", and other laws of Ukraine (Law of Ukraine *On Counterintelligence Activities*, 2002).

The organization and coordination of counterintelligence activities are entrusted to the Central Directorate of the Security Service of Ukraine. The procedure for organizing and carrying out counterintelligence activities is determined by the laws of Ukraine and normative legal acts of the Security Service of Ukraine adopted pursuant thereto, and, in cases provided for by law, by interagency normative legal acts. The Security Service of Ukraine reports on the results of counterintelligence activities to the President of Ukraine and informs the Verkhovna Rada of Ukraine.

Employees of the bodies and units of the Security Service of Ukraine engaged in counterintelligence activities are covered by the social and legal guarantees established by the **Law of Ukraine "On the Security Service of Ukraine"** and the **Law of Ukraine "On the Social and Legal Protection of Servicemen and Members of Their Families"**, as well as other laws of Ukraine (Ponomarov, 2012).

4. Conclusions

Based on the conducted analysis of theoretical conclusions of domestic scholars, including representatives of the departmental scientific school of the Security Service of Ukraine, the provisions and norms of current legislation, and the content of subordinate normative legal acts regulating certain aspects of the activities of the special service bodies, it can be stated that the special legal status of the Security Service of Ukraine, in addition to the main legislative acts, is reflected to some extent in a significant number of normative legal acts. This is explained by the diversity of tasks assigned to the bodies, units, and individual employees of the domestic special service.

The significant number of legislative acts determining the legal status and regulating the activities of the Security Service of Ukraine indicates, in fact, the blanket nature of the **Law of Ukraine "On the Security Service of Ukraine."**

Summarizing the above, it can be concluded that the legal status of the Security Service of Ukraine as a **"specially authorized state authority in the field of counterintelligence activities"** is characterized by the following factors:

– The Security Service of Ukraine is a special body with law enforcement functions;

– The Service conducts its overall activities, including counterintelligence activities as an integral component, strictly within the framework of current legislation and within the powers and competencies defined therein;

– The Security Service of Ukraine is accountable to the state authorities of Ukraine;

– To successfully accomplish the tasks assigned to it, the Service is endowed with special powers necessary to ensure the state security of Ukraine in the field of counterintelligence activities;

– It is a specially authorized body in the field of counterintelligence activities aimed at preventing, detecting, and suppressing unlawful actions that may harm the state sovereignty of Ukraine, lead to violations of its territorial integrity and inviolability of state borders, undermine the constitutional order, and threaten the foundations of national security and defense.

References

Karpenko, M.M. (2014). *Administratyvno-pravovyi status orhaniv Sluzhby bezpeky Ukrainy [Administrative and legal status of the Security Service of Ukraine bodies]. Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav*, 2014(4), 137–148. (in Ukrainian)

Kumeiko, A.V. (2016). *Administratyvno-pravovyi status Sluzhby bezpeky Ukrainy u systemi subiektiv protydii zlochynnosti [Administrative and legal status of the Security Service of Ukraine in the system of subjects of combating crime]*. Extended abstract of candidate's thesis. Kharkiv. (in Ukrainian)

Ponomarov, S.P. (2012). *Administratyvno-pravovyi status orhaniv Sluzhby bezpeky Ukrainy [Administrative and legal status of the Security Service of Ukraine bodies]. Pravo i bezpeka*, 2012(3), 121–125. (in Ukrainian)

Stepanovskyi, V.S. (2023). *Diialnist Sluzhby bezpeky Ukrainy yak subiekta zabezpechennia natsionalnoi bezpeky v umovakh voiennoho stanu [Activities of the Security Service of Ukraine as a subject of ensuring national security in conditions of martial law]. Analitychno-porivnialne pravoznavstvo*, 2023(7), 298–302. (in Ukrainian)

Law of Ukraine On Combating Terrorism: dated 20 March 2003, No. 638-IV (*Zakon Ukrainy "Pro borotbu z teroryzmom"*). Retrieved from https://zakon.rada.gov.ua/laws/show/638-15#Text (in Ukrainian)

Law of Ukraine On State Secret: dated 21 January 1994, No. 3855-XII (*Zakon Ukrainy "Pro derzhavnu taiemnytsiu"*). Retrieved from https://zakon.rada.gov.ua/laws/show/3855-12#Text (in Ukrainian)

Law of Ukraine On Counterintelligence Activities: dated 26 December 2002, No. 374-IV (*Zakon Ukrainy "Pro kontrrozviduvalnu diialnist"*). Retrieved from https://zakon.rada.gov.ua/laws/show/374-15#Text (in Ukrainian)

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

Law of Ukraine On Operational and Investigative Activities: dated 18 February 1992, No. 2135-XII (*Zakon Ukrainy "Pro operatyvno-rozshukovu diialnist"*). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text (in Ukrainian)

Law of Ukraine On the Security Service of Ukraine: dated 25 March 1992, No. 2229-XII (*Zakon Ukrainy "Pro Sluzhbu bezpeky Ukrainy"*). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-12#Text (in Ukrainian)

Віталій Жалубак,
кандидат юридичних наук, старший викладач кафедри захисту об'єктів критичної інфраструктури Національної академії Служби безпеки України,
вулиця Михайла Максимовича, 22, Київ, Україна, 03022, zhalubak_vitalii@ukr.net
***ORCID ID:** orcid.org/0000-0002-7812-7103*

ПРАВОВИЙ СТАТУС СЛУЖБИ БЕЗПЕКИ УКРАЇНИ В АСПЕКТІ КОНТРРОЗВІДУВАЛЬНОЇ ДІЯЛЬНОСТІ В УМОВАХ СЬОГОДЕННЯ

Анотація. ***Мета статті*** полягає у визначенні правового статусу Служби безпеки України, зокрема, щодо проведення контррозвідувальної діяльності, її роль і місце в системі органів державної влади в нинішніх умовах. ***Результати.*** У статті здійснено комплексний аналіз правового статусу Служби безпеки України як спеціального державного органу, уповноваженого на здійснення контррозвідувальної діяльності в умовах сучасних безпекових викликів. Правовий статус Служби безпеки України розглядається як системна сукупність нормативно визначених завдань, функцій, повноважень і обов'язків, закріплених у національному законодавстві, реалізація яких спрямована на забезпечення державної та національної безпеки, захист конституційного ладу, суверенітету й територіальної цілісності України. Обґрунтовано, що правовий статус Служби безпеки України зумовлює специфіку її організаційно-правової природи та визначає особливий характер контр-

розвідувальної діяльності, яка включає збір, аналіз, узагальнення й використання інформації, протидію розвідувально-підривній діяльності іноземних спеціальних служб, терористичним та іншим загрозам національній безпеці. У статті виокремлено ключові ознаки, що характеризують особливий правовий статус Служби безпеки України у сфері контррозвідувальної діяльності, зокрема її належність до спеціальних органів з правоохоронними функціями, здійснення діяльності виключно в межах закону та підзвітна органам державної влади, а також наявність спеціальних повноважень, необхідних для виконання покладених на неї завдань у сфері державної безпеки. ***Висновки.*** Акцентовано увагу на превентивному та захисному характері контррозвідувальної діяльності Служби безпеки України, спрямованої на запобігання, виявлення й припинення протиправних посягань на державний суверенітет, конституційний лад, обороноздатність та інші життєво важливі інтереси держави. Зроблено висновок про необхідність подальшого удосконалення нормативно-правового регулювання правового статусу Служби безпеки України з урахуванням трансформації загроз національній безпеці та сучасних умов функціонування сектору безпеки і оборони.

Ключові слова: державна безпека, загрози, контррозвідувальна діяльність, національна безпека, правовий статус, спеціальний орган, спеціальні повноваження, тероризм.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2024.4.04

Anna Kabysh
Applicant, Research Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, kabysh_anna@ukr.net
ORCID: *orcid.org/0009-0002-4478-4620*

THE CONCEPT AND ESSENCE OF ADMINISTRATIVE AND LEGAL INSTRUMENTS FOR ENSURING ENVIRONMENTAL SAFETY

Abstract. ***Purpose.*** The purpose of this article is to define and reveal the essence of administrative and legal instruments for ensuring environmental safety. ***Results.*** Based on an analysis of scholarly views, the article discloses general theoretical approaches to defining the notions of "instrument," "legal instrument," and "administrative and legal instrument." It outlines the key features inherent to administrative and legal instruments in general, as well as within the sphere of environmental safety. ***Conclusions.*** It is concluded that the essential characteristics of administrative and legal instruments include: the practical expression of the activities of public administration entities—namely, bodies of state power and local self-government. These include the forms, measures, means, and methods employed by authorized officials to implement their assigned tasks and functions, and to ensure regulation and coordination of particular spheres of public activity. Such instruments are marked by a high degree of formalization, since the types and procedures for their application are defined by legislation for each specific area of public life. Consequently, they may have a unique but relatively stable set, as any transformations in their content or scope occur exclusively through amendments to normative acts. These instruments also presuppose the imperative establishment of the powers (subjective rights and duties) of the actors applying them, who may not act at their own discretion, as this would constitute a violation of Ukrainian law. It is noteworthy that most instruments provide extensive opportunities to affect human rights and freedoms; however, excessive discretion creates risks of bureaucratic arbitrariness, corruption, and other abuses. The instruments within each specific sphere of public legal relations are applied directly by the public administration entities legally empowered to do so, in accordance with their competence and authority established by Ukrainian legislation. The use of administrative and legal instruments is always aimed at achieving a concrete, predetermined result expressed in the attainment of objectives related to influencing public legal relations in a particular sphere. Therefore, administrative and legal instruments for ensuring environmental safety should be understood as a set of legislatively defined and regulated forms, measures, means, and methods of a public-authoritative nature that are applied by specially authorized entities to minimize—and, if possible, completely eliminate—risks that cause or may cause harm to the natural environment or pose an actual danger to human life and health.

Key words: instruments, legal instruments, administrative and legal instruments, instruments for ensuring environmental safety, environmental safety.

1. Introduction

An important aspect of the real, practical operation of any sectoral mechanism of legal regulation is its instrumental component. It is through this component that authorized actors influence public legal relations and the behavior of participants within a particular sphere of public life. In administrative law, this function is performed by a set of special administrative and legal instruments. This is a broad category that encompasses a wide range of regulatory levers of a public-administrative nature. It is through a specific group of administrative and legal instruments that environmental safety is ensured in our state.

The content of administrative and legal instruments and their impact on different spheres of social relations have been examined in the works of such scholars as V.V. Halunko, L.V. Zinych, I.V. Kovbasa, S.V. Mazurenko, R.S. Melnyk, I.V. Paterylo, V.L. Fedorenko, among others. Despite extensive coverage in theoretical legal sources, the issue of administrative and legal instruments has a high degree of individualization, and its content depends on the sphere of practical application. Consequently, an analysis of this category specifically in the context of ensuring environmental safety has not yet been sufficiently carried out.

Therefore, the aim of this article is to define and reveal the essence of administrative and legal instruments for ensuring environmental safety.

2. Principles and Specific Features of Interpreting the Concept of "Instrument"

Etymologically, the term *instrument* is most often understood as a particular tool or a set of tools used to perform a certain type of work, process, activity, or operation (Ivchenko, 2002). In the context of management, as T.O. Karabin notes, instruments are the means employed by a management entity to implement the goals, tasks, and functions of managerial activity. They constitute one of the essential components of the substantive content of the managerial activities of enterprises, institutions, organizations, including public authorities (Karabin, 2007).

In law, according to I.V. Paterylo, an instrument represents an arsenal—the entire spectrum—of legal phenomena of various levels that are applied to regulate public legal relations and influence the behavior of their participants (Paterylo, 2006). A broader position is expressed by O.V. Onufriienko and P.M. Humeniuk, who argue that instruments in law are, first, the means of legal regulation of public legal relations through which such relations and the behavior of their participants are ordered and structured; and second, substantial and institutional legal phenomena aimed at achieving socially useful objectives (Humeniuk, 2000; Onufriienko, 2002). K.O. Kocherhina maintains that instruments are static elements—legal means that are reflected in various legal norms and provisions and ensure the accomplishment of the objectives assigned to legal regulation (Kocherhina, 2005).

While in the general theory of law there is a certain unity of scholarly thought regarding the content of legal instruments as expressions of legal regulation, within administrative science their content is predominantly associated with the activity-oriented dimension of public institutions. Thus, according to the approach proposed by O.V. Felyk, administrative and legal instruments constitute the external expression of the administrative activity of public administration bodies, having a direct impact on social processes and being used to achieve public interests, implement state policy, and ensure public order within the territory of the state. In addition, the author emphasizes the dynamic nature of these instruments, as their set may change depending on the needs of society and the state during a particular period. This enables administrative bodies to respond effectively and appropriately to contemporary challenges such as crises, wars, or other emergencies (Felyk, 2024).

V.V. Halunko, A.O. Levchuk, and P.V. Dikhtiievskyi underscore that instruments represent the external expression of groups of administrative actions by public administration entities that are homogeneous in their nature and legal characteristics, and are implemented strictly within the scope of competence defined by law in order to achieve the desired result for public administration (Halunko, Dikhtiievskyi, Kuzmenko, 2020). According to V.V. Khasanova, administrative and legal instruments consist of the means and measures by which public bodies organize and regulate the functioning of certain social structures, including: registration of property rights and licensing; the judicial system for resolving commercial disputes; differentiated regimes for the use of resources; administrative liability norms; and so forth (Khasanova, 2009).

3. Administrative and Legal Instruments of Regulation in Various Sectors

The definition of administrative and legal instruments is often formulated inseparably from the objects they are intended to regulate. For example, I.V. Ishchenko proposes understanding administrative and legal instruments of the activities of the National Police, as an entity responsible for implementing the preventive function, as a set of forms and methods of police activity regulated by the norms of administrative law and aimed at ensuring and implementing the preventive function of the state in accordance with the main directions of police activity in the sphere of maintaining public safety and order, as well as protecting human rights and freedoms (Ishchenko, 2022).

O.V. Barylo defines administrative instruments for combating domestic violence as specialized mechanisms, norms, and procedures developed for preventing, detecting, and responding to cases of domestic violence, which are used by state authorities, social services, and other institutions to protect victims, ensure public order, and establish an effective system of response to this problem (Barylo, 2020). According to D.V. Krylov, administrative and legal instruments of state regulation of the economy constitute a system of measures and means responsible for the regulation of economic actors, guaranteeing the freedom to make economic decisions, protecting property rights, and ensuring competitive relations, which is achieved through the establishment of an appropriate regulatory framework and its continuous improvement, revision, and implementation (Krylov, 2023).

Within the sphere of interaction among security and defence sector actors, administrative and legal instruments were analysed by A.H. Vakhrov. The scholar defines this category as a set of measures and methods used by authorised state entities, including: rulemaking (the establishment of rules, procedures, obligations, etc.); organisational instruments (infor-

mation collection, preparation of documents, etc.); supporting instruments (methodological assistance, technical and material provision, financing, etc.); and managerial instruments (incentives, persuasion, supervisory and control activities, etc.) (Vakhrov, 2023).

M.M. Sirant devoted her research to the analysis of the administrative and legal toolkit for ensuring environmental safety and established that its system consists of methods and forms. Broadly understood, these methods are perceived as techniques or approaches by which the influence on objects is exercised for the practical implementation of specific tasks. As for administrative and legal forms, these are, in her view, externally expressed actions of authoritative entities carried out within their competence and producing certain consequences. Methods of administrative and legal regulation manifest in practice through administrative and legal forms, which are conditioned by the content of the respective methods. A method structures activity and is manifested within it, yet conceptually exists beyond it, preceding the process of activity that it enables (Sirant, 2020).

4. Conclusions

Thus, the analysis conducted makes it possible to distinguish the following key characteristics of the concept of administrative and legal instruments:

First, they constitute the practical expression of the activities of public administration entities, namely state authorities and local self-government bodies. This refers, in particular, to the forms, measures, means, and methods employed by authorised officials through which they fulfil their assigned tasks and functions and ensure the regulation and coordination of specific spheres of social activity.

Second, this toolkit is characterized by a high degree of formalisation, since the types and procedures for the use of relevant instruments are defined by legal norms for each particular sphere of social life. Consequently, their set may be unique to a specific sector, while maintaining a stable nature, as any transformation of their content or scope occurs solely through amendments to normative acts.

Third, their use presupposes the imperative establishment of the powers (subjective rights and obligations) of the entities applying such instruments. These entities cannot act at their own discretion, as such conduct would constitute a violation of Ukrainian legislation. It is important to note that most instruments provide broad possibilities for influencing human rights and freedoms; however, excessive discretion in this context creates negative risks of official arbitrariness, corruption, and similar abuses.

Fourth, instruments in each specific sphere of public legal relations are implemented directly by the public administration entities expressly authorised to do so, in accordance with the competence and powers established for them by the legislation of Ukraine.

Fifth, the application of administrative and legal instruments is always aimed at achieving a clearly defined and concrete result, expressed in the attainment of specific regulatory objectives within a particular sphere of public legal relations.

Based on the above, administrative and legal instruments for ensuring environmental safety may be defined as a set of forms, measures, means, and methods of a public-authoritative nature, specified and regulated by the legislation of Ukraine, and applied by specially authorised entities for the purpose of minimising and, where possible, fully eliminating risks that cause or may cause harm to the natural environment, or present an actual danger to human life and health.

References

Barylo, O.V. (2020). *Instrumenty administratyvnoho vplyvu u sferi borotby z domashnim nasylstvom* [Administrative influence tools in the field of combating domestic violence]. *Ekonomika ta pravo*, (6), 48–54 (in Ukrainian).

Felyk, O.V. (2024). *Sutnist instrumentiv publichnoho administruvannia v Ukraini* [The essence of public administration instruments in Ukraine]. *Pravo i suspilstvo*, (4), 44–50 (in Ukrainian).

Halunko, V., Dikhtiievskyi, P., & Kuzmenko, O. (2020). *Administratyvne pravo Ukrainy* [Administrative Law of Ukraine]. Kherson: OLDI-PLIuS (in Ukrainian).

Humeniuk, P.M. (2000). *Formalna lohika: navchalnyi posibnyk dlia studentiv-yurystiv* [Formal logic: a textbook for law students]. Donetsk: DIVS MVS Ukrainy (in Ukrainian).

Ishchenko, I. (2022). *Administratyvno-pravovi instrumenty Natsionalnoi politsii yak subiekta realizatsii preventyvnoi funktsii derzhavy: poniattia ta zmist* [Administrative and legal instruments of the National Police as a subject of implementing the state's preventive function: concept and content]. *KELM*, (6), 171–177 (in Ukrainian).

Ivchenko, A.O. (2002). *Tlumachnyi slovnyk ukrainskoi movy* [Explanatory dictionary of the Ukrainian language]. Kharkiv: FOLIO (in Ukrainian).

Karabin, T.O. (2007). *Spivvidnoshennia povnovazhen mistsevykh orhaniv vykonavchoi vlady ta orhaniv mistsevoho samovriaduvannia: teoretychni i praktychni pytannia* [Correlation of powers of local executive authorities and local self-government bodies: theoretical and practical issues]. Candidate's thesis. Uzhhorod: Zakarpatskyi derzhavnyi universytet (in Ukrainian).

Khasanova, V.V. (2009). *Derzhavne rehuliuvannia vnutrishnioi torhivli v Ukraini (orhanizatsiino-pravovyi aspekt)* [State regulation of internal trade in Ukraine (organizational and legal aspect)]. Candidate's thesis. Kyiv: Kyivskyi natsionalnyi torhovelno-ekonomichnyi universytet (in Ukrainian).

Kocherhina, K.O. (2005). *Zmist orhanizatsiino-pravovykh form pidpryiemnytskykh tovarystv: interesy, funktsii, pravovi zasoby* [The content of organizational and legal forms of business associations: interests, functions, legal means]. Candidate's thesis. Kharkiv: Natsionalna yurydychna akademiia Ukrainy imeni Yaroslava Mudroho (in Ukrainian).

Krylov, D.V. (2023). *Teoretyko-metodolohichni osnovy derzhavnoho rehuliuvannia natsionalnoi ekonomiky* [Theoretical and methodological foundations of state regulation of the national economy]. *Problemy suchasnykh transformatsii*, (8), 1–5 (in Ukrainian).

Onufriienko, O.V. (2002). *Reliatyvizm u pravorozuminni: terminolohichne pidgruntia* [Relativism in legal understanding: terminological basis]. *Visnyk Zaporizkoho yurydychnoho instytutu MVS Ukrainy*, (3), 45–53 (in Ukrainian).

Paterylo, I.V. (2006). *Pravo yak tsinnisna katehoriia* [Law as a value category]. Extended abstract of candidate's thesis. Kyiv: Instytut derzhavy i prava im. V.M. Koretskoho (in Ukrainian).

Sirant, M. (2020). *Mekhanizm administratyvno-pravovoho rehuliuvannia zabezpechennia ekolohichnoi bezpeky: instrumentalna osnova* [Mechanism of administrative and legal regulation of ensuring environmental safety: instrumental basis]. *Visnyk Natsionalnoho universytetu "Lvivska politekhnika"*, (3), 158–165 (in Ukrainian).

Vakhrov, A.H. (2023). *Administratyvno-pravovyi mekhanizm vzaiemodii subiektiv bezpeky y oborony shchodo zabezpechennia natsionalnoi bezpeky: pytannia teorii ta praktyky* [Administrative and legal mechanism of interaction among security and defense actors in ensuring national security: issues of theory and practice]. Candidate's thesis. Kropyvnytskyi: Tsentralnoukrainskyi derzhavnyi universytet imeni Volodymyra Vynnychenka (in Ukrainian).

Анна Кабиш,
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, kabysh_anna@ukr.net
ORCID: *orcid.org/0009-0002-4478-4620*

ПОНЯТТЯ ТА СУТНІСТЬ АДМІНІСТРАТИВНО-ПРАВОВИХ ІНСТРУМЕНТІВ ЗАБЕЗПЕЧЕННЯ ЕКОЛОГІЧНОЇ БЕЗПЕКИ

Анотація. ***Мета статті*** полягає у визначенні поняття та розкритті сутності адміністративно-правових інструментів забезпечення екологічної безпеки. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених, розкрито загальнотеоретичні підходи щодо визначення понять «інструмент», «правовий інструмент» та «адміністративно-правовий інструмент». Наведено ключові особливості притаманні адміністративно-правовим інструментам взагалі, а також в контексті сфери забезпечення екологічної безпеки. ***Висновки.*** Зроблено висновок, що ключовими характеристиками поняття адміністративно-правових інструментів є: практичне вираження діяльності суб'єктів публічного управління, а саме органів державної влади та місцевого самоврядування. Зокрема, йдеться про форми, заходи, засоби та способи уповноважених осіб, за допомогою яких вони реалізують покладені на них завдання, функції та забезпечують регулювання і координацію певних сфер суспільної діяльності; такий інструментарій відрізняється високим ступенем формалізму, оскільки різновиди та порядок використання відповідних інструментів визначені нормами законодавства для кожної окремої сфери суспільного життя. Саме через це, вони цілком можуть мати унікальний перелік, але при цьому стабільний характер, адже будь-яка трансформація їх змісту та кількості відбувається виключно через внесення змін у нормативні акти; передбачають імперативне встановлення повноважень (суб'єктивних прав та обов'язків) суб'єктів, що відповідні інструменти використовують. При цьому останні не можуть діяти на власний розсуд, так як це вважатиметься порушенням законодавства України. Доцільно зауважити, що більшість інструментів надають широкі можливості впливу на права та свободи людини, однак надмірна свобода в цьому питанні несе негативну перспективу виникнення свавілля посадових осіб, корупційних ризиків і таке інше; інструменти в кожній окремій сфері суспільно-правових відносин реалізуються прямо уповноваженими на це суб'єктами публічного управління, що відповідає їх встановленій законодавством України компетенції та повноваженням; застосування адміністративно-правових інструментів завжди переслідує цілком конкретний, визначений результат, виражений в досягненні цілей впливу на суспільно-правові відносини тієї чи іншої сфери. Отже, адміністративно-правові інструменти забезпечення екологічної безпеки – це сукупність визначених та врегульованих законодавством України форм, заходів, засобів та способів публічно-владного характеру, що застосовуються спеціально уповноваженими на це суб'єктами з метою мінімізації та, у разі можливості, повної ліквідації ризиків, які завдають та/або можуть завдати шкоди навколишньому природному середовищу, або ж нести фактичну небезпеку життю та здоров'ю людей.

Ключові слова: інструменти, правові інструменти, адміністративно-правові інструменти, інструменти забезпечення екологічної безпеки, екологічна безпека.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2024.4.05

Serhii Kvasiuk,
Applicant Scientific Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, serhii_kvasiuk@ukr.net
ORCID: *orcid.org/0009-0002-4330-1320*

SPECIFICS OF STATE-LEGAL REGULATION OF AGRICULTURAL SUPPORT IN UKRAINE: A THEORETICAL AND LEGAL FRAMEWORK

Abstract. ***Purpose.*** The purpose of the article is to conduct a comprehensive theoretical and legal analysis of the specifics of state-legal regulation of agricultural support in Ukraine. ***Results.*** The study reveals the essence and main forms of state-legal regulation of Ukraine's agrarian sector and outlines their normative, organizational, economic, and supervisory foundations. Considerable attention is devoted to the classification of methods and forms of state support, the analysis of their effectiveness, and the problems of terminological inconsistency in special agrarian legislation. The paper summarizes scholarly approaches to interpreting the mechanism of state support and to systematizing the instruments influencing agrarian legal relations. It is established that the system of state regulation and support of Ukraine's agrarian sector is based on a combination of administrative-legal and economic-legal instruments, yet remains conceptually and normatively fragmented. Divergent interpretations of key concepts, the absence of coherent classifications of forms and mechanisms of support, as well as the sectoral dispersion of regulatory acts, significantly reduce the effectiveness of agrarian policy. The study demonstrates the need to update the legislative framework, unify definitions, and construct a coherent system of forms and methods of state support aligned with the economic nature of agrarian legal relations. Overall, state regulation of the agrarian sphere has the potential to serve as a strategic tool for market stabilization, production development, and strengthening the competitiveness of agricultural producers. ***Conclusions.*** It is concluded that Ukraine has introduced complex mechanisms of state regulation of agrarian markets aimed at stabilizing prices and supporting producers. Legislation provides for the use of commodity and financial interventions, administrative price regulation, and systems of subsidies and collateral (pledge) purchases. These instruments are intended to ensure market equilibrium, prevent speculative price fluctuations, and support producers under crisis conditions. State intervention is complemented by tariff regulation for transportation and storage, which helps prevent hidden costs and abuses on the market. Overall, the system of state support and regulation is aimed at stabilizing the agrarian sector, stimulating production, and protecting the interests of both producers and consumers.

Key words: state, administrative procedure, agriculture, agricultural sector, state support, livestock production, water use, administrative-legal regulation.

1. Introduction

Agriculture is one of the key sectors of Ukraine's national economy, shaping food security, constituting a significant share of exports, and determining the socio-economic development of the state. Given the dynamic transformations within the agrarian sector, the issue of effective state influence on agrarian legal relations acquires strategic importance. State-legal regulation ensures the stability of agrarian markets, rational use of resources, and the ability of producers to adapt to economic and global challenges.

The relevance of the topic is also determined by the significant fragmentation and inconsistency of the current legislation regulating forms and mechanisms of state support for agriculture. The absence of a unified conceptual and categorical apparatus, duplication of norms, and divergent approaches to defining direct and indirect support mechanisms diminish the effectiveness of law enforcement. In addition, the large volume of sector-specific regulatory acts creates legal uncertainty and complicates access for agricultural entities to state support instruments.

Ukraine's strategic course toward European integration further necessitates the modernization of national agri-protection policy and the harmonization of support mechanisms with EU principles and standards. Under conditions of increasing competitive pressure and global market fluctuations, effective state regulation of the agrarian sector becomes a crucial factor for stability and innovative development. Therefore, a comprehensive admin-

istrative-legal study of the forms, methods, and mechanisms of state support is both timely and of significant theoretical and practical value.

The purpose of the article is to provide a comprehensive theoretical and legal analysis of the specifics of state-legal regulation of agricultural support in Ukraine.

2. The Role of Agriculture in the Ukrainian Economy

Mazurenko V.H. emphasizes that agriculture is one of the key sectors of the Ukrainian economy. For Ukraine, the agrarian sphere holds a leading position, as the country is among the major agricultural producers in Europe in terms of output volumes, and domestic agricultural products are exported worldwide (Mazurenko, 2023).

State-legal regulation of agricultural activities is traditionally regarded as a distinct institution of agrarian law. State-legal regulation in the agrarian sphere should be understood as a set of economic and legal measures aimed at ensuring governmental influence on agrarian legal relations. The foundation of state regulation consists of the development of normative legal acts, the formation and organization of work of state bodies in the agricultural sector, and the definition of their powers.

State regulation of socio-economic development, including in the agrarian sphere, is carried out through the preparation and approval of nationwide programs of economic, scientific and technological, and social development, as well as environmental protection programs. It provides for the predominant use of economic and incentive-based methods.

Vinichenko I.I. notes that agriculture belongs to the most priority sectors, as it directly affects public welfare and global food security. In 2021, the sector demonstrated significant growth of 14.4%, and agricultural enterprises showed an increase of 19.2% (Vinichenko, Didur, Dobrodzii, 2024).

Forms of state-legal regulation represent the external expression of the activities of competent state authorities aimed at organizing agrarian relations and ensuring the maximum efficiency of agricultural production. The following forms are distinguished: law-making, law enforcement, law-protection, and organizational.

The **law-making form** manifests itself in the adoption by authorized bodies of legislative and executive normative legal acts regulating the agrarian sector. The Constitution of Ukraine defines the powers of the Verkhovna Rada, which holds the exclusive right to adopt laws, including those concerning the agro-industrial complex, and to approve nationwide development and environmental protection programs (Art. 85). It also establishes the powers of the President and the Cabinet of Ministers.

The **law-enforcement form** of state regulation consists in adopting individual acts addressed to specific subjects. Such documents include resolutions of the Cabinet of Ministers, orders, regulations, and instructions of ministries aimed at implementing agrarian reforms, developing markets, privatizing land and property, ensuring product quality, and promoting rational resource use. This form serves to detail the rights and obligations of participants in agrarian legal relations.

The **law-protection form** is aimed at protecting the rights of agrarian business entities and state interests, exercising supervision, restoring violated rights, and preventing offenses. Civil, administrative, and criminal legal instruments are applied for these purposes. Sectoral authorities, supervisory bodies, and law enforcement agencies play an important role.

The **organizational form** of regulation is aimed at ensuring the effectiveness of the agrarian sector and related areas. It includes the interpretation of legislation, preparation of instructional materials, identification of directions of agrarian reform, and provision of food and raw materials. After the reorganization of the Ministry of Agrarian Policy, these functions were transferred to the Ministry of Economy of Ukraine. All forms of state regulation are interdependent, and only their combined application can ensure the effective development of the agrarian sector.

Salamin O.S. emphasizes that issues of state regulation of the agrarian sector in Ukraine have always remained relevant, since throughout the years of reforms numerous regulatory acts have been applied without clearly defined strategic guidelines (Salamin, 2021).

Methods of state regulation of agriculture are independent ways of influence systematically applied in regulatory activities. They constantly evolve and depend on the nature of relations and the powers of the regulatory authority. A distinction is made between **administrative-legal (direct)** and **economic-legal (indirect)** methods. The former include imperative instructions, supervision, prohibitions, and other forms of influence applied in key spheres of agricultural production and determining the obligatory conduct of subjects (for example, prohibition of improper land use, taxation obligations, quality control of products, licensing of certain activities), as well as permissive and advisory instruments.

Under modern conditions, **economic-legal methods** become priority instruments, as

the state, through economic tools (preferential taxation, crediting, subsidies, advance financing, procurement prices, etc.), stimulates subjects toward specific activities without applying coercion. These methods are the most effective, as they contribute to the formation of a favorable economic environment and to the development of agricultural production.

3. Regulatory and Legal Framework for Agriculture in Ukraine

The Law of Ukraine of 24 June 2004 *"On the Principles of State Agrarian Policy and State Policy of Rural Development"* introduced new economic and legal instruments for regulating the agrarian sector, such as minimum and maximum intervention prices, agrarian interventions (commodity and financial), temporary administrative price regulation, pledge grain procurement, credit subsidies, budgetary livestock subsidies, and others (Korniienko, Korniienko, Kulchii, 2021).

Malik M. emphasizes that in global practice family farming is the dominant type of agrarian enterprise, providing up to 80% of food products (Malik, Shpykuliak, Bezhenar, Tarasiuk, Lupenko, 2024). Analysis of scientific literature devoted to the legal support of state aid for the agrarian sector demonstrates a wide range of scholarly approaches to defining and classifying the forms, directions, instruments, types, and mechanisms of such support. Moreover, researchers often use these categories interchangeably, indicating a significant deficit of theoretical and conceptual development in this field.

One of the most common approaches is the classification of state support by its forms. Frequently, two forms of state support for the agrarian sector are distinguished: **direct** and **indirect**. Direct budgetary support typically includes: subsidies for agricultural production and material-technical supply; subsidization of short- and long-term loans for agro-industrial enterprises; financial compensation for part of crop insurance costs; subsidization of capital expenditures, etc.

According to Mushenok V.V., direct support refers to the use by the state of such instruments of financial and legal regulation as budgetary financing, including budgetary compensations, subsidies, support for special funds, and credit subsidies (Mushenok, 2014). Direct support is usually understood as the direct subsidization of agricultural producers. Accordingly, direct measures of income support include compensatory payments; reimbursement of losses caused by natural disasters; payments related to changes in production structure, reduction of sown areas, forced slaughter of livestock, and similar situations.

Scientific interpretations of indirect support also cover a broad spectrum of measures, but different authors present them differently. In simplified form, indirect support includes scientific services for the agrarian sector, preferential lending, and establishing restrictive prices for agricultural products. Mushenok V.V. expands this list by adding special tax regimes, mechanisms of state insurance, lending, price regulation, and others (Mushenok, 2014). Within the framework of indirect support, additional measures include procurement of products for state needs, market regulation, restructuring of tax debts, provision of state guarantees, and permissions to derogate from antimonopoly rules. Conversely, Sus L.V. interprets indirect support very narrowly, treating it only as funds that could be paid into the state budget but from which the state voluntarily refrains for the benefit of producers through various privileges (Sus, 2014).

Some scholars, using the same classification, apply different terminology. Kozhukh M.S., for instance, defines direct means of support as those that involve the immediate provision of budgetary funds to agricultural producers or exemption from ordinary production or marketing expenses. Such measures include budgetary subsidies, exemption from import duties, and partial reimbursement of expenses related or unrelated to production (Kozhukh, 2015).

In addition to traditional direct and indirect forms of state support, a third type—**mediated support**—is sometimes mentioned. Conditionally direct (mediated) support refers to the strengthening of production potential and market positions through measures such as debt restructuring, support for extra-budgetary funds, financing agrarian science, and implementation of state programs and national projects. However, despite the logic of a three-level model, clear criteria for differentiation are lacking, and excessively heterogeneous measures are grouped under mediated support, making the classification conceptually inconsistent.

Thus, the presented approaches show that scholars often arbitrarily determine the content of forms of state support for agriculture. Based on identical legal norms, they reach different conclusions. Analysis of the Law of Ukraine *"On the Principles of State Agrarian Policy and State Rural Development Policy"* allows for identifying two forms of support: **direct** and **indirect**. Direct support refers to immediate assistance to producers—budgetary transfers, subsidies, preferential energy prices, state investments, etc.

At the same time, Chabanenko M.M., relying on the same law, distinguishes the following forms of support:a) **price support** (state interventions, administrative price regulation,

temporary budgetary subsidies); b) **support for livestock producers** (targeted livestock subsidies); c) **other types of support** (state grain procurement, financial assistance to the agro-industrial complex, market deregulation, per-hectare subsidies, partial compensation for the use of high-reproduction seed, soil fertility programs, pest control measures, support for production in radiation-contaminated areas, etc.) (Chabanenko, 2015). However, this classification lacks a common criterion, which makes it scientifically incorrect. Since it is based on an imperfect legislative framework, this additionally justifies the need to update special agro-protection legislation.

Havryk O.Yu. stresses that under the conditions of transformation of Ukraine's agrarian sector, the importance of an effective management system for agricultural producers increases, as it must ensure optimal use of material, labor, and financial resources (Havryk, 2022). Special attention is drawn to the issue of methods of providing state support for agriculture. A support method must answer the question of how exactly such assistance is implemented. Generally, methods of providing state support for the agrarian sphere are divided into two types:

1. regulatory,
2. deregulatory.

The first consists in applying positive legal measures. The most effective manifestation of the regulatory method is **legal incentivization**. General theoretical analysis allows distinguishing two concepts of legal incentivization. Representatives of the narrow concept argue that legal incentivization has exclusively positive effects for the subject, is implemented through incentive measures, and represents a form of reward for socially valuable behavior.

Legal incentivization as an instrument of state support for the agrarian sector must create legal conditions under which agricultural entities voluntarily engage in activities beneficial to society and the state. The most common directions of incentivization include: greening of production; introduction of agro-innovations; expansion of agricultural production; stimulation of specific types of activities; implementation of socially oriented projects; and development of agrarian infrastructure.

From another perspective, methods of state support are divided into **contractual** and **non-contractual**, depending on the form of implementation. The contract serves as a key instrument for organizing economic relations in the provision of agrarian support. A significant share of agro-protection relations assumes contractual forms.

Contractual methods have important advantages. First, when properly regulated, they impose less burden on the state budget than non-contractual mechanisms and are less dependent on the financial capacity of the state. Second, contractual forms integrate harmoniously into the market economy system, ensuring that support corresponds to its economic nature. Third, contractual support fosters institutionalization and the formation of specialized organizations (Agrarian Fund, Ukragroleasing, Spetsagroleasing, Ukrderzhfond, etc.), which enhance its efficiency and accessibility.

Non-contractual methods also have considerable advantages. They provide direct financial relief to agricultural producers through direct payments or the state's refusal to claim revenues. At the same time, under domestic conditions such mechanisms exhibit persistent weaknesses:

1. bureaucratic procedures;
2. dependence on budgetary financing, leading to instability;
3. frequent changes in implementation procedures due to departmental regulation.

Accordingly, the instruments of state support form the following system:

1. **Financial instruments** – those expressed in monetary form and provided through budgetary payments or through reducing the expenses of economic entities. These include: a) allocation of budgetary funds (subsidies, compensations, grants, subventions, investment financing); b) the state's refusal to collect revenues (preferential taxation, exemption from customs duties, preferential lending, insurance and leasing under preferential conditions).

2. **Non-financial instruments** – those provided without direct financing of producers. These include state guarantees, public procurement, organizational intermediation, and similar measures. In this case, budgetary funds may be allocated for the implementation of activities, but not directly to producers. This classification differs from the traditional division into budgetary and extra-budgetary support.

State legal regulation of the agrarian sector constitutes a distinct institute of agrarian law. It represents a system of economic and legal measures through which the state influences agrarian relations (Bakai, 2022).

Another important concept is the **mechanism of state support for the agrarian sector**. Given the substantial economic component of agro-protection relations, this concept is widely used in scholarly research. Analysis of the literature makes it possible to distinguish two approaches to its interpretation:

1. **The narrow approach**, under which the mechanism of state support is equated with the instruments of its implementation;

2. **The broad approach**, according to which the mechanism is understood as the entire system of state support established in legislation.

The first approach is associated with interpreting the mechanism as a *legal mechanism*. In legal scholarship, a legal mechanism is understood as a systemic complex of legal means that are sequentially organized to achieve a specific legal objective in accordance with an established procedure. The second approach is based on equating the mechanism of state support with the mechanism of legal regulation. This category has a different substantive nature and remains the subject of scientific debate.

The variety of legal mechanisms of state support and the substantial differences between them underline the need for their scholarly systematization and classification for a comprehensive study. Numerous criteria for such classification exist, yet the choice of the optimal criterion determines the structure and logic of the entire analysis. For example, the literature proposes a division of state support into four groups:

1. **General state support** – measures directed at all sectors of Ukraine's economy without distinguishing agrarian producers;
2. **General sectoral support** – support for the agro-industrial complex of Ukraine as an economic sector;
3. **Socio-territorial support** – support for the agrarian sector in the context of supporting rural areas, infrastructure, and rural settlements;
4. **Subject-oriented support** – situational assistance to particular groups, types, or individual agrarian enterprises.

However, such a classification requires further refinement. Therefore, it is proposed to expand it by classifying state support depending on the range of relations to which it is directed:

1. **General sectoral support** – covers the widest possible circle of recipients, independent of type of activity, scale of production, or organizational-legal form. It is primarily implemented through tax, credit, insurance, and material-technical mechanisms;
2. **Special sectoral support** – aimed at specific branches of agriculture: crop production, livestock production, and aquaculture;
3. **Special subject-oriented support** – directed at particular organizational-legal forms, such as support for family farms or cooperatives;
4. **Special infrastructural support** – focused on the development of infrastructure, including processing, marketing, and information-consulting services;
5. **Special priority support** – aimed at stimulating key priorities of agrarian policy, such as greening, innovation, development of breeding and genetic improvement. This type of support goes beyond sectoral or subject-based differentiation and is aimed at encouraging activities of significant public interest (Hryhorieva, 2019).

4. Conclusions

The conducted analysis demonstrates that the system of state regulation and support of Ukraine's agrarian sector is based on a combination of administrative-legal and economic-legal instruments; however, it remains conceptually and normatively fragmented. Divergent interpretations of key concepts, the absence of harmonized classifications of forms and mechanisms of support, as well as the departmental dispersion of regulatory acts significantly diminish the effectiveness of agrarian policy. The study confirms the need to update the legislative framework, unify definitions, and construct a coherent system of forms and instruments of state support aligned with the economic nature of agrarian legal relations. Overall, state regulation of the agrarian sphere has the potential to serve as a strategic instrument for market stabilization, production development, and strengthening the competitiveness of agricultural producers.

Thus, Ukraine has introduced comprehensive mechanisms of state regulation of agrarian markets aimed at price stabilization and producer support. Legislation provides for the application of commodity and financial interventions, an administrative price-regulation regime, as well as systems of subsidies and loan-secured procurement. These instruments are intended to ensure market balance, prevent speculative price fluctuations, and support producers under crisis conditions. State intervention is complemented by the regulation of tariffs for transportation and storage, which helps prevent hidden costs and market abuses. Overall, the system of state support and regulation is aimed at stabilizing the agrarian sector, stimulating production, and protecting the interests of both producers and consumers.

References

Bakai, Yu. Yu. (2022). *Ahrarne pravo: konspekt lektsii* [Agrarian law: lecture notes]. Kharkiv: Yurait. (in Ukrainian).

Chabanenko, M. M. (2015). *Stanovlennia ta rozvytok systemy ahrarnoho prava Ukrainy: monohrafiia* [Formation and development of the system of agrarian law of Ukraine: monograph]. Dnipropetrovsk: Hrani. (in Ukrainian).

Havryk, O. Iu. (2022). Osoblyvosti vykorystannia MSFZ (IAS) 41 «Silske hospodarstvo» v praktychnii diialnosti silskohospodarskykh pidpryiemstv [Features of the use of IFRS (IAS) 41 "Agriculture" in the practical activities of agricultural enterprises]. *Ahrosvit*, no. 15–16, 40–46. (in Ukrainian).

Hryhorieva, Kh. A. (2019). *Derzhavna pidtrymka silskoho hospodarstva Ukrainy: problemy pravovoho zabezpechennia: monohrafiia* [State support for agri-

culture in Ukraine: problems of legal support: monograph]. Kherson: Helvetyka. (in Ukrainian).

Korniienko, V. M., Korniienko, H. S., & Kulchii, I. M. (2021). *Ahrarne pravo: pidruchnyk* [Agrarian law: textbook]. Kharkiv: Pravo. (in Ukrainian).

Kozhukh, M. S. (2015). *Hospodarsko-pravove zabezpechennia realizatsii derzhavnoi prodovolchoi polityky: monohrafiia*[Economic and legal support for the implementation of state food policy: monograph]. Kyiv: Yurydychna dumka. (in Ukrainian).

Malik, M., Shpykuliak, O., Bezhenar, I., Tarasiuk, A., & Lupenko, A. (2024). Stratehichni napriamy stymuliuvannia rozvytku simeinykh fermerskykh hospodarstv u konteksti voiennoho ta yevrointehratsiinoho vyklykiv [Strategic directions for stimulating the development of family farms in the context of military and European integration challenges]. *Silske hospodarstvo: stan ta perspektyvy rozvytku. Ahrarna ekonomika*, 17(3–4), 3–18. (in Ukrainian).

Mazurenko, V. H. (2023). Silske hospodarstvo yak obiekt administratyvno-pravovoho rehuliuvannia [Agriculture as an object of administrative and legal regulation]. *Problemy suchasnykh transformatsii. Seriia: pravo, publichne upravlinnia ta administruvannia*, no. 7, 1–5. (in Ukrainian).

Mushenok, V. V. (2014). Suchasna derzhavna polityka Ukrainy shchodo finansovoi pidtrymky silskoho hospodarstva [Modern state policy of Ukraine on financial support of agriculture]. *Naukovyi visnyk NUBiP Ukrainy*, no. 197, 244–249. (in Ukrainian).

Salamin, O. S. (2021). Derzhavne rehuliuvannia silskoho hospodarstva Ukrainy [State regulation of agriculture in Ukraine]. *Ekonomichnyi prostir*, no. 168, 44–48. (in Ukrainian).

Sus, L. V. (2014). Instrumentarii derzhavnoho rehuliuvannia haluzi tvarynnytstva v Ukraini [State regulation instruments of the livestock industry in Ukraine]. *Visnyk SumDU*, no. 2, 54–62. (in Ukrainian).

Vinichenko, I. I., Didur, K. M., & Dobrodzii, T. V. (2024). Investytsii v silske hospodarstvo yak holovne dzherelo dosiahnennia prodovolchoi bezpeky Ukrainy [Investments in agriculture as the main source of achieving food security in Ukraine]. *Investytsii: praktyka ta dosvid*, no. 1, 49–55. (in Ukrainian).

Zakon Ukrainy *Pro zasady derzhavnoi ahrarnoi polityky ta derzhavnoi polityky silskoho rozvytku* vid 24 chervnia 2004 roku № 1877-IV [Law of Ukraine *On the principles of state agrarian policy and state policy of rural development* of June 24, 2004 No. 1877-IV]. (2004). Retrieved from zakon.rada.gov.ua/laws/show/1877-15/ed20260101 (in Ukrainian).

Сергій Квасюк,
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, serhii_kvasiuk@ukr.net
ORCID ID: *orcid.org/0009-0002-4330-1320*

ОСОБЛИВОСТІ ДЕРЖАВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ПІДТРИМКИ СІЛЬСЬКОГО ГОСПОДАРСТВА УКРАЇНИ: ТЕОРЕТИКО-ПРАВОВА КОНСТРУКЦІЯ

Анотація. ***Метою статті*** є здійснення комплексного теоретико-правового аналізу особливостей державно-правового регулювання підтримки сільського господарства України. ***Результати.*** У дослідженні розкрито сутність та основні форми державно-правового регулювання аграрного сектору України, охарактеризовано їх нормативні, організаційні, економічні та контрольні засади. Значну увагу приділено класифікації методів і способів державної підтримки, аналізу їх ефективності та проблем термінологічної невизначеності у спеціальному аграрному законодавстві. Узагальнено підходи науковців до тлумачення механізму державної підтримки та до систематизації засобів впливу на аграрні правовідносини. Визначено, що система державного регулювання та підтримки аграрного сектору України ґрунтується на поєднанні адміністративно-правових та економіко-правових інструментів, проте залишається концептуально та нормативно фрагментованою. Різнотлумачення ключових понять, відсутність узгоджених класифікацій форм і механізмів підтримки, а також відомча розпорошеність нормативних актів істотно знижують ефективність аграрної політики. Дослідження доводить необхідність оновлення законодавчої бази, уніфікації дефініцій та побудови логічної системи форм і способів державної підтримки, узгодженої з економічною природою аграрних правовідносин. У цілому державне регулювання аграрної сфери має потенціал бути стратегічним інструментом стабілізації ринку, розвитку виробництва та підвищення конкурентоспроможності аграріїв. ***Висновки.*** Зроблено висновок, що в Україні запроваджено комплексні механізми державного регулювання аграрних ринків, спрямовані на стабілізацію цін та підтримку виробників. Законодавство передбачає застосування товарних і фінансових інтервенцій, режим адміністративного регулювання цін, а також системи дотацій і заставних закупівель. Такі інструменти покликані забезпечити рівновагу на ринку, попередити спекулятивні коливання цін та підтримати виробників у кризових умовах. Державне втручання доповнюється регуляцією тарифів на транспортування та зберігання, що дозволяє уникнути прихованих витрат і зловживань на ринку. Загалом система державної підтримки та регулювання спрямована на стабілізацію аграрного сектору, стимулювання виробництва та захист інтересів як виробників, так і споживачів.

Ключові слова: держава, адміністративна процедура, господарство, сільське господарство, державна підтримка, тваринництво, сільське господарство, водокористування, адміністративно-правове регулювання.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2024.4.06

Vitalii Monastyretskyi
Applicant Scientific Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, vitalii_monastyretskyi@ukr.net
ORCID: *orcid.org/0009-0006-0997-7213*

ON DEFINING THE CONCEPT OF THE ADMINISTRATIVE AND LEGAL STATUS OF THE SECURITY SERVICE OF UKRAINE IN THE FIELD OF PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES

Abstract. ***Purpose.*** The purpose of the article is to formulate the author's definition of the concept of the administrative and legal status of the Security Service of Ukraine in the field of protection of critical infrastructure facilities. ***Results.*** The article emphasizes that the Security Service of Ukraine operates at the intersection of law enforcement, counterintelligence, analytical, and protective activities. This enables it to identify threats to critical infrastructure at early stages, forecast their development, and ensure a strategic level of response. In this context, the administrative and legal status of the Security Service of Ukraine ceases to be merely a formal legal category and becomes a fundamental prerequisite for the effective functioning of the entire system of protection of critically important facilities. In jurisprudence, several types of status are distinguished: general legal and sectoral, including administrative status, each of which incorporates a significant array of features of social status. The legal status is based on the actual social status, that is, the real position of a person within a given system of social relations. Social and legal statuses correlate as content and form. The article provides an in-depth and comprehensive analysis of theoretical and scholarly sources, on the basis of which the main conceptual approaches to the interpretation of the category of "status" from the perspective of legal science are identified. A separate study of interpretations of administrative and legal status in relation to various subjects is conducted. An authorial approach to defining the administrative and legal status of the Security Service of Ukraine as a subject ensuring security, stability of functioning, and protection of critical infrastructure facilities is proposed. ***Conclusions.*** It is concluded that the administrative and legal status of the Security Service of Ukraine in the field of protection of critical infrastructure facilities is a systemic set of legal elements defined by the legislation of Ukraine that establish the place, role, and purpose of the Security Service of Ukraine in social and legal relations arising from the implementation of activities aimed at ensuring the security and resilience of the functioning of critical infrastructure facilities.

Key words: status, administrative and legal status, Security Service of Ukraine, protection, critical infrastructure.

1. Introduction

Unlike most state authorities whose competence is limited to a specific area of public administration, the Security Service of Ukraine operates at the intersection of law enforcement, counterintelligence, analytical, and protective activities. This provides it with the ability to identify threats to critical infrastructure at early stages, forecast their development, and ensure a strategic level of response. In this context, the administrative and legal status of the Security Service of Ukraine ceases to be merely a formal legal category and becomes a fundamental condition for the effective functioning of the entire system of protection of critically important facilities.

For many years, certain problematic issues related to the activities of the Security Service of Ukraine have been examined in the scholarly works of O. M. Bandurka, M. M. Burbyka, O. V. Brusakova, S. D. Husariev, O. Ye. Kahlynskyi, O. V. Kovalov, A. T. Komziuk, and Yu. V. Pavliutin. However, the complex polysectoral nature of the SBU's activities, as well as the high degree of secrecy inherent therein, results in insufficient coverage of the specifics of its administrative and legal status, particularly within individual spheres of social life, such as the protection of critical infrastructure facilities.

Therefore, the purpose of this article is to formulate the author's definition of the concept of the administrative and legal status of the Security Service of Ukraine in the field of protection of critical infrastructure facilities.

2. Analysis of the Concept of "Legal Status"

The concept of "status" expresses the position, standing, place, or role of someone or something. The term originates from Latin, from *status*, which means the state or condition of a particular object (Babii, Burchak, Koretskyi, Tsvietkov, 1983). There is a certain unity between the etymological and philosophical interpretations of this term, since in philosophical science it corresponds to the categories of "state" and "condition," which are understood as the unity of being and non-being, a continuous process of change that should lead to the emergence of something new, to the transformation of possibility into reality, and to actual existence. In general, the category of status was introduced into philosophy by Aristotle, who considered it in close connection with the categories of "essence" and "relation" (Petrushenko, 2009; Shynkaruk, 2002).

Thus, based on etymological and philosophical approaches, status is a descriptive term that characterizes the place, role, position, or condition of a certain subject or object within a system of external characteristics. Sociology significantly influenced the development of the understanding of the concept of "status," where it acquired the meaning of one of the central categories.

According to documents and official sources of the international organization UNESCO, social status is defined as a person's position in society and in social relations (UNESCO, 2023). In a sociology textbook by V. N. Horodianenko, social status is defined as the position of an individual in the social system associated with belonging to a particular social group or community, encompassing the totality of social roles and the quality and degree of their performance. It includes a generalized characteristic of an individual's position in society, such as profession, qualifications, education, nature of work performed, position held, material well-being, possession of power, party and trade union affiliation, business relations, and belonging to demographic or ethnic groups (nationality, religion, age, marital status, family ties).

In addition, social statuses, as noted by the author, are divided into ascribed statuses, which are obtained independently of the subject, most often from birth (race, gender, age, nationality), and achieved statuses, which are acquired through the individual's own efforts (marital status, professional and qualification level, etc.). Among statuses, an integral status and auxiliary statuses are distinguished. In some cases, their interaction may lead to intrapersonal conflicts (Horodianenko, 2003).

In the study by O. V. Belkova, social status is characterized as the position of an individual in society. The concept of "position" is also used in various meanings: "a certain standing determined by relevant circumstances; a place and role in society, in a social or professional environment." Regarding the use of the notions of "role" and "place" in social life, it can be stated that an individual's position in certain circumstances determines which actions a person may perform and which actions may be required of them, as well as the manner in which such actions are performed. Position (status) characterizes something that is independent of the will of the individual occupying it and may be defined as an established range of opportunities beyond which a person cannot go. These opportunities are not determined by the individual but by social norms accepted in a particular society or social group and are conditioned by the presence of certain characteristics that allow a person to occupy such a position (Belkova, 2003).

In jurisprudence, several types of status are distinguished: general legal status and sectoral statuses, including administrative status, each of which incorporates a significant array of features inherent in social status. For example, S. Ya. Burda writes that legal status is a theoretical construct that combines normative characteristics, theoretical concepts, and real practice of the implementation of legal provisions. The specific nature of legal status as a category lies in the fact that it allows, in a comprehensive manner and taking into account various perspectives, its normative regime and legal forms of social opportunities and constraints, to model the legal condition of various persons and organizations, thereby overcoming the shortcomings of a one-sided approach to the study of a subject solely as a bearer of rights or legal obligations (Burda, 2010).

According to I. Y. Snihur, legal status is the legally established position of an individual in society. The legal status is based on the actual social status, that is, the real position of a person within a given system of social relations. Social and legal statuses correlate as content and form. Based on this, the author concludes that legal status is a complex, integrative category that reflects the relationships between the individual and society, the citizen and the state, the individual and the collective, as well as other social connections (Snihur, 2007).

A broad characterization of this category is provided by T. P. Popovych, who defines legal status as a concept that makes it possible to outline the place and position of an individual in relations with the state and society as a whole. Such relations are reflected in the form of mutual rights and obligations, which constitute the basis of legal status. On this basis,

the scholar distinguishes broad and narrow definitions of the category. According to the broad approach, legal status includes subjective rights, freedoms, and legal obligations combined with legal personality and legal responsibility. From the perspective of the narrow approach, legal status is the legally established position of an individual in society, reflected in the totality of their rights and obligations defined and guaranteed by the Constitution and laws of Ukraine, other normative legal acts, and international treaties, the binding force of which has been approved by the Verkhovna Rada of Ukraine (Popovych, 2023).

3. The Content of Administrative and Legal Status

Administrative and legal status constitutes a derivative of the classical legal status and characterizes the position of a natural or legal person within the framework of public authority legal relations. T. O. Kolomoiets defines the category of administrative and legal status as a set of subjective rights and obligations enshrined in the norms of administrative law. At the same time, a mandatory feature of acquiring administrative and legal status is the presence of specific subjective rights and obligations of a subject, which are exercised both within administrative legal relations and beyond them (Kolomoiets, 2011; Bezpalova, Horbach, 2017).

However, as a rule, scholarly approaches to the interpretation of administrative and legal status are oriented toward a specific subject. For example, I. P. Holosnichenko defines the administrative and legal status of an individual as a complex of their rights and obligations enshrined in the norms of administrative law, the implementation of which is ensured by certain guarantees. This status is based on administrative legal capacity, that is, the ability to possess rights and perform obligations of an administrative and legal nature (Averianov, 2004).

According to S. L. Kurylo, the administrative and legal status of internal affairs bodies (modern police) and local authorities as subjects of interaction is their position within the system of social relations and the mechanism of public administration, which is determined by the state through the consolidation in the norms of administrative legislation of their tasks, functions, powers, and responsibility. These elements are implemented by the relevant subjects through administrative and legal (managerial) relations, in particular those arising directly during their interaction in matters of ensuring public security and public order (Kurylo, 2012).

O. V. Lytvyn provides the following interpretation of the administrative and legal status of civil servants: a list of subjective rights, legal obligations, guarantees of their implementation, as well as restrictions defined by current legislation, which in their entirety ensure the exercise of powers by a civil servant within the framework of the functions and tasks of public service. Based on this understanding, the author proposes to distinguish the following constituent elements of administrative and legal status: rights; obligations; guarantees for the exercise of rights and obligations; and restrictions applicable to civil servants (Lytvyn, 2009).

O. Yu. Drozd, L. V. Soroka, and L. I. Myskiv characterize the administrative and legal status of executive authorities as a type of legal status that determines the rights, obligations, powers, and responsibility of a specific subject within this system (a ministry, service, agency, inspection, central executive authority with a special status, collegial body, other central executive authority, or local authority) in the field of public administration and specific administrative relations. In their view, such status is established by laws or other normative legal acts, but most often by regulations governing the principles and organization of their activities (Drozd, Soroka, Myskiv, 2023).

D. O. Ishchuk раскрывает the administrative and legal status of the National Agency on Corruption Prevention as a set of elements enshrined in the norms of administrative law that determine the direction of the Agency's activities, as well as its purpose within the system of relevant subjects. According to the scholar, the elements of such status include the Agency's structure, tasks, functions, powers, guarantees, and responsibility. The author identifies the following specific features of the administrative and legal status of the National Agency on Corruption Prevention:

1. the purpose of the Agency's existence is to prevent the commission of corruption offenses and to create all necessary conditions to minimize or eliminate corruption risks in the activities of enterprises, institutions, and organizations;
2. it employs specific forms and methods of combating corruption in its activities (for example, electronic asset declaration);
3. it has a special hierarchical structure that affects the specifics of managerial decision-making;
4. it is endowed with a specific range of powers and legal guarantees of activity;
5. the main form of the Agency's direct work consists of meetings held on a regular basis (Ishchuk, 2021).

4. Conclusions

The conducted analysis has demonstrated the diversity of scholarly concepts regarding the understanding of the content and signifi-

cance of administrative and legal status. Their examination and comparison make it possible to formulate an authorial interpretation of this category in view of the issue raised in this article. Therefore, it is argued that the administrative and legal status of the Security Service of Ukraine in the field of protection of critical infrastructure facilities constitutes a systemic set of legal elements defined by the legislation of Ukraine, which establish the place, role, and purpose of the Security Service of Ukraine within social and legal relations arising from the implementation of activities aimed at ensuring security and resilience in the functioning of critical infrastructure facilities.

References

Averianov, V. B. (2004). *Administratyvne pravo Ukrainy. Akademichnyi kurs* [Administrative Law of Ukraine. Academic Course]. Kyiv: Yurydychna dumka.

Babii, B. M., Burchak, F. H., Koretskyi, V. M., & Tsvietkov, V. V. (1983). *Yurydychnyi slovnyk* [Legal Dictionary]. Kyiv: Holovna redaktsiia Ukrainskoi Radianskoi entsyklopedii.

Belkova, O. V. (2003). Poniattia ta osoblyvosti pravovoho statusu svidka v kryminalnomu protsesi Ukrainy [The concept and features of the legal status of a witness in the criminal process of Ukraine]. *Pravo i bezpeka*, 21, 52–54.

Bezpalova, O. I., & Horbach, D. O. (2017). Poniattia ta struktura administratyvno-pravovoho statusu Natsionalnoi hvardii Ukrainy [The concept and structure of the administrative and legal status of the National Guard of Ukraine]. *Forum prava*, 5, 31–38.

Burda, S. Ya. (2010). *Administratyvno-pravovyi zakhyst uchasnykiv vyboriv i referendumiv v Ukraini* [Administrative and legal protection of participants in elections and referendums in Ukraine] (Candidate's thesis). Lviv: Lviv State University of Internal Affairs.

Drozd, O. Yu., Soroka, L. V., & Myskiv, L. I. (2023). Zahalnoteoretychni osnovy kontseptu «administratyvno-pravovyi status derzhavnoi sluzhby» z ohliadom yoho osoblyvostei na prykladi orhaniv Derzhavnoi vykonavchoi sluzhby [General theoretical foundations of the concept of "administrative and legal status of civil service" using the example of the State Executive Service]. *Yurydychnyi naukovyi elektronnyi zhurnal*, 5, 506–508.

Horodianenko, V. H. (2003). *Sotsiolohiia* [Sociology]. Kyiv: Vydavnychyi tsentr "Akademiia".

Ishchuk, D. O. (2021). *Administratyvno-pravovyi status spetsializovanykh subiektiv protydii koruptsii Ukrainy*[Administrative and legal status of specialized subjects combating corruption in Ukraine] (Candidate's thesis). Kyiv: Dnipropetrovsk State University of Internal Affairs.

Kolomoiets, T. O. (2011). *Administratyvne pravo Ukrainy: akademichnyi kurs* [Administrative Law of Ukraine: Academic Course]. Kyiv: Yurinkom Inter.

Kurylo, S. L. (2012). Administratyvno-pravovyi status orhaniv vnutrishnikh sprav yak subiekta vzaiemodii z orhanamy mistsevoi vlady z pytan zabezpechennia hromadskoi bezpeky ta hromadskoho poriadku [Administrative and legal status of internal affairs bodies as a subject of interaction with local authorities]. *Forum prava*, 1, 523–526.

Lytvyn, O. V. (2009). *Administratyvno-pravove rehuliuvannia statusu derzhavnoho sluzhbovtsia v Ukraini*[Administrative and legal regulation of the status of a civil servant in Ukraine] (Candidate's thesis). Irpin: National University of the State Tax Service of Ukraine.

Petrushenko, V. (2009). *Tlumachnyi slovnyk osnovnykh filosofskykh terminiv* [Explanatory dictionary of basic philosophical terms]. Lviv: Lviv Polytechnic National University Publishing House.

Popovych, T. P. (2023). Poniattia oboviazku yak elementu pravovoho statusu osoby [The concept of duty as an element of the legal status of a person]. *Analitychno-porivnialne pravoznavstvo*, 6, 714–718.

Shynkaruk, V. I. (2002). *Filosofskyi entsyklopedychnyi slovnyk* [Philosophical encyclopedic dictionary]. Kyiv: Abrys.

Snihur, I. I. (2007). *Mekhanizm realizatsii prava hromadian na uchast u zdiisnenni derzhavnoi vlady* [The mechanism of implementing citizens' right to participate in the exercise of state power] (Candidate's thesis). Kyiv: National Pedagogical University named after M. P. Drahomanov.

UNESCO. (2023). *UNESCO Thesaurus: Social status.* Retrieved from https://vocabularies.unesco.org/browser/thesaurus/en/page/?uri=http://vocabularies.unesco.org/thesaurus/concept6181

Віталій Монастирецький,
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, vitalii_monastyretskyi@ukr.net
ORCID ID: *orcid.org/0009-0006-0997-7213*

ДО ВИЗНАЧЕННЯ ПОНЯТТЯ АДМІНІСТРАТИВНО-ПРАВОВОГО СТАТУСУ СЛУЖБИ БЕЗПЕКИ УКРАЇНИ ЩОДО ЗАХИСТУ ОБ'ЄКТІВ КРИТИЧНОЇ ІНФРАСТРУКТУРИ

Анотація. ***Мета статті*** полягає у необхідності сформулювати авторське визначення поняття адміністративно-правового статусу Служби безпеки України щодо захисту об'єктів критичної інфраструктури. ***Результати.*** У статті наголошено, що Служба безпеки України функціонує на

перетині правоохоронної, контррозвідувальної, аналітичної та захисної діяльності. Це надає їй здатність виявляти загрози для критичної інфраструктури ще на ранніх етапах, прогнозувати їх розвиток і забезпечувати стратегічний рівень реагування. У такому контексті адміністративно-правовий статус Служби безпеки України перестає бути лише формальною юридичною категорією - він стає базовою умовою ефективного функціонування всієї системи захисту критично важливих об'єктів. В юриспруденції існує декілька різновидів статусу: загальний правовий та галузеві, зокрема, адміністративний, кожен з яких переймає значний масив ознак соціального. В основі правового статусу лежить фактичний соціальний статус, тобто реальне становище людини в даній системі суспільних відносин. Соціальний і правовий статуси співвідносяться як зміст та форма. У статті проведено глибокий та комплексний аналіз теоретико-наукових джерел, на підставі чого виокремлено головні концептуальні підходи до тлумачення категорії «статус» з точки зору правової науки. Проведено окреме дослідження тлумачень адміністративно-правового статусу в розрізі різних суб'єктів. Запропоновано авторський підхід до визначення адміністративно-правового статусу Служби безпеки України, як суб'єкту забезпечення безпеки, стабільності функціонування та захисту об'єктів критичної інфраструктури. ***Висновки.*** Зроблено висновок, що адміністративно-правовий статус Служби безпеки України щодо захисту об'єктів критичної інфраструктури – це системна сукупність визначених законодавством України юридичних елементів, які встановлюють місце, роль та призначення Служби безпеки України у суспільно-правових відносинах, що виникають з реалізації діяльності направленої на забезпечення безпеки і стійкості функціонування об'єктів критичної інфраструктури.

Ключові слова: статус, адміністративно-правовий статус, Служба безпеки України, захист, критична інфраструктура.

UDC 351:620.9(477)
DOI https://doi.org/10.32849/2663-5313/2024.4.07

Maksym Panasiuk,
Postgraduate Student Scientific Research Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, maksym_panasiuk@ukr.net
ORCID: *orcid.org/0000-0001-7412-3558*

THE STATE OF SCIENTIFIC RESEARCH ON THE DEFINITION OF THE CONCEPT AND ESSENCE OF PUBLIC ADMINISTRATION IN THE FIELD OF ALTERNATIVE ENERGY IN UKRAINE

Abstract. ***Purpose.*** The purpose of this article is to identify and elucidate the approaches, conceptual foundations, and key provisions developed within the administrative-law domain of scientific knowledge regarding the definition of the concept and essence of public administration in the field of alternative energy in Ukraine. ***Results.*** Since the formation of a new scientifically grounded concept is always based on the study, analysis, and integration of existing theoretical and practical knowledge, as well as on a critical rethinking of existing approaches, this article presents the main conceptual foundations established within the administrative-law domain concerning the definition of the concept and essence of public administration in the field of alternative energy in Ukraine. It is noted that the author did not identify comprehensive monographic studies dedicated specifically to the legal nature and functional mechanisms of public administration in Ukraine's alternative energy sector. Instead, available research substantiates the belonging of social relations within the alternative energy sector to the object component of mechanisms of state, legal, and administrative-law regulation. It is asserted that periodic scholarly works contain a number of conceptual provisions that may serve as a methodological basis for the further development of the theoretical and legal foundations of public administration in the said sector. ***Conclusions.*** The research is summarized in two key points: 1) it is necessary to distinguish between normative and scientific discourses in the interpretation of the content and essence of public administration in the field of alternative energy in Ukraine; 2) there is a need to form a comprehensive scientifically grounded approach to understanding the mechanisms of public administration in this sector. It is proposed to consider alternative energy as a strategic object of Ukraine's state policy, the protection, provision, and support of which constitute an independent state priority in the context of state-building. Accordingly, public administration in the field of alternative energy in Ukraine is defined as a means of realizing the public interest in achieving energy independence, sustainable economic functioning, and environmental security, which objectifies regulatory, managerial, provision, protection, and safeguarding mechanisms of social relations arising in the process of using alternative energy sources. It is further noted that public administration in this sector can reasonably be defined as a form of state policy implementation in the field of alternative energy, carried out through the activities of specially authorized entities–representatives of public administration–who are functionally obliged to create appropriate conditions for the full development of the sector.

Key words: alternative energy, renewable energy sources, sustainable energy, energy independence, energy resources, public administration, sustainable development.

1. Introduction The formation of a new scientifically grounded concept is always based on the study, analysis, and integration of existing theoretical and practical knowledge, as well as on the critical reconsideration of existing approaches. In other words, any scientific research, regardless of its structure and content, must be built on clear methodological foundations, among which is the correct selection of review sources for analysis.

When beginning research on ways to improve the legislative and practical implementation aspects of public administration in the field of alternative energy in Ukraine, it is indisputable that it is necessary to clarify the concept and essence of the phenomenon under study, which is practically impossible without analyzing the state of scientific investigation of this problem by domestic administrative law scholars.

In view of the above, the purpose of this article is to identify and elucidate the approaches, conceptual foundations, and key provisions developed within the administrative-law

domain of scientific knowledge regarding the definition of the concept and essence of public administration in the field of alternative energy in Ukraine.

2. Principles of State Regulation of the Development of Alternative Energy

It should be noted immediately that comprehensive monographic studies dedicated specifically to the legal nature and functional mechanisms of public administration in the field of alternative energy in Ukraine have not been identified. Instead, available research substantiates the attribution of social relations within the alternative energy sector to the object component of mechanisms of state, legal, and administrative-law regulation.

For instance, O. Voloshyn asserts that: *"The further development of alternative, non-traditional, renewable energy sources in Ukraine requires the creation and legislative provision of favorable investment conditions and appropriate state support, the development and implementation of competitive technologies and equipment models, and their introduction into production. State support for the production of alternative energy sources should consist in granting relevant incentives and stimulating private investment (including foreign investment) directed towards the development of various sectors of alternative energy. Only under these conditions will the development of wind energy facilities; solar energy facilities; energy facilities producing electricity from biogas; energy facilities producing electricity from biomass; environmental thermal energy facilities; and facilities harnessing the hydropower potential of small rivers in Ukraine at an economically feasible level significantly increase the share of alternative energy in the overall fuel and energy balance and ensure the necessary level of Ukraine's economic, environmental, and energy security"* (Voloshyn, 2015).

Thus, according to the scholar, state regulation of the development of alternative energy includes: legislative provision, creation of conditions for a favorable investment climate, stimulation of scientific, technical, and technological development, as well as state support for entities operating in this sector. At the same time, the scholar defines state regulation of alternative energy development as: *"the influence of the state (the regulatory entity) on the regulated objects through the creation of proper conditions for the production, supply, transportation, storage, transfer, and consumption of energy produced from alternative sources, with the aim of ensuring sustainable, balanced, and innovative development of the national energy system, which implies the rational use of available energy resources, ensuring national energy security on environmental grounds, and improving the welfare of society"* (Maistro, Voloshyn, 2015; Voloshyn, 2015).

Equally noteworthy is the position of D. Shtoda, who proposes defining administrative-law regulation of relations in the field of alternative energy use as *"administrative-law influence exerted by authorized entities through the norms of administrative law and other administrative-law instruments, aimed at targeted activities to ensure the public interest in the development of alternative energy in Ukraine, and guaranteeing each individual the real observance of rights regarding the production, storage, transportation, supply, transfer, and consumption of energy obtained from alternative sources, as well as the adequate protection of these rights in the event of their violation"* (Shtoda, 2023).

It is important to note that the relationship between these categories and public administration is rather controversial. For example, M. Rivis argues that public administration and administrative-law regulation are closely interconnected. The scholar explains that for a long time, domestic science referred exclusively to the terms *"state governance"* and *"state regulation"*, including administrative-law regulation. However, over time, there has been a tendency to transform these categories into a qualitatively new conceptual apparatus, resulting in the emergence of the new theoretical construct of *"public administration"* (Rivis, 2018). He further clarifies that this construct gained widespread use due to the radical reform changes in the state apparatus and specific organizational factors in its structure. The transition from a model of totalitarian governance to the recognition of human goods, values, and needs as a priority of state policy necessitated the implementation of regulatory processes not only by the state but also with the involvement of other, non-state institutions (Rivis, 2018).

The scholar L. Aldokhina, who dedicated a scientific publication to certain issues of organizing public administration in the field of alternative energy in Ukraine, also emphasizes that the topic of public administration has been the subject of scientific discussion in recent years due to the transformation of the state governance system and the emergence of new interrelated categories, such as *"public management"* and *"public administration"*. Consequently, managerial functions in the public sphere are carried out not only by state authorities but also by other entities endowed with authority (local self-government bodies, public organizations, etc.) [5, p. 105].

According to her, the concept of *"public administration in the field of alternative energy"* can be defined as the purposeful interaction

of public administration entities (the Ministry of Energy of Ukraine, other authorized state bodies, and local self-government bodies) with alternative energy producers, consumers, and other participants in the energy market regarding the implementation of regulatory legal acts in the field of alternative energy and the execution of main tasks and functions in this sector (creation of legal, organizational, and material-technical conditions, including attracting investments necessary for sector development). She clarifies that the analysis of the content of the public administration process in the field of alternative energy in Ukraine demonstrated that such a process combines elements and instruments of management, regulation, and monitoring, and therefore requires the development of a comprehensive regulatory framework that would maximally cover the legal relations between the subject and object of administration, with the legislative consolidation of the concept of *"public administration"* and its main functions in the field of alternative energy. According to the scholar, the main task of public administration in this sector is to create a coordinated mechanism of interaction between the state, local self-government bodies, and business entities in the field of alternative energy on the principles of public-private partnership to create maximum opportunities for the effective development of the sector (Aldokhina, 2021).

3. Features of Public Administration in the Field of Alternative Energy Sources

In another publication, L. Aldokhina expressed the view that state governance and public administration in the field of alternative energy sources should involve the establishment of a system of supervision and control over the effective use of renewable energy sources and alternative fuels; the development and monitoring of the implementation of state target programs in the field of efficient use of alternative energy sources and fuels; and the development of sectoral and regional programs in this area. One of the primary tasks she identifies is ensuring the further development of public-private partnership mechanisms in the use of alternative energy sources, coordinating and harmonizing interactions between public authorities and participants in the energy market to accomplish the main tasks and functions in this sector, as well as further improving the regulatory framework governing the field of alternative energy (Aldokhina, 2023).

Interestingly, A. Zadykhailo, in his publication *"Main Directions for Improving State Governance in the Field of Alternative Energy in Ukraine"*, states that: *"The study of the concept of state governance in the field of alternative energy requires scientific and theoretical justification and the definition of the content of state governance, the essence, and directions for improving the main categories of state governance in the alternative energy sector. There is also an urgent need to distinguish this category from the related concepts of 'public management' and 'public administration,' primarily due to the transformation of the state governance system itself and the emergence of new interrelated categories in this domain"* (Zadykhailo, 2021).

We find this scholarly position compelling, as it appears sufficiently substantiated by those researchers who consider state governance as the organization of the state sector, which implies the absence of variability in behavioral models or the organizational structure of the governance object and represents the establishment and enforcement of imperative norms in exclusive spheres of state interest. Such spheres include those that are wholly or partially non-public by default–internal security, areas containing state secrets, territorial division of administrative units, economic aspects of ensuring state competitiveness, and international relations (Danylenko, 2020).

However, A. Zadykhailo does not share this view, arguing that the category *"state governance"* has lost its methodological properties, since one of the subjects of administrative legal relations is the local self-government body, which does not belong to either the system of state authorities or the domain of state governance. Therefore, the main directions for improving state governance in such a strategically important sector for ensuring national security and energy independence as alternative energy, according to Zadykhailo, are primarily: the improvement of legal regulation of legal relations between the subject and object of administration; the legislative consolidation of the concept of *"public administration"*, its main principles, and functions in the field of alternative energy; further scholarly investigations to delineate the relationship between the concepts of *"state governance"*, *"public management"*, and *"public administration"*; and research into the organizational and legal component of implementing the latter in the alternative energy sector (Zadykhailo, 2021).

Accordingly, summarizing an interim conclusion of this research, we can note the following:

– **First**, the legislative and scholarly discourses regarding the development processes of the alternative energy sector under active state participation differ in terms of conceptual-contentual and ideological characteristics;

– **Second**, scholars unanimously agree that the state must actively participate in the mechanisms for developing this sector;

– **Third**, at the current stage of state-building processes, it is more appropriate to appeal to the category of *"public administration"* in the field of alternative energy in Ukraine, which necessitates an update of the regulatory terminology. The methodological basis for this can be provided by periodic scientific works containing a number of conceptual provisions on the issue. However, it seems more appropriate to conduct a monographic study that would systematically and comprehensively illuminate the foundational theoretical and legal principles of public administration in this sector.

4. Conclusions

The conducted research can be summarized in two key points: 1) it is necessary to distinguish between the normative and scientific discourses in interpreting the content and essence of public administration in the field of alternative energy in Ukraine; 2) it is essential to develop a comprehensive, scientifically grounded approach to understanding the mechanisms of public administration in this sector.

It should be assumed that alternative energy ought to be considered a strategic object of Ukraine's state policy, the protection, provision, and support of which constitute an independent state priority in the context of state-building.

Accordingly, public administration in the field of alternative energy in Ukraine can be defined as a means of realizing the public interest in achieving energy independence, sustainable economic functioning, and environmental security, which objectifies in the legal implementation sphere the mechanisms of regulation, management, provision, protection, and safeguarding of social relations arising in the process of using alternative energy sources.

On the other hand, public administration in the field of alternative energy in Ukraine can reasonably be defined as a form of implementing state policy in the sphere of alternative energy sources, carried out through the activities of specially authorized entities–representatives of public administration–who are functionally obliged to create appropriate conditions for the full development of the sector through lawmaking, strategic planning and forecasting, licensing and registration, control and supervisory activities, state support, and other relevant measures.

References

Aldokhina, L. M. (2021). *Do pytannia udoskonalennia mekhanizmiv publichnoho administruvannia u sferi alternatyvnoi enerhetyky v Ukraini [On the issue of improving public administration mechanisms in the field of alternative energy in Ukraine]. Zbirnyk naukovykh prats Kharkivskoho natsionalnoho pedahohichnoho universytetu imeni H.S. Skovorody*, (33), 105–111. (in Ukrainian)

Aldokhina, L. M. (2023). *Do pytannia derzhavnoho upravlinnia ta publichnoho administruvannia u sferi alternatyvnoi enerhetyky v umovakh dii voiennoho stanu [On the issue of public administration in the field of alternative energy under martial law].* Łomża: MANS w Łomży. (in Ukrainian)

Danylenko, A. O. (2020). *Zasady publichnoho administruvannia v Ukraini [Principles of public administration in Ukraine]* (Candidate's thesis). Scientific Research Institute of Public Law, Kyiv. (in Ukrainian)

Maistro, S. V., & Voloshyn, O. L. (2015). *Mekhanizmy derzhavnoho rehuliuvannia rozvytku alternatyvnoi enerhetyky: teoretychni pidkhody do vyznachennia ta zmistu [Mechanisms of state regulation of the development of alternative energy: theoretical approaches to definition and content]. Efektyvnist derzhavnoho upravlinnia*, (1), 36–43. (in Ukrainian)

Rivis, M. M. (2018). *Publichne administruvannia transkordonnoho spivrobitnytstva Ukrainy ta krain uchasnyts YeS [Public administration of cross-border cooperation of Ukraine and EU member states]* (Candidate's thesis). Scientific Research Institute of Public Law, Kyiv. (in Ukrainian)

Shtoda, D. O. (2023). *Administratyvno-pravove rehuliuvannia vidnosyn u sferi vykorystannia alternatyvnykh dzherel enerhii [Administrative and legal regulation of relations in the field of use of alternative energy sources]* (Candidate's thesis). National University of Life and Environmental Sciences of Ukraine. (in Ukrainian)

Voloshyn, O. (2015). *Mekhanizmy derzhavnoho rehuliuvannia rozvytku alternatyvnoi enerhetyky v Ukraini [Mechanisms of state regulation of the development of alternative energy in Ukraine]* (Candidate's thesis). National University of Civil Protection of Ukraine, Kharkiv. (in Ukrainian)

Zadykhailo, O. A. (2021). *Osnovni napriamy vdoskonalennia derzhavnoho upravlinnia u sferi alternatyvnoi enerhetyky v Ukraini [Main directions of improving public administration in the field of alternative energy in Ukraine]. Zbirnyk naukovykh prats Kharkivskoho natsionalnoho pedahohichnoho universytetu imeni H.S. Skovorody*, (34), 89–95. (in Ukrainian)

Максим Панасюк,
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, maksym_panasiuk@ukr.net
ORCID ID: *orcid.org/0000-0001-7412-3558*

СТАН НАУКОВОГО ОПРАЦЮВАННЯ ПРОБЛЕМИ ВИЗНАЧЕННЯ ПОНЯТТЯ ТА СУТНОСТІ ПУБЛІЧНОГО АДМІНІСТРУВАННЯ У СФЕРІ АЛЬТЕРНАТИВНОЇ ЕНЕРГЕТИКИ УКРАЇНИ

Анотація. ***Метою статті*** є виявлення та розкриття підходів, концептуальних засад і основних положень, сформованих у межах адміністративно-правової галузі наукових знань щодо визначення поняття та сутності публічного адміністрування у сфері альтернативної енергетики України. ***Результати.*** Оскільки формування нової науково обґрунтованої концепції завжди ґрунтується на вивченні, аналізі та інтеграції наявних теоретичних і практичних знань, а також на критичному переосмисленні існуючих підходів, у цій статті автором розкриваються основні концептуальні засади, сформовані у межах адміністративно-правової галузі наукових знань, щодо визначення поняття та сутності публічного адміністрування у сфері альтернативної енергетики України. Зауважено, що комплексних монографічних праць, присвячених тематиці визначення юридичної природи та особливостей функціонування механізмів публічного адміністрування у сфері альтернативної енергетики України автором не виявлено. Натомість наявними є наукові розробки, що обґрунтовують приналежність суспільних відносин сфери альтернативної енергетики до об'єктної складової механізмів державного, правового та адміністративно-правового регулювання. Констатується, що періодичні наукові праці містять ряд концептуальних положень, які можуть слугувати методологічною основою для подальшої розробки теоретико-правових засад публічного адміністрування в означеній сфері. ***Висновки.*** Проведені розвідки узагальнено двома ключовими положеннями: 1) варто розрізняти нормативний та науковий дискурси інтерпретації змісту та сутності публічного адміністрування у сфері альтернативної енергетики в Україні; 2) необхідним є формування цілісного науково обґрунтованого підходу до розуміння механізмів публічного адміністрування в означеній сфері. Запропоновано виходити з того, що альтернативна енергетика має розглядатись як стратегічний об'єкт державної політики України, охорона, забезпечення та підтримка розвитку якого є самостійним державним пріоритетом у сфері розбудови державності. З огляду на зазначене публічне адміністрування у сфері альтернативної енергетики України визначено як спосіб реалізації суспільного інтересу в досягненні енергетичної незалежності, сталого функціонування економіки та екологічної безпеки, що об'єктивує в правореалізаційну площину механізми регулювання, управління, забезпечення, охорони та захисту суспільних відносин, які виникають у процесі використання альтернативних джерел енергії. Проте зауважено, що публічне адміністрування у сфері альтернативної енергетики України цілком закономірно може визначатись як форма реалізації державної політики у сфері альтернативних джерел енергії, що реалізовується через діяльність спеціально уповноважених суб'єктів – представників публічної адміністрації – які функціонально зобов'язані створити належні умови для повноцінного розвитку означеної сфери.

Ключові слова: альтернативна енергетика, альтернативні джерела енергії, відновлювальна енергетика, енергетична незалежність, енергетичні ресурси, публічне адміністрування, сталий розвиток.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2024.4.08

Ihor Kudriavtsev,
PhD in Law, Senior Research Fellow Research Institute of Public Law, 2A, H. Kirpy St., Kyiv, 03035, Ukraine, Asmiti123@gmail.com
ORCID: *orcid.org/0009-0001-9277-2993*

CLASSIFICATION OF SUBLEGAL ACTS AS A TOOL FOR ENHANCING THE EFFECTIVENESS OF LAW ENFORCEMENT

Abstract. ***Purpose.*** To analyse the criteria for the classification of sublegal normative legal acts. ***Results.*** This article explores the issue of the effectiveness of applying sublegal normative legal acts through the lens of their classification. The author emphasizes that the systematization and classification of sublegal acts play a crucial role in ensuring the coherence of legal regulation, consistency among different levels of normative provisions, and predictability for legal subjects. It is noted that the absence of clear classification criteria may lead to legal uncertainty, normative conflicts, and a general decline in the authority of law. The article examines existing approaches to the classification of sublegal acts based on various criteria: the issuing authority, legal force, scope of application, and functional purpose. A refinement of the classification system is proposed, taking into account current legislative trends and the increasing significance of departmental regulatory acts. The author argues that the implementation of a unified classification approach would improve the quality of law enforcement, facilitate navigation within the legal framework, and allow for more effective legal oversight and regulatory impact assessment. ***Conclusions.*** Based on the analysis of academic literature on the classification of sublegal normative legal acts, the author concludes that there is little disagreement in the Ukrainian scholarly discourse regarding their division according to the following criteria: (1) subjects of legal rulemaking; (2) legal force; (3) subject of regulation; (4) duration; (5) territorial scope; and (6) scope of applicability in terms of subjects. Most authors identify local sublegal normative legal acts. It is noted that the inclusion of additional classification criteria by some scholars—such as the nature of normative competence (within own authority or based on delegated powers) and the procedure of adoption (issued individually, adopted collegially, or jointly by several bodies)—is a positive development. The author concludes that new approaches to the classification of sublegal normative legal acts reflect growing scholarly interest in their application and contribute to its effectiveness. However, there remains a need to unify classification criteria and clearly define in legal science which criteria should be used for the classification of sublegal normative legal acts.

Key words: classification, sublegal normative legal acts, law enforcement.

1. Introduction

The classification of sublegal normative legal acts (NLAs) is essential for understanding their legal force and consequences, their significance for the regulation of social relations, and their legal impact, as well as for ensuring effective law enforcement. The necessity of their classification is emphasized in academic literature as follows: the continuous development of social relations leads to the emergence of new types of sublegal acts and necessitates determining their place in the overall system of legal documents; the establishment, reorganization, and dissolution of state and local self-government bodies authorized to issue sublegal NLAs requires scholarly analysis to improve or eliminate shortcomings; and the emergence of new digital information carriers also necessitates a clear delineation of such acts (Vylehzhanina, 2011).

The classification of sublegal NLAs allows for:

1. clearly defining the place of each norm within the legal system;
2. characterizing their functions and role in the system of legal regulation;
3. identifying the boundaries of the state's regulatory influence on society;
4. enhancing the effectiveness of both law-making and law enforcement practices;
5. studying the features and potential interaction among different types of sublegal NLAs;
6. determining their purpose;
7. analysing the mechanisms through which legal norms influence legal subjects (Zaichuk, 2006). The division of sublegal NLAs on such grounds underscores the relevance of studying this issue.

The classification of sublegal NLAs regulating social relations in general and within specific societal domains is actively exam-

ined by scholars such as M. Vylehzhanina, I. Hryhorieva, H. Dudka, T. Kalynovska, L. Mohylevskyi, I. Ovcharenko, N. Petruseva, K. Naumova, among others. In their works, classification is traditionally based on such criteria as rule-making subjects, legal force of the act, duration, territorial scope, applicability by subjects, and others. At the same time, modern academic literature proposes new classification criteria that may enhance the effectiveness of law enforcement and require further scholarly investigation (Kudriavtsev, 2018).

2. Principles of Classification of Sublegal Normative Legal Acts

Before analysing the scholarly positions on such classification, it is necessary to clarify the meaning of the term itself. The *Comprehensive Explanatory Dictionary of the Modern Ukrainian Language* defines "classification" as:

1. the act of classifying;

2. a system of dividing objects, phenomena, or concepts into classes, groups, etc., based on shared features or properties (Dubinskyi, 2009). Classification allows for the systematic organisation of objects according to specific criteria, thereby contributing to their effective and consistent application.

In legal scholarship, the classification of legal norms is understood as "their division into separate types based on certain essential features, which determine the specific role of each type of norm in the regulation of social relations" (Zaichuk, 2006).

Turning to the classification approaches specifically for sublegal normative legal acts (NLAs), scholars apply a variety of criteria. An analysis of academic works dealing with classification reveals the existence of both narrow and broad approaches. A **narrow approach** to the classification of NLAs refers to the use of only one or a few criteria or classification within a specific field of social relations. A **broad approach**, by contrast, entails the application of multiple criteria for classifying sublegal NLAs (Kudriavtsev, 2017).

Examples of the narrow approach can be found in the works of M. Vylehzhanina, L. Mohylevskyi, O. Skakun, Yu. Nychka and others. For instance, L. Mohylevskyi, analysing the role of the highest state authorities in issuing sublegal normative legal acts, classifies them based on whether they are adopted by the Verkhovna Rada of Ukraine, issued by the President of Ukraine, or the Cabinet of Ministers of Ukraine (Mohilevskyi, 2016).

M. Vylehzhanina classifies sublegal NLAs into presidential decrees, resolutions of the Cabinet of Ministers of Ukraine, orders of central executive authorities, decisions of local self-government bodies, and decisions resulting from national or local referenda (Vylehzhanina, 2011).

V. Sukhonos divides them into: normative presidential decrees, Cabinet of Ministers resolutions, instructions and normative orders of ministries and agencies, decisions of local self-government and local executive authorities (e.g., decisions of regional state administrations), and normative orders applicable at enterprises, institutions, and organisations (Sukhonos, 2005).

Yu. Nychka classifies sublegal rule-making based on:

– subjects (rule-making by the head of state, the government, executive authorities, local self-government, non-state organisations and institutions for internal matters);

– the method of formation (normative-act based [unilateral], contractual, or precedent-based);

– the method by which the rule-making authority is defined (Nychka, 2015).

A **broad approach** to classifying sublegal NLAs can be found in the works of V. Kulapov, N. Motuzova, A. Malko, M. Tsvik, and O. Petryshyn, among others. This approach is based on the application of multiple classification criteria (Kudriavtsev, 2018).

The classification developed by L. Horbunova is among the most widespread. She groups sublegal NLAs of public administration entities into:

1. normative legal acts of the President of Ukraine;

2. normative legal acts of the Cabinet of Ministers of Ukraine;

3. normative legal acts of ministries and other central executive authorities;

4. normative legal acts of the authorities of the Autonomous Republic of Crimea;

5. normative legal acts of local state administrations;

6. normative legal acts of local self-government bodies (Horbunova, 2005).

The authors of the textbook *General Theory of State and Law* classify sublegal NLAs according to:

1. the adopting subject;

2. the external form of the act (e.g., decrees, resolutions, orders, directives, decisions, statutes, rules, etc.);

3. the scope of the act (general, departmental, local, internal);

4. duration (permanent or temporary);

5. the nature of rule-making competence (within own authority or based on delegated powers);

6. the procedure of adoption (issued individually, adopted collegially, or jointly by multiple bodies) (Tsvik, 2010).

Special attention should be given to the classification criterion of the **nature of rule-making competence**, which is not always explicitly addressed in academic discourse. In our view, it is most comprehensively defined in the **Law of Ukraine "On Local Self-Government" of 21 May 1997, No. 280/97-VR**. Chapter 2, titled "Powers of the Executive Bodies of Village, Settlement, and City Councils," provides a list of both their own (self-governance) and delegated powers across 14 areas, including: socio-economic and cultural development, planning and accounting; budget, finance, and pricing; management of communal property; housing and communal services; domestic services, trade, public catering, transportation and communications; construction; education, healthcare, culture, physical education and sports; regulation of land relations and environmental protection; and others (*Law of Ukraine On Local Self-Government*, 1997).

The most comprehensive classification of sublegal NLAs is presented by M. Kelman and O. Murashyn. They identify the following main types of sublegal NLAs:

– decrees and directives of the President of Ukraine;

– resolutions of the Verkhovna Rada of Ukraine and other acts;

– normative acts of the Autonomous Republic of Crimea;

– Cabinet of Ministers resolutions;

– international treaties of Ukraine — those duly concluded and ratified (approved, sanctioned, or adopted) by Ukraine form an integral part of national legislation and are applied in the manner prescribed for legal norms. The legal force of such treaties is determined by the body that ratified them;

– instructions, directives, and normative orders of ministers and heads of other central executive bodies, as well as agencies of economic management and oversight;

– instructions and normative orders of ministries and departments of the former USSR on matters not yet regulated by Ukrainian legal acts;

– normative acts of divisions and services of local executive bodies, agencies of economic management and oversight that affect the rights, freedoms, and legitimate interests of citizens or have interdepartmental significance;

– resolutions of the Board of the National Bank of Ukraine;

– decisions of territorial communities;

– decisions of village, settlement, district (in cities), oblast and district councils (Kelman, Murashyn, 2006).

In addition, they recommend identifying types of specific legal acts that may acquire normative legal significance, such as:

– acts of direct popular expression of will, reflecting the results of national or local referenda;

– certain decisions of public associations (acts of rule-making by such associations delegated or sanctioned by the state);

– specific decisions of labour collectives (resolutions and councils of labour collectives) (Kelman, Murashyn, 2006).

3. Specifics of Formulating Criteria for the Classification of Normative Legal Acts

The most significant discrepancies arise concerning the formulation of the criteria by which scholars classify normative legal acts (NLAs). In our view, a unified approach to the classification criteria of NLAs should be established in the academic community.

We propose classifying sublegal NLAs according to the following criteria:

– **By adopting subjects**: resolutions of the Verkhovna Rada of Ukraine; presidential decrees; resolutions of the Cabinet of Ministers of Ukraine; orders, directives, and decisions of ministries and other central executive bodies; orders of their territorial subdivisions; orders, resolutions, and directives of other state authorities that are legally authorised to adopt normative acts; directives of the heads of local state administrations; decisions of local referenda; decisions of local councils and their executive committees; directives of village, settlement, and city mayors, as well as heads of district, district-in-city, and regional councils.

– **By legal force**: types of normative legal acts are hierarchically ranked as follows: Constitution, law, decree, resolution, ordinance, order, directive, decision. The place of sublegal NLAs within this system is determined by the status of the executive body in the hierarchy that adopted the act.

– **By subject matter of legal regulation**: sublegal NLAs are classified into acts of constitutional, civil, administrative, financial, labour, land, criminal law, and others.

– **By scope of legal regulation**:

– *General acts* regulate a wide range of public relations and are mandatory for them;

– *Special acts* are mandatory for regulating a specific type of social relation or within a particular field.

– **By functional purpose**:

– *Regulatory acts* are aimed at the positive regulation of social relations;

– *Protective acts* are aimed at securing regulatory norms and safeguarding them from violations.

– **By territorial scope**:

– *General effect* (applicable throughout the territory of Ukraine);

– *Limited effect* (applicable within a specific region);

– *Local effect* (applicable within the institution or body that adopted them).

– **By duration**:

– *Permanent* (no specified term of validity);

– *Temporary* (valid for a defined period).

– **By external form**: decrees, resolutions, orders, decisions, statutes, rules, and others.

– **By procedure of adoption**:

– *Unilateral* (e.g., an order issued by the head of a body or institution);

– *Collegial* (adopted by a board, directorate, or similar collective body);

– *Joint* (adopted by multiple government bodies) (Kudriavtsev, 2018).

Let us consider the criteria by which NLAs are classified within various branches and areas of legal regulation.

Legal scholarship also presents classifications of sublegal NLAs issued by local self-government bodies. For example, T. Kalynovska classifies such acts according to:

1. the adopting subject;
2. the legal basis for adoption;
3. the form of the act;
4. the subject matter of regulation;
5. the content of the expressed will, most clearly manifested in the acts of local councils;
6. the nature of the functions performed by local council acts;
7. the circle of persons to whom the act applies;
8. the duration of the act;
9. the nature of the powers exercised by local councils (Kalynovska, 2011).

The author notes that these acts differ from those adopted by state authorities in several respects, including: the purpose of adoption; the scope of application; hierarchical subordination; and a specific procedure for annulment (Kalynovska, 2009).

K. Naumova suggests classifying normative legal acts of local self-government bodies based on the following:

1. **Rule-making subjects** – acts adopted by the territorial community, respective council, or executive body of the local council;
2. **Form** – statutes, regulations, decisions, directives, etc.;
3. **Duration** – permanent and temporary acts;
4. **Territorial scope** – applicable throughout the jurisdiction of the local self-government body or to a specific locality;
5. **Target group** – general, special, or exceptional application;
6. **Hierarchy** – adopted by representative or executive bodies of local self-government, or by local referendum;
7. **Purpose** – acts implementing own powers and those implementing delegated powers;
8. **Subject area** – consistent with the fields in which powers are exercised by local self-government bodies and officials (Naumova, 2014).

L. Horbunova proposes the following criteria for the classification of normative legal acts of local state administrations, which we support:

a) **By the organisational and legal level of the local executive authorities issuing them**:

– NLAs of regional, Kyiv and Sevastopol city state administrations;

– NLAs of district administrations in regions and in the cities of Kyiv and Sevastopol.

b) **By form**: directives of the heads of local state administrations; orders of department heads and other structural units of local state administrations.

c) **By subject matter**: acts addressing legality within a given administrative-territorial unit; protection of citizens' rights, freedoms, and legitimate interests; socio-economic development; local budgets, finances, and accounting; management of state property; privatisation and entrepreneurship; regional economic and industrial development; agriculture; transportation and communications; education, science, and culture.

d) **By purpose**:

– Acts aimed at implementing the own powers of these state bodies;

– Acts aimed at exercising delegated powers, including those of local self-government bodies (Horbunova, 2005).

In administrative law, normative legal acts are regarded as **acts of public administration**, and their classification is commonly based on the following criteria: **legal content**, **legal force**, **legal consequences**, **issuing subjects**, **form of expression of will**, **method of adoption**, **temporal and territorial scope**, **entry into force and termination procedures**, among others (B. Averyanov, D. Bezubov, T. Hurzhii, N. Zarosylo). We concur with the position of N. Zarosylo that **legal force** is the principal criterion for the classification of administrative legal acts (Zarosylo, 2014), given that administrative law governs public administrative relations within the state (Kudriavtsev, 2018).

Of particular interest is the classification of administrative legal acts proposed by a group of scholars (Averianov, 2004), which is based on the following criteria:

– **By legal nature**: normative, individual, and mixed acts;

– **By issuing subjects**: the authorities legally empowered to adopt acts of public administration;

– **By legal form**: resolutions, directives, orders, instructions, rules, regulations;

– **By the method of adoption**: unilateral, collegial, joint, or by coordination;

– **By the relationship between the issuer and addressees**:

– acts addressed directly to subordinate subjects;

– acts addressed to entities within the functional scope of the issuing authority;

– acts with an undefined circle of addressees;

– acts addressed to individually identified (personalised) subjects;

– **By form of expression of will**: written and oral acts;

– **By the moment of entry into force**:

a) immediately upon signature or adoption;

b) from the date specified in the act itself;

c) from the date indicated in another act;

d) upon state registration;

e) after official publication or notification in accordance with established procedures;

– **By the scope of authority of the issuing subject**:

– *discretionary acts* adopted at the sole discretion of the authority or official without the need for approval;

– *acts of "bound administration"* adopted where the authority has no discretion and must act within strictly defined parameters (Averianov, 2004).

In economic law, scholars classify **sublegal normative legal acts** to include:

a) presidential decrees on economic matters;

b) presidential directives on economic matters;

c) resolutions and directives of the Cabinet of Ministers of Ukraine relating to economic policy;

d) economic regulatory acts issued by ministries, state committees, and administrative bodies;

e) normative legal acts of local councils and state administrations that govern economic relations (Kravchuk, 2007).

When classifying sublegal NLAs by **legal force**, H. Smolyn proposes the following hierarchy:

1. **Decrees of the President of Ukraine**;

2. **Acts of the Cabinet of Ministers of Ukraine**;

3. **Ministerial and departmental normative acts** issued by competent ministries and agencies to regulate specific sectors of the national economy or particular categories of subjects;

4. **Regional normative acts** adopted by local self-government bodies within the framework of delegated state authority and established procedures (e.g., regional rules concerning urban development master plans or spatial planning, approved by regional councils);

5. **Local normative acts** adopted directly by business entities or their founders, such as charters, founding agreements, internal regulations of governing bodies, and other documents that regulate the activities of the economic entity (Smolyn, 2010).

Even a superficial analysis of these classifications reveals the **absence** of some forms of sublegal normative legal acts, such as **resolutions of the Verkhovna Rada of Ukraine**, which are also relevant in the system of legal regulation (Kudriavtsev, 2018).

4. Conclusions

An analysis of scholarly literature on the classification of subordinate normative legal acts reveals a general consensus among legal scholars regarding the following classification criteria:

1. subjects of normative law-making;
2. legal force;
3. subject matter of regulation;
4. duration of effect;
5. scope of application;
6. personal scope of application.

Most authors emphasize the existence and importance of local subordinate normative legal acts. A positive trend can be observed in the recognition of such additional criteria as: the **nature of law-making competence** (within the scope of own competence or within delegated powers), and the **procedure of adoption** (issued unilaterally, adopted collegially, or jointly by several bodies).

Emerging approaches to the classification of subordinate normative legal acts reflect a growing academic interest in their application, which contributes to more effective legal practice (Kudriavtsev, 2018). However, it is necessary to **unify the classification criteria** and to define, within the framework of legal science, the **specific set of standards** by which the classification of subordinate normative legal acts should be carried out.

References

Averianov, V.B. (2004). *Administrative Law of Ukraine*. Kyiv: Yurydychna dumka. (in Ukrainian)

Dubinskyi, V.V. (2009). *Modern Explanatory Dictionary of the Ukrainian Language: 100,000 Words*. Kharkiv: VD "ShKOLA". (in Ukrainian)

Horbunova, L.M. (2005). *By-laws: Organizational and Legal Issues of Ensuring Legality* (PhD thesis). Kyiv. (in Ukrainian)

Kalynovska, T.O. (2009). The concept of normative legal acts and officials of local self-government, their legal nature. *Journal of Kyiv University of Law*, (4), 168–175. (in Ukrainian)

Kalynovska, T.O. (2011). *Normative Legal Acts of Local Councils as Local Self-Government Bodies in Ukraine*(Extended abstract of PhD thesis). Kyiv. (in Ukrainian)

Kelman, M.S., & Murashyn, O.H. (2006). *General Theory of State and Law: Textbook*. Kyiv: Kondor. (in Ukrainian)

Kravchuk, S.I. (2007). *Commercial Law of Ukraine: Textbook*. Kyiv: Kondor. (in Ukrainian)

Kudriavtsev, I.O. (2017). The concept of regulatory legal acts in nuclear energy. *Current Issues of National Legislation*, (1), 33–35. (in Ukrainian)

Kudriavtsev, I.O. (2018). *The Place and Role of Subordinate Regulatory Legal Acts on Nuclear Energy in the System of Ukrainian Legislation* (PhD thesis). Ivano-Frankivsk. (in Ukrainian)

Mohilevskyi, L. (2016). The role of higher bodies of state physical protection of nuclear facilities and nuclear materials in the sphere of issuing regulatory legal acts of a subordinate nature. *Visegrad Journal on Human Rights*, (1), 145–151. (in Ukrainian)

Naumova, K.I. (2014). Normative legal acts of local self-government: concept and types. *Scientific Bulletin of Uzhhorod National University*, (26), 63–66. (in Ukrainian)

Nychka, Yu. (2015). Subordinate lawmaking: general theoretical characteristics. *Journal of Lviv University*, (61), 45–49. (in Ukrainian)

Smolyn, H.V. (2010). *Commercial Law of Ukraine (Special Part)*. Lviv: Lviv State University of Internal Affairs. (in Ukrainian)

Sukhonos, V.V. (2005). *Theory of State and Law*. Sumy. (in Ukrainian)

Tsvik, M.V. (2010). *General Theory of State and Law*. Kharkiv: Pravo. (in Ukrainian)

Vylehzhanina, M.V. (2011). Classification analysis of regulatory legal acts. *Library Science. Documentation. Informatology*, (1), 35–40. (in Ukrainian)

Zaichuk, O.V. (2006). *Theory of State and Law*. Kyiv: Yurinkom Inter. (in Ukrainian)

Zarosylo, N.V. (2014). Grounds for the classification of regulatory legal acts. *Science and Legal Protection*, (1), 36–40. (in Ukrainian)

Law of Ukraine "On Local Self-Government": dated May 21, 1997 No. 280/97-VR. Retrieved from: http://zakon2.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80 (in Ukrainian)

Ігор Кудрявцев,
кандидат юридичних наук, старший науковий співробітник Науково-дослідного інституту публічного публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, asmiti123@gmail.com
ORCID: *orcid.org/0009-0001-9277-2993*

КОМПЕТЕНЦІЯ СУБ'ЄКТІВ ЩОДО ВИДАННЯ ПІДЗАКОННИХ НОРМАТИВНО-ПРАВОВИХ АКТІВ У СФЕРІ ЯДЕРНОЇ ЕНЕРГЕТИКИ ТА РАДІАЦІЙНОЇ БЕЗПЕКИ

Анотація. ***Метою статті*** є визначення компетенції суб'єктів щодо видання підзаконних нормативно-правових актів у сфері ядерної енергетики та радіаційної безпеки**.** ***Результати.*** У статті досліджено компетенцію суб'єктів щодо видання підзаконних нормативно-правових актів у сфері ядерної енергетики та радіаційної безпеки. Підзаконні нормативно-правові акти у сфері використання ядерної енергії та радіаційної безпеки є похідними. Їх підзаконний характер зумовлюється тим, що вони приймаються або на основі законів, або підзаконних актів вищої юридичної сили (на виконання указу Президента України, постанов КМУ, Міністерство енергетики України тощо) або відповідно до міжнародних зобов'язань України. Наголошено, що нормативно-правове регулювання в галузі використання ядерної енергії має не лише стратегічне значення, а й вимагає особливої чіткості, системності та узгодженості. Так як правове поле у цій сфері охоплює широкий спектр актів - від законів України до підзаконних нормативно-правових актів органів виконавчої влади та спеціалізованих органів. Водночас велика кількість таких актів, їхній різний юридичний статус, рівень деталізації та правова сила зумовлюють потребу в докладному аналізі суб'єктів нормотворчості та ролі в механізмі правозастосування. Автором визначено наступні суб'єкти у компетенцію яких входить видання підзаконних нормативно-правових актів у сфері ядерної енергетики та радіаційної безпеки, ними є: Верховна Рада України, Президент України, Кабінет Міністрів України, Міністерство енергетики України, а також інші органи державної влади (міністерства, відомства, місцева державна адміністрація) та органи місцевого самоврядування. ***Висновки.*** Аналіз підзаконних нормативно-правових актів у сфері ядерної енергетики та забезпечення радіаційної безпеки дозволив автору констатувати їх відповідність законодавчим положенням, стабільність і водночас оперативність та постійне оновлення відповідно до реального стану ядерної енергетики. Однак, звернено увагу на недостатнє розмежування повноважень та компетенції органів державної влади і управління щодо нормативного регулювання діяльності енергетики та радіаційної безпеки, що призводить до дублювання нормативного масиву, прийняття та впровадження фактично аналогічних нормативних актів, паралелізму в нормативній діяльності міністерств та відомств.

Ключові слова: компетенція, підзаконні нормативно-правові акти, ядерна енергетика, радіаційна безпека, суб'єкти.

UDC 342.95:343.102:343.132:343.985.7 343.35
DOI https://doi.org/10.32849/2663-5313/2024.4.09

Andrii Balon,
candidate of Law Sciences, balonandriy82@gmail.com
ORCID: *orcid.org/0009-0008-6754-990X*

THE INVESTIGATOR OF THE STATE BUREAU OF INVESTIGATION AS A SUBJECT COUNTERACTING CRIMINAL OFFENCES IN THE SPHERE OF OFFICIAL ACTIVITY

Abstract. ***Purpose.*** The purpose of the article is to analyse the legal status of an investigator of the State Bureau of Investigation (SBI) as a subject counteracting criminal offences in the sphere of official activity, to identify relevant problems of their functioning, and to formulate practical and regulatory proposals aimed at enhancing the effectiveness of the exercise of their powers within criminal proceedings. ***Results.*** The scientific article examines the role of the State Bureau of Investigation as a key actor in the system of counteracting criminal offences in the sphere of official activity. The author emphasizes the importance of adhering to the constitutional principle of comprehensive, complete, and impartial examination of the circumstances of criminal proceedings in accordance with criminal procedural law, which constitutes a decisive criterion for evaluating the effectiveness of investigators and prosecutors during pre-trial investigation. It is argued that in the context of incomplete reform of the law-enforcement system and the existence of multiple procedural inconsistencies, normative improvement of certain aspects of the work of SBI investigators is required. ***Conclusions.*** In this regard, the paper proposes a number of amendments to the provisions of the Criminal Procedure Code of Ukraine, in particular: granting investigators, upon approval of the prosecutor, the authority to decide on the application of certain preventive measures; expanding the scope of temporary access to things and documents without applying to the investigating judge; updating approaches to the recording of testimonies from victims and witnesses by broadening the grounds for their interrogation in the investigating judge's mode; reforming the procedure for conducting urgent investigative (search) actions, including those involving entry into a person's dwelling; expanding the grounds for conducting covert investigative (search) actions before obtaining the relevant ruling of the investigating judge; and establishing the investigator's right to request information, objects, and documents through an official request. The proposed amendments aim to increase the efficiency of SBI investigators, eliminate barriers to law enforcement practice, and ensure a balance between the public interest and the protection of human rights.

Key words: investigator, State Bureau of Investigation, criminal offences in the sphere of official activity, criminal proceedings, pre-trial investigation, powers, investigative (search) actions, covert investigative actions.

1. Introduction

One of the most destructive phenomena posing a real threat to national security, the stability of state institutions, and public trust in bodies of public administration is criminal offences in the sphere of official activity. These offences include abuse of power, exceeding official authority, official forgery, and receiving unlawful benefits, frequently committed by officials of public authorities, law-enforcement bodies, and judicial institutions. Effective counteraction to such offences is impossible without the proper functioning of specialised institutions endowed with procedural autonomy, professional staffing potential, and statutorily defined powers.

In this context, the State Bureau of Investigation (SBI) plays an important role as an independent law-enforcement body authorised to conduct pre-trial investigations into serious and particularly serious crimes committed by high-ranking officials, judges, prosecutors, and law-enforcement officers. Since its establishment pursuant to the Law of Ukraine "On the State Bureau of Investigation" (2015), the SBI has gradually become one of the key instruments in combating corruption and other manifestations of abuse of power in the public sector.

At the same time, the practice of applying criminal procedural legislation demonstrates the existence of a number of issues related to the exercise of powers by SBI investigators, in particular the limited nature of their procedural rights, the complexity of evidence-gather-

ing mechanisms, duplication of functions with other agencies, and legislative gaps. The relevance of this study is conditioned by the need to improve the legal regulation of the SBI's activities in the context of ensuring effective and fair pre-trial investigation of criminal offences in the sphere of official activity.

The purpose of the article is to analyse the legal status of an SBI investigator as a subject counteracting criminal offences in the sphere of official activity, to identify the existing problems of their functioning, and to develop practical and regulatory proposals aimed at improving the effectiveness of the exercise of their powers within criminal proceedings.

Issues concerning the exercise of procedural powers by investigators, particularly in the context of the SBI's activities, have been addressed in a number of scientific studies, normative acts, and practice-oriented works. In scholarly literature, the delineation of procedural competence between investigators and other participants in pre-trial investigation is analysed in the work of M.S. Tsutskiridze. A comprehensive analysis of systemic shortcomings in the legal regulation of pre-trial investigation is presented in the monograph by V.H. Drozd. The aspects of investigators' authority to conduct interrogations are explored in the studies of I.V. Hlovyuk, L.D. Udalova, and M.Ye. Shumylo. Legislative aspects of conducting certain investigative (search) actions are highlighted by O.S. Starenkyi. Thus, the analysis of scientific sources demonstrates active research into specific aspects of the investigator's activity as a key figure in pre-trial investigation. However, it must be noted that there is no holistic approach to the comprehensive study of the status of an investigator of the State Bureau of Investigation in the context of counteracting criminal offences in the sphere of official activity, which determines the relevance of the chosen academic direction.

2. Problems in the Course of Criminal Proceedings

Within the system of the criminal procedural legislation of Ukraine, the key role in fulfilling the tasks of pre-trial investigation belongs to the investigator, including the investigator of the State Bureau of Investigation (SBI), which is a specialised body authorised to detect and investigate criminal offences committed in the sphere of official activity. It is the SBI investigator who carries out the recording, seizure, verification, assessment, and procedural documentation of information about the criminal event, traces, items, documents, as well as the environment and other essential circumstances relevant for establishing the truth in criminal proceedings.

Pursuant to Part 2 of Article 9 of the Criminal Procedure Code of Ukraine, the investigator, along with the prosecutor and the head of the pre-trial investigation body, is obliged to ensure a comprehensive, complete, and impartial examination of all circumstances of the criminal proceedings (Criminal Procedure Code of Ukraine, 2012). This requirement concerns both the circumstances indicating a person's guilt and those that justify them, as well as circumstances mitigating or aggravating the degree of liability. The proper legal assessment of these facts and the adoption of substantiated procedural decisions represent the core of the professional activity of the SBI investigator. This principle is fundamental for ensuring objectivity and legality of the pre-trial investigation, particularly in cases involving public officials, where the investigator may face external influences, attempts at interference, as well as informational or political pressure (Tsutskiridze, 2018). It is the impartiality and procedural autonomy of the SBI investigator that serve as guarantees of effective counteraction to criminal offences in the sphere of official activity.

In the course of criminal proceedings, the SBI investigator encounters a number of substantial issues that complicate the effective exercise of their procedural powers. In particular, the regulatory framework governing certain investigative (search) actions remains problematic. V. H. Drozd draws attention to the fact that current legislation does not provide a clear procedure for conducting such investigative (search) actions as an investigative experiment or obtaining samples for expert examination in residential premises, which creates significant difficulties for ensuring compliance with legality requirements during the collection of evidence (Drozd, 2018).

A separate issue deserving attention concerns the legal regulation of interrogation as a procedural action. According to L. D. Udalova, interrogation should be regarded not only as an investigative action but also as a form of implementing criminal prosecution, combining the function of obtaining evidentiary information with an institution of criminal procedural law, which plays a crucial role in forming the evidentiary base of criminal proceedings (Udalova, 2013).

In their activities, an SBI investigator daily adopts procedural decisions that must be based on sound logic and a legislatively defined procedure. As noted by Yu. A. Komissarchuk, the decision-making process includes several sequential stages. The first stage involves establishing the factual circumstances of the case in accordance with the rules of evidence provided by the criminal procedural law, which ensures

an appropriate basis for decision-making. A particular role in this process is played by the assessment of evidence, as it allows determining its relevance to the proceedings. The second stage consists in correlating the established factual circumstances with the legal grounds provided by law, with the aim of identifying congruence between them. The final stage involves choosing a specific form of action, which presupposes the adoption of the most appropriate decision considering the tasks of the pre-trial investigation. This stage also includes the selection of means and mechanisms for achieving the intended goal, which is a typical element of decision-making in any sphere of social practice (Komissarchuk, Riashko, 2013).

Thus, the SBI investigator not only exercises the powers granted by law but also acts as an active subject of the criminal process, responsible for the objectivity, legality, and effectiveness of counteraction to official misconduct. Their role in this process requires not only high professional competence but also adequate regulatory support for procedural activity.

The exercise of procedural powers by an SBI investigator is manifested in the adoption of procedural decisions and the performance of procedural actions, which are documented in the form of criminal procedural instruments, including resolutions (orders), motions, protocols, and submissions. As rightly noted by I. V. Basysta, the term "decision" is a generic concept that reflects the legal nature of the investigator's act, whereas a resolution or submission constitutes the form of such a decision (Basysta, 2011). Accordingly, a resolution is a procedural act that not only formalises the will of the investigator but also gives rise to specific legal consequences. At the same time, the protocol of an investigative (search) action, unlike a resolution, performs a recording function and reflects the results of a directly conducted procedural action without independently generating legal consequences.

It is incorrect to equate the concept of a "procedural decision" with an "investigator's resolution," since the latter is merely an external form of expressing the adopted decision. If the resolution is lost or damaged, the decision itself—as a result of the investigator's internal volition—does not cease to exist and is subject to restoration in the appropriate form.

Special attention should be paid to such a form of procedural decision as a motion. As noted by N. V. Hlynska, a motion embodies the decision already adopted by the investigator; however, its implementation often requires the prosecutor's approval or an investigative judge's ruling. At the same time, a motion should be considered a type of criminal procedural decision, as it not only imposes a legal obligation on another participant in the proceedings to consider it on the merits but may also entail potentially adverse consequences for the suspect or other persons (Hlynska, 2014).

Therefore, the activity of the SBI investigator as a subject of counteraction to criminal offences in the sphere of official activity is realised through adopting procedural decisions, which are formally documented and serve as a mechanism for the implementation of legal consequences within criminal proceedings. According to Parts 3 of Article 104 and 5 of Article 110 of the Criminal Procedure Code of Ukraine, the structure of such documents is strictly regulated and contains information about the circumstances of the procedural actions carried out, their content, legal grounds, and justification, which ensures an adequate level of procedural form and compliance with guarantees of the rights of the participants in the proceedings (Criminal Procedure Code of Ukraine, 2012).

3. Specific Features of the Exercise of Procedural Powers by an SBI Investigator

One of the pressing issues in the exercise of procedural powers by an SBI investigator in the context of combating criminal offenses in the sphere of official activity is the limited ability to independently apply operational-search measures. In addition, current procedural regulation requires mandatory formalization of the results of investigative (search) actions in the form of a protocol, even when modern technical means of recording are used, which in some cases complicates the promptness and effectiveness of pre-trial investigation.

According to Article 41(3) of the Criminal Procedure Code of Ukraine, the instructions of an investigator or prosecutor regarding the conduct of covert investigative (search) actions (CISA) are mandatory for execution by the relevant operational units. At the same time, Article 41(2) establishes an imperative prohibition on the independent initiation of procedural actions by operational personnel. On one hand, this corresponds to the general principles of organizational subordination and procedural unity of investigation. However, in practice, situations arise in which, within the scope of a given instruction, an operational officer objectively requires the conduct of additional CISAs, for example, in cases of tracing a suspect or documenting corrupt activities of officials. In such cases, current legislation does not allow the operational officer to file a corresponding motion to the investigating judge or prosecutor but instead obliges them to coordinate every initiative with the authority that issued the instruction. This significantly reduces flex-

ibility and efficiency in a dynamic operational environment.

In this regard, it appears reasonable to introduce a provision in the CPC that would grant the authorized operational officer, within the scope of the given instruction, the right to submit proposals to the investigator or prosecutor regarding the necessity of conducting specific CISAs.

Under current criminal procedural law, an SBI investigator has the right to personally conduct CISAs or to entrust their conduct to operational units. However, the procedural powers of an SBI investigator in the sphere of CISAs may and should be considered as a form of manifestation of criminal procedural relations, within which the permissible limits of interaction between the parties to the proceedings are established. Such interaction must take place within clearly defined limits of authority, aligned with the principles of adversarial proceedings, proportionality, and respect for human rights. To improve current procedural regulation, it is proposed to grant investigators the right to entrust the conduct of investigative (search) actions, covert investigative (search) actions, or other procedural actions to the relevant operational units (by supplementing Article 40(2)(3) CPC). Implementation of such a provision would enhance the effectiveness of procedural interaction between the SBI investigator and operational units, ensure prompt response, and strengthen the institutional capacity of pre-trial investigation bodies in countering crimes in the sphere of official activity.

A critical aspect of the procedural activity of an SBI investigator is the exercise of powers regarding obtaining statements from witnesses and victims as sources of evidence. In this context, particular attention should be paid to the legal regulation of a special type of interrogation – interrogation in a court session at the pre-trial stage, provided for in Article 225 CPC. In the scientific community, various viewpoints are expressed regarding the appropriateness of this institution. Some scholars question the necessity of retaining this method of interrogation in the CPC, arguing that the powers of the investigating judge in this case exceed the function of judicial control over the legality of the investigator's and prosecutor's actions. According to them, the form of this interrogation is overly complicated, as it does not exclude the possibility of obtaining the corresponding statements directly by the investigator (Ilieva, 2014).

However, as rightly noted by O.S. Starenkyi, such an approach is unfounded (Starenkyi, 2017), since, as M.E. Shumylo reasonably emphasizes, the norm of Article 225 CPC is aimed at preventing the risk of loss of evidence in conditions of a real threat to the life or health of a witness or victim or other circumstances that may make their interrogation in court during the trial impossible (Shumylo, 2013). Granting the authority to conduct such an interrogation specifically to the investigating judge is justified in terms of ensuring the adversarial nature of the proceedings, preventing potential abuses by the investigator, and considering procedural guarantees for the defence. As correctly indicated by I.V. Hloviuk, the powers of the investigating judge in this aspect are a measure for securing evidence, allowing consideration of the future impossibility of obtaining such statements again during the trial (Hloviuk, 2013).

The legislator assigns particular importance to such statements within the system of evidence evaluation. According to Article 95(4) CPC, the court may base its conclusions only on statements obtained directly in court or according to the procedure established in Article 225 CPC, which indicates their higher evidentiary value compared to statements obtained in the general procedure (Article 224 CPC). In this regard, it is advisable to improve Article 225(1) CPC by specifying an exhaustive list of exceptional circumstances under which a witness or victim may be interrogated in a court session at the pre-trial stage (existence of danger to life or health, serious illness, long-term business trip, travel abroad, absence of permanent residence, conscription into the Armed Forces of Ukraine, presence in temporarily occupied territory of Ukraine, or other circumstances that may prevent interrogation).

Implementing such clarifications will preserve the balance between the necessity of securing evidence and the protection of the rights of the parties, as well as strengthen procedural discipline in the conduct of interrogations as an investigative (search) action in criminal proceedings, particularly those investigated by SBI investigators and related to criminal offenses in the sphere of official activity.

Within the procedural activity of an SBI investigator, an important component is ensuring the effective collection of evidence, including through the request of objects and documents. Requests, as a distinct form of obtaining evidentiary information, are of a universal nature and may be applied at any stage of criminal proceedings. This is explained by the fact that, unlike investigative (search) actions, requests are made without coercion and do not require judicial control, making them appropriate even at the initial stages of pre-trial investigation or during the trial (Shepitko, 2015). The advantage of this method of obtaining evidence is its

procedural simplicity and flexibility, especially in cases where conducting full investigative actions is unnecessary.

However, in practice, investigators encounter problems associated with the lack of regulation regarding the recognition of requested documents as proper and admissible evidence, particularly when dealing with copies not obtained directly through court procedures. According to Article 99 CPC, the prosecution or defence is obliged to provide the original document, and the absence of a clear regulatory mechanism for requesting originals results in copies often being deemed inadmissible. Furthermore, due to inconsistencies in Article 93(3) CPC, a situation of procedural inequality arises: an investigator has the authority to request documents, whereas the defence or a representative of a legal entity does not, which violates the principle of adversarial proceedings.

To address this gap and ensure uniform law enforcement in requesting objects and documents, it is proposed to improve Article 93(2) CPC. The need for such amendments is determined by the necessity of a regulatory mechanism for requesting information from state authorities, local self-government bodies, enterprises, institutions, organizations, and individuals in a procedural form, which would define the procedure and deadlines for compliance. It is proposed to establish that decisions by the investigator, inquiry officer, or prosecutor regarding the request of documents, objects, information, expert conclusions, or inspection reports should be issued in the form of a reasoned resolution with a mandatory compliance period not exceeding ten days, except where a different period is agreed upon with the initiator of the request. Such an approach will contribute to the unification of procedural regulation, enhance legal certainty for participants in criminal proceedings, and ensure effective collection of evidentiary information in accordance with the principles of adversarial proceedings and admissibility of evidence.

Special attention should be given to the issue of granting investigators the authority to instruct temporary access to objects and documents. As V.I. Farynnyk notes, temporary access is a procedural, rather than investigative action, and therefore does not fall within the scope of actions that may be delegated to operational units under Articles 40(1)(3) and 41 CPC (Farynnyk, 2017). As a result, documents obtained through such instructions may be considered inadmissible evidence, which directly contradicts legal requirements and casts doubt on the legality of the collected evidence. The existing restriction prohibiting an investigator from delegating temporary access to operational units does not fully correspond to practical needs. These units, performing tasks of search, collection of factual data, and ensuring the evidence base, are often the first source of information with procedural significance. Therefore, preventing their involvement in temporary access deprives the investigator of an effective tool for implementing pre-trial investigative tasks.

Considering this, it is reasonable to amend Article 41 CPC to expand the powers of the SBI investigator, allowing instructions not only for conducting investigative (search) actions or CISAs but also for temporary access to objects and documents. This will enable: prompt response to dynamic changes in the investigation environment; ensuring admissibility and propriety of evidence; and preserving procedural balance between the parties.

Thus, improving the normative regulation of the investigator's powers regarding requests and temporary access to objects and documents is a necessary condition for increasing the efficiency of the SBI as a subject combating crimes in the sphere of official activity, which will contribute not only to establishing the truth in criminal proceedings but also to ensuring a proper level of procedural guarantees and strengthening trust in the investigator as a procedurally independent and professionally responsible participant in criminal proceedings.

4. Conclusions

As a result of the conducted research, a number of pressing issues have been identified in the exercise of powers by SBI investigators as subjects of criminal procedural relations in the investigation of criminal offenses in the sphere of official activity. To address these issues, a set of practical and normative-legal changes has been proposed, aimed at enhancing the efficiency of pre-trial investigation. In particular, it appears appropriate to supplement Article 40(2)(3) CPC with a provision granting the investigator the right to entrust the conduct of investigative (search) actions, covert investigative (search) actions, or other procedural measures to the relevant operational units. Article 41 CPC should also provide for the possibility for the investigator to exercise powers regarding temporary access to objects and documents, which would contribute to prompt evidence collection.

Particular attention should also be paid to improving the mechanism of interrogation under Article 225 CPC by expanding the list of grounds that prevent interrogation of a person in court or may significantly affect the completeness and reliability of their testimony. In addition, the SBI investigator should be granted the right, in coordination with the prosecutor,

to apply preventive measures in cases provided by law and to initiate the closure of criminal proceedings in the presence of grounds established by Article 284 CPC. Furthermore, it is advisable to normatively regulate the powers of SBI investigators to request objects, documents, or their copies, as well as information from state authorities, local self-government bodies, enterprises, institutions, organizations, individuals, and auxiliary bodies, establishing a clear deadline for providing a response to such requests—no later than ten days from the date of receipt.

Implementation of the proposed measures will contribute to strengthening the institutional capacity of the SBI, increasing the efficiency of pre-trial investigation of criminal offenses in the sphere of official activity, and ensuring a balance between the interests of justice and the procedural rights of participants in criminal proceedings.

References

Basysta, I.V. (2011). *Protsesualni rishennia slidchoho, shcho vyrazhaiutsia u formi podannia: problemni aspekty [Procedural decisions of the investigator expressed in the form of a submission: problematic aspects]. Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, 3(55), 248–257. (in Ukrainian)

Drozd, V.H. (2018). *Pravove rehuliuvannia dosudovoho rozsliduvannia: problemy teorii ta praktyky: monohrafiia [Legal regulation of pre-trial investigation: problems of theory and practice: monograph]*. Odesa: Vydavnychyi dim «Helvetyka». (in Ukrainian)

Farynnyk, V.I. (2017). *Zastosuvannia zakhodiv zabezpechennia kryminalnoho provadzhennia: teoriia ta praktyka: monohrafiia [Application of measures to ensure criminal proceedings: theory and practice: monograph]*. Kyiv: Alerta. (in Ukrainian)

Hloviuk, I.V. (2013). *Funktsionalna spriamovanist diialnosti slidchoho suddi [Functional orientation of the investigating judge's activities]. Vcheni zapysky Tavriiskoho natsionalnoho universytetu im. V.I. Vernadskoho*, 26(65), 302–308. (in Ukrainian)

Hlynska, N.V. (2014). *Kontseptualni zasady vyznachennia ta zabezpechennia standartiv dobroiakisnosti kryminalnykh protsesualnykh rishen: monohrafiia [Conceptual principles for determining and ensuring the standards of good quality of criminal procedural decisions: monograph]*. Kyiv: Istyna. (in Ukrainian)

Ilieva, T.H. (2014). *Funktsiia sudovoho kontroliu u kryminalnomu protsesi [The function of judicial control in criminal proceedings]*. Candidate's thesis. Nats. akad. vnutr. sprav. Kyiv. (in Ukrainian)

Komissarchuk, Yu.A., & Riashko, O.V. (2013). *Pryiniattia protsesualnykh rishen yak zasib pozytyvnoi realizatsii zasady prezumptsii nevynuvatosti ta zabezpechennia dovedenosti vyny [Adoption of procedural decisions as a means of positive implementation of the principle of presumption of innocence and ensuring proof of guilt]. Naukovi zapysky Lvivskoho universytetu biznesu ta prava*, 10, 248–251. (in Ukrainian)

Kryminalnyi protsesualnyi kodeks Ukrainy: vid 13.04.2012 r. № 4651-VI [*Criminal Procedure Code of Ukraine: dated April 13, 2012, No. 4651-VI*]. (2012). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text (in Ukrainian)

Shepitko, V.Iu. (2015). *Zmahalna model dosudovoho rozsliduvannia: iliuziia abo realnist [Competitive model of pre-trial investigation: illusion or reality]. Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky*, 15, 5–12. (in Ukrainian)

Shumylo, M.Ie. (2013). *Dosudovi i sudovi dokazy u KPK Ukrainy [Pre-trial and judicial evidence in the Criminal Procedure Code of Ukraine]. Yurydychnyi chasopys Natsionalnoi akademii vnutrishnikh sprav*, 1, 80–89. (in Ukrainian)

Starenkyi, O.S. (2017). *Zakonodavchi novovvedennia shchodo protsesualnoho poriadku provadzhennia okremykh slidchykh (rozshukovykh) dii yak zasobiv otrymannia dokaziv u dosudovomu rozsliduvanni [Legislative innovations regarding the procedural procedure for conducting certain investigative (search) actions as means of obtaining evidence in pre-trial investigation]. Visnyk kryminalnoho sudochynstva*, 4, 82–94. (in Ukrainian)

Tsutskiridze, M.S. (2018). *Spivvidnoshennia diialnosti slidchoho z diialnistiu neupovnovazhenykh uchasnykiv dosudovoho rozsliduvannia [The correlation between the activities of the investigator and the activities of unauthorized participants in the pre-trial investigation]. Visnyk kryminalnoho sudochynstva*, 2, 124–132. (in Ukrainian)

Udalova, L.D. (2013). *Svidotskyi imunitet za novym KPK Ukrainy [Witness immunity under the new CPC of Ukraine]. Yurydychnyi chasopys natsionalnoi akademii vnutrishnikh sprav*, 1, 284–288. (in Ukrainian)

Zakon Ukrainy Pro Derzhavne biuro rozsliduvan: vid 12 lystopada 2015 r. № 794-VIII [*Law of Ukraine On the State Bureau of Investigation: dated November 12, 2015, No. 794-VIII*]. (2015). Retrieved from https://zakon.rada.gov.ua/laws/show/794-19#Text (in Ukrainian)

Андрій Балонь,
кандидат юридичних наук, balonandriy82@gmail.com
ORCID: *orcid.org/0009-0008-6754-990X*

СЛІДЧИЙ ДЕРЖАВНОГО БЮРО РОЗСЛІДУВАНЬ ЯК СУБ'ЄКТ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ У СФЕРІ СЛУЖБОВОЇ ДІЯЛЬНОСТІ

Анотація. ***Метою статті*** є аналіз правового статусу слідчого ДБР як суб'єкта протидії злочинам у сфері службової діяльності, виявлення актуальних проблем його функціонування, а також формулювання практичних і нормативних пропозицій щодо підвищення ефективності реалізації його повноважень у межах кримінального провадження. ***Результати.*** У науковій статті досліджується роль Державного бюро розслідувань як ключового суб'єкта у системі протидії кримінальним правопорушенням у сфері службової діяльності. Автор акцентує увагу на значенні дотримання конституційного принципу всебічного, повного й неупередженого дослідження обставин кримінального провадження відповідно до кримінального процесуального закону, що є визначальним критерієм ефективності діяльності слідчого та прокурора в умовах досудового розслідування. Обґрунтовується, що в умовах незавершеного реформування правоохоронної системи та наявності низки процесуальних колізій, необхідним є нормативне вдосконалення окремих аспектів діяльності слідчих Державного бюро розслідувань. ***Висновки.*** У зв'язку з цим у роботі запропоновано ряд змін до положень Кримінального процесуального кодексу України, зокрема: надати слідчим, за погодженням із прокурором, повноваження на прийняття рішень щодо застосування окремих запобіжних заходів; розширити межі здійснення тимчасового доступу до речей і документів без звернення до слідчого судді; оновити підходи до фіксації показань потерпілих та свідків шляхом розширення підстав для їх допиту в режимі слідчого судді; реформувати порядок здійснення невідкладних слідчих (розшукових) дій, у тому числі пов'язаних із проникненням до житла особи; доповнити підстави для проведення негласних слідчих (розшукових) дій до отримання відповідної ухвали слідчого судді; а також закріпити за слідчим Державного бюро розслідувань право витребування інформації, речей і документів шляхом направлення запиту. Запропоновані зміни спрямовані на підвищення ефективності роботи слідчих Державного бюро розслідувань, усунення правозастосовних бар'єрів та забезпечення балансу між публічним інтересом і захистом прав людини.

Ключові слова: слідчий, Державне бюро розслідувань, кримінальні правопорушення у сфері службової діяльності, кримінальне провадження, досудове розслідування, повноваження, слідчі (розшукові) дії, негласні слідчі дії.

UDC 343.98
DOI https://doi.org/10.32849/2663-5313/2024.4.10

Vitalii Hahach,
PhD in Law, Senior Researcher, Doctoral Candidate of the Scientific Research Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, hahach_vitalii@ukr.net
ORCID: *orcid.org/0009-0000-7933-0712*

LEGAL FRAMEWORK FOR THE INVESTIGATION OF CRIMINAL OFFENSES IN THE SPHERE OF ECONOMIC ACTIVITY RELATED TO DOCUMENT FORGERY

Abstract. ***Purpose.*** The purpose of the article is to analyze the legal framework for the investigation of criminal offenses in the sphere of economic activity related to document forgery under conditions of transition to a unified system of civil-law regulation, as well as to develop theoretically substantiated proposals for improving criminal, procedural, and special legislation in order to enhance the effectiveness of investigating such criminal offenses. ***Results.*** The article is devoted to a comprehensive study of the legal framework for the investigation of criminal offenses in the sphere of economic activity related to document forgery in the context of the transformation of Ukraine's economic legislation and the digitalization of economic processes. The relevance of the topic is обусловлена by the repeal of the Commercial Code of Ukraine, the adoption of the Law of Ukraine "On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms during the Transitional Period and Associations of Legal Entities," as well as by the growing share of electronic document circulation, which significantly changes the nature and methods of committing criminal offenses in the economic sphere. The author identifies the range of regulatory legal acts governing the investigation of this category of criminal offenses and substantiates the necessity of their updating and harmonization in view of the new conditions of functioning of economic entities. Special attention is paid to the analysis of the provisions of the Criminal Code of Ukraine that establish the substantive legal grounds for liability for document forgery, as well as the provisions of the Criminal Procedure Code of Ukraine regulating the procedure for recording, inspection, and seizure of documents, in particular digital ones. It is established that modern methods of document forgery increasingly have a digital nature, which necessitates the modernization of criminal procedural legislation. ***Conclusions.*** The expediency of amending Article 237 of the Criminal Procedure Code of Ukraine is substantiated in order to regulate the procedure for inspection, recording, and seizure of documents stored in information and communication systems, as well as to introduce the mandatory use of hashing technologies, electronic signatures, and the involvement of a specialist. Particular emphasis is placed on the problem of regulatory and legal support for interagency interaction. Based on the analysis of the powers of the Bureau of Economic Security of Ukraine, the National Police, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation, the Security Service of Ukraine, and supervisory authorities, the absence of a unified regulatory mechanism for coordinating the actions of these entities is established. The necessity of developing a joint interagency order is proven, which would regulate the procedure for the exchange of analytical, financial, and evidentiary information, standardize procedures for detecting and documenting offenses, and ensure the coherence of law enforcement activities.

Key words: criminal offenses, economic activity, document forgery, economic security, criminal proceedings, proof, legal regulation, financial monitoring.

1. Introduction

The repeal of the Commercial Code of Ukraine and the transition to a unified system of regulation of economic legal relations based on the Civil Code of Ukraine and special laws have significantly transformed the legal environment for entrepreneurial activity. This reform eliminates the long-standing dualism of legal regulation and is aimed at harmonizing national legislation with European Union law. However, this process is accompanied by the emergence of new challenges in the field of economic security and ensuring an adequate legal response of the state to criminal offenses, in particular those related to document forgery in economic activity.

This problem becomes especially relevant under conditions of martial law and post-war recovery, when economic processes are accompanied by significant volumes of public expendi-

tures, public procurement, redistribution of resources, and the need to ensure transparency of financial transactions. The use of forged documents in such conditions becomes a tool for unlawful appropriation of budget funds, tax evasion, legalization (laundering) of proceeds of crime, and concealment of the activities of fictitious or high-risk economic entities.

The effectiveness of counteracting these criminal offenses largely depends on proper regulatory and legal support for the activities of law enforcement agencies, in particular with regard to documenting facts of forgery, identifying persons involved in the manufacture and use of falsified documents, as well as detecting criminal mechanisms in the sphere of economic activity. At the same time, the current legal landscape is characterized by the dynamic nature of changes, conflicts between certain regulatory acts, and insufficient coherence between the provisions of criminal, criminal procedural, financial, and economic legislation. This necessitates a comprehensive scientific analysis of the legal foundations for the investigation of criminal offenses related to document forgery, as well as the development of proposals for their improvement.

The purpose of the article is to analyze the legal framework for the investigation of criminal offenses in the sphere of economic activity related to document forgery under conditions of transition to a unified system of civil-law regulation, as well as to develop theoretically substantiated proposals for improving criminal, procedural, and special legislation in order to enhance the effectiveness of investigating such criminal offenses.

Certain issues of regulatory and legal support for the investigation of criminal offenses in the sphere of economic activity have been studied by such domestic scholars as I. R. Pashynska, S. S. Trach, D. B. Sanakoiev, S. S. Cherniavskyi, and V. Yu. Shepitko. However, under modern conditions of transformation of economic processes, expansion of digitalization of record management, growth in the number of criminal offenses related to the use of forged documents, as well as the functioning of the law enforcement system under martial law, the existing scientific developments require updating and supplementation.

2. Structure of Crime in Ukraine

The contemporary structure of crime in Ukraine includes a significant proportion of criminal offenses committed in the sphere of economic activity. Within the overall structure of economic crime, economic (business-related) criminal offenses account for 80.5% (Official website of the Prosecutor General's Office, 2025). At economic entities, criminal offenses provided for by numerous articles of the Criminal Code of Ukraine are recorded. The predominant share of such offenses is committed in the budgetary sphere, the agro-industrial and fuel and energy complexes, the areas of privatization, banking and foreign economic activity, as well as in the fields of high technologies and intellectual property.

Practice shows that document forgery is often not an independent corpus delicti of a criminal offense but constitutes an element of complex economic schemes that combine several unlawful acts. This significantly complicates the activities of pre-trial investigation bodies and necessitates interagency coordination.

In this context, there arises the task of a systematic study of the regulatory framework governing the procedure for documenting, seizing, expert examination, and evaluation of forged documents, as well as the peculiarities of applying special knowledge in the investigation of such criminal offenses. Scientific analysis of these aspects makes it possible to outline problematic issues of law enforcement practice, identify gaps in the current legislation, and propose ways to increase the effectiveness of pre-trial investigation and the prevention of economic crimes related to document forgery.

The sphere of economic activity, like the economy as a whole, is an extremely important area of economic relations and is accorded a special role in the implementation of state policy. Ensuring economic security is a key component of state policy, since the stability of the economic system, protection of financial resources, preservation of the integrity of market relations, and prevention of criminal encroachments in the sphere of economic activity directly affect national security, institutional resilience, and the socio-economic development of the country.

O. V. Tykhonova, within the system of ensuring economic security, identifies several components, including financial security, energy security, food security, agricultural security, demographic security, and other types of security. In addition, the scholar emphasizes that these components of economic security are closely interconnected and complement each other, may manifest themselves through the operation of another, while strengthening or weakening their overall impact (Tykhonova, 2015).

The forensic methodology for investigating criminal offenses in the sphere of economic activity related to document forgery is based on a complex of legal norms regulating the actions of law enforcement agencies in the process of detecting, investigating, and preventing such crimes. These legal foundations constitute an important element of the system for combat-

ing economic crime and ensuring legality in economic activity.

3. Peculiarities of the Regulatory and Legal Framework for Investigating Criminal Offenses in the Sphere of Economic Activity

The regulatory and legal framework for investigating criminal offenses in the sphere of economic activity related to document forgery is multi-level in nature and encompasses both general provisions of criminal and criminal procedural law and special legal acts regulating document circulation, financial and economic activity, state control, and the functioning of specific sectors of the economy. In this regard, the relevant legal acts may be classified into the following groups:

– acts defining the general principles of ensuring economic security and carrying out entrepreneurial activity (the Constitution of Ukraine) (Constitution of Ukraine, 1996);

– international legal instruments forming the basis for legal regulation in the sphere of economic activity, including the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 (Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990); the International Convention for the Suppression of Counterfeiting of Currency of 20 April 1929 (International Convention for the Suppression of Counterfeiting of Currency, 1929); the Convention for the Protection of the Financial Interests of the European Communities of 26 July 1995 (Convention for the Protection of the Financial Interests of the European Communities, 1995), and others;

– regulatory legal acts governing the procedure for conducting economic activity, including the Civil Code of Ukraine (Civil Code of Ukraine, 2003); the Law of Ukraine *On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities* (2025); the Law of Ukraine *On Joint Stock Companies* (2022); the Law of Ukraine *On Limited and Additional Liability Companies* (2018); the Law of Ukraine *On Public Procurement* (2015); the Law of Ukraine *On Electronic Documents and Electronic Document Management* (2003); the Law of Ukraine *On Electronic Identification and Electronic Trust Services* (2017); the Law of Ukraine *On Accounting and Financial Reporting in Ukraine* (1999), and others;

– regulatory legal acts in the field of financial and state control, including the Law of Ukraine *On Protection of Economic Competition* (2001); the Law of Ukraine *On the Basic Principles of State Financial Control in Ukraine* (1993); and the Law of Ukraine *On Prevention and Counteraction to the Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction* (2019);

– acts establishing criminal liability for criminal offenses in the sphere of economic activity, primarily the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001);

– acts regulating the procedural order of pre-trial investigation, recording of evidence, interaction of authorized bodies, and the application of special knowledge, including the Criminal Procedure Code of Ukraine (2012); the Law of Ukraine *On Operational-Investigative Activities* (1992); the Law of Ukraine *On Forensic Expertise* (1994); the Order of the Ministry of Justice of Ukraine *On Approval of the Instructions on the Appointment and Conduct of Forensic Expertise and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Expertise and Expert Studies* (1998); and the Order of the Ministry of Internal Affairs of Ukraine *On Approval of the Instructions on Organizing the Interaction of Pre-Trial Investigation Bodies with Other Bodies and Units of the National Police of Ukraine in the Prevention, Detection, and Investigation of Criminal Offenses* (2017);

– regulatory legal acts defining the legal status and competence of specific pre-trial investigation bodies, including the Law of Ukraine *On the Bureau of Economic Security of Ukraine* (2021); the Law of Ukraine *On the National Police*(2015); the Law of Ukraine *On the Security Service of Ukraine* (1992); the Law of Ukraine *On the National Anti-Corruption Bureau of Ukraine* (2014); and the Law of Ukraine *On the State Bureau of Investigation* (2015).

The Constitution of Ukraine ensures the rule of law and the protection of human and civil rights and freedoms, including the right to property, and establishes the obligation of the state to combat economic crime. It defines the foundations of legal order, which serve as the basis for the development of sectoral legislation and legal norms.

The Constitution of Ukraine (Articles 42 and 43) constitutes the foundation for shaping the legal environment of entrepreneurial activity, enshrining the right of every person to freely use their abilities and property for entrepreneurial purposes (Constitution of Ukraine, 1996). The very concept and content of entrepreneurial activity are defined in current legislation, although other related terms are also used therein.

4. Analysis of International Legal Instruments in the Field of Legal Regulation of Counteracting Offenses in the Sphere of Economic Activity

With regard to international legal instruments in the field of legal regulation of coun-

teracting offenses in the sphere of economic activity, a number of scholars propose their classification into three groups:

1. acts that establish general legal principles for ensuring the exercise of economic activity (the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966), etc.);

2. international treaties of Ukraine, the provisions of which determine the direct directions of counteracting offenses in the sphere of economic activity, including at the international level (the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990); the International Convention for the Suppression of Counterfeiting of Currency (1929), etc.);

3. bilateral agreements concluded by Ukraine with other states, including for the purpose of counteracting offenses in the sphere of economic activity (the Convention between Ukraine and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property (1995); the Convention between Ukraine and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property (1996), etc.) (Suhak, 2020).

In addition to general norms, sector-specific regulatory legal acts are also of importance in the sphere of economic activity, as they establish special requirements and rules for certain types of activities. For example, the Law of Ukraine *On Accounting and Financial Reporting in Ukraine* regulates the rules of accounting and financial reporting, while the Law of Ukraine *On Licensing of Types of Economic Activity* determines the procedure for obtaining licenses and liability for violations of licensing conditions, including the use of forged documents, and others.

Modern legal acts form a national system of economic and financial incentives that guarantee the necessary support for various categories of economic entities, establish general rules for their activities within a national market economy, introduce certain safeguards preventing the criminalization of bona fide entrepreneurship, and provide measures to protect economic entities from external negative influences, including unlawful actions by representatives of public authorities, their biased attitudes, and obstruction of lawful economic activity in the market for the production and sale of goods and services.

The formation of an appropriate legal environment makes it possible to regulate economic relations in the sphere of development of domestic economic activity at various stages, starting from the registration of natural persons and legal entities as economic entities and licensing of their lawful activities, and ending with bankruptcy procedures and termination of their existence.

At present, Ukraine is undergoing a transformation of the system of legal regulation of economic relations. Along with the repeal of the Commercial Code of Ukraine, the Law of Ukraine *On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities*was adopted. The purpose of this Law is to regulate the transitional period for legal entities of certain organizational and legal forms (primarily state-owned and municipal enterprises) in order to ensure their gradual transformation into corporate structures (companies), as well as to bring the legal system into conformity with the Civil Code of Ukraine. In addition, the adoption of this regulatory legal act introduces a transitional period during which enterprises owned by the state or territorial communities must be transformed into business companies (for example, limited liability companies or joint-stock companies).

The main provisions of the Law provide for the corporatization of state-owned and municipal enterprises. All state and municipal unitary enterprises are to be transformed into joint-stock companies or limited liability companies. This approach complies with international standards and promotes investment attraction. For municipal enterprises, corporatization is of a flexible nature, allowing territorial communities to independently determine the expediency of such transformation.

The Law also provides for financial transparency and accountability. In accordance with its provisions, state-owned enterprises are obliged to publish financial statements, which contributes to public oversight and transparency of management. For non-entrepreneurial assets that are not subject to privatization, a usufruct mechanism is introduced, ensuring their rational use under state supervision (Law of Ukraine *On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities*, 2025).

Furthermore, the Law clearly regulates the transitional period. Its provisions ensure the continuity of activities of municipal enterprises during the transitional period and the harmonization of norms with the Laws of Ukraine *On Local Self-Government* and the Civil Code of Ukraine, in order to avoid legal gaps following

the repeal of the Commercial Code of Ukraine, which was adopted in 2003 in contrast to the pro-European Civil Code. At the same time, certain provisions of the Commercial Code of Ukraine retain their validity under this Law and will apply throughout the transitional period (Official Website of the Verkhovna Rada of Ukraine, 2024).

Analyzing the provisions of the said Law, it is necessary to distinguish both its positive aspects and the risks associated with its adoption.

Among the positive aspects, the following should be highlighted:

1. a modern corporate approach, whereby the transformation of state-owned and municipal enterprises into joint-stock companies or limited liability companies corresponds to international practice and modernizes the management of state property, which may increase efficiency, attract investors, and reduce corruption risks;

2. ensuring transparency and asset control, since the use of electronic procedures (such as the *Prozorro* system and public reporting) significantly enhances the openness of operations and reduces opportunities for non-transparent manipulation of state assets;

3. improvement of legal certainty, in particular the transition to civil-law instruments (lease, management) instead of outdated economic-law constructs of economic management and operational management, which creates clearer and more "market-oriented" legal models;

4. reduction of financial pressure on businesses, especially defense enterprises, as the reduction of penalty sanctions for delays may alleviate the financial burden on contractors executing defense contracts and stimulate timely yet stable performance of obligations;

5. flexibility for territorial communities, as municipal enterprises may independently decide whether to undergo transformation, providing communities with a greater degree of self-determination in choosing the form of ownership and management.

At the same time, it should be noted that there are risks associated with the application of this Law under conditions of legal transformation and martial law, in particular: complications in identifying ultimate beneficial owners of legal entities undergoing reorganization procedures; the emergence of regulatory gaps during changes in organizational and legal forms; potential manipulation of corporate rights and property assets during the operation of special transitional procedures; as well as risks of using simplified reorganization mechanisms to evade financial control or liability for criminal offenses in the sphere of economic activity.

A more detailed consideration should be given to the identified risks and their impact on the investigation of criminal offenses in the sphere of economic activity.

1. Risks in the Field of Identification and Transparency of Corporate Structure

One of the key challenges is the potential complication of identifying the ultimate beneficial owners of legal entities undergoing reorganization or changes in their organizational and legal form. Transitional procedures provide for simplified mechanisms for submitting certain information, temporary deferral of data disclosure, or modifications in the set of documents submitted to state registers.

This creates additional opportunities for committing criminal offenses in the sphere of economic activity, such as manipulation of information on beneficial owners; the emergence of a temporary "window of non-transparency" allowing the concealment of actual business controllers; the use of offshore structures or nominee owners; and complications in conducting proper KYC procedures by banks and other financial monitoring entities. Such risks directly affect the ability of law enforcement agencies to promptly and effectively identify the actual organizers of criminal schemes in the sphere of economic activity.

2. Risks Related to Manipulation of Corporate Rights and Assets

Special transitional procedures create conditions under which criminal groups may use reorganization, merger, division, or transformation of legal entities as instruments for asset stripping prior to the initiation of criminal proceedings; transfer of property between related entities through fictitious transactions; establishment of new legal entities to continue unlawful activities; and disruption of liability chains when the original legal entity ceases operations before its officials are brought to justice. Particularly dangerous is the use of the transitional period for the legalization (laundering) of proceeds of crime through complex corporate arrangements and changes in ownership.

3. Regulatory Gaps and Normative Collisions

The application of the Law during the transitional period is accompanied by inconsistencies between its provisions and the Civil Code of Ukraine and the Law of Ukraine *On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations*; conflicts with anti-corruption legislation, particularly regarding the obligation to timely disclose information on ownership structure; and the absence of clear procedures for monitoring reorganized legal entities. All of this creates regulatory uncertainty that may be exploited by criminal

groups to evade financial control or manipulate corporate rights.

4. Risks of Reduced Effectiveness of State Financial Control

The transitional period in the activities of legal entities may complicate the conduct of scheduled and unscheduled inspections; the proper assessment of financial statements; and the detection of violations in the budgetary, tax, and investment spheres. Particularly problematic is the limited access of supervisory authorities to documents of legal entities undergoing reorganization, which increases the number of cases of artificial bankruptcy, concealment of liabilities, understatement of income, and tax evasion.

Such factors are capable of creating additional challenges for law enforcement agencies, primarily in ensuring a proper evidentiary base for criminal offenses of an economic nature, preventing the legalization (laundering) of proceeds of crime, and preventing the use of corporate restructuring mechanisms as a means of disguising illegal activities.

In addition, upon analyzing the Law under consideration, it appears appropriate to propose amendments to Part 1 of Article 2 of the Law, which defines the concept of "economic activity," and to set it forth as follows: "economic activity is the activity of economic entities in the sphere of social production and circulation of material, financial, informational, and digital resources aimed at the creation and sale of products, performance of works, provision of services, or management of assets having value characteristics and price determinacy."

The proposed amendments are justified by the need to adapt the legislative definition of "economic activity" to modern conditions of economic development, including digitalization, changes in corporate legislation, and the requirements of European integration. The refined definition ensures legal certainty, eliminates gaps that emerged after the repeal of the Commercial Code of Ukraine, and creates a basis for the correct qualification of offenses in the sphere of economic activity, in particular those related to document forgery.

A special place in the system of legal regulation of economic activity is occupied by legislative acts in the field of state financial control. The system of state control in Ukraine has undergone a complex process of formation, accompanied by frequent renaming of supervisory bodies (Pikhotskyi, 2015). Pre-trial investigation bodies most often receive materials on economic criminal offenses from units of the State Audit Service of Ukraine (hereinafter – the State Audit Service), the State Fiscal Service of Ukraine, and the State Financial Monitoring Service of Ukraine.

The State Audit Service of Ukraine is a central executive authority that ensures the formation and implementation of state policy in the field of state financial control and, in accordance with the Regulation on the State Audit Service of Ukraine, carries out assessments of the effective, lawful, targeted, and efficient use and preservation of state financial resources by economic entities of the public sector of the economy. Where violations of legislation are identified that entail criminal liability or contain signs of corruption-related acts, units of the State Audit Service transmit the materials resulting from state financial control to law enforcement agencies in the prescribed manner.

The Law of Ukraine *On the Basic Principles of State Financial Control in Ukraine* constitutes the basic regulatory act defining the organizational and legal principles, forms, types, and instruments of state financial control. Its provisions form the legal basis for state activities aimed at ensuring the targeted, effective, and lawful use of public resources, which directly affects the level of economic security of the state and indirectly contributes to the prevention of criminal offenses in the sphere of economic activity (Law of Ukraine *On the Basic Principles of State Financial Control in Ukraine*, 1993).

5. The Role of State Financial Control in the Context of Martial Law and the Recovery of Ukraine's Economy

In the context of martial law and the recovery of Ukraine's economy, the role of state financial control acquires particular significance. The Law establishes unified rules for controlling the movement of funds of the state and local budgets, state property, and financial resources of state-owned enterprises, which is critically important for minimizing the risks of corruption, embezzlement, and misuse of public funds. Effective state financial control, within the meaning of the Law, has a dual function: a preventive function—preventing offenses related to budgetary funds and state assets; and a law enforcement function—detecting violations that may contain elements of criminal offenses in the sphere of economic activity, followed by informing law enforcement agencies.

The Law defines the system of bodies authorized to carry out state financial control. The key body under the current version of the Law is the State Audit Service of Ukraine, along with other entities vested with such powers (the Accounting Chamber, the National Bank of Ukraine, the Ministry of Finance, etc.) (Law of Ukraine *On the Basic Principles of State Financial Control in Ukraine*, 1993).

It is important to emphasize that the Law has significantly expanded the analytical pow-

ers of the State Audit Service, allowing it to use risk indicators and automated information systems, which increases the effectiveness of detecting violations in the economic sphere. The Law establishes the following main forms of financial control: state financial audit aimed at assessing the efficiency of an entity's activities; inspection (revision), intended to establish facts of violations of legislation and financial discipline; inspection of individual transactions; procurement monitoring (significantly expanded in 2025); and verification of state investment projects.

The Law regulates the mechanisms for transferring materials obtained as a result of audits and inspections to the Bureau of Economic Security of Ukraine, the National Anti-Corruption Bureau of Ukraine, the Security Service of Ukraine, and the National Police, thereby ensuring a timely response to criminal offenses in the sphere of economic activity. In particular, it establishes the obligation to inform law enforcement agencies in the event of detecting signs of criminal offenses; the right of the State Audit Service to participate in the verification of materials within criminal proceedings; and the possibility of providing specialists and expert assistance to investigators (Law of Ukraine *On the Basic Principles of State Financial Control in Ukraine*, 1993).

Thus, the Law forms an institutional linkage between the system of financial control and the criminal justice system, which significantly enhances the State's capacity to detect criminal offenses in the sphere of economic activity.

The Criminal Code of Ukraine establishes the substantive legal framework for criminal liability for criminal offenses in the sphere of economic activity, including those related to document forgery, by defining their legal nature, social danger, and the limits of criminal law influence. It is the Criminal Code of Ukraine that determines which acts are recognized as crimes or criminal misdemeanors, establishes their qualifying elements, characterizes the object of encroachment, and defines the types and limits of punishment. The repeal of the Commercial Code of Ukraine does not create a direct need for immediate amendments to the Criminal Code of Ukraine, since the latter does not contain provisions directly based on the Commercial Code.

However, the transition to new approaches to regulating economic activity enshrined in the Law of Ukraine *On the Peculiarities of Regulating the Activities of Legal Entities of Certain Organizational and Legal Forms during the Transitional Period and Associations of Legal Entities* requires terminological and conceptual harmonization of criminal legislation with the updated system of concepts, such as "economic activity," "economic entity," "document in the sphere of economic activity," "entrepreneurial activity," "legal entity," and its organizational and legal form. Such harmonization will promote legal certainty, unification of law enforcement practice, and prevention of conflicts in the qualification of criminal offenses in the sphere of economic activity.

The next group of norms comprises legal acts that determine the procedural order for investigating such criminal offenses. The Criminal Procedure Code of Ukraine establishes a system of procedural rules ensuring the legality, consistency, and effectiveness of pre-trial investigation of criminal offenses, including those in the sphere of economic activity related to document forgery. Primarily, it defines the procedural procedure for detecting, recording, collecting, evaluating, and using evidence; establishes the list and content of investigative (search) actions and covert investigative (search) actions, as well as the conditions for their application. In addition, the Code regulates the jurisdiction of criminal offenses and delineates the competence of pre-trial investigation bodies, which is of particular importance in cases where document forgery is combined with complex financial transactions or misappropriation of assets.

Modern economic activity in Ukraine, especially after the repeal of the Commercial Code and the introduction of a new legislative paradigm for regulating economic entities, is characterized by the predominance of electronic document circulation. Currently, document management in the sphere of economic activity is carried out in digital rather than paper form through the use of electronic document management systems. However, the procedural norms of the Criminal Procedure Code of Ukraine remain largely oriented toward working with paper documents and physical media, which does not correspond to the actual practice of investigating criminal offenses in the sphere of economic activity related to document forgery. As a result, there arises a risk of loss of authenticity during copying or rewriting of digital data. In foreign jurisdictions (the United States, Germany, France, Estonia), the involvement of a forensic expert or technical specialist is mandatory during the examination and copying of electronic documents, which ensures their integrity and preservation of authenticity.

Moreover, the Criminal Procedure Code of Ukraine lacks a normative obligation to involve relevant specialists when seizing documents stored on digital media, which leads to procedural errors and the inadmissibility

of evidence in court. Ukrainian courts have repeatedly declared electronic documents inadmissible as evidence due to the absence of confirmation of their authenticity, in particular because of the failure to provide hash identifiers or the absence of a specialist during their copying (Resolution of the Cassation Commercial Court of the Supreme Court, 2023).

We agree with the position of S.S. Khyzhniak, who notes that, compared to the examination of traditional documents, the examination of electronic documents is a more extensive and complex procedural action that requires the use of specialized knowledge, technical means, and software, as well as the involvement of specialists to search for and seize electronic evidence during criminal proceedings (Khyzhniak, 2017). As emphasized by Yu.M. Chornous and O.L. Dulskyi, under such conditions forensic technical means, techniques, and methods are applied provided that there are legal grounds—namely, where they are provided for by law or do not contradict it (Chornous, Dulskyi, 2025), in accordance with international and European standards (Chornous, Dulskyi, 2024).

In view of the above, it is proposed to introduce amendments to the Criminal Procedure Code of Ukraine, in particular by supplementing Part 2 of Article 237 of the Criminal Procedure Code of Ukraine with new paragraphs as follows:

"The examination of documents stored in information and communication systems shall be carried out with the mandatory involvement of an information technology specialist or a forensic expert.

During the examination of documents stored in information and communication systems, their authenticity, integrity, and the possibility of subsequent verification shall be ensured through the use of hashing technologies or the creation of an electronic signature and/or electronic seal."

It is also proposed to supplement Part 5 of Article 237 of the Criminal Procedure Code of Ukraine, after the words "seizure only of items and documents," with the words: "including documents stored in information and communication systems, which are copied or stored with the fixation of a digital identifier," and to supplement Part 8 of Article 237 of the Criminal Procedure Code of Ukraine to regulate issues of temporary access to digital media as follows:

"Where the examination of documents requires access to remote electronic systems (including cloud storage), the investigator or prosecutor shall ensure the copying of the relevant data in compliance with requirements on non-disclosure of commercial secrets, using certified data recording tools."

Special attention should be given to laws that determine the status and competence of individual pre-trial investigation bodies, namely: the Bureau of Economic Security of Ukraine, the National Police of Ukraine, the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine, and the State Bureau of Investigation.

The Law of Ukraine *On the Bureau of Economic Security of Ukraine* defines the Bureau of Economic Security of Ukraine (hereinafter – the BES) as a central executive authority with a special status, the primary task of which is to counter criminal offenses in the economic sphere through the implementation of law enforcement, analytical, economic, informational, and other functions (Law of Ukraine *On the Bureau of Economic Security of Ukraine*, 2021).

Pursuant to Article 4 of the Law, the main tasks of the Bureau of Economic Security of Ukraine include:

1. identifying risk zones in the economic sphere through the analysis of structured and unstructured data;
2. assessing risks and threats to the economic security of the State, developing methods for their minimization and elimination;
3. submitting proposals on amendments to regulatory legal acts aimed at eliminating prerequisites for the creation of schemes of unlawful activity in the economic sphere;
4. ensuring the economic security of the State by preventing, detecting, terminating, and investigating criminal offenses encroaching on the functioning of the national economy;
5. collecting and analyzing information on offenses affecting the economic security of the State and determining ways to prevent their occurrence in the future;
6. planning measures to counter criminal offenses attributed by law to its jurisdiction;
7. detecting and investigating offenses related to the receipt and use of international technical assistance;
8. preparing analytical conclusions and recommendations for public authorities in order to improve the effectiveness of managerial decision-making in regulating economic relations (Law of Ukraine *On the Bureau of Economic Security of Ukraine*, 2021).

In addition, based on an analysis of Article 8 of the Law, the main areas of activity of the BES have been identified. In accordance with the tasks assigned to it, the Bureau carries out:

– analytical activities aimed at identifying and assessing risks to the economic security of the State, forecasting trends in the development of shadow economic processes, tax evasion schemes, and other forms of unlawful activity in the sphere of economic relations;

– collection, consolidation, and analysis of information on economic criminal offenses received from public authorities, business entities, financial institutions, and international partners, as well as the development of relevant information and analytical products for law enforcement and public policy needs;

– operational-search measures provided for by criminal procedural legislation, aimed at identifying organized schemes causing damage to the State budget, unlawful use of public finances, activities of "conversion centers," fictitious enterprises, and transnational economic criminal groups;

– pre-trial investigation of criminal offenses attributed to the jurisdiction of the BES, including crimes in the budgetary, tax, customs, financial, banking, and corporate sectors, as well as in the sphere of circulation of excisable goods and public procurement;

– monitoring of financial transactions and economic processes that may contain signs of unlawful activity, in cooperation with the State Tax Service of Ukraine, the State Customs Service of Ukraine, the National Bank of Ukraine, the National Securities and Stock Market Commission, and other subjects of state financial control;

– initiation and participation in international cooperation aimed at information exchange, joint investigations, and implementation of best practices in combating economic crime, in particular within the framework of cooperation with Europol, Interpol, FATF, and other international institutions;

– development of proposals for improving state policy in the field of economic security, including the initiation of amendments to legislation, regulatory acts, and mechanisms of interagency cooperation;

– ensuring protection of the economic interests of the State during the implementation of priority sectoral, defense, infrastructure, and investment projects, especially under conditions of martial law and post-war recovery;

– expert and analytical assessment of schemes of movement of financial flows, material resources, and assets, both within the domestic economic environment and in the transnational dimension;

– implementation of measures aimed at compensation for damage caused to the State, including through seizure of property, identification of beneficial owners of assets, termination of unlawful financial and economic transactions, and initiation of recovery of funds through judicial proceedings (Law of Ukraine *On the Bureau of Economic Security of Ukraine*, 2021).

In addition to the BES, the investigation of criminal offenses in the sphere of economic activity falls within the competence of pre-trial investigation bodies of the National Police of Ukraine. The National Anti-Corruption Bureau of Ukraine investigates economic crimes only in cases where they are of a corrupt nature and are related to officials referred to in Article 45 of the Criminal Code of Ukraine and Part 5 of Article 216 of the Criminal Procedure Code of Ukraine. Security Service investigation bodies exercise jurisdiction where such crimes pose a threat to the economic security of the State, critical infrastructure, are related to the financing of terrorism, or involve the activities of the aggressor state. The State Bureau of Investigation conducts investigations of economic crimes if they are committed by officials who are employees of law enforcement agencies, military personnel, or belong to categories defined in Article 216 of the Criminal Procedure Code of Ukraine (Criminal Procedure Code of Ukraine, 2012).

Currently, EU and FATF (Financial Action Task Force) international standards require states to establish integrated mechanisms for interaction between financial intelligence units, supervisory bodies, and law enforcement agencies. However, in Ukraine there is no single normative act that would comprehensively regulate the interaction between law enforcement and supervisory authorities during the detection and investigation of criminal offenses in the sphere of economic activity. Existing coordination mechanisms are fragmented and contained in separate instructions, regulations, and interagency agreements, which does not ensure a unified procedure for transferring operational, analytical, or evidentiary information, does not establish common standards for documenting digital data, and does not regulate issues of protection of restricted information and commercial secrets.

In our view, the introduction of a joint regulation (order) of the National Police of Ukraine, the National Anti-Corruption Bureau of Ukraine, the Bureau of Economic Security of Ukraine, the State Bureau of Investigation, and supervisory authorities would ensure the unification of procedures for detecting, documenting, and analyzing economic crimes, standardize access to digital data, and enhance the evidentiary value of collected information, which as a whole would strengthen the economic security of Ukraine under conditions of martial law and post-war recovery.

6. Conclusions

Thus, the study of the legal foundations for the investigation of criminal offenses in the sphere of economic activity related to document forgery makes it possible to formulate a number of generalizations and proposals

aimed at improving the effectiveness of pre-trial investigation. First of all, it has been established that the regulatory framework governing the investigation of criminal offenses in the sphere of economic activity related to document forgery encompasses both general provisions of criminal law and criminal procedural law, as well as special legal acts regulating document circulation, financial and economic activity, state control, and the functioning of individual sectors of the economy.

This regulatory framework comprises several groups of legal acts, in particular: acts defining the general principles of ensuring economic security and conducting entrepreneurial activity; international legal instruments forming the basis for legal regulation in the sphere of economic activity; regulatory acts determining the procedure for conducting economic activity; normative acts in the field of financial and state control; acts establishing criminal liability for criminal offenses in the sphere of economic activity; acts regulating the procedural порядок of pre-trial investigation, evidence fixation, interaction of authorized bodies, and the application of special knowledge; as well as normative legal acts defining the status and competence of individual pre-trial investigation bodies.

The transformation of Ukraine's economic legislation, associated with the repeal of the Commercial Code of Ukraine and the adoption of the Law of Ukraine *On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities*, actualizes the need to clarify a number of concepts and legal categories used in the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine.

Accordingly, increasing the effectiveness of investigating criminal offenses in the sphere of economic activity related to document forgery requires a comprehensive updating of the regulatory framework. The proposed changes will contribute to eliminating gaps in legal regulation, forming a unified approach to working with digital evidence, strengthening interagency coordination, and generally reinforcing the system of economic security of Ukraine.

References:

Chornous, Yu., Dulskyi, O. (2024). Mizhnarodni ta yevropeiski standarty kryminalistychnoho zabezpechennia kryminalnoho provadzhennia [International and European Standards of Forensic Support for Criminal Proceedings]. Yurydychnyi chasopys Natsionalnoi akademii vnutrishnikh sprav, 2024, № 1, pp. 9-19 (in Ukrainian).

Chornous, Yu.M. Dulskyi, O.L. (2025). Osoblyvosti kryminalistychnoho zabezpechennia zbyrannia dokaziv storonamy kryminalnoho provadzhennia u zmahalnomu kryminalnomu protsesi [Peculiarities of forensic support for the collection of evidence by the parties to criminal proceedings in adversarial criminal proceedings]. Pivdennoukrainskyi pravnychyi chasopys, 2025, № 2, pp. 51-58 (in Ukrainian).

Khyzhniak, S.S. (2017). Osoblyvosti ohliadu elektronnykh dokumentiv pid chas rozsliduvannia kryminalnykh pravoporushen [Peculiarities of reviewing electronic documents during the investigation of criminal offenses]. Derzhava ta rehiony, 2017. № 4(58), pp. 80-85 (in Ukrainian).

Konstytutsiia Ukrainy: vid 28.06.1996 № 254k/96 VR [Constitution of Ukraine: dated 28.06.1996 No. 254k/96 VR]. (1996). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text (in Ukrainian).

Konventsii pro zakhyst finansovykh interesiv Yevropeiskykh spivtovarystv: mizhnarodnyi dokument vid 26.07.1995 [Convention for the Protection of the Financial Interests of the European Communities: international document of 26.07.1995]. (1995). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/984_001-95#Text (in Ukrainian).

Konventsiia mizh Ukrainoiu i Kanadoiu pro unyknennia podviinoho opodatkuvannia ta poperedzhennia ukhylen vid splaty podatkiv stosovno dokhodiv i maina: vid 04.03.1996 [Convention between Ukraine and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property: dated 04.03.1996]. (1996). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/124_674#Text (in Ukrainian).

Konventsiia mizh Ukrainoiu i Korolivstvom Niderlandiv pro unyknennia podviinoho opodatkuvannia ta poperedzhennia podatkovykh ukhylen stosovno podatkiv na dokhody i maino: mizhnarodnyi dokument vid 24.10.1995 [Convention between Ukraine and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property: international document dated 24.10.1995]. (1995). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/528_654 (in Ukrainian).

Konventsiia pro vidmyvannia, poshuk, aresht ta konfiskatsiiu dokhodiv, oderzhanykh zlochynnym shliakhom: vid 08.11.1990 [Convention on laundering, search, seizure and confiscation of proceeds of crime: dated 08.11.1990]. (1990). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_029#Text (in Ukrainian).

Konventsiia pro vidmyvannia, poshuk, aresht ta konfiskatsiiu dokhodiv, oderzhanykh zlochynnym shliakhom: vid 08.11.1990 [Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime: of 08.11.1990]. (1990). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_029#Text (in Ukrainian).

Kryminalnyi protsesualnyi kodeks Ukrainy: vid 13.04.2012 № 4651-VI [Criminal Procedure Code of Ukraine: dated 13/04/2012 No. 4651-VI]. (2012). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text (in Ukrainian).

Mizhnarodna konventsiia shchodo borotby z pidrobkoiu hroshovykh znakiv: mizhnarodnyi dokument vid 20.04.1929 [International Convention for the Suppression of Counterfeiting of Currency: international document of 20.04.1929]. (1929). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_589 (in Ukrainian).

Mizhnarodna konventsiia shchodo borotby z pidrobkoiu hroshovykh znakiv: vid 20.04.1929 [International Convention for the Suppression of Counterfeiting of Currency: of 20.04.1929]. (1929). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_589 (in Ukrainian).

Mizhnarodnyi pakt pro ekonomichni, sotsialni i kulturni prava: mizhnarodnyi dokument vid 16.12.1966 [International Covenant on Economic, Social and Cultural Rights: international document of 16.12.1966]. (1966). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_042#Text (in Ukrainian).

Mizhnarodnyi pakt pro hromadianski i politychni prava: mizhnarodnyi dokument vid 16.12.1966 [International Covenant on Civil and Political Rights: international document of 16.12.1966]. (1966). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_043/conv (in Ukrainian).

Nakaz Ministerstva yustytsii Ukrainy Pro zatverdzhennia Instruktsii pro pryznachennia ta provedennia sudovykh ekspertyz ta ekspertnykh doslidzhen ta Naukovo-metodychnykh rekomendatsii z pytan pidhotovky ta pryznachennia sudovykh ekspertyz ta ekspertnykh doslidzhen: vid 08.10.1998 № 53/5 [Order of the Ministry of Justice of Ukraine On Approval of the Instructions on the Appointment and Conduct of Forensic Expertise and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Expertise and Expert Studies: 08.10.1998 No. 53/5]. (1998). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/z0705-98#Text (in Ukrainian).

Nakaz MVS Ukrainy Pro zatverdzhennia Instruktsii z orhanizatsii vzaiemodii orhaniv dosudovoho rozsliduvannia z inshymy orhanamy ta pidrozdilamy Natsionalnoi politsii Ukrainy v zapobihanni kryminalnym pravoporushenniam, yikh vyiavlenni i rozsliduvannia vid 07 lyp. 2017 r. № 575 [Order of the Ministry of Internal Affairs of Ukraine On approval of the Instructions on organizing the interaction of pre-trial investigation bodies with other bodies and units of the National Police of Ukraine in the prevention of criminal offenses, their detection and investigation dated July 7, 2017 No. 575]. (2017). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/z0937-17#Text (in Ukrainian).

Ofitsiinyi sait Verkhovnoi Rady Ukrainy Candidate's thesis. [Official Website of the Verkhovna Rada of Ukraine]. (2024). *zakon.rada.gov.ua*. Retrieved from https://www.rada.gov.ua/news/razom/257481.html?utm_source=chatgpt.com (in Ukrainian).

Oftsiinyi sait Ofisu Heneralnoho prokurora [Official website of the Prosecutor General's Office]. (2025). *gp.gov.ua*. Retrieved from https://gp.gov.ua/ua/posts/pro-kriminalni-pravoporushennya-vchineni-na-pidpriyemstvah-v-ustanovah-organizaciyah-za-vidami-ekonomichnoyi-diyalnosti-2 (in Ukrainian).

Pikhotskyi, V.F. (2015). Systema derzhavnoho finansovoho kontroliu v Ukraini: kontseptualni zasady teorii ta praktyky [The system of state financial control in Ukraine: conceptual foundations of theory and practice]. *Doctor's thesis*. Instytut rehionalnykh doslidzhen im. M.I. Dolishnoho NANU. Lviv (in Ukrainian).

Postanova Kabinetu Ministriv Ukrainy Pro zatverdzhennia Polozhennia pro Derzhavnu sluzhbu finansovoho monitorynhu Ukrainy: vid 29 lypnia 2015 r. № 537 [Resolution of the Cabinet of Ministers of Ukraine On Approval of the Regulations on the State Financial Monitoring Service of Ukraine: dated July 29, 2015 No. 537]. (2015). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/537-2015-%D0%BF#n2 (in Ukrainian).

Postanova Kasatsiinoho hospodarskoho sudu Verkhovnoho Sudu vid 21.06.2023 u spravi №916/3027/21 [Resolution of the Cassation Economic Court of the Supreme Court dated June 21, 2023 in case No. 916/3027/21]. (2023). *reyestr.court.gov.ua*. Retrieved from https://reyestr.court.gov.ua/Review/112088045 (in Ukrainian).

Suhak, O.V. (2020). Administratyvno-pravova protydiia pravoporushenniam u sferi hospodarskoi diialnosti [Administrative and Legal Counteraction to Offenses in the Sphere of Economic Activity]. *Candidate's thesis*. Sumy (in Ukrainian).

Tsyvilnyi kodeks Ukrainy: vid 16.01.2003 № 435-IV [Civil Code of Ukraine: dated 16.01.2003 No. 435-IV]. (2003). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text (in Ukrainian).

Tykhonova, O.V. (2015). Finansova bezpeka Ukrainy: kryminalno-pravovi ta kryminolohichni osnovy : monohrafiia [Financial security of Ukraine: criminal law and criminological foundations: monograph]. Dnipropetrovsk

Zahalna deklaratsiia z prav liudyny: mizhnarodnyi dokument vid 10.12.1948 [Universal Declaration of Human Rights: international document dated 10.12.1948]. (1948). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text (in Ukrainian).

Zakon Ukrainy Kryminalnyi kodeks Ukrainy : vid 05 kvitnia 2001 r. № 2341-III [Law of Ukraine Criminal Code of Ukraine: dated 05/04/2001 No. 2341-III]. (2001). *zakon.rada.gov.ua*. Retrieved from http://zakon2.rada.gov.ua/laws/show/2341-14 (in Ukrainian).

Zakon Ukrainy Pro aktsionerni tovarystva: vid 27.07.2022 № 2465-IX [Law of Ukraine On Joint Stock Companies: dated 27.07.2022 No. 2465-IX].

(2022). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2465-20#Text (in Ukrainian).

Zakon Ukrainy Pro Biuro ekonomichnoi bezpeky Ukrainy: vid 28.01.2021 № 1150-IX [Law of Ukraine On the Bureau of Economic Security of Ukraine: dated January 28, 2021 No. 1150-IX.]. (2021). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/1150-20 (in Ukrainian).

Zakon Ukrainy Pro bukhhalterskyi oblik ta finansovu zvitnist: vid 16.07.1999 № 996-XIV [Law of Ukraine On Accounting and Financial Reporting: dated 16.07.1999 No. 996-XIV]. (1999). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/996-14#Text (in Ukrainian).

Zakon Ukrainy Pro Derzhavne biuro rozsliduvan. vid 12.11.2015 № 794-VIII [Law of Ukraine On the State Bureau of Investigation. dated 12.11.2015 No. 794-VIII]. (2015). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/794-19#Text (in Ukrainian).

Zakon Ukrainy Pro elektronni dokumenty ta elektronnyi dokumentoobih: vid 22.05.2003 № 851-IV [Law of Ukraine On Electronic Documents and Electronic Document Management: dated 22.05.2003 No. 851-IV]. (2003). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/851-15 (in Ukrainian).

Zakon Ukrainy Pro elektronnu identyfikatsiiu ta elektronni dovirchi posluhy: vid 05.10.2017 № 2155-VIII [Law of Ukraine On Electronic Identification and Electronic Trust Services: dated 05.10.2017 No. 2155-VIII]. (2017). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2155-19#Text (in Ukrainian).

Zakon Ukrainy Pro Natsionalne antykoruptsiine biuro Ukrainy. vid 14.10.2014 № 1698-VII [Law of Ukraine On the National Anti-Corruption Bureau of Ukraine. dated 14.10.2014 No. 1698-VII]. (2014). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text (in Ukrainian).

Zakon Ukrainy Pro Natsionalnu politsiiu: vid 02.07.2015 № 580-VIII [Law of Ukraine On the National Police: dated July 2, 2015 No. 580-VIII]. (2015). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text (in Ukrainian).

Zakon Ukrainy Pro operatyvno-rozshukovu diialnist: 18 liut. 1992 r. № 2135-XII [Law of Ukraine On Operational-Investigative Activities: 18 Feb. 1992 No. 2135-XII]. (1992). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text (in Ukrainian).

Zakon Ukrainy Pro osnovni zasady zdiisnennia derzhavnoho finansovoho kontroliu v Ukraini. vid 26.01.1993 № 2939-XII [Law of Ukraine On the Basic Principles of State Financial Control in Ukraine. dated 01/26/1993 No. 2939-XII]. (1993). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12#Text (in Ukrainian).

Zakon Ukrainy Pro osoblyvosti rehuliuvannia diialnosti yurydychnykh osib okremykh orhanizatsiino-pravovykh form u perekhidnyi period ta obiednan yurydychnykh osib. vid 09.01.2025 № 4196-IX [Law of Ukraine On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities. dated 09.01.2025 No. 4196-IX]. (2025). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/4196-20#Text (in Ukrainian).

Zakon Ukrainy Pro publichni zakupivli: vid 25.12.2015 № 922-VIII [Law of Ukraine On Public Procurement: dated 25.12.2015 No. 922-VIII]. (2015). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/922-19#Text (in Ukrainian).

Zakon Ukrainy Pro Sluzhbu bezpeky Ukrainy: vid 25.03.1992 № 2229-XII [Law of Ukraine On the Security Service of Ukraine: dated 25.03.1992 No. 2229-XII]. (1992). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2229-12#Text (in Ukrainian).

Zakon Ukrainy Pro sudovu ekspertyzu: vid 25.02.1994 № 4038-XII [Law of Ukraine On Forensic Expertise: 25.02.1994 No. 4038-XII]. (1994). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/4038-12#Text (in Ukrainian).

Zakon Ukrainy Pro tovarystva z obmezhenoiu ta dodatkovoiu vidpovidalnistiu: vid 06.02.2018 № 2275-VIII [Law of Ukraine On Limited and Additional Liability Companies: dated 06.02.2018 No. 2275-VIII]. (2018). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2275-19#Text (in Ukrainian).

Zakon Ukrainy Pro zakhyst ekonomichnoi konkurentsii: vid 11.01.2001 № 2210-III [Law of Ukraine On Protection of Economic Competition: dated 11.01.2001 No. 2210-III]. (2001). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2210-14#Text (in Ukrainian).

Zakon Ukrainy Pro zapobihannia ta protydiiu lehalizatsii (vidmyvanniu) dokhodiv, oderzhanykh zlochynnym shliakhom, finansuvanniu teroryzmu ta finansuvanniu rozpovsiudzhennia zbroi masovoho znyshchennia: vid 06.12.2019 № 361–IX [Law of Ukraine On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction: dated 06/12/2019 No. 361– IX]. (2019). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text (in Ukrainian).

Віталій Гагач,
кандидат юридичних наук, старший дослідник, докторант Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, hahach_vitalii@ukr.net
ORCID: *orcid.org/0009-0000-7933-0712*

ПРАВОВІ ЗАСАДИ РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ У СФЕРІ ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ, ПОВ'ЯЗАНИХ ІЗ ПІДРОБКОЮ ДОКУМЕНТІВ

Анотація. ***Метою статті*** є аналіз правових основ розслідування кримінальних правопорушень у сфері господарської діяльності, пов'язаних із підробкою документів в умовах переходу до єдиної системи цивільно-правового регулювання; а також розроблення теоретично обґрунтованих пропозицій щодо вдосконалення кримінального, процесуального та спеціального законодавства з метою підвищення ефективності розслідування таких кримінальних правопорушень. ***Результати.*** Стаття присвячена комплексному дослідженню правових засад розслідування кримінальних правопорушень у сфері господарської діяльності, пов'язаних із підробкою документів, у контексті трансформації господарського законодавства України та цифровізації економічних процесів. Актуальність теми зумовлена скасуванням Господарського кодексу України, прийняттям Закону «Про особливості регулювання діяльності юридичних осіб окремих організаційно-правових форм у перехідний період та об'єднань юридичних осіб», а також зростанням частки електронного документообігу, що суттєво змінює характер і способи вчинення кримінальних правопорушень у господарській сфері. У роботі автором визначено коло нормативно-правових актів, що регламентують розслідування зазначеної категорії кримінальних правопорушень. Автором аргументується необхідність їх оновлення та гармонізації з огляду на нові умови функціонування економічних суб'єктів. Особлива увага приділяється аналізу норм Кримінального кодексу України, що визначають матеріально-правові передумови притягнення до відповідальності за підробку документів, та норм Кримінального процесуального кодексу України, які регламентують порядок фіксації, огляду та вилучення документів – зокрема цифрових. Встановлено, що сучасні способи підробки документів дедалі частіше мають цифровий характер, що потребує модернізації кримінального процесуального законодавства. ***Висновки.*** Обґрунтовано доцільність внесення змін до статті 237 КПК України з метою врегулювання порядку огляду, фіксації та вилучення документів, що зберігаються в інформаційно-комунікаційних системах, а також запровадження обов'язкового застосування технологій хешування, електронного підпису та участі спеціаліста. Окремий акцент зроблено на проблемі нормативно-правового забезпечення міжвідомчої взаємодії. На основі аналізу повноважень Бюро економічної безпеки України, Національної поліції, НАБУ, ДБР, СБУ та контролюючих органів встановлено відсутність єдиного нормативно-правового механізму координації дій таких суб'єктів. Доведено необхідність розроблення спільного міжвідомчого наказу, який би регламентував порядок обміну аналітичною, фінансовою та доказовою інформацією, стандартизував процедури виявлення й документування правопорушень та забезпечив узгодженість правоохоронної діяльності.

Ключові слова: кримінальні правопорушення, господарська діяльність, підробка документів, економічна безпека, кримінальне провадження, доказування, правове регулювання, фінансовий моніторинг.

UDC 342.98
DOI https://doi.org/10.32849/2663-5313/2024.4.11

Oleh Hryhorov
Applicant, Scientific Institute of Public Law, 2a Heorhii Kirpa Street, Kyiv, 03055
olehhryhorov@ukr.net
ORCID: *orcid.org/0009-0008-4550-5858*

TYPICAL INVESTIGATIVE SITUATIONS OF THE INITIAL STAGE OF INVESTIGATING CRIMES COMMITTED BY INTERNALLY DISPLACED PERSONS

Abstract. ***Purpose.*** The purpose of this article is to identify the typical investigative situations at the initial stage of investigating crimes committed by internally displaced persons. ***Results.*** The article examines the typical investigative situations characteristic of the initial stage of criminal investigation involving crimes committed by internally displaced persons. The author concludes that, in the context of detecting and investigating crimes committed by internally displaced persons, particular significance should be attributed to typical investigative situations and to action algorithms for the initial stage of investigation, since the timely identification of offenders and their apprehension based on collected evidence most frequently occurs at this stage. ***Conclusions.*** A generalization of different approaches to defining typical investigative situations for the identified groups of crimes, as well as the results of studying criminal case materials, makes it possible to unify the typical investigative situations most characteristic of the priority stage of investigating crimes committed by internally displaced persons, namely: 1. A crime has been detected, but the person (internally displaced person) who committed it has not been identified. 2. A crime has been detected, information has been established regarding the internally displaced person who committed it/them, but the person has not been apprehended: a crime has been detected; it has been established that the internally displaced person who committed it/them remains within the territory of Ukraine; a crime has been detected; it has been established that the internally displaced person who committed it/them has left for another state; a crime has been detected; it has been established that the internally displaced person who committed it/them has left for a territory not controlled by the state authorities of Ukraine and/or for the territory of the aggressor state; a crime has been detected; it has been established that the internally displaced person who committed it/them is a servicemember of the Armed Forces of Ukraine, the National Guard of Ukraine, or other defence forces. 3. A crime has been detected, the internally displaced person who committed it/them has been apprehended, and sources of evidentiary information are available. 4. A crime has been detected, the internally displaced person who committed it/them has been apprehended, but sources of evidentiary information are insufficient and/or absent.

Key words: algorithm, variability, apprehension, unidentified person, suspicion.

1. Introduction

The scope and content of the initial information detected at the early stage of investigation regarding a criminal offense ultimately determine the operative–investigative situation, which, on the one hand, necessitates a non-template approach to conducting procedural actions and organizational measures, and, on the other hand, necessitates the application of investigative (search) actions, covert investigative (search) actions, and operational measures in a particular sequence and coordination to ensure maximum efficiency (Klimov, 2024).

This method of organizing a criminal investigation is usually referred to as *planning*. In criminal proceedings, an investigation plan must be thoroughly considered. The investigative (search) actions planned must reflect the investigator's tactical concept and the internal logic of the investigation. At the initial stage of investigation, a distinction is made between *planning* and *subsequent planning* (Orlov, 2005).

On the one hand, the existence of plans and planning provides a number of advantages; on the other hand, it requires additional human resources and time–resources that cannot be lost during the priority stage of conducting urgent procedural actions and operational measures. Such situations require pre-developed variations of actions, determined by the dynamic development of events, changes in the situation at the scene, etc. These varia-

tions of actions in criminalistics and other criminal-law sciences are referred to as *algorithms*. At the same time, there is no single universal algorithm (sequence of actions) for the investigator, even in the investigation of typical crimes of the same type.

The variability of the investigator's actions largely depends on situations that arise due to unpredictable circumstances at certain stages of the investigation. However, the unpredictable nature of these circumstances does not preclude the possibility of anticipating the situations themselves or identifying patterns of their emergence and typology.

This underscores the importance and necessity of studying the typical investigative situations of the initial stage of investigating crimes committed by internally displaced persons (hereinafter – IDPs).

A wide range of works by domestic scholars is devoted to the general theoretical foundations of investigative situations as a whole, including those by V.P. Bakhin, S.V. Velikanov, A.F. Volobuiev, V.A. Zhuravel, A.V. Ishchenko, O.N. Kolesnichenko, V.O. Konovalova, V.S. Kuzmichov, V.P. Korzh, H.A. Matusovskyi, M.V. Saltevskyi, R.L. Stepaniuk, S.S. Cherniavskyi, K.O. Chaplynskyi, V.Yu. Shepitko, among others.

At the same time, modern research does not address the specificity of typical investigative situations at the initial stage of investigating crimes committed by IDPs, nor the algorithms of actions for resolving them.

The purpose of this article is to determine the typical investigative situations at the initial stage of investigating crimes committed by IDPs.

2. Foundations for Studying Typical Investigative Situations

Knowledge of typical investigative situations makes it possible not only to anticipate their emergence under corresponding conditions as regular occurrences, but also to select appropriate means, techniques, and methods for investigating crimes (Veselskyi, 2011).

In this regard, scholars emphasize the importance of studying the typical investigative situations of both the initial and subsequent stages of investigation. The existence of a typical investigative situation ensures a clear structuring of specific forensic methodologies in close connection with the concept of an investigative stage (Volobuiev, 2000).

At the same time, despite the fact that in Ukraine the doctrine of typical investigative situations began to develop at the level of theoretical concepts as early as the 1970s, there is still no unified position regarding the classification and content of typical investigative situations.

It should be noted that scholars interpret this category differently, and some even in two dimensions simultaneously.

Thus, S.V. Velikanov defines this category as a set of conditions formed at a particular stage– namely, the circumstances, state, and environment–of an investigation, perceived, evaluated, and used by the investigator to solve tactical tasks and achieve general (strategic) investigative objectives (Velikanov, 2002).

A.P. Sheremet defines the investigative situation as, on the one hand, an objective reality (material and ideal sources), and on the other hand, an objective reality that has been cognized by the subject of proof and exists at that specific moment (Sheremet, 2009).

M.M. Shulha, V.M. Plakhotina, and O.V. Balaniuk understand this category as the sum of information significant for the investigation that is available to the investigator at a certain stage of the investigation (Shulha, Plakhotina, Balaniuk, 2013).

A somewhat different viewpoint is held by M.V. Saltevskyi, who defines an investigative situation as a set of circumstances of a specific criminal event actualized by the investigator, inquiry officer, prosecutor, or court involved in its detection, investigation, and prevention, or as a set of potential information about the crime that has been actualized by the subject of the criminal process and is reflected and preserved in the material environment (Saltevskyi, 2001).

O.F. Kobzar, M.L. Komissarov, N.O. Komissarova, O.V. Tkachenko, and O.M. Voluiko understand a typical investigative situation as a set of data on the criminal event and the circumstances of its investigation at a specific stage, which influences the selection, sequence, and tactics of investigative (search) actions and operational-search measures (Kobzar, Komissarov, Komissarova, Tkachenko, Voluiko, 2023).

We support those scholars who define an investigative situation as an imagined dynamic model that reflects the informational-logical, tactical-psychological, tactical-managerial, and organizational states that have developed in a criminal case and that characterize a favorable (or unfavorable) course of the investigative process (Shepitko, 1998).

Moving on to the types of typical investigative situations, it should be emphasized that the groups of crimes identified by us–

1. acquisitive (thefts, fraud, unlawful seizure of vehicles);

2. ideological (high treason, collaboration, evasion of conscription for military service);

3. violent (intentional grievous or moderate bodily injuries);

4. situational (violations of traffic safety rules or operation of transport by persons driving vehicles) – have already been studied from the perspective of situational analysis.

At the same time, the issue of typical investigative situations in crimes committed by internally displaced persons, as well as the corresponding algorithms of investigators' actions when the offenders are IDPs, has not yet been addressed in scientific literature, which is undeniably a shortcoming from an academic standpoint.

Given the subject of our research, it is appropriate to present several variations of typical investigative situations at the initial stage of investigation that have been defined by scholars with regard to the examined groups of crimes.

1. Acquisitive crimes (thefts, fraud, unlawful seizure of vehicles)

For example, M.I. Skryhoniuk identifies the following typical investigative situations in theft cases:

1. The first situation arises when information about the theft and the identity of the perpetrator is available, and the offender has been apprehended at the crime scene or immediately after its commission.

2. The second situation arises when the identity of the offender has been established, but the person has disappeared and is hiding from the investigation.

3. The third situation arises when no information about the identity of the person who committed the theft is available (Skryhoniuk, 2005).

A.S. Kuzmenko identifies a system of typical investigative situations at the *subsequent* stage of investigating thefts committed by previously convicted persons, specifically:

a) the offender has been notified of suspicion, provides truthful testimony, and the material evidence is sufficient for drafting an indictment;

b) the offender has been notified of suspicion, provides false testimony, and the material evidence is sufficient for drafting an indictment;

c) the offender has been notified of suspicion, provides false testimony, but the material evidence is insufficient for drafting an indictment;

d) the offender has been notified of suspicion, refuses to testify, and the material evidence is sufficient for drafting an indictment;

e) the offender has been notified of suspicion, refuses to testify, and the material evidence is insufficient for drafting an indictment (Kuzmenko, 2018).

2. Ideological Crimes (high treason, collaboration, evasion of conscription for military service)

In examining the investigation of criminal offenses related to collaboration, A.V. Kovalenko identifies the following typical investigative situations:

1. **First situation:** the investigated act of collaboration was committed in territory controlled by the Ukrainian government;

2. **Second situation:** the acts were committed in temporarily occupied territories that, at the time of the pre-trial investigation, had already been de-occupied;

3. **Third situation:** the investigated acts were committed (1) in temporarily occupied territories that, at the time of investigation, remain beyond the control of the Government of Ukraine, or (2) outside the territory of Ukraine (Kovalenko, 2024).

According to the author, these situations should further be divided into **sub-situations** based on an internal informational criterion–specifically, depending on the available possibilities to obtain information about the offender and from the offender. In particular, he proposes distinguishing sub-situations in which the person who committed the collaborative activity, at the time of the pre-trial investigation, is located in territory controlled by the Government of Ukraine, and sub-situations in which such a person, at the same moment, is located in temporarily occupied territories or outside Ukraine (Pysmenskyi, Holovkin, Kovalenko, Kovalenko, 2024).

A more substantiated approach is proposed by O.L. Khrystov, who notes that the detection of such criminal offenses occurs both in occupied and in de-occupied territories. Simultaneously with identifying these facts, measures are undertaken to establish the whereabouts of offenders. Their location may be as follows:

– the individuals are located in the occupied territory where the criminal offense is being committed;

– the individuals are located in de-occupied territory;

– the individuals have left for the territory of the Russian Federation or the Republic of Belarus;

– the individuals have left for the territory of "third" states (Khrystov, 2024).

A similar approach is applied by A.V. Kovalenko, who distinguishes the following sub-situations:

– **Situation 1.1.** The person committed collaboration and is located in territory controlled by the Government of Ukraine (36%).

– **Situation 1.2.** The person committed collaboration in territory controlled by the Government of Ukraine but left it before the start of the pre-trial investigation (0%).

– **Situation 2.1.** The person committed collaboration and is located in de-occupied territory (46%).

– **Situation 2.2.** The person committed collaboration in temporarily occupied territory, left it before de-occupation, and at the time of the investigation is located outside the territory controlled by the Government of Ukraine (1.6%).

– **Situation 3.1.** The person committed collaboration in temporarily occupied territory or abroad and, at the time of the pre-trial investigation, returned to territory controlled by the Government of Ukraine (4%).

– **Situation 3.2.** The person committed collaboration in temporarily occupied territory or abroad and, at the time of the pre-trial investigation, remains outside the territory controlled by the Government of Ukraine (12.4%) (Kovalenko, 2024).

3. Violent Crimes (intentional grievous and moderate bodily injuries)

M.I. Panov, V.Yu. Shepitko, and V.O. Konovalova note that, in the investigation of bodily injuries, the investigative situations at the initial stage are characterized by the conditions under which information about the crime is received:

– **Situation I:** Information is received regarding bodily injuries inflicted upon a victim who has been brought to a medical facility.

– **Situation II:** The fact of bodily injury is known; information is available regarding the nature of the incident and the alleged offender (Panov, Shepitko, Konovalova, 2007).

3. Typical Investigative Situations at the Initial Stage of Crime Investigation

The analysis of criminal cases involving bodily injuries and existing investigation methodologies has enabled I.A. Strok to identify the following general situations at the initial stage:

1. **The investigator possesses sufficient information about the victim and the offender, and there are eyewitnesses.**

2. **Bodily injuries were inflicted in the presence of witnesses, but neither the victim nor the witnesses have information about the offender.**

3. **Serious bodily injuries were inflicted without witnesses.**

Each of these situations determines a specific direction for further investigation and requires the proper organization and planning of actions by investigators and operational officers (Panov, Shepitko, Konovalova, 2007).

4. Situational Crimes (Violations of Road Traffic Safety Rules or Transport Operation by Drivers)

Every traffic accident is inherently individual. At the same time, certain regularities operate within the mechanism of their occurrence. The situational theory states that each traffic accident results from a set of accidental circumstances that give rise to a particular incident and influence the degree of its social danger. Indeed, the analysis of any accident reveals a chain of accidental events that were previously unrelated but, due to a certain combination of circumstances, led to harm to life, health, or property of road users (Iunin, Shevchenko, Babanin, Toloshna, 2022).

Initial information about the facts of traffic accidents is received from the patrol police, medical institutions, drivers, or individual citizens. Depending on the clarity or obscurity of the traffic accident, the harmful consequences, the timeliness of detection, the nature of crime traces, and the actions aimed at concealing or destroying the consequences of the accident, as well as the characteristics of the offender, the following **typical investigative situations** at the initial stage are distinguished:

1. **The vehicle and the driver remain at the scene, and there are witnesses** (a favourable investigative situation);

2. **The material consequences of the accident have been established, but there are no witnesses, and the driver has:**

3. **a) fled the scene in the vehicle used to commit the accident;**

4. **b) fled the scene but left the vehicle behind;**

5. **c) taken measures to destroy traces at the scene (removed, concealed, or destroyed the victim's body) or subsequently filed a report alleging that the vehicle had been stolen prior to the accident** (an unfavourable investigative situation) (Lukianchykov, Lukianchykov, Petriaiev, 2017).

In the context of this study, particular attention should be paid to the conclusions drawn by V.M. Shevchuk, who notes that the classification of investigative situations should be carried out based on situational modelling, the essence of which lies in the consolidation of a large number of specific situations that are similar in some essential respect into one or several generalized situations. For these generalized situations, optimal programmes for decision-making and practical actions are developed (Shevchuk, 2014).

Given the above, it is hardly possible to compile an exhaustive list of all components constituting an investigative situation. Therefore, it is advisable to identify only certain groups of such components. This approach simplifies the analysis of the content of a situation while allowing practitioners to consider all significant elements of the investigative situation and determine possibilities for their optimal use in solving investigative tasks (Shevchuk, 2014).

At the initial stage of the investigation, it is also necessary to consider the complexity

and duration of conducting non-traditional types of forensic examinations (phototechnical, video-phonoscopy, examinations of materials, substances and products such as petroleum products, fuels and lubricants, paint and varnish materials, etc.). The need for these examinations may arise when traces of a criminal offence and physical evidence are detected and seized. Therefore, primary forensic examinations should be appointed, depending on the situation, as promptly as possible at the initial stage of the investigation (Klimov, 2024).

Consequently, the systematization of typical investigative situations at the initial stage of investigating crimes committed by IDPs should be based on situational modelling, which implies combining or generalising several situations that are repeatable in essential respects and arise as a result of pre-crime, crime, or post-crime actions of IDPs.

A generalization of various approaches to defining typical investigative situations of the groups of crimes identified by us, as well as the results of the analysis of criminal proceedings, makes it possible to **unify the typical investigative situations most characteristic of the initial stage of investigating crimes committed by IDPs**, including:

1. **The crime has been detected, but the IDP who committed it has not been identified (36%).**

2. **The crime has been detected, information about the IDP offender has been established, but the offender has not been apprehended (17%):**

2.1. The IDP offender remains within the territory of Ukraine (7%).

2.2. The IDP offender has left for another state (3%).

2.3. The IDP offender has left for a territory not controlled by the Ukrainian government and/or for the territory of the aggressor state (3%).

2.4. The IDP offender is a servicemember of the Armed Forces of Ukraine, the National Guard of Ukraine, or other Defence Forces (4%).

3. **The crime has been detected, the IDP offender has been apprehended, and sources of evidence are available (24%).**

4. **The crime has been detected, the IDP offender has been apprehended, but sources of evidence are insufficient or absent (23%).**

In the context of the detection and investigation of crimes committed by IDPs, **typical investigative situations and action algorithms at the initial stage** are of particular importance, since the prompt identification and apprehension of offenders based on collected evidence occurs in most cases precisely at this stage.

4. Conclusions

In the context of detecting and investigating crimes committed by internally displaced persons (IDPs), particular importance is attached to the typical investigative situations and action algorithms characteristic of the initial stage of the investigation, since the prompt identification of offenders and their apprehension based on the collected evidence occurs, in most cases, precisely at this stage.

A generalization of different approaches to identifying typical investigative situations within the selected groups of crimes, as well as the results of examining criminal case materials, makes it possible to unify the typical investigative situations most characteristic of the initial stage of investigating crimes committed by IDPs, namely:

1. **A crime has been detected, but the IDP offender has not been identified.**

2. **A crime has been detected, information about the IDP offender has been established, but the offender has not been apprehended:**

3. 2.1. A crime has been detected and it has been established that the IDP offender remains within the territory of Ukraine.

4. 2.2. A crime has been detected and it has been established that the IDP offender has left for another state.

5. 2.3. A crime has been detected and it has been established that the IDP offender has left for a territory not controlled by the Ukrainian authorities and/or for the territory of the aggressor state.

6. 2.4. A crime has been detected and it has been established that the IDP offender is a servicemember of the Armed Forces of Ukraine, the National Guard of Ukraine, or other Defence Forces.

7. **A crime has been detected, the IDP offender has been apprehended, and sources of evidence are available.**

8. **A crime has been detected, the IDP offender has been apprehended, but sources of evidence are insufficient or absent.**

References

Iunin, O.S., Shevchenko, S.I., Babanin, S.V., Toloshna, N.V. (2022). *Porushennia pravyl bezpeky dorozhnoho rukhu abo ekspluatatsii transportu osobamy, yaki keruiut transportnymy zasobamy (determinanty ta kryminalno-pravovi zakhody zapobihannia): metodychni rekomendatsii* [Violation of road safety rules or transport operation by persons driving vehicles (determinants and criminal law prevention measures): methodological recommendations]. Dnipro: DDUVS (in Ukrainian).

Khrystov, O.L. (2024). *Osoblyvosti vykorystannia hromadskosti pidrozdilamy kryminalnoi politsii pid chas vyiavlennia ta dokumentuvannia kryminal-*

nykh pravoporushen, peredbachenykh st. 111–1 KK Ukrainy [Peculiarities of using the public by criminal police units during the detection and documentation of criminal offenses provided for in Art. 111–1 of the Criminal Code of Ukraine]. *Zakonodavchi aspekty protydii osoblyvo nebezpechnym zlochynam v Ukraini*, № 1, 279–282 (in Ukrainian).

Klimov, B.V. (2024). *Rozsliduvannia khulihanstva, vchynenoho futbolnymy vbolivalnykamy* [Investigation of hooliganism committed by football fans]. Candidate's thesis. Zaporizhzhia: Zaporizk. nats. un-t (in Ukrainian).

Kobzar, O.F., Komissarov, M.L., Komissarova, N.O., Tkachenko, O.V., Voluiko, O.M. (2023). *Kryminalistyka* [Forensic science]. Kyiv: IVTs NHU (in Ukrainian).

Kovalenko, A.V. (2024). *Typovi slidchi sytuatsii pochatkovoho etapu rozsliduvannia kolaboratsiinoi diialnosti (za materialamy sudovo-slidchoi praktyky)* [Typical investigative situations of the initial stage of investigation of collaboration activities (based on forensic and investigative practice)]. *Visnyk LNNI im. E.O. Didorenka*, № 1, 279–296 (in Ukrainian).

Kuzmenko, A.S. (2018). *Rozsliduvannia kvartyrnykh kradizhok, uchynenykh ranishe zasudzhenymy* [Investigation of apartment thefts committed by previously convicted persons]. Candidate's thesis. Dnipro (in Ukrainian).

Luk'ianchykov, B.Ie., Luk'ianchykov, Ye.D., Petriaiev, S.Iu. (2017). *Kryminalistyka* [Forensic science]. Kyiv (in Ukrainian).

Orlov, Yu.Iu. (2005). *Poniattia ta elementy orhanizatsii operatyvno-rozshukovoi diialnosti* [Concept and elements of the organization of operational and investigative activities]. *Naukovyi visnyk Kyivskoho natsionalnoho universytetu vnutrishnikh sprav*, № 5, 264–271 (in Ukrainian).

Panov, M.I., Shepitko, V.Iu., Konovalova, V.O. (2007). *Nastilna knyha slidchoho* [Investigator's desk book]. Kyiv: Vyd. Dim «In Yure» (in Ukrainian).

Pysmenskyi, Ye.O., Holovkin, S.V., Kovalenko, A.V., Kovalenko, V.V. (2024). *Rozsliduvannia kolaboratsiinoi diialnosti*[Investigation of collaboration activities]. Kyiv: VD Dakor (in Ukrainian).

Saltevskyi, M.V. (2001). *Kryminalistyka: pidruchnyk* [Forensic science: textbook]. Kharkiv: Konsum (in Ukrainian).

Shepitko, V.Iu. (1998). *Kryminalistyka. Kryminalistychna taktyka i metodyka rozsliduvannia zlochyniv: pidruchnyk*[Forensic science. Forensic tactics and methods of investigating crimes: textbook]. Kharkiv: Pravo (in Ukrainian).

Sheremet, A.P. (2009). *Kryminalistyka* [Forensic science]. Kyiv: Tsentr uchbovoi literatury (in Ukrainian).

Shevchuk, V.M. (2014). *Slidcha sytuatsiia: poniattia, struktura, vydy ta yikh znachennia dlia optymizatsii rozsliduvannia zlochyniv* [Investigative situation: concept, structure, types and their significance for optimizing the investigation of crimes]. *Yurydychnyi naukovyi elektronyi zhurnal*, № 1, 146–150 (in Ukrainian).

Shulha, M.M., Plakhotina, V.M., Balaniuk, O.V. (2013). *Kryminalistyka* [Forensic science]. Odesa: Feniks (in Ukrainian).

Skryhoniuk, M.I. (2005). *Kryminalistyka: pidruchnyk* [Forensic science: textbook]. Kyiv: Atika (in Ukrainian).

Velikanov, S.V. (2002). *Klasyfikatsiia slidchykh sytuatsii v kryminalistychnii metodytsi* [Classification of investigative situations in forensic methodology]. Abstract of Candidate's thesis (PhD in Law). Kharkiv: Natsionalna yurydychna akademiia Ukrainy im. Yaroslava Mudroho (in Ukrainian).

Veselskyi, V.K. (2011). *Slidcha sytuatsiia yak katehoriia kryminalistychnoi taktyky* [Investigative situation as a category of forensic tactics]. *Borotba z orhanizovanoiu zlochynnistiu i koruptsiieiu (teoriia i praktyka)*, № 25–26, 193–199 (in Ukrainian).

Volobuiev, A.F. (2000). *Problemy metodyky rozsliduvannia rozkradannia maina u sferi pidpryiemnytstva: monohrafiia*[Problems of the methodology of investigating property theft in the business sector: monograph]. Kharkiv: KhNUVS (in Ukrainian).

Олег Григоров,
здобувач Науково-дослідного інституту публічного права
вул. Г. Кірпи, 2 а, Київ, Україна, 03055, olehhryhorov@ukr.net
ORCID: *orcid.org/0009-0008-4550-5858*

ТИПОВІ СЛІДЧІ СИТУАЦІЇ ПОЧАТКОВОГО ЕТАПУ РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, ЩО ВЧИНЯЮТЬСЯ ВНУТРІШНЬО-ПЕРЕМІЩЕНИМИ ОСОБАМИ

Анотація. ***Метою статті*** є визначення типових слідчих ситуацій початкового етапу розслідування злочинів, що вчиняються внутрішньо переміщеними особами. ***Результати.*** У статті досліджено типові слідчі ситуації початкового етапу розслідування злочинів, що вчиняються внутрішньо переміщеними особами. Автор дійшов висновків, що у контексті розкриття та розслідування злочинів, вчинених внутрішньо переміщених осіб, особливого значення відіграють саме типові слідчі ситуації та алгоритми дій початкового етапу розслідування, оскільки швидке встановлення злочинців та їх затримання на підставі зібраних доказів у більшості випадків відбувається саме на цьому етапі. ***Висновки.*** Узагальнення різних підходів до визначення типових слідчих ситуацій виокремлених нами груп злочинів, а також результати вивчення матеріалів кримінальних проваджень

дозволяють уніфікувати типові слідчі ситуації, які є найбільш характерними на першочерговому етапі розслідування злочинів внутрішньо переміщених осіб, зокрема: 1. Виявлено злочин, а особу (внутрішньо переміщену особу), що його вчинила не встановлено. 2. Виявлено злочин, встановлено відомості про внутрішньо переміщену особу, яка його вчинила (-ли), але останнього не затримано: виявлено злочин, встановлено, що внутрішньо переміщена особа, яка його вчинила (-ли), перебуває на території України; виявлено злочин, встановлено, що внутрішньо переміщена особа, яка його вчинила (-ли), виїхав (-ли)до іншої держави; виявлено злочин, встановлено, що внутрішньо переміщена особа, яка його вчинила (-ли), виїхав (-ли) на непідконтрольну органам державної влади України територію та/або на територію держави-агресора; виявлено злочин, встановлено, що внутрішньо переміщена особа, яка його вчинила (-ли), є військовослужбовцем Збройних сил України, Національної гвардії України або інших сил оборони. 3. Виявлено злочин, затримано внутрішньо переміщену особу, яка його вчинила (-ли), наявні джерела доказової інформації. 4. Виявлено злочин, затримано внутрішньо переміщену особу, яка його вчинила (-ли), джерел доказової інформації недостатньо та/або вони відсутні.

Ключові слова: алгоритм, варіативність, затримання, невстановлена особа, підозра.

UDC 343.98
DOI https://doi.org/10.32849/2663-5313/2024.4.12

Vitaliy Drozd
PhD in Law, Research Fellow, Research Laboratory on the Prevention of Criminal Offences, Faculty No. 3, Donetsk State University of Internal Affairs, Velyka Perspektivna Street, 1, Kropyvnytskyi, Ukraine, 25000, drozd_vitaliy@ukr.net
ORCID: *orcid.org/0000-0002-3872-8879*

TACTICS OF INTERROGATING A WHISTLEBLOWER DURING THE INVESTIGATION OF CORRUPTION-RELATED CRIMINAL OFFENCES COMMITTED BY LAW ENFORCEMENT OFFICERS

Abstract. ***Purpose.*** The purpose of the article is to develop tactics for interrogating a whistleblower during the investigation of corruption-related criminal offences committed by law enforcement officers. ***Results.*** The article examines procedural and forensic aspects of obtaining information from a complainant and a whistleblower in criminal proceedings concerning corruption-related criminal offences committed by law enforcement officers. The starting point is an understanding of interrogation as an information-psychological communication process regulated by criminal procedural law, aimed at obtaining information relevant to establishing the circumstances of the event. It is demonstrated that the current Criminal Procedure Code of Ukraine grants evidentiary value only to the testimony of a suspect, accused, witness, victim, and expert, whereas the information provided by a complainant and a whistleblower is legally classified as explanations, which do not have evidentiary significance. Based on an analysis of legislation, criminal case materials, and questionnaire results, it is substantiated that the whistleblower's information at the initial stage of the investigation shapes the investigative situation, determines the directions of verification, outlines the circle of involved persons, and identifies sources of additional evidence. The article reveals substantive categories of information that should be clarified during the whistleblower's interrogation (the nature of relations with the law enforcement officer, communication methods, circumstances of extortion or receipt of undue advantage, the role of intermediaries, and motivation for reporting), as well as their significance for planning further investigative and covert investigative (search) actions. ***Conclusions.*** It is proposed to conceptually revise the procedural status of a whistleblower and include this category of persons among those whose testimony may be used as evidence by amending Article 95 of the Criminal Procedure Code of Ukraine. The necessity of establishing a special procedure for whistleblower interrogation in Article 224 of the CPC of Ukraine is substantiated, taking into account guarantees of confidentiality, safety, and special protection mechanisms provided by anti-corruption legislation, including the possibility of applying technical means of anonymization. It is concluded that integrating whistleblower information into the evidentiary system of criminal proceedings is essential for improving the effectiveness of investigating corruption-related criminal offences and ensuring the protection of the whistleblower's legal status.

Key words: interrogation, whistleblower, complainant, testimony, explanations, corruption-related criminal offence.

1. Introduction

Despite the importance of interrogation as one of the principal investigative (search) actions, criminal procedural legislation does not take into account the specific role of a whistleblower in corruption-related criminal offences, particularly his or her significance as the holder of primary information about the preparation, mechanism, and circumstances of the commission of a corruption-related criminal offence.

The Criminal Procedure Code of Ukraine does not classify a whistleblower as a subject whose testimony may constitute evidence, which leads to a contradiction between the procedural status of the complainant and the actual significance of the information he or she provides.

As a result, the whistleblower's information–although it may be decisive for formulating investigative versions, constructing investigative situations, and obtaining evidentiary information–remains outside the system of admissible evidence, while the whistleblower remains outside the scope of procedural guarantees. The absence of clear procedural regulation of whistleblower interrogation creates a gap that negatively affects the effectiveness of investigating corruption-related offences, including those committed by law enforcement officers.

Issues of interrogation tactics have been addressed in the works of forensic scholars such as V.K. Veselskyi, V.O. Konovalova, Yu.M. Chornous, V.Yu. Shepitko, L.D. Udalova, among others. Certain aspects of the legal status of whistleblowers in criminal proceedings have been explored by O.S. Bondarenko, K.L. Buhaichuk, I.V. Hlovyuk, V.V. Karelin, V.V. Komashko, S.O. Kravchenko, O.P. Kuchynska, V.V. Lutsyk, V.V. Mykhailenko, O.A. Morhunov, I.S. Oheruk, N.O. Pribitkova, K.R. Rezvorovych, A.A. Strashok, V.M. Trepak, A.B. Fodchuk, Yu.V. Tsyhaniuk.

However, the procedural possibility of interrogating a whistleblower in the investigation of corruption-related criminal offences committed by law enforcement officers, as well as the tactics of conducting such interrogation, have not been covered in the academic literature.

The purpose of the article is to develop tactics for interrogating a whistleblower during the investigation of corruption-related criminal offences committed by law enforcement officers.

2. General Principles for Ensuring the Conduct of Interrogation

Obtaining information stored in the memory of a person who is related to the circumstances of the investigated event is impossible without communication with that person, which is carried out in the form of an interrogation (Veselskyi, 1999). Interrogation is an investigative (search) action whose content is the receipt of testimony from a person possessing information relevant to the investigated criminal offense (Piaskovskyi, Chornous, Ishchenko, 2015). It is a procedural action constituting an information-psychological communication process between the participants, regulated by criminal procedural norms, and aimed at obtaining information about facts known to the interrogated person that are relevant to establishing the truth in the case (Shepitko, 2004). According to L.D. Udalova, interrogation is a verbal action whose purpose is the transmission and receipt of information about ideal reflections, that is, mental images, whose bearer is a specific individual with whom the investigator interacts (Udalova, 2007).

According to the theoretical concept, interrogation as a complex cognitive action includes provisions grouped into the following blocks:

1. psychological;
2. legal and moral;
3. tactical;
4. organizational and technical (Veselskyi, 2012).

If we consider the tactical dimension of interrogation, it encompasses such aspects as the subject matter, interrogation tactics (organizational-tactical aspect), and interpersonal interaction (psychological aspect), each of which also depends on the procedural status of the interrogated person.

Interrogation is defined as the most significant and irreplaceable investigative (search) action, since by obtaining testimony during interrogation the investigator collects and accumulates ideal traces. Therefore, the issue of optimizing the conduct of interrogation, particularly in the context of improving its psychological foundations and preparation, is extremely important (Chornous, Vlasenko, 2022).

The Criminal Procedure Code of Ukraine specifies a clear list of participants in criminal proceedings whose testimony during interrogation constitutes evidence: the suspect, the accused, the witness, the victim, and the expert (Art. 95 CPC of Ukraine).

At the same time, procedural legislation also defines the status of an applicant–an individual who has submitted a statement or report about a criminal offense to a public authority authorized to initiate a pre-trial investigation and who is not a victim (Art. 60 CPC of Ukraine).

Undoubtedly, the role of this participant is important, since the submitted report of a crime is the basis for entering information into the Unified Register of Pre-Trial Investigations and for the emergence of criminal procedural legal relations. The applicant has a certain connection to the circumstances of the case, which may vary: the person may have committed the crime they report, may have witnessed the unlawful act, or may have suffered from it. Identifying this connection enables the investigator to properly determine the subsequent status of this individual, since the applicant is a temporary participant in legal relations: in any case, the person who reported the crime will eventually become either a witness, a victim (or a representative of a minor victim), or acquire another procedural status (Halahan, Kalachova, 2012).

At the same time, the testimony obtained during the interrogation of an applicant has orienting significance for determining the strategy of investigation. Although such testimony does not have evidentiary value, it may contain important information about the circumstances of the preparation or commission of a corruption-related criminal offense by a law enforcement officer. Accordingly, the interrogation of such a person (the applicant) should be detailed, as this allows the assessment and verification of the information received.

The analysis of criminal case materials shows that witnesses and suspects were interrogated most often. However, when considering the obtaining of testimony and explanations, it is impossible to overlook the receipt of information from a whistleblower.

The CPC of Ukraine provides that a whistleblower is a natural person who, upon having a reasonable belief that the information is reliable, submitted a statement or report of a corruption-related criminal offense to the pre-trial investigation authority (paragraph 16-2 of Part One of Article 3 of the CPC of Ukraine) (Criminal Procedure Code of Ukraine, 2012). The Law of Ukraine "On Prevention of Corruption" defines a whistleblower as a natural person who, upon having a reasonable belief that the information is reliable, reported possible facts of corruption or corruption-related offenses, or other violations of this Law committed by another person, if such information became known to them in connection with their employment, professional, economic, public, or scientific activity, their service or studies, or their participation in legally required procedures that are mandatory for the commencement of such activity, service, or studies (paragraph 20 of Part One of Article 1 of the Law) (Law of Ukraine "Prevention of Corruption", 2014).

3. Specific Features of the Procedural Status of a Whistleblower

Under its procedural status, a whistleblower is considered an applicant (para. 25 part 1 Art. 3 CPC, part 3 Art. 60 CPC), but with a broader scope of procedural rights, namely: the right to a reward for disclosure; guarantees of protection from negative measures of influence (dismissal, demotion, persecution, etc.), including labour and procedural guarantees; confidentiality of the report and the possibility of preserving the secrecy of personal data; the right to free legal aid within the mechanisms of whistleblower protection; compensation for expenses related to protection; a clearly fixed and short time frame for receiving notifications regarding key procedural decisions; the possibility to apply security measures and/or workplace protection measures (transfer, leave, change of working conditions) following special procedures established by anti-corruption legislation.

If a whistleblower's report contains information on the commission of a corruption-related criminal offence, but the pre-trial investigation body enters information into the Unified Register of Pre-Trial Investigations under an article of the Criminal Code that does not qualify as corruption-related, the person does not acquire the procedural status of a whistleblower but acquires the status of an applicant (Clarification of the National Agency for the Prevention of Corruption, 2020).

An analysis of Articles 84 and 95 of the CPC of Ukraine shows that information obtained from an applicant does not constitute testimony and therefore cannot serve as evidence in criminal proceedings. A report on the commission of a crime is not evidence in criminal proceedings but constitutes grounds for an appropriate response by the pre-trial investigation bodies, for entering information into the Unified Register of Pre-Trial Investigations based on the facts stated in such a report, and for their verification (Resolution of the Panel of Judges of the First Judicial Chamber of the Supreme Court of Ukraine, 2023).

At the same time, the results of our survey demonstrate that whistleblower information often contains crucial details about the commission of a corruption-related criminal offence. The detailed recording of a whistleblower's explanations in criminal proceedings involving corruption-related offences significantly contributes to establishing the perpetrator's guilt.

The Law of Ukraine "On Prevention of Corruption" (Art. 53-3) provides the whistleblower with the right to give explanations, provide testimony, or refuse to do so (Law of Ukraine Prevention of Corruption, 2014).

However, under the provisions of procedural law, the details reported by a whistleblower concerning preparatory actions for committing a corruption-related criminal offence, the circumstances of the unlawful conduct itself, or the object of the unlawful demand may facilitate obtaining additional evidence and help determine the investigative situation at the initial stage of the investigation. Nevertheless, they will not have evidentiary value in criminal proceedings, as they do not constitute testimony but rather explanations or statements.

When obtaining explanations from a whistleblower during the investigation of corruption-related criminal offences committed by law enforcement officers, depending on the circumstances of the criminal proceedings, it is necessary to establish the following information and circumstances:

– identifying data of the whistleblower and of the law enforcement officer involved in the offence (identity of the whistleblower: personal details, position, contact information; identification of the involved law enforcement officer: full name, position, workplace; information on individuals who facilitated their acquaintance or recommended contacting this person; whether visits to the institution were recorded in relevant registers, documents, or travel records);

– the nature of the relationship between the whistleblower and the implicated law enforcement officer (circumstances of their acquaintance: when, where, under what conditions, who initiated the contact; duration of communication; type of relationship: official, personal, professional, etc.; existence of shared interests, obligations, or joint activities);

– circumstances of the corruption-related criminal offence (specific actions/inactions expected from the law enforcement officer; information about the object of the unlawful demand: its nature and amount; precise address, date, time, and circumstances of the alleged or actual offence);

– intermediaries (if any) (their personal data; how the whistleblower became acquainted with them; whether attempts were made to bypass intermediaries and communicate directly; the role of intermediaries and the nature of their relationships with both the whistleblower and the implicated officer; whether intermediaries were used by the officer);

– the whistleblower's motivation and related circumstances (reasons that prompted the report: personal motives, civic position, conflict of interest; changes in relations after the incident; whether the actions of the official were appealed–when, where, and in what form; whether the whistleblower reported the offence to third parties or other authorities).

The analysis of the circumstances that may be clarified from a whistleblower concerning a corruption-related criminal offence demonstrates that a whistleblower possesses information essential for pre-trial investigation.

Based on legislative analysis, an applicant acquires the status of a whistleblower under the following conditions: (1) a belief that the information reported is truthful; (2) reporting factual data that may confirm a possible corruption-related or other violation of the law; (3) obtaining this information through work, study, service, or participation in legal procedures. If any of these conditions is absent, the person is not considered a whistleblower.

This allows us to conclude that a whistleblower is not merely a person who reports a criminal offence but one who possesses specific information about it.

In practice, whistleblowers are often questioned as witnesses, providing testimony during interrogation. However, in this case, procedural law does not grant them the safety guarantees established by the Law of Ukraine "On Prevention of Corruption" and the Law of Ukraine "On Ensuring the Safety of Persons Participating in Criminal Proceedings".

Therefore, it is advisable to amend Article 95 of the CPC of Ukraine by restating it as follows:

"Testimony means information provided orally or in writing during interrogation by the suspect, accused, witness, victim, expert, and whistleblower regarding the circumstances known to them in a criminal proceeding that are relevant to such proceeding."

Recognising the whistleblower as a holder of information that may constitute testimony, it is advisable to amend Article 224 of the CPC of Ukraine by establishing the procedure for whistleblower interrogation and supplementing Article 224 with new parts as follows:

"… The interrogation of a whistleblower shall be conducted with due regard to the guarantees of confidentiality provided by the relevant Law, as well as with the application (if necessary) of security measures established by the Law of Ukraine 'On Ensuring the Safety of Persons Participating in Criminal Proceedings.' Upon the motion of the whistleblower, the investigator, the prosecutor, or on the initiative of the investigating judge/court, the interrogation may be conducted using technical and organisational means that prevent the whistleblower's identification by other participants in the criminal proceedings, including by: altering (masking) voice timbre, blurring or masking the image, spatial shielding, being located in a separate room, using videoconferencing, limiting the number of persons present, as well as conducting the interrogation in a closed court session as provided by this Code."

4. Conclusions

The generalisation of the conducted research makes it possible to assert that the institution of interrogation in proceedings concerning corruption-related criminal offences committed by law-enforcement officers requires substantial modernisation in light of contemporary forensic challenges and the realities of anti-corruption practice. Interrogation, as a verbal investigative action, remains a key instrument for obtaining information about the preparation, commission, and concealment of a corruption-related criminal offence.

The analysis of legislation, case materials, and empirical survey data confirms that the whistleblower forms the initial investigative situation, determines the directions of evidence collection, outlines key investigative versions, and is often the only source of information about the mechanism of corrupt interaction, the role of intermediaries, and the method of soliciting or transferring an unlawful benefit.

The findings reveal an urgent need to reconsider the procedural status of the whistleblower and to expand the normative model of interrogation. This is proposed to be achieved by recognising the whistleblower as a subject whose testimony may serve as evidence through corresponding amendments to Article 95 of the CPC of Ukraine; by developing a forensic-based procedure for whistleblower interrogation that incorporates necessary guarantees of protection, confidentiality, and safeguards against undue pressure; and by substantiating the intro-

duction of a separate interrogation procedure into Article 224 of the CPC of Ukraine, which would provide for the use of technical means to ensure anonymity and safety, as well as the possibility of conducting interrogation remotely or in a closed session.

Thus, the development of the whistleblower's procedural status, the improvement of interrogation tactics, and the integration of the information obtained into the system of proof constitute essential preconditions for enhancing the effectiveness of anti-corruption criminal proceedings. Such changes align with contemporary European standards for the protection of whistleblowers, strengthen guarantees of internal anti-corruption security, and contribute to forming a qualitatively new model of combating corruption within law-enforcement bodies.

References

Chornous, Yu. M., & Vlasenko, S. O. (2022). *Osoblyvosti taktyky dopytu u protsesi rozsliduvannia nezakonnoho zavolodinnia transportnym zasobom* [Peculiarities of interrogation tactics in the process of investigating illegal seizure of a vehicle]. *Yurydychna psykholohiia*, 1(30), 74–79. (in Ukrainian).

Halahan, V. I., & Kalachova, O. M. (2012). *Vstanovlennia protsesualnoho statusu okremykh osib, yaki berut uchast u dosudovomu provadzhenni: Monohrafiia* [Establishing the procedural status of individuals participating in pre-trial proceedings: Monograph]. Luhansk: SPD Rieznikov V. S. (in Ukrainian).

Kryminalnyi protsesualnyi kodeks Ukrainy: Vid 13.04.2012 № 4651-VI [Criminal Procedure Code of Ukraine: Dated 13.04.2012 No. 4651-VI]. (2012). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/go/4651-17 (in Ukrainian).

Piaskovskyi, V. V., Chornous, Yu. M., & Ishchenko, A. V. (2015). *Kryminalistyka: Pidruchnyk* [Forensic science: Textbook]. Kyiv: Tsentr navchalnoi literatury. (in Ukrainian).

Postanova kolehii suddiv Pershoi sudovoi palaty KKS VS vid 30.05.2023 u spravi № 761/13685/14-k [Resolution of the Panel of Judges of the First Judicial Chamber of the Supreme Court of Ukraine dated 30.05.2023 in case No. 761/13685/14-k]. (2023). *court.gov.ua*. Retrieved from https://reyestr.court.gov.ua/Review/111339388 (in Ukrainian).

Roziasnennia Natsionalnoho ahentstva z pytan zapobihannia koruptsii vid 26.10.2020 № 10 "Shchodo pravovoho statusu vykryvacha u kryminalnomu provadzhenni" [Clarification of the National Agency on Corruption Prevention dated 26.10.2020 No. 10 "Regarding the legal status of a whistleblower in criminal proceedings"]. (2020). *nazk.gov.ua*. Retrieved from https://nazk.gov.ua/uk/documents/roz-yasnennya-vid-26-10-2020-10-shhodo-pravovogo-statusu-vykryvacha-u-kryminalnomu-provadzhenni/ (in Ukrainian).

Shepitko, V. Iu. (2004). *Kryminalistyka: Pidruchnyk* [Forensic science: Textbook]. Kyiv: In Yure. (in Ukrainian).

Udalova, L. D. (2007). *Teoretychni zasady verbalnoi informatsii u kryminalnomu protsesi Ukrainy* [Theoretical foundations of verbal information in the criminal process of Ukraine]. *Doctor's thesis*, Kyiv. (in Ukrainian).

Veselskyi, V. K. (1999). *Suchasni problemy dopytu (protsesualni, orhanizatsiini i taktychni aspekty): Monohrafiia*[Modern problems of interrogation (procedural, organizational and tactical aspects): Monograph]. Kyiv: Pravnyk – NAVSU. (in Ukrainian).

Veselskyi, V. K. (2012). Kontseptualni osnovy taktyky slidchykh dii (slidchyi ohliad, dopyt, pryznachennia i provedennia sudovykh ekspertyz) [Conceptual foundations of investigative tactics (investigative examination, interrogation, appointment and conduct of forensic examinations)]. *Borotba z orhanizovanoiu zlochynnistiu i koruptsiieiu (teoriia i praktyka)*, 2, 151–158. (in Ukrainian).

Zakon Ukrainy "Pro zapobihannia koruptsii": Vid 14.10.2014 № 1700-VII [Law of Ukraine "Prevention of Corruption": Dated 14.10.2014 No. 1700-VII]. (2014). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/go/1700-18 (in Ukrainian).

Віталій Дрозд,
кандидат юридичних наук, науковий співробітник науково-дослідної лабораторії з проблем запобігання кримінальним правопорушенням факультету № 3 Донецького державного університету внутрішніх справ, вул. Велика Перспективна, 1, Кропивницький, Україна, 25000, drozd_vitaliy@ukr.net
ORCID: *orcid.org/0000-0002-3872-8879*

ТАКТИКА ОБШУКУ ПІД ЧАС РОЗСЛІДУВАННЯ КОРУПЦІЙНИХ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ВЧИНЕНИХ ПРАЦІВНИКАМИ ПРАВООХОРОННИХ ОРГАНІВ

Анотація. ***Метою статті*** є комплексне дослідження особливостей процесуальних засад й тактики проведення обшуку під час розслідування корупційних кримінальних правопорушень, учинених працівниками правоохоронних органів. ***Результати.*** У статті комплексно досліджено процесуальні та криміналістичні особливості проведення обшуку під час розслідування корупційних кримінальних правопорушень, учинених працівниками

правоохоронних органів. Відзначено, що обшук є однією з найбільш ефективних слідчих (розшукових) дій, оскільки дозволяє виявляти й фіксувати речові та цифрові докази, які мають ключове значення для встановлення фактичних обставин кримінального правопорушення. Проаналізовано положення КПК України щодо видів обшуку, порядку його проведення та процесуальних гарантій, а також акцентовано увагу на змінах, внесених у 2022 році до ст. 236 КПК України, якими передбачено можливість пошуку та фіксації комп'ютерних даних під час обшуку без окремого судового дозволу. Продемонстровано, що така новела, хоча й сприяє оперативності розслідування, водночас породжує дискусії щодо захисту приватності особи, необхідності додаткових гарантій судового контролю та правомірності втручання у сферу персональних даних. ***Висновки.*** Висвітлено особливості тактики проведення обшуку у кримінальних провадженнях щодо працівників правоохоронних органів, які характеризуються підвищеним рівнем протидії слідству, професійною обізнаністю підозрюваних та високими ризиками знищення цифрової інформації. Окрему увагу приділено питанням роботи з мобільними терміналами систем зв'язку, комп'ютерними системами та іншими цифровими пристроями, які нерідко містять відомості про підготовчі дії, взаємини між співучасниками, геолокацію, листування в месенджерах, метадані та іншу інформацію, що має значення для доказування. Обґрунтовано необхідність удосконалення алгоритму підготовки до обшуку, залучення фахівців цифрової криміналістики, забезпечення раптовості та мінімізації витоку інформації про проведення слідчої (розшукової) дії. Сформульовано пропозиції щодо вдосконалення практики застосування обшуку в умовах цифровізації доказової бази та посилення гарантій дотримання прав особи, у тому числі шляхом запровадження додаткового судового контролю за доступом до цифрових даних.

Ключові слова: обшук; цифрові докази; мобільний термінал; комп'ютерні дані; корупційне кримінальне правопорушення; працівник правоохоронного органу; тактика обшуку; право на приватність.

UDC 343.1
DOI https://doi.org/10.32849/2663-5313/2024.4.13

Viktor Luhovyi
Doctoral Candidate National Academy of Internal Affairs, PhD in Law, 1 Solomianska Square, Kyiv, Ukraine, 03035, LuhovyiViktor@ukr.net
ORCID: *orcid.org/0009-0007-7276-2994*

SCIENTIFIC DISPUTES REGARDING THE CIRCUMSTANCES SUBJECT TO ESTABLISHMENT DURING THE INVESTIGATION OF CRIMES COMMITTED BY TRANSNATIONAL ORGANIZED CRIMINAL GROUPS

Abstract. Purpose. The purpose of the article is to analyse the circumstances that are subject to establishment during the investigation of crimes committed by transnational organized criminal groups. ***Results.*** The scholarly article examines several aspects of investigating crimes perpetrated by transnational organized criminal groups. Based on domestic and foreign academic literature, it analyses the circumstances that must be established during the investigation of this category of unlawful acts. The author emphasizes that the circumstances to be established in the course of investigating criminal offences have long been the subject of research by a number of domestic scholars in the fields of criminalistics and criminal procedure, particularly in the context of developing specific investigative methodologies for various categories of unlawful acts. This is understandable, since the entire process of investigating a given criminal offence is structured with regard to this legal category. In this regard, the investigation of crimes committed by transnational organized criminal groups does not differ from investigations of other unlawful acts. ***Conclusions.*** It is established that the legislator cannot define in a single provision all the circumstances that must be established during the investigation of different categories of unlawful acts. The circumstances formulated by the legislator serve as general guidelines for researchers, who must adapt them according to the subject of their own scientific inquiry. Based on the analysis of criminal proceedings and the positions of scholars, the following key circumstances to be established in the investigation of the studied category of crimes have been identified: the fact of the commission of a crime by transnational organized criminal groups (time and place); the source of information regarding the unlawful acts under investigation; the method of direct commission of crimes by transnational organized criminal groups; the methods of preparation and concealment of the unlawful acts; information on the structure and hierarchy of the transnational organized criminal group; the causes and conditions that facilitated the commission of the crimes; and the existence of corrupt connections within the transnational organized criminal group.

Key words: transnational organized criminal group, crime, circumstances subject to establishment, investigation, investigative (search) actions, investigation planning.

1. Introduction

The circumstances that are subject to establishment during the investigation of criminal offences have long been, and continue to be, the focus of attention for a number of domestic scholars in the fields of criminalistics and criminal procedure, particularly within the development of specific investigative methodologies for various categories of unlawful acts. This is understandable, since the entire process of investigating a particular criminal offence is structured around this legal category. The investigation of crimes committed by transnational organized criminal groups does not, in this respect, differ from the investigation of other unlawful acts. Therefore, the examination of this issue is essential for a comprehensive disclosure of the methodology of investigating crimes committed by transnational organized criminal groups.

Among domestic scholars who have contributed to the development of the set of circumstances subject to establishment during the investigation of criminal offences, the following should be noted: O.A. Antoniuk, V.P. Bakhin, O.A. Banchuk, P.D. Bilenchuk, H.P. Zharovska, M.M. Yefimov, N.S. Karpov, O.L. Kobylianskyi, V.V. Korolchuk, A.V. Kofanov, R.O. Kuibida, V.K. Lysychenko, B.Ye. Lukianchykov, Ye.D. Lukianchykov, S.Yu. Petriaiev, S.M. Stakhivskyi, K.O. Chaplynskyi, Yu.M. Chornous, M.I. Khavroniuk, V.Yu. Shepitko, R.M. Shekhavtsov, among others. At the same time, the present study is

characterized by a comprehensive approach to analysing this category in the context of its transnational nature, as well as with regard to contemporary international practice and current global developments.

The purpose of the article is to analyse the circumstances that are subject to establishment during the investigation of crimes committed by transnational organized criminal groups.

2. The content of the correct criminal law qualification

We consider M.M. Yefimov's observation to be quite accurate. He emphasized the variety of the set of circumstances that must be established during the investigation of different categories of unlawful acts (Yefimov, 2011). S.M. Stakhivskyi further noted that the purpose of criminal procedural proof is the establishment of objective truth, and achieving it is possible only when all facts and circumstances relevant to the proper resolution of a criminal proceeding are established with sufficient completeness and reliability. Consequently, the researcher concluded that the totality of such facts and circumstances constitutes the subject of proof in a criminal case (Stakhivskyi, 2005).

In turn, a separate group of scholars identified the circumstances to be established as the factual basis for the proper criminal-law qualification of a socially dangerous act committed by an individual (or individuals), the targeted exercise of procedural powers by the parties in criminal proceedings in a specific case, the individualization of criminal punishment for the guilty persons, and the compensation of damage caused (Banchuk, Kuibida, Khavroniuk, 2013). For her part, Yu.M. Chornous emphasized that, in criminal proceedings, the activity of establishing circumstances of a specific nature is expressed through: recording the course and results of procedural, investigative (search) actions and covert investigative (search) actions; detecting, documenting, collecting, and examining traces of a crime; maintaining systems of criminal records and forensic registries; involving specialized knowledge in the conduct of procedural, investigative (search), and covert investigative (search) actions; involving experts and conducting forensic examinations, among others (Chornous, 2017). In other words, the authors stressed the importance of identifying circumstances that must be established during investigations of various categories of criminal offenses.

Another group of scholars (B.Ye. Lukianchykov, Ye.D. Lukianchykov, S.Yu. Petriaiev) argued that since the process of committing criminal offenses follows objective patterns, certain similar situations can be observed during the investigation of particular types of unlawful acts. The authors noted that these situations are referred to as typical, which allows the development of sets of typical actions for the authorized person. Moreover, disclosing the tactical characteristics of the most common investigative (search) actions at the level of typical investigative situations–taking into account the multivariance of investigative circumstances–increases the practical value of methodological recommendations. These should reflect not an averaged approach but a solution that is as close as possible to addressing the specific tasks of the investigation (Lukianchykov, Lukianchykov, Petriaiev, 2017). Thus, the researchers analyzed this scientific category through the prism of solving specific tasks of criminal proceedings.

For his part, V.Yu. Shepitko distinguished among the circumstances requiring establishment the following: spatial and temporal connections between individual traces of the unlawful act and the circumstances of the event; identification and situational properties of the traces and their evidentiary value; reasons for the absence or presence of traces as facts that contradict the natural course of similar events (negative circumstances) (Shepitko, 2011). In other words, the researcher identified only certain groups of circumstances reflecting individual components of criminal proceedings.

A.F. Volobuiev also offered a well-grounded view that the tasks of the initial stage of the investigation correlate with the circumstances that must be established. In generalized form, the scholar included the following:

1. determining the place, time, and conditions of the unlawful act, its nature, and detecting, documenting, and seizing its traces as sources of evidence;
2. collecting evidence that with high probability points to the person suspected of committing a criminal offense;
3. identifying, locating, and apprehending the person suspected of committing the unlawful act (serving a notice of suspicion).

In addition to the primary tasks, the author noted the existence of others at this stage, such as: determining the amount of material damage caused by the crime, taking measures to ensure its compensation, among others. At the same time, the researcher emphasized that their full implementation occurs later, at the subsequent stage of the investigation (Volobuiev, Stepaniuk, Maliarova, 2018). We share A.F. Volobuiev's position that investigative tasks should be based on the relevant circumstances that must be established.

At the same time, M.M. Yefimov correctly observes that the circumstances identified by

forensic scholars, regardless of their formulation (proof, establishment), serve only as possible guidelines for law enforcement officers. Furthermore, the scholar stresses that the investigation of a specific criminal offense may have its own particularities depending on several factors: the type of unlawful act committed, the specifics of investigative (search) and covert investigative (search) actions, and typical investigative situations (Yefimov, 2020). We also fully support this view.

O.A. Antoniuk, based on the analysis of criminal case materials, identified the following circumstances that must be established in cases involving criminal offenses against public order: "...whether unlawful acts were indeed committed and what they consisted of; the time of their commission; the place of their commission; the circumstances under which they occurred; the identity of the person who committed the unlawful acts; the person's guilt in committing the offense; information characterizing the offender; motives behind the offender's behavior; circumstances influencing the degree and nature of the offender's liability; the specific manifestations of exceptional cynicism or particular audacity; whether the victims provoked the unlawful acts; causes and conditions conducive to the specific unlawful manifestation; specific consequences of the act; whether other criminal offenses were committed during the unlawful act; circumstances affecting the degree and nature of liability of the person who committed the unlawful acts; and what instruments were used to commit the unlawful acts" (Antoniuk, 2020).

3. The range of circumstances to be established during the investigation of crimes committed by transnational organized criminal groups

According to Article 91(1) of the Criminal Procedure Code of Ukraine, the following circumstances are subject to proof: "(1) the event of a criminal offense (the time, place, method and other circumstances of its commission); (2) the guilt of the accused in the commission of a criminal offense, the form of guilt, motive and purpose of the criminal offense; (3) the type and amount of damage caused by the criminal offense, as well as the amount of procedural costs; (4) circumstances that affect the degree of gravity of the committed criminal offense, characterize the accused, aggravate or mitigate punishment, exclude criminal liability, or constitute grounds for closing criminal proceedings; (5) circumstances that constitute grounds for exemption from criminal liability or punishment; (6) circumstances confirming that money, valuables or other property subject to special confiscation were obtained as a result of a criminal offense and/or constitute income derived from such property, or were intended (used) to induce a person to commit a criminal offense, to finance and/or materially support the criminal offense or to reward for its commission, or are the object of a criminal offense, including those related to their illicit circulation, or were sought, manufactured, adapted or used as means or instruments of committing a criminal offense; (7) circumstances that constitute grounds for applying criminal-law measures to legal entities" (Criminal Procedure Code of Ukraine, 2012).

At the same time, it must be understood that the legislator cannot define within a single provision all circumstances that must be established during the investigation of various categories of unlawful acts. The circumstances set out in the Code serve as a general guideline for scholars, who should adapt them in accordance with the subject of their own scientific inquiry.

When addressing the category of crimes committed by transnational organized criminal groups, it is appropriate to refer to the position of a group of scholars who, drawing on the provisions of criminal procedure, criminalistics, and legal psychology, constructed an integrative model of investigation. This model includes the following elements: "the purpose (establishing the objective truth regarding the circumstances of the crime) and the tasks of the investigation (the prompt and complete solving of crimes, detection and exposure of perpetrators, and ensuring the proper application of the law so that every offender is brought to justice and no innocent person is punished; identifying and eliminating the causes and conditions that contributed to the crime; ensuring compensation for material damages); the subject matter of the activity – the circumstances subject to proof; the conditions of criminal-procedural activity, which relate to the procedural form and time limits of pre-trial proceedings as defined by the Criminal Procedure Code of Ukraine, as well as the environment in which the investigation takes place (investigative situations); the subjects of this activity (the inquiry body, investigator, head of the investigative unit, prosecutor, court) and other participants (specialists, experts, victims, witnesses, suspects (accused), defense counsel, etc.), along with their procedural status; procedural actions (investigative and other actions defined by the CPC of Ukraine) and decisions; search-and-cognitive actions and organizational measures carried out by the subjects of criminal-procedural activity that are not regulated by law (mental actions and operations related to examining information about the crime event, developing versions and planning the investigation, technical-criminalistic and tactical methods, operations (com-

binations), etc.); scientific and technical means of crime investigation. Further development of this framework, in our view, will contribute not only to deepening theoretical knowledge about the nature and content of investigative activity and its correlation with criminal activity, but may also be used to study foreign experience in legal regulation, pre-trial investigative practice, and in modelling the legal mechanism for implementing the provisions of the new criminal procedural legislation of Ukraine" (Lysychenko, Shekhavtsov, 2012).

Based on the analysis of criminal case materials and the above-mentioned scholarly positions, we identified a range of circumstances that must be established during the investigation of the examined category of crimes, namely:

– the fact of the commission of a crime by transnational organized criminal groups (time and place);

– the source of information regarding the unlawful acts under investigation;

– the method of direct commission of crimes by transnational organized criminal groups;

– the methods of preparation and concealment of the unlawful acts;

– the environment in which the crimes were committed;

– material and personal traces of the unlawful activity;

– information about the structure and hierarchy of the transnational organized criminal group;

– characteristics of persons who are part of the transnational organized criminal group;

– information regarding victims of the unlawful acts;

– the type and amount of damage caused by the crime;

– the causes and conditions that contributed to the commission of the crimes;

– evidence of corrupt ties maintained by the transnational organized criminal group.

4. Conclusions

To summarize, the circumstances subject to establishment during the investigation of criminal offenses play a crucial role in shaping the methodology of investigating crimes committed by transnational organized criminal groups. It has been established that the legislator cannot determine within a single statutory provision the full range of circumstances that must be identified when investigating various categories of unlawful acts. The circumstances defined in the Criminal Procedure Code serve as general guidelines, which researchers must further specify and adapt in accordance with the focus of their scientific inquiry.

Based on an analysis of criminal proceedings and the positions of scholars, a set of circumstances has been identified that must be established during investigations involving the examined category of crimes. These include: the fact of the commission of a crime by transnational organized criminal groups (including time and place); the source of information regarding the unlawful acts under investigation; the method of direct commission of such crimes; the methods of preparation and concealment employed; information concerning the structure and internal hierarchy of the transnational organized criminal group; the causes and conditions that facilitated the commission of the crime; and the presence of corrupt ties maintained by the group.

A structured approach to determining and examining these circumstances contributes not only to the theoretical development of the methodology for investigating crimes committed by transnational organized criminal groups, but also provides a practical basis for improving the effectiveness of pre-trial investigations and enhancing the legal mechanisms for implementing the provisions of current criminal procedural legislation.

References:

Antoniuk, O.A. (2020). Naukova polemika z pryvodu vyznachennia obstavyn, shcho pidliahaiut vstanovlenniu pid chas rozsliduvannia kryminalnykh pravoporushen proty hromadskoho poriadku [Scientific polemics on the determination of circumstances to be established during the investigation of criminal offenses against public order]. *Yurydychna nauka*, 2020, № 11, pp. 158–164 (in Ukrainian).

Banchuk, O.A., Kuibida, R.O., Khavroniuk, M.I. (2013). *Naukovo-praktychnyi komentar do Kryminalnoho protsesualnoho kodeksu Ukrainy* [Scientific and practical commentary on the Criminal Procedure Code of Ukraine]. Kharkiv: Faktor (in Ukrainian).

Chornous, Yu.M. (2017). Kryminalistychne zabezpechennia rozsliduvannia zlochyniv : naukovi zasady ta napriamy realizatsii [Forensic support for the investigation of crimes: scientific principles and directions of implementation]. *Suchasni tendentsii rozvytku kryminalistyky ta kryminalnoho protsesu*, 2017, pp. 220–222 (in Ukrainian).

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

Lukianchykov, B.Ie., Lukianchykov, Ye.D., Petriaiev, S.Iu. (2017). *Kryminalistyka* [Criminology]. Kyiv: Natsionalnyi tekhnichnyi universytet Ukrainy «Kyivskyi politekhnichnyi instytut imeni Ihoria Sikorskoho» (in Ukrainian).

Lysychenko, V.K., Shekhavtsov, R.M. (2012). *Problemy teorii ta praktyky podolannia protydii rozsliduvanniu okremykh riznovydiv zlochyniv, vchy-*

nenykh orhanizovanymy hrupamy, zlochynnymy orhanizatsiiamy : monohrafiia [Problems of theory and practice of overcoming resistance to the investigation of certain types of crimes committed by organized groups and criminal organizations: monograph]. Luhansk: RVV LDUVS imeni E.O. Didorenka (in Ukrainian).

Shepitko, V.Iu. (2011). *Kryminalistyka : pidruchnyk* [Forensic science: textbook]. Kyiv (in Ukrainian).

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

НАУКОВІ ДИСПУТИ ЩОДО ОБСТАВИН, ЯКІ ПІДЛЯГАЮТЬ ВСТАНОВЛЕННЮ ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПОВАННЯМИ

Анотація. ***Метою статті*** є аналіз обставин, які підлягають встановленню під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупованнями. ***Результати.*** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі вітчизняної та зарубіжної наукової літератури проведено аналіз обставин, які підлягають встановленню під час розслідування досліджуваної категорії протиправних діянь. Автор акцентує увагу на тому, що обставини, які підлягають встановленню під час розслідування кримінальних правопорушень, були та є предметом дослідження ряду вітчизняних учених-криміналістів та процесуалістів в розрізі опрацювання окремих методик розслідування різних категорій протиправних діянь. І це зрозуміло, адже з огляду на вказану правову категорію проєктується весь процес розслідування відповідного кримінального правопорушення. Вчинення злочинів транснаціональними організованими злочинними угрупованнями в цьому плані не відрізняється від інших протиправних діянь. ***Висновки.*** Визначено, що законодавець не може визначити в одній статті всі обставини, які необхідно встановити під час розслідування різних категорій протиправних діянь. Сформульовані ним обставини є своєрідним орієнтиром для різних дослідників, які повинні варіювати їх відповідно до предмету власних наукових пошуків. На основі опрацювання кримінальних проваджень та розгляду позицій науковців було з'ясовано коло обставин, які підлягають встановленню під час розслідування досліджуваної категорії злочинів, як-от: факт вчинення злочину транснаціональними організованими злочинними угрупованнями (час та місце); джерело надходження відомостей про досліджувані протиправні діяння; який був спосіб безпосереднього вчинення злочинів транснаціональними організованими злочинними угрупованнями; які способи підготовки та приховування досліджуваних протиправних дій; інформація про структуру та ієрархію транснаціонального організованого злочинного угруповання; причини та умови, які сприяли вчиненню злочинів; факт корумпованих зв'язків, наявних у транснаціонального організованого злочинного угруповання.

Ключові слова: транснаціональне організоване злочинне угруповання, злочин, обставини, які підлягають встановленню, розслідування, слідчі (розшукові) дії, планування розслідування.

UDC 343.3
DOI https://doi.org/10.32849/2663-5313/2024.4.14

Oleksandr Tarasenko,
PhD in Law, Director of the Department of Education, Science and Sports of the Ministry of Internal Affairs of Ukraine, 1 Solomianska Square, Kyiv, Ukraine, 03035, tarasenkooleksandr@ukr.net
ORCID: *orcid.org/0000-0003-0369-520X*

CRIMINAL LAW ANALYSIS OF THE PECULIARITIES OF ILLEGAL EXPERIMENTATION ON HUMANS IN LIGHT OF INTERNATIONAL EXPERIENCE

Abstract. ***Purpose.*** The purpose of the article is to further standardize the objective and subjective elements of the corpus delicti under Article 142 of the Criminal Code of Ukraine, taking into account the achievements of contemporary criminal law doctrine. *Results.* To determine the elements of the corpus delicti provided for in Article 142 of the Criminal Code of Ukraine (hereinafter – CC of Ukraine) "Illegal Experimentation on a Human Being," the author conducted a comprehensive comparative legal study on the subject matter of the research. It has been established that the basis for drafting numerous state and professional codes regulating the determination of norms governing criminal liability for illegal experimentation on a human being in countries of the Romano-Germanic legal system was the 1947 Nuremberg Code, a codification of rules for conducting experiments on humans that contains ten fundamental principles of medical, biological, psychological, or other research. The continuation of the Nuremberg Code is the 1964 Declaration of Helsinki, which, in turn, serves as a system of ethical principles for the medical community in matters of human experimentation. Such documents are of a recommendatory nature and stipulate that, in the course of biomedical research involving human subjects, legal and ethical norms must be observed in accordance with the legislation of the specific country where such research is conducted. *Conclusions.* It is emphasized that legal (criminal) liability for illegal medical, biological, psychological, or other experimentation on a human being is established not only by national legislation but also by the laws of other European countries of the Romano-Germanic legal system, as it constitutes the most dangerous violation of bioethics. This is confirmed by a comparative analysis of the criminal legislation of Austria, Estonia, Poland, France, and Switzerland, which has shown that the regulation of research involving human subjects is based on international legal instruments of both general and specialized nature. At the same time, research into criminally unlawful acts in the fields of medical genetics, transplantation, and reproduction makes it possible to improve national legislative regulation and judicial practice regarding illegal human experimentation.

Key words: experimentation, human being, criminally unlawful act, criminal offense, corpus delicti, qualifying elements, moral and ethical aspects, international experience.

1. Introduction

With the entry into force of the Criminal Code of Ukraine in 2001, a provision establishing liability for illegal experimentation on a human being (Article 142 of the Criminal Code of Ukraine) was introduced. In other words, the incorporation of such a provision into the Criminal Code of Ukraine meets the needs of both Ukrainian society and the international community. This provision is the result of more than fifty years of the civilized world's struggle against unlawful human experimentation, and the development of this approach, particularly in consolidating the fundamental principles of such activity, is reflected in numerous international legal instruments. Among them, special mention should be made of the 1947 Nuremberg Code and the Declaration of Helsinki of the World Medical Association "Ethical Principles for Medical Research Involving Human Subjects" of 1964, as revised in 2008. These documents define the list of key principles, as well as the moral, ethical, and legal concepts governing research involving human subjects, having influenced the establishment of criminal liability for such unlawful conduct in the countries of the Romano-Germanic legal system.

However, as judicial practice demonstrates, Article 142 of the Criminal Code of Ukraine has, in fact, never been applied by domestic courts, which indicates that the latency of illegal human experimentation remains extremely high. For this reason, the study of the legal elements (corpus delicti) of such a criminal offense acquires particular importance.

It should be emphasized that the issue of conducting a systematic analysis of illegal

experimentation on a human being in Ukraine has long ceased to be the subject of specialized research. At the same time, various aspects of this matter have been examined by a significant number of Ukrainian scholars, among whom the following should be noted: O. Horokhovska, S. Hrynchak, V. Yehorova, I. Kritsak, T. Lutskyi, O. Panchuk, O. Pasieka, O. Sapronov, I. Sydoruk, M. Syiploki, M. Khavroniuk, T. Khar, A. Shalia, Yu. Shopina, among others. Nevertheless, comparative legal studies of criminal liability for illegal experimentation on a human being are absent, which indicates the necessity of a detailed examination of this issue.

The purpose of this article is to further standardize the objective and subjective elements of the corpus delicti under Article 142 of the Criminal Code of Ukraine, taking into account the achievements of modern criminal law doctrine.

2. Development of International Regulation on Countering Illegal Experimentation on Humans and Its Influence on Ukrainian Legislation

The Nuremberg Code contains ten fundamental principles relating to medical, biological, psychological, and other experimentation on humans, namely: *voluntary consent of the individual as an absolutely essential condition for conducting any research on them; experiments must yield results for the good of society that cannot be obtained by other methods; experiments on animals must precede those on humans; avoidance of all unnecessary physical and mental suffering; experiments must not be conducted where there is a prior reason to believe that death or disabling injury will occur; the degree of risk taken by the subject must never exceed the humanitarian importance of the problem; proper preparations must be made to protect the subject against even remote possibilities of injury, disability, or death; experiments must be conducted only by scientifically qualified persons; the subject must be at liberty to end the experiment at any stage; the scientist in charge must be prepared to terminate the experiment at any stage if continuation is likely to result in injury, disability, or death to the subject* (Protection of Research Participants, 2010).

It should be noted that the continuation of the trend set by the Nuremberg Doctors' Trial in 1947 was the development and adoption in 1964 of the Declaration of Helsinki, which establishes ethical principles for the medical community regarding human experimentation. Since its adoption, the Declaration of Helsinki has undergone eight revisions, the most recent of which was adopted in 2000 (Declaration of Helsinki of the World Medical Association "Ethical Principles of Medical Research Involving Human Subjects": Declaration of the World Medical Association, 1964). Although the above-mentioned international legal acts provide for criminal, civil, and ethical liability arising under the law, these documents are recommendatory in nature and stipulate that, in conducting biomedical research involving human subjects, legal and ethical norms are regulated by the legislation of the specific country where the research takes place.

Relevant criminal provisions are contained in the criminal legislation of Ukraine and certain European countries. In particular, the Criminal Code of Ukraine contains Article 142 "Illegal Experimentation on a Human Being" in Section II of the Special Part "Criminal Offenses Against Life and Health of a Person," which establishes liability for "illegal medical, biological, psychological, or other experimentation on a human being, if such experimentation created a danger to the person's life or health" (Criminal Code of Ukraine, 2001).

Given that the disposition of Article 142 of the Criminal Code of Ukraine is blanket in nature, it is necessary to refer to other normative legal acts that define the procedure for conducting experiments on humans. Thus, according to Article 45 of the Fundamental Legislation of Ukraine on Health Care, the use of medical and biological experiments on humans is permitted for socially beneficial purposes. However, this is allowed only when scientifically justified, when the anticipated success outweighs the risk of serious consequences for health or life, when the experiment is public, when the adult, legally capable person participating in the experiment is fully informed and freely agrees to its conduct, and, if necessary, preserves medical confidentiality.

As for restrictions regarding certain categories of persons on whom research may be conducted, experimental studies on patients, prisoners of war, and detainees are prohibited, as are therapeutic experiments on persons with diseases not directly related to the objective of the study.

Accordingly, the primary direct object of the criminal offense is the health and life of the individual, and the additional mandatory object is the established procedure for conducting experimentation on humans.

Regarding the objective element of the corpus delicti, it is material in nature and is expressed in the following acts:

1. *socially dangerous act* – illegal conduct of medical and biological experiments (e.g., research on the biological capabilities of the human body in extreme conditions, under the influence of gravity, high temperatures, or oxygen deficiency), psychological experiments

(e.g., research on the psychophysiological capabilities of the human brain under hypnosis, in the context of memorizing large volumes of information), or other experiments (any scientific research) on a human being;

2. *socially dangerous consequences* – creation of a danger to the life or health of a person;

3. *causal link* between the socially dangerous act and the socially dangerous consequences.

The subjective element is characterized by direct intent with respect to the act and negligence with respect to the consequences (Part 1 of Article 142 of the Criminal Code of Ukraine) and prolonged health disorder of the victim (Part 2 of Article 142 of the Criminal Code of Ukraine).

The subject of this criminal offense is general (a natural, sane person who has reached the age of 16).

The qualifying elements of this criminal offense (Part 2 of Article 142 of the Criminal Code of Ukraine) provide for liability for illegal medical, biological, psychological, or other experimentation posing a danger to life or health, if such experimentation has any of the following features:

1. conducted on a minor;
2. conducted on two or more persons;
3. carried out by coercion;
4. carried out by deception;
5. resulting in prolonged health disorder of the victim.

Minors include both children under the age of 14 and those aged 14 to 18 (Article 3 of the Criminal Procedure Code of Ukraine). The feature "two or more persons" refers to the minimum number of victims harmed as a result of the criminal offense. If the number of victims is two or more, the perpetrator's act is classified under Part 2 of Article 142 of the Criminal Code; however, this circumstance does not change the legal classification but is taken into account by the court when imposing criminal liability and punishment.

The qualifying element "by coercion or deception" is, at present, scarcely elaborated upon in the Criminal Code of Ukraine. At the same time, Article 40 of the Criminal Code of Ukraine specifies that coercion may be physical or psychological, resulting in a person being unable to control their conduct. Deception is understood as the communication of false information or the concealment of information that should have been disclosed. Furthermore, the *Rules for Forensic Medical Determination of the Degree of Severity of Bodily Injuries* (Section 2.2.2) define "prolonged health disorder" as a health impairment lasting more than three weeks (over 21 days).

It is worth noting that a criminal offense of this type is considered complete from the moment a real threat to a person's life or health is created.

As for foreign legislation on this matter, it should be noted that the principal states of the Romano-Germanic legal system contain relevant provisions in their criminal codes. For example, Section III "On Endangering a Person" in Book II of the Criminal Code of France "On Crimes and Offenses Against Persons" includes a special Subsection IV "On Conducting Experiments on Humans," which establishes criminal liability for unlawful biomedical research on a human being, i.e., "conducting and organizing biomedical research on a person without obtaining the voluntary, informed, and explicit consent of the person, their parents, or guardian, in cases provided for by the Public Health Code." The Criminal Code of France also contains a specific provision that the same penalties apply if biomedical research is conducted after previously granted consent has been withdrawn. However, these provisions "do not apply to research on a person's genetic characteristics or identification through genetic fingerprinting carried out for scientific purposes" (Menchynskyi, 2017). An interesting aspect of this offense is the possibility of holding a legal entity criminally liable as a subject of the offense.

In the section of Estonian criminal legislation entitled "Offenses Against Persons," there is an article on unlawful research on a person (Article 124-5 of the Criminal Code of Estonia) (Criminal (Penitentiary) Code of the Republic of Estonia, 2005), which defines it as the conduct of medical or scientific research on a person who has not given valid consent. Under the terminology of the Criminal Code of Estonia, this offense is classified as a second-degree crime (Criminal (Penitentiary) Code of the Republic of Estonia, 2005).

3. Specific Features of the Unlawful Conduct of Experiments on Humans under the Legislation of Austria, Switzerland, and Poland

An interesting example is provided by Austrian criminal law, which establishes liability for unauthorized medical treatment (§ 110 of the Austrian Criminal Code) (*Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Strafgesetzbuch*, 2023). This offense is included in the section "On Criminal Acts Against Liberty," which the Austrian legislator interprets quite broadly. The elements of the offense consist of "treating another person without their voluntary consent, including by using medical knowledge" (*Bundesrecht konsolidiert*, 2023). Austrian law classifies such conduct as a misdemeanor, punishable by imprisonment for up to six months or a fine.

The Austrian Criminal Code also provides for the liability of a physician if "in the physician's opinion, delaying treatment could have caused serious harm to the patient's life or health, but in reality such harm did not exist, and the physician failed to obtain the patient's consent, although such consent could have been obtained with due diligence" (*Bundesrecht konsolidiert*, 2023). In other words, criminal liability may arise when a physician erroneously assesses the urgency of treatment, commits a factual error, and proceeds without patient consent, where such an error could have been avoided with proper medical care (a form of negligence). This negligence is possible when the person "fails to exercise the due caution that should be observed in the circumstances of the case and is incapable of doing so given their physical and mental abilities" (*Bundesrecht konsolidiert*, 2023).

It should be emphasized that, regardless of the form of culpability, unauthorized medical treatment can only be prosecuted on the basis of a complaint by the person subjected to such treatment. In this context, medical ethics in biomedical research is also linked to another provision of the Austrian Criminal Code establishing liability for the disclosure of medical secrets. According to Article 121 of the Austrian Criminal Code, "persons who disclose or otherwise use information about a patient's health status that was entrusted to them exclusively in the course of their professional activity–such as providing treatment, care, nursing, medication, conducting medical research, or carrying out tasks related to the functioning of medical institutions or medical insurance–are liable only in cases where there is a risk of violating the patient's legitimate interests" (*Bundesrecht konsolidiert*, 2023).

Such actions are classified as a misdemeanor and are punishable by imprisonment for up to six months or a fine, and they are prosecuted only upon the victim's complaint. Qualified circumstances include cases "where the disclosure or use of a medical secret was committed with the purpose of obtaining profit or with the intent to cause direct harm to another person" (*Bundesrecht konsolidiert*, 2023). If such aggravating circumstances are present, the offense is punishable by imprisonment for up to one year. Similar liability is established for an expert involved in legal proceedings "if they disclose or use a secret that became known to them in connection with their professional activity, and their conduct may harm the legitimate interests of a person" (*Bundesrecht konsolidiert*, 2023). For such an expert to be held liable, a complaint from the injured party is required.

In addition, Article 184 of the Austrian Criminal Code establishes liability for the offense committed when "a person systematically provides medical assistance to a large number of people without having the necessary qualifications" (*Bundesrecht konsolidiert*, 2023). This conduct is classified as a criminal infraction, punishable by imprisonment for up to three months and a fine.

Similarly, certain provisions of the Swiss Criminal Code relating to the establishment of legal liability for the disclosure of secrets "obtained in the course of research activities in the field of medicine or health care" resemble those in Austrian law (Swiss Criminal Code, 1937). However, such confidential information may be disclosed with the authorization of an expert commission. Conditions for disclosure include the absence of a direct prohibition in the application by the person concerned, the impossibility or disproportionate difficulty of obtaining the consent of the authorized person, or when the benefit of the research outweighs the benefit of preserving confidentiality. The expert commission must grant authorization and impose an obligation to ensure the security of undisclosed information (Swiss Criminal Code, 1937).

If there is no threat to the interests of individuals or if personal data has been anonymized before the research begins, the commission may grant a so-called general authorization or determine the necessary procedure. The chair and members of the commission are appointed by the Federal Council (*Bundesrat*), which determines its composition and procedures (Swiss Criminal Code, 1937).

Article 321 of the Swiss Criminal Code establishes liability for the disclosure of secrets entrusted to doctors, pharmacists, midwives, and nurses. The offense is prosecuted upon the complaint of the victim and is punishable by imprisonment for not less than three days and not more than three years or a fine (Swiss Criminal Code, 1937).

Under Section XXIII "Crimes Against Liberty" of the Polish Criminal Code, liability is established for conducting medical treatment without the patient's consent (Article 192 of the Polish Criminal Code). Such conduct is punishable by a fine, restriction of liberty, or imprisonment for up to two years. Prosecution is initiated on the basis of a complaint from the victim (Menchynskyi, 2017).

4. Conclusions

Thus, taking into account the above, it should be noted that the 1947 Nuremberg Code and the Declaration of Helsinki are of a recommendatory nature and stipulate that biomedical research involving human subjects should be guided by legal and ethical standards in accordance with the legislation of the specific country

where the research is conducted. At the same time, there are certain exceptions to such activities, namely: research experiments on patients, prisoners of war, and incarcerated individuals, as well as therapeutic experiments on persons with illnesses not directly related to the purpose of the study, are prohibited. In turn, research involving patients or healthy volunteers must be conducted under the supervision of a physician or other medical professional with the appropriate qualifications. Responsibility for protecting the research subject lies with the physician or other medical professional, and not with the subject themselves, even if they have given consent.

It should be emphasized that the issue of criminal liability for unlawful experiments on humans always requires attention, but it is particularly important during wartime, given the latent nature of such a criminal offense. Thus, criminal liability for unlawful experiments on humans–representing the most dangerous violation of bioethics–is widely established in the criminal legislation of countries belonging to the Romano-Germanic legal system. A comparative study of the experience of other countries that have introduced criminal liability for offenses in the fields of medical genetics, transplantation, and reproduction makes it possible to implement such provisions into national legal regulation and judicial practice regarding the conduct of unlawful experiments on humans.

References

Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Strafgesetzbuch, 2023. Retrieved from https://www.ris.bka.gv.at/GeltendeFassung.wxe (in German).

Criminal (Penitentiary) Code of the Republic of Estonia. Legal acts of Estonia. 2005. № 17. pp. 1103–1220 (in English).

Helsinska deklaratsiia Vsesvitnoi medychnoi asotsiatsii «Etychni pryntsypy medychnykh doslidzhen za uchastiu liudyny u yakosti obiekta doslidzhennia»: Deklaratsiia Vsesvitnoi medychnoi asotsiatsii vid 01 cherv. 1964 r. [Declaration of Helsinki of the World Medical Association "Ethical Principles of Medical Research Involving Human Subjects": Declaration of the World Medical Association of 01 June 1964]. (1964). rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/990_005 (in Ukrainian).

Kryminalnyi kodeks Ukrainy: vid 5 kvitnia 2001 r. № 2341-III [Criminal Code of Ukraine: of 5 April 2001 No. 2341-III]. (2001). rada.gov.ua. Retrieved from http://zakon2.rada.gov.ua/laws/show/2341-14 (in Ukrainian).

Menchynskyi, V.L. (2017). Kryminalnyi kodeks Frantsuzkoi Respubliky [Criminal Code of the French Republic]. Kyiv: OVK (in Ukrainian).

Menchynskyi, V.L. (2017). Kryminalnyi kodeks Respubliky Polshcha [Criminal Code of the Republic of Poland]. Kyiv: OVK (in Ukrainian).

Swiss Criminal Code of 21 December 1937, SR 311.0. Federal Act. Vusiness-swiss. business-swiss.ch. Retrieved from https://business-swiss.ch/wp-content/uploads/2020/04/311.0.pdf (in English).

Zakhyst uchasnykiv doslidzhennia [Protection of research participants]. ProfiHealth. (2010). profihealth.org.ua. Retrieved from https://profihealth.org.ua/uk/lessons/210 (in Ukrainian).

Олександр Тарасенко,
кандидат юридичних наук, директор Департаменту освіти, науки та спорту Міністерства внутрішніх справ України, Солом'янська площа, 1, Київ, Україна, 03035, tarasenkooleksandr@ukr.net
ORCID: *orcid.org/0000-0003-0369-520X*

КРИМІНАЛЬНО-ПРАВОВИЙ АНАЛІЗ ОСОБЛИВОСТЕЙ НЕЗАКОННОГО ПРОВЕДЕННЯ ДОСЛІДІВ НАД ЛЮДИНОЮ З УРАХУВАННЯМ МІЖНАРОДНОГО ДОСВІДУ

Анотація. ***Метою статті*** є подальше унормування об'єктивних та суб'єктивних ознак передбачених складом кримінального правопорушення за ст. 142 КК України з урахуванням досягнень сучасної доктрини кримінально-правової науки. ***Результати.*** З метою визначення ознак складу кримінального правопорушення передбаченого ст. 142 Кримінального кодексу України (далі – КК України) «Незаконне проведення дослідів над людиною» автором проведено комплексне порівняльно-правове дослідження за темою предмета наукової розвідки. Визначено, що основою для укладання багатьох державних та професійних кодексів, які регулюють питання пов'язані із визначенням норм, які регламентують положення щодо кримінальної відповідальності за незаконне проведення дослідів над людиною у країнах романо-германської правової системи став Нюрнберзький кодекс 1947 року, як уложення правил проведення експериментів над людьми, який уміщує десять основних принципів медико-біологічних, психологічних або інших дослідів. При цьому, продовженням Нюрнберзького кодексу є розроблена Гельсінська декларація 1964 р., яка своєю чергою

виступає своєрідною системою етичних принципів для медичного співтовариства в питаннях проведення експериментів над людиною. Такі документи мають рекомендаційний характер і передбачають, що під час проведення біомедичних досліджень за участю людини слід керуватися правовими та етичними нормами відповідно до законодавства конкретної країни, де вони проводяться. ***Висновки.*** Наголошено, що юридична (кримінальна) відповідальність за незаконне проведення медико-біологічних, психологічних або інших дослідів над людиною передбачена не тільки національним законодавством, але й законодавством інших європейських країн романо-германської правової системи, як найнебезпечніше порушення біоетики, що підтверджується проведеним порівняльним дослідженням кримінального законодавства Австрії, Естонії, Польщі, Франції, Швейцарії, яким визначено, що регулювання досліджень над людиною ґрунтується на міжнародному законодавстві загального та спеціального характеру. Водночас таке дослідження за кримінально-протиправні діяння у сфері медичної генетики, трансплантації та репродукції дають можливість удосконалити національне законодавче регулювання та судову практику щодо незаконного експериментування над людиною.

Ключові слова: досліди, людина, кримінально-протиправне діяння, кримінальне правопорушення, склад кримінального правопорушення, кваліфікуючі ознаки, морально-етичні аспекти, міжнародний досвід.

UDC 343.9
DOI https://doi.org/10.32849/2663-5313/2024.4.15

Oleksandr Fishchenko,
graduate student of the Department of Criminology and Information Technologies
National Academy of Internal Affairs, 1 Solomianska Square, Kyiv, Ukraine, 03035,
kriminolog@ukr.net
ORCID ID: *orcid.org/0009-0006-0965-7213*

GENERAL SOCIAL MEASURES FOR PREVENTING BANDITRY UNDER MARTIAL LAW

Abstract. ***Purpose.*** The purpose of the article is to formulate a conceptual vision of the general social measures aimed at preventing banditry under martial law. ***Results.*** The article emphasizes that the general social measures for preventing banditry constitute a comprehensive set of large-scale, systemic, and long-term legal, socio-economic, managerial, and cultural-educational measures implemented at the national, regional, local, and interagency levels. These measures are aimed at ensuring sustainable national security, shaping an anti-criminal social environment, and eliminating or neutralizing the determinants that facilitate the emergence and functioning of armed criminal groups. Taking into account the results of criminological research and an assessment of contemporary threats, the article proposes a set of legal and managerial measures designed to ensure security and prevent banditry under martial law and during the post-war recovery of the state, based on the formation of an integrated system of programmatic and strategic documents. With these key priorities in place, general social measures evolve into a multi-level system of social stabilization that creates conditions for systematic prevention of banditry by: eliminating the social causes behind the formation and activity of bandit groups; fostering legal and moral culture among the population; reducing social tension and post-war trauma; limiting access to illegal weapons; ensuring stable functioning of public authorities; integrating state security policy with economic, social, youth, defence, and educational policies; preventing marginalization and the criminalization of combatants and youth. ***Conclusions.*** The article concludes that the implementation of general social measures for preventing banditry should include, inter alia: adopting the *Strategy for Combating Organized Crime in Ukraine until 2035* and advancing the program-targeted approach through improving strategic planning mechanisms and expanding law-enforcement instruments. The key directions of this innovative Strategy should operate as a nationwide directive for developers of medium- and short-term national and regional plans, subject to adjustment depending on the criminogenic situation; adopting the *Comprehensive Plan for Preventing Criminal Offenses in Ukraine for 2027–2035* as the basic document for the implementation of the Strategy, which, given its long-term nature, will become the methodological foundation for developing regional crime prevention plans; developing regional banditry prevention plans at the level of regions and oblasts, assigning responsibility for their implementation to regional state administrations and territorial units of the National Police, and ensuring a standardized format that reflects state planning requirements, regional criminogenic specifics, resource potential, and organizational capacities; establishing the *Directorate for Criminal Offense Prevention* within the central apparatus of the National Police of Ukraine, entrusted with determining strategic priorities of state policy on crime prevention, conducting nationwide crime research (including organized crime), coordinating the activities of prevention actors, synthesizing preventive practices, and organizing international cooperation in the field of criminal offense prevention.

Key words: banditry, gang, organized group, criminal offense, criminology, prevention.

1. Introduction

The current conditions of martial law, caused by armed aggression against Ukraine, have significantly transformed both the criminogenic environment and the parameters of the national crime-prevention system. This transformation is especially evident in the sphere of violent offenses and organized forms of criminal activity. One of the most dangerous manifestations of such criminality–characterized by a high level of public danger, structural stability, and growing latency–is banditry.

Under wartime conditions, this phenomenon acquires additional complexity: social control becomes considerably weakened, the number of individuals with combat experience and access to weapons increases, economic and social disparities intensify, and psychological instability spreads among a significant part of the population. These factors create a favourable environment for the emergence of stable criminal groups capable of armed attacks, coordinated violent acts, and establishing localized influence over certain territories.

In such circumstances, general social measures for preventing banditry acquire particular significance, as they form the foundational preventive mechanism targeting violent and organized crime. Their purpose is to eliminate or neutralize a broad range of determinants that generate or reinforce motivation to participate in armed organized groups. These measures encompass a complex of political, socio-economic, cultural-educational, legal, informational, psychological, and institutional actions that ensure the proper functioning of public authorities, the stabilization of social relations, maintenance of public order, strengthening of public trust in the state, reduction of social tension, and restoration of citizens' sense of security.

Given the scale and systemic nature of banditry during wartime, solely criminal-law instruments prove insufficient; instead, a wide, interdisciplinary system of measures is required–those implemented at the levels of society, state institutions, communities, and the individual.

The purpose of the article is to articulate a conceptual vision of the general social measures aimed at preventing banditry under martial law.

Various criminological aspects of preventing organized forms of crime have been addressed by V. Batyrhareieva, V. Beschastnyi, V. Vasylevych, B. Holovkin, O. Holovkin, O. Dzhuzha, P. Yepryntsev, A. Zakaliuk, O. Lytvynov, O. Kulyk, M. Semenyshyn, O. Shostko. The issue of preventing banditry has been examined by V. Bedrykivskyi, V. Holina, Yu. Zhyvova, and Yu. Kyfliuk. The scientific contributions of these scholars are undisputed; however, the specific problem of general social measures for preventing banditry under martial law remains insufficiently explored.

2. Foundations of General Social Measures for Crime Prevention

In criminology, general social measures for crime prevention are traditionally understood as a set of long-term socio-economic and cultural-educational measures aimed at the further development and improvement of social relations, as well as the elimination or neutralization of the causes and conditions of crime (Holina, Holovkin, Valuiska, 2014). As aptly noted by O.M. Dzhuzha, this level of crime prevention is characterized by the fact that its components constitute an integral part of socio-economic development and the enhancement of the moral and spiritual spheres of society (Dzhuzha, Vasylevych, Kolb, 2009).

According to V.V. Holina, the primary objectives of this preventive direction include overcoming or limiting criminogenically dangerous contradictions within society, as well as the gradual eradication of negative phenomena generated by political, economic, psychological, ideological, and other factors contributing to the emergence of criminal potential in society. These include economic and political crises, dangerous levels of property stratification, unjustified–even criminal–enrichment of certain groups of citizens, unemployment, wage arrears, subsistence-level living conditions for the majority of the population, moral degradation, prostitution, drug addiction, alcoholism, and homelessness (Holina, 2011). Under martial law, these factors not only intensify but also assume new forms (mass displacement of the population, traumatic combat experience, the increasing circulation of weapons, destruction of infrastructure, decline of trust in governmental institutions in certain regions), thereby creating an exceptionally favourable environment for the emergence and consolidation of bandit formations. Consequently, general social measures in the fields of the economy, social protection, support for veterans and internally displaced persons, and the reconstruction of devastated territories are directly linked to preventing banditry as the most dangerous form of organized armed criminality.

As noted by O.O. Tytarenko, the application of the program-targeted method constitutes one of the key elements of a fundamentally new approach to organizing and ensuring a comprehensive system of crime prevention. This approach emerged within the framework of a modern criminological concept that requires the development, adoption, and implementation of preventive measures in strict accordance with defined systemic and programmatic requirements (Tytarenko, 2019). For preventing banditry under martial law, this is of particular importance, as program-targeted models allow for the integration of general social, organizational, operational, and analytical capacities of the state into a single strategic framework for countering stable armed criminal groups.

Comprehensive crime-prevention programming has its own specific content–its own goals, a defined circle of actors, objects of influence, and forms of interaction between these actors and objects (Dzhuzha, Vasylevych, Hida, 2011). Adopting the concept of crime prevention, O.M. Lytvynov identified three principal levels of such activity: the level of large social groups (the state, regions, economic sectors, social subsystems); the level of small social groups (work collectives, communities, families, organizations); and the level of individual actors (specific officials, professional crime-prevention subjects) (Bandurka, Lytvynov, 2012).

In the context of preventing banditry under martial law, programming functions not only as an instrument of strategic planning but also as a mechanism for integrating general social, special criminological, and individual preventive measures. This allows the consolidation of efforts across various sectors of security, the economy, the social sphere, and local self-government to eliminate the deep-rooted factors that facilitate the emergence and functioning of armed organized groups.

Attention should be drawn to the *Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies as part of the Security and Defense Sector of Ukraine for 2023–2027* (Decree of the President of Ukraine, 2023) and the *Action Plan aimed at implementing the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies as part of the Security and Defense Sector of Ukraine for 2023–2027* (Order of the Cabinet of Ministers of Ukraine, 2024). These documents encompass all core directions of reforming the law-enforcement sector and outline the systemic transformation of law-enforcement agencies in accordance with EU standards, intelligence-led policing (ILP), the SOCTA model, risk-oriented management, multi-level coordination, and the enhancement of criminal-justice effectiveness. Many of the prescribed measures have direct preventive relevance for combating banditry: weapons control, analytical intelligence, risk-oriented management, technical modernization, strengthened interagency coordination, strategic planning, and criminal policy improvement. At the same time, successful implementation depends on: the speed of legislative adoption; adequate resource provision; avoidance of institutional competition; strengthening public trust; and effective control over weapons circulation in the post-war period. These documents create the prerequisites for significantly reducing the risks associated with the formation and activity of armed criminal groups; however, their impact will depend on the practical implementation of each specified direction.

In our view, the core element of developing a crime-prevention program is the scientifically grounded definition of its goals and objectives.

The goals of programming serve as the fundamental benchmarks that determine the logic, structure, and substantive content of the relevant decisions. Such goals include: reducing and gradually lowering the overall crime rate, including its most socially dangerous forms; overcoming negative social-development phenomena that determine criminal behaviour (the mass spread of background deviant phenomena, economic crises, the creation of "conversion centres", the growth of weapons circulation, etc.); preventing deviant behaviour of citizens that leads to or facilitates the commission of offences; preventing unlawful forms of behaviour within society, collectives, and families; fostering positive socio-legal processes that neutralize antisocial manifestations; strengthening legal consciousness, discipline, and moral norms; and cultivating active civic engagement in the sphere of law observance and counteraction to criminal manifestations.

In the context of preventing banditry, these goals are transformed into the task of creating socio-economic conditions that minimize opportunities for the formation of armed criminal groups, as well as establishing measures that enhance community resilience to violent threats. The objectives of programming further include: systematizing the processes of preparing, adopting, and implementing managerial decisions in the field of crime prevention; enhancing the effectiveness of all types of criminological activity; strengthening coordination among crime-prevention actors; ensuring regional monitoring of crime, its determinants, and consequences; optimizing expenditures on law-enforcement activities at the regional level; rationalizing the management system through timely decision-making; improving the qualifications of personnel in law-enforcement and supervisory bodies; enhancing regulatory and legal frameworks; and stimulating the activity of civil-society institutions in the field of prevention (Dzhuzha, Vasylevych, Hida, 2011).

Of significant scientific and practical interest is the State Targeted Social Program *"Youth of Ukraine" for 2021–2025* (Resolution of the Cabinet of Ministers of Ukraine, 2021), which emphasizes that the full development and self-realization of young people constitute key social values, and that their social support is one of the principal priorities of state policy. In this regard, harmonization of Ukrainian approaches with European standards is essential, since one of the European Union's youth-policy priorities is likewise the enhancement of youth participation in public life.

Regarding the legal dimensions of prevention, an important benchmark in this area is the *National Security Strategy of Ukraine* adopted in 2020 (Decree of the President of Ukraine, 2020). Its purpose is the affirmation of human and civil rights and freedoms, the creation of conditions for a new quality of economic, social, and humanitarian development, Ukraine's integration into the European Union, and the formation of prerequisites for NATO membership. A further important step was the adoption of the *Law of Ukraine "On the Basic Principles of Youth Policy"* (2021), which defines

the main tasks of youth policy, including: creating conditions for the involvement of young people in the public, political, socio-economic, and cultural life of society; promoting the role and importance of youth participation in decision-making; supporting youth in realizing their socio-economic potential, including resolving housing issues, ensuring professional development and employment, and meeting educational, medical, cultural, and other needs; fostering the civic, national, and cultural identity of Ukrainian youth; promoting institutional development of youth and children's public associations and youth centres, strengthening their role in the socialization process; developing youth infrastructure; and supporting national and international youth cooperation.

The escalation of brutality and violence, together with the destabilization of the domestic socio-political environment, leads to disruption of the functioning of state authorities and local self-government bodies, and undermines the authority of the state and its law-enforcement agencies among the population. In such a context, organized crime functions not only as a criminal phenomenon but also as a geopolitical instrument that may be used by foreign intelligence services to destabilize the situation in Ukraine and to undermine national security, including through stimulating banditry and other forms of violent group criminality.

In this regard, the Government approved the *Strategy for Combating Organized Crime* (Resolution of the Cabinet of Ministers of Ukraine, 2020), which is intended to serve as a framework document setting strategic guidelines and standards for a systemic response to organized criminal activity, including banditry, both in peacetime and under martial law.

3. General Methodology of Strategic Planning as a General Social Measure for Preventing Banditry

According to V. V. Vasylevych, pursuant to the general methodology of strategic planning, an effective model of state anti-crime policy must be developed in several stages:

Stage I – drafting a Concept or Strategy that defines the fundamental principles, the strategic objective (ensuring national security for a 10–15-year period), crime trends at the national and regional levels, key crime-prevention tasks, and resource support;

Stage II – drafting, on its basis, a State Programme as a systemic normative document;

Stage III – adopting a State Action Plan for the implementation of the Strategy (for a period of 3–5 years), which specifies the sequence of implementation;

Stage IV – developing regional and local programmes that adapt nationwide provisions to territorial specifics (Vasylevych, 2021).

Based on this doctrinal approach, we argue that the set of legal and organizational-administrative measures aimed at ensuring security and preventing banditry under martial law and during the post-war recovery of the country must be implemented through the formation of a coherent system of programme-strategic documents, including the following:

1. Adoption of the Crime Prevention Strategy of Ukraine until 2035.

Its content must be grounded in preliminary criminological forecasting of crime development in Ukraine, taking into account potential international, military, and socio-economic threats expected over the next ten years (Law of Ukraine *On State Forecasting and Development of Programmes for Economic and Social Development of Ukraine*, 2000; Resolution of the Cabinet of Ministers of Ukraine *On Approval of the Procedure for the Development of Forecast and Programme Documents for Economic and Social Development and for Preparing Draft Budget Declarations and the State Budget*, 2003).

The Strategy should:

– define the basic principles of state policy in the field of crime prevention and its specific manifestations, including banditry;

– specify the principles of planning and management in the field of criminal policy;

– establish requirements for the crime-prevention system, criteria of effectiveness, and monitoring procedures;

– contain recommendations on the development of state and regional plans detailing the strategy for the medium term;

– formulate mandatory tasks for crime-prevention actors, serving as binding guidelines for all executive authorities.

Long-term crime forecasting must rely on objective criminal-law statistics, ensuring that strategic decisions are scientifically grounded.

This normative act should become the single framework document guiding state authorities in preventing the growth of criminal activity and the formation of a criminal environment, while its detailed provisions should be further developed in lower-level documents.

2. Adoption of the Comprehensive Plan for the Prevention of Criminal Offenses in Ukraine for 2026–2035.

This document will have a long-term nature (ten-year period); serve as the foundation for regional plans; and ensure a unified planning vertical aligned with the Strategy until 2035.

The plan must include a system of objectives, measures, performance indicators, and control mechanisms, thus ensuring an effective–rather than declarative–policy in the field of criminal security.

3. Adoption of Regional Plans for Preventing Banditry (by oblasts).

The necessity of such plans is conditioned by:

– the increased risk of forming armed criminal groups as a consequence of the war;

– substantial regional variations in the crime situation across Ukraine;

– the need to account for territorial specifics of violent group crime.

Regional programmes must:

– contain region-specific, evidence-based measures rather than duplicate nationwide documents;

– incorporate the views of not only the Ministry of Internal Affairs but also:

• civil society organizations,
• research institutions,
• universities,
• expert communities;

– be grounded in the principles of transparency, openness, and scientific validity.

Unlike the Strategy, such normative acts must avoid broad, non-specific language ("to improve," "to ensure," "to promote") and instead include precise, concrete measures and mechanisms for their adjustment based on changes in the crime situation.

4. Establishment of a specialized body within the structure of the National Police of Ukraine – the Directorate for the Prevention of Criminal Offenses.

The key functions of such a body should include:

– identifying the main directions of state policy in the field of crime prevention;

– conducting nationwide studies of latent crime and its determining factors;

– coordinating the activities of all crime-prevention actors;

– summarizing best practices in preventive activity;

– organizing and expanding cooperation among crime-prevention stakeholders;

– developing applied scientific recommendations for state authorities.

The proposed system of measures enables the formation of a unified, structured, and effective mechanism of general social prevention, which is a necessary precondition for restraining and preventing the spread of banditry under martial law. Without strengthening the strategic and programmatic components, the fight against organized armed groups will remain fragmented, and the risks of societal criminalization will remain high.

4. Conclusions

Within the framework of general social measures for preventing banditry, the following measures are proposed:

1. **Adoption of the Strategy for Combating Organized Crime in Ukraine until 2035** and the development of a program-targeted approach through the improvement of strategic planning mechanisms and the expansion of law-enforcement instruments. The key directions of the innovative Strategy are intended to ensure the implementation of nationwide directives for the developers of medium- and short-term state and regional plans, which will be adjusted according to the criminogenic situation.

2. **Adoption of the Comprehensive Plan for the Prevention of Criminal Offenses in Ukraine for 2027–2035** as a fundamental document for the implementation of the Strategy. Due to its long-term nature, this Plan will serve as a methodological basis for the formation of regional crime-prevention plans.

3. **Development of Regional Banditry Prevention Plans (by oblasts)**, with implementation entrusted to regional state administrations and local bodies of the National Police of Ukraine. These plans should follow a standardized format that takes into account state-level planning, regional criminogenic specificity, resource capacity, and organizational capabilities.

4. **Establishment of the Directorate for the Prevention of Criminal Offenses within the central apparatus of the National Police of Ukraine**, tasked with defining the strategic priorities of state policy in crime prevention; conducting nationwide research on crime, including organized crime; coordinating the activities of crime-prevention actors; systematizing preventive practices; and organizing international cooperation in the field of crime prevention.

References

Bandurka, O.M., Lytvynov, O.M. (2012). *Stratehiia i taktyka protydii zlochynnosti: monohrafiia* [Strategy and Tactics of Combating Crime: Monograph]. Kharkiv: NikaNova. (in Ukrainian)

Dzhuzha, O.M., Vasylevych, V.V., Hida, O.F. (2011). *Profilaktyka zlochyniv: pidruchnyk* [Crime Prevention: Textbook]. Kyiv: Atika. (in Ukrainian)

Dzhuzha, O.M., Vasylevych, V.V., Kolb, O.H. (2009). *Kryminolohiia* [Criminology]. Kyiv: Pretsedent. (in Ukrainian)

Holina, V.V. (2011). *Zapobihannia zlochynnosti (teoriia i praktyka)* [Crime Prevention (Theory and Practice)]. Kharkiv: National Academy of Law of Ukraine. (in Ukrainian)

Holina, V.V., Holovkin, B.M., Valuiska, M.Iu. (2014). *Kryminolohiia: pidruchnyk* [Criminology: Textbook]. Kharkiv. (in Ukrainian)

Postanova Kabinetu Ministriv Ukrainy vid 02.06.2021 № 579. *Pro zatverdzhennia Derzhavnoi tsilovoi sotsialnoi prohramy "Molod Ukrainy" na 2021–2025 roky* [Resolution of the Cabinet of Ministers of Ukraine dated 02.06.2021 No. 579 On Approval of the State Targeted Social Program "Youth of Ukraine" for 2021–2025]. (2021). Retrieved from

https://zakon.rada.gov.ua/laws/show/148-2016-p (in Ukrainian)

Postanova Kabinetu Ministriv Ukrainy vid 26.04.2003 № 621. *Pro zatverdzhennia Poriadku rozroblennia prohnoznykh i prohramnykh dokumentiv ekonomichnoho i sotsialnoho rozvytku ta skladannia proektiv Biudzhetnoi deklaratsii ta derzhavnoho biudzhetu* [Resolution of the Cabinet of Ministers of Ukraine dated 26.04.2003 No. 621 On Approval of the Procedure for the Development of Forecast and Program Documents for Economic and Social Development and the Preparation of Draft Budget Declarations and the State Budget]. (2003). Retrieved from https://zakon.rada.gov.ua/laws/show/621-2003-p (in Ukrainian)

Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 16.09.2020 № 1126-r. *Pro zatverdzhennia Stratehii borotby z orhanizovanoiu zlochynnistiu* [Resolution of the Cabinet of Ministers of Ukraine dated 16.09.2020 No. 1126-r On Approval of the Strategy for Combating Organized Crime]. (2020). Retrieved from https://zakon.rada.gov.ua/laws/show/1126-2020-r#Text (in Ukrainian)

Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 23.08.2024 № 792-r. *Pro zatverdzhennia planu zakhodiv spriamovanykh na vykonannia Kompleksnoho stratehichnoho planu reformuvannia orhaniv pravoporiadku yak chastyny sektoru bezpeky i oborony Ukrainy na 2023–2027 roky* [Order of the Cabinet of Ministers of Ukraine dated 23.08.2024 No. 792-r On Approval of the Plan of Measures Aimed at Implementing the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies as Part of the Security and Defense Sector of Ukraine for 2023–2027]. (2024). Retrieved from https://zakon.rada.gov.ua/laws/show/792-2024-r (in Ukrainian)

Tytarenko, O.O. (2019). *Derzhavne prohramuvannia protydii zlochynnosti v Ukraini: monohrafiia* [State Programming to Combat Crime in Ukraine: Monograph]. Kharkiv: Promart. (in Ukrainian)

Ukaz Prezydenta Ukrainy vid 11.05.2023 № 273/2023. *Pro skhvalennia Kompleksnoho stratehichnoho planu reformuvannia orhaniv pravoporiadku yak chastyny sektoru bezpeky i oborony Ukrainy na 2023–2027 roky* [Decree of the President of Ukraine dated 11.05.2023 No. 273/2023 On Approval of the Comprehensive Strategic Plan for the Reform of Law Enforcement Agencies as Part of the Security and Defense Sector of Ukraine for 2023–2027]. (2023). Retrieved from https://zakon.rada.gov.ua/laws/show/273/2023#Text (in Ukrainian)

Ukaz Prezydenta Ukrainy vid 14.09.2020 № 392/2020. *Pro skhvalennia Stratehii natsionalnoi bezpeky Ukrainy* [Decree of the President of Ukraine dated 14.09.2020 No. 392/2020 On Approval of the National Security Strategy of Ukraine]. (2020). Retrieved from https://www.president.gov.ua/documents/3922020-35037 (in Ukrainian)

Vasylevych, V.V. (2021). *Teoretyko-prykladni zasady kryminolohichnoi polityky Ukrainy* [Theoretical and Applied Principles of Criminological Policy of Ukraine]. Doctoral Dissertation. Kyiv. (in Ukrainian)

Zakon Ukrainy vid 23.03.2000 № 1602-III. *Pro derzhavne prohnozuvannia ta rozroblennia prohram ekonomichnoho i sotsialnoho rozvytku Ukrainy* [Law of Ukraine On State Forecasting and Development of Programs for Economic and Social Development of Ukraine: dated 23.03.2000 No. 1602-III]. (2000). Retrieved from https://zakon.rada.gov.ua/laws/show/1602-14 (in Ukrainian)

Zakon Ukrainy vid 27.04.2021 № 1414-IX. *Pro osnovni zasady molodizhnoi polityky* [Law of Ukraine On the Basic Principles of Youth Policy: dated 27.04.2021 No. 1414-IX]. (2021). Retrieved from https://zakon.rada.gov.ua/laws/show/1414-20#Text (in Ukrainian)

Олександр Фіщенко,
аспірант кафедри кримінології та інформаційних технологій
Національної академії внутрішніх справ, Солом'янська площа, 1, Київ, Україна, 03035, kriminolog@ukr.net
ORCID: *orcid.org/0009-0006-0965-7213*

ЗАГАЛЬНОСОЦІАЛЬНІ ЗАХОДИ ЗАПОБІГАННЯ БАНДИТИЗМУ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. ***Мета статті*** полягає у необхідності сформулювати концептуальне бачення загальносоціальних заходів запобігання бандитизму в умовах воєнного стану. ***Результати.*** У статті наголошено, що загальносоціальні заходи запобігання бандитизму становлять комплекс масштабних, системних і довготривалих правових, соціально-економічних, організаційно-управлінських та культурно-виховних заходів, що реалізуються на загальнодержавному, регіональному, місцевому та міжвідомчому рівнях, спрямованих на забезпечення стійкої національної безпеки, формування антикриміногенного соціального середовища та усунення або нейтралізацію детермінант, які сприяють виникненню й діяльності озброєних злочинних угруповань. З урахуванням результатів кримінологічних досліджень та аналізу сучасних загроз, запропоновано комплекс правових, організаційно-управлінських заходів впливу на забезпечення безпеки й запобігання бандитизму в умовах воєнного стану та післявоєнного відновлення країни на основі формування цілісної системи програмно-стратегічних документів. За допомоги таких ключових пріоритетів, загальносоціальні заходи перетворюються на багаторівневу систему стабілізації суспільства, яка створює умови для

системного запобігання бандитизму шляхом: усунення соціальних причин, що зумовлюють виникнення та діяльність бандитських угруповань; формування правової та моральної культури населення; зниження рівня соціальної напруги й поствоєнних травм; обмеження доступу до нелегальної зброї; забезпечення стійкої роботи інституцій публічної влади; інтеграції державної політики безпеки з економічною, соціальною, молодіжною, оборонною та освітньою політиками; подолання маргіналізації, недопущення криміналізації учасників бойових дій та молоді. ***Висновки.*** Зроблено висновок про доцільність виконання загальносоціальних заходів запобігання бандитизму зокрема: 1) прийняття Стратегії боротьби з організованою злочинністю в Україні до 2035 року та розвиток програмно-цільового підходу шляхом удосконалення механізмів стратегічного планування і розширення інструментарію правоохоронної діяльності, при цьому визначені ключові напрями інноваційної Стратегії мають забезпечити виконання загальнодержавної директиви для розробників середньо- та короткострокових державних і регіональних планів, що корегуватимуться залежно від криміногенної ситуації; 2) прийняття Комплексного плану запобігання кримінальним правопорушенням в Україні на 2027–2035 рр. як базового документа для реалізації Стратегії, який завдяки довгостроковому характеру стане методологічною основою формування регіональних планів запобігання злочинності; 3) розробка Планів запобігання бандитизму за регіонами, областями, організацію виконання яких покласти на обласні державні адміністрації та органи Національної поліції на місцях, забезпечивши стандартизований формат із урахуванням державного планування, регіональної криміногенної специфіки, ресурсного потенціалу та організаційних можливостей; 4) створення Управління запобігання кримінальним правопорушенням у структурі центрального апарату Національної поліції України, на яке покласти функції визначення стратегічних пріоритетів державної політики щодо запобігання кримінальним правопорушенням, проведення загальнонаціональних досліджень злочинності, у тому числі й організованої, координації діяльності суб'єктів запобігання, узагальнення превентивної практики та організації міжнародного співробітництва у сфері запобігання кримінальним правопорушенням.

Ключові слова: бандитизм, банда, організована група, кримінальне правопорушення, кримінологія, запобігання.

UDC 343.9
DOI https://doi.org/10.32849/2663-5313/2024.4.16

Bohdan Chehil,
Applicant Scientific Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, bohdancehil@ukr.net
ORCID: *orcid.org/0009-0009-9898-9398*

CRIMINOLOGICAL FOUNDATIONS OF THE ACTIVITIES OF PROSECUTION AUTHORITIES IN PREVENTING CRIMES RELATED TO THE IMPLEMENTATION OF THE STATE MIGRATION POLICY: FORMATION OF A CONCEPTUAL AND CATEGORICAL FRAMEWORK

Abstract. ***Purpose.*** The purpose of the article is to systematize and generalize existing scholarly views on the criminological analysis of migration crime and the role of the prosecution service in the prevention system, as well as to develop a coherent conceptual and categorical framework for further theoretical substantiation and improvement of the criminological foundations of the activities of the prosecution authorities of Ukraine in preventing crimes related to the implementation of the state migration policy. ***Results.*** The article examines the criminological foundations of the activities of the Ukrainian prosecution authorities in preventing crimes associated with the implementation of the state migration policy. The relevance of the problem is driven by the need for interdisciplinary integration of knowledge about the phenomenology of crime under conditions of instability and armed conflict, as well as by the absence of a direct definition of the crime prevention function in the current Law of Ukraine "On the Prosecution Service," which necessitates theoretical interpretation of its role. The developed conceptual and categorical framework includes key definitions such as *"criminological foundations of the activity of the prosecution service"*, defined as the theoretical and methodological basis for the implementation of the prosecution's preventive function through identifying, analyzing, and eliminating the causes and conditions of crime. It is established that *"migration policy"* is interpreted as a complex and structured system of measures, resources, and mechanisms aimed at regulating migration processes and achieving socio-economic and security objectives. "Migration crime" is considered as a set of criminal acts that includes crimes committed by migrants, crimes committed against migrants (human trafficking, exploitation), as well as crimes related to the organization of illegal migration. It is determined that *"crimes related to the implementation of the state migration policy"* include not only direct migration-related offenses but also corruption by authorized officials and transnational organized crime, which undermine the state's ability to properly implement its policy. ***Conclusions.*** The article identifies the critical importance of criminological foundations, which provide prosecutors with scientifically grounded tools for exerting systemic influence on the root causes of crime (primarily corruption) and establish clear supervisory priorities, directing the prosecution service toward combating organized crime and protecting the rights of vulnerable groups (migrants). It is argued that the systematization of scholarly views has enabled the formation of an integrated conceptual and categorical framework, which is an essential prerequisite for further theoretical substantiation and enhancement of the preventive role of the prosecution service in the field of state migration policy.

Key words: criminological foundations of the prosecution service, migration policy, migration crime, crime prevention, anti-corruption, transnational organized crime, preventive function of the prosecution service, conceptual and categorical framework.

1. Introduction

A significant aspect in developing the theoretical principles of the criminological foundations of the activities of prosecution authorities aimed at preventing crimes related to the implementation of the state migration policy is defining the substantive content of the research object. It is essential to formulate a conceptual and categorical framework concerning the activities of prosecution authorities and its components as an object of the state migration policy associated with crime prevention in this area.

In particular, when examining the criminological foundations of the activities of the prosecution

service under conditions of armed conflict, scholars emphasize the importance of clarifying the essence and meaning of categories such as "activities of prosecution authorities," "criminological foundations," "crime," "armed conflict," "crime under conditions of armed conflict," etc. This is due to the fact that the cognition of any phenomenon requires the use of specific conceptual and categorical tools. Correct formulation of theoretical concepts is essential in the process of interpreting the results of criminological research. At the same time, a structured system of knowledge enables organizing and structuring the domain of social reality related to the identification of crime prevention problems, determining effective means of counteracting crime, and promoting further scholarly inquiry (Kovalevskyi, 2020).

Holovkin B.M. notes that in an era of unstable development, interdisciplinary integration of knowledge about the ontology and phenomenology of crime is inevitable. The development of fundamental and applied criminology is directly affected by the state and trends of crime both in Ukraine and globally (Holovkin, 2020). Combating and preventing crime remains a pressing issue regardless of the level of criminogenic conditions in society. This issue directly influences public safety, citizens' sense of protection by the state, and confidence in the imposition of fair punishment on perpetrators of criminal offenses.

Any actions aimed at combating and preventing crime are carried out by an organized system of authorized entities, which may evolve depending on social needs and the prevalence of certain categories of criminal acts. The prosecution service plays an important role within the law enforcement system of Ukraine as a state institution acting on behalf of the state and society. Its activities are regulated by a number of legal sources, including international treaties and instruments (e.g., the 1948 Universal Declaration of Human Rights, the 1990 UN Guidelines on the Role of Prosecutors), the Constitution of Ukraine, the Law of Ukraine "On the Prosecution Service," the Criminal Procedure Code of Ukraine, and others that determine the functions and tasks of the prosecution service, the legal status of prosecutors, and the principles of prosecutorial oversight (Boreiko, Bronevytska, Lisitsyna, Lutsyk, Navrotska, 2019).

The current Law of Ukraine "On the Prosecution Service" of 14 October 2014 does not explicitly define crime prevention among the direct tasks of the prosecution service. Nevertheless, analysis of the functions and powers of prosecutors allows for identifying certain forms of activity that demonstrate the prosecutor's role in crime prevention (Markov, 2010).

For instance, in exercising prosecutorial oversight over compliance with the law by bodies conducting operational and investigative activities, inquiry, and pre-trial investigation, the Prosecutor General and the leadership of district prosecutor's offices coordinate the activities of law enforcement agencies at the local level by organizing joint meetings, establishing inter-agency working groups, conducting coordination measures, and analyzing crime prevention efforts. Thus, crime prevention is an inherent component of preventing criminal offenses (Komisaruk, 2023).

Accordingly, to develop a conceptual and categorical framework concerning the criminological foundations of the activities of the prosecution authorities in preventing crimes within the sphere of state migration policy, it is necessary to define key terms based on criminological doctrine and the functional purpose of the prosecution service.

Research on the concept of *"criminological activity of the prosecution service"* has been conducted by O.S. Ishchuk, O.H. Kalman, V. Yurchyshyn, V.M. Komisaruk, V.V. Markov, V.M. Kuts, and A.M. Orlean.

The definition of *"migration policy,"* which represents an object requiring protection from criminal encroachments, has been examined in the works of S.O. Mosiondz, S.F. Denysiuk, O.H. Babenko, A.L. Shevtsov, and O.I. Shaporenko.

Issues of migration crime and corruption in this field, which lay the groundwork for the diagnostic toolkit of the prosecution service, have been explored by Yu.B. Kuryliuk, A.P. Mozol, V.V. Mozol, M. Puzyrov, V. Shapka, and M. Hradovska.

However, no separate study has yet been devoted to analyzing the level of scholarly development of the criminological foundations of the activities of prosecution authorities in preventing crimes related to the implementation of the state migration policy, through systematizing and generalizing the main research areas in the criminological analysis of migration crime and determining the role of the prosecution service in the prevention system. This gap highlights the relevance of the present research.

The purpose of the article is to systematize and generalize existing scholarly views on the criminological analysis of migration crime and the role of the prosecution service in the prevention system, as well as to develop a coherent conceptual and categorical framework for further theoretical substantiation and improvement of the criminological foundations of the activities of the prosecution service of Ukraine in preventing crimes related to the implementation of the state migration policy.

2. Specific Features of Clarifying the Conceptual and Categorical Framework

In studying the criminological foundations of the activities of prosecution authorities in preventing crimes related to the implementation of the state migration policy, it is essential to clarify the essence and significance of such categories as *"criminological foundations of the activity of the prosecution service," "migration policy," "migration crime,"* and *"crimes related to the implementation of the state migration policy."* These categories allow for a systematic approach to examining and improving the role of the prosecution service as a key actor in combating crime in this specific and socially sensitive sphere.

To determine the essence and significance of the category *"criminological foundations of the activity of the prosecution service,"* it is necessary to refer to the dissertation research by O.S. Ishchuk devoted to the criminological activity of prosecution authorities. The scholar defined the priorities and levels of the criminological activity of the prosecution service, characterized the effectiveness, information-analytical support, and scientific accompaniment of such activity, and proposed a mechanism for its implementation (Ishchuk, 2014).

Criminological activity of the prosecutor is also addressed in the work of O.H. Kalman. The scholar argues that, during the pre-trial investigation stage, criminological activity consists of prosecutorial actions connected with the exercise of the following powers:

a) the prosecutor's participation in investigative actions aimed at identifying and eliminating the causes and conditions that contributed to the commission of a crime;

b) giving instructions to an investigator or inquiry body to carry out investigative actions aimed at identifying and eliminating such causes and conditions;

c) returning a criminal case to an investigator or inquiry body for additional investigation due to the failure to identify the causes and conditions that contributed to the commission of the crime;

d) revoking insufficiently substantiated submissions made by the investigator or inquiry body (Kalman, 2010).

In turn, V. Yurchyshyn concludes that *"criminological activity of the prosecutor"* should be understood as a special supervisory activity aimed at the timely identification by pre-trial investigation bodies of the causes and conditions that contributed to the commission of crimes, as well as the adoption of substantiated procedural and non-procedural measures aimed at eliminating them in order to minimize criminogenic influence (Sydorenko, 2018).

Criminological activity is implemented by prosecutors in several directions: exercising prosecutorial supervision over compliance with and proper application of laws; criminological activity during pre-trial investigation; criminological activity in court proceedings; supervision over the execution of court decisions in criminal cases and over the application of other coercive measures involving restrictions of personal liberty; analytical work; development and planning of crime prevention measures; coordination of law enforcement agencies in combating crime.

In addition, prosecutors must promote preventive activities of the public, participate in legal education, and cooperate with relevant institutions of other states and international organizations in the field of crime prevention and counteraction.

The prosecution authorities are entrusted with the following tasks: protecting the constitutional order of Ukraine, personal rights and freedoms of individuals and citizens, and the foundations of the democratic system from unlawful encroachments; carrying out criminal prosecution and bringing offenders to criminal liability; taking measures to compensate for material and other damages caused by offenses; coordinating the activities of law enforcement bodies in preventing and combating crime; participating in all types of judicial proceedings and identifying causes and conditions of crimes and other offenses; ensuring interaction with foreign law enforcement bodies and specialized international organizations for the purpose of mutual legal assistance in combating organized crime and other especially dangerous offenses; identifying needs for legal regulation in various spheres of social relations and submitting proposals accordingly; ensuring the objective formation of state legal statistics and maintaining specialized records by supervising compliance with law in this area; analyzing legality and law and order at the regional and national levels; participating in the development of plans and programs aimed at combating and preventing crime (Popovych, 2007).

An important component of the activities of prosecution authorities in combating and preventing crime is the submission by prosecutors of representations to relevant state bodies and agencies, containing proposals aimed at strengthening legality and law and order and improving the effectiveness of crime prevention measures. The prosecution service is also tasked with *"informing state bodies and the public about the state of legality and measures taken to strengthen it,"* as specified in paragraph 5 of Article 6 of the Law of Ukraine "On the Prosecutor's Office" (Law of Ukraine On the Prosecutor's Office, 2014).

Thus, based on the aforementioned scholarly views, it can be concluded that the category *"criminological foundations of the activity of the prosecution service"* represents the theoretical and methodological basis for the implementation of the preventive function of the prosecution service. It constitutes a set of scientifically grounded fundamental provisions, principles, and approaches that determine the content, methods, and organization of prosecutorial activity aimed at identifying, analyzing, and eliminating the causes and conditions of crime.

In terms of its significance for preventing crimes related to the implementation of the state migration policy, the *criminological foundations of the activity of the prosecution service* provide prosecutors with scientifically grounded tools for influencing the root causes of crime, transforming the prosecution service from a body that reacts to consequences into a key actor within the state's preventive system.

3. Specific Features of Formulating the Concepts of "Migration Policy" and "Migration Crime"

In academic discourse, the definition of the concept of *"migration policy"* remains a matter of ongoing debate. Numerous interpretations exist, depending on the meaning attributed by researchers to the terms *"policy"* and *"migration."*According to a widely accepted view in the scholarly community, migration policy may be defined as a system or set of measures determined by the state.

For example, S.O. Masondz understands migration policy as a set of legal, financial, administrative, and organizational measures through which the state purposefully influences the regulation of migration processes in line with migration priorities, the quantitative composition of migration flows, and their structure within the sphere of public administration (Mosondz, 2003).

According to S.F. Denysiuk, migration policy is a set of measures belonging to the sphere of public governance that includes a legally regulated and representative-authority-controlled decision-making process aimed at organizing migration processes (Denysiuk, 2008). Similar approaches to defining *"migration policy"* are found in the works of other Ukrainian scholars.

However, some researchers argue that migration policy should not be limited solely to a system of measures. Thus, O.H. Babenko defines migration policy as a system of measures, resources, and mechanisms through which the state and society purposefully influence social movements and social mobility of both their indigenous population and all allogeneic groups (Babenko, 1997).

A.L. Shevtsov views migration policy as a system of state-level, generally accepted ideas and conceptually integrated means through which, primarily the state as well as its social institutions, adhering to certain principles, plan the achievement of goals relevant to the current and subsequent stages of societal development (Shevtsov, 2013).

O.I. Shaporenko interprets migration policy as a system of conceptually unified instruments through which the state and its social institutions anticipate achieving the objectives of developing external migration processes in accordance with the long-term tasks of the socio-economic development of society (Shaporenko, 2019).

This diversity of interpretations within the Ukrainian academic field reflects the multidimensional nature of the phenomenon under analysis. Migration policy may therefore be conceptualized as a system of measures, resources, mechanisms, instruments, and ideas. Overall, migration policy constitutes a complexly structured system that encompasses coherent ideas, objectives, and strategies, along with interacting measures, resources, mechanisms, and instruments, which collectively enable the state to regulate migration processes.

Depending on territorial characteristics, migration policy takes different forms and reflects the diverse migration processes and challenges inherent to various countries and regions. Territorial differentiation, and consequently differences in migration policy, is a natural response to the unique set of factors and conditions characteristic of each territory, which require an individual approach. Migration policy aims to achieve goals that relate, to varying degrees, to economic, social, political, and other aspects. For example, its role in economic development has been examined in recent studies (Semenets-Orlova, Pylypchenko, 2024).

Thus, *migration policy* seeks to achieve multifaceted objectives that concern economic development, social stability, national security, and other aspects of societal functioning. Its effective implementation requires a deep understanding of migration processes and flexible responses to constantly changing conditions. Migration policy is a key variable determining success or failure in preventing crimes in this sphere. The criminological foundations of the prosecution service's activity provide tools for the systemic protection of migration policy from corruption and inefficiency, which constitute major factors contributing to crimes related to its implementation.

The category of *"migration crime"* represents one of the most complex and sensitive

aspects of contemporary criminology and legal scholarship. It encompasses crimes committed by migrants (foreign nationals and stateless persons) in the host country, crimes committed *against* migrants, as well as crimes associated with the organisation of illegal migration (such as human trafficking and migrant smuggling). Numerous challenges arise in clarifying the essence and significance of the category *"migration crime,"* as various terms are frequently used–sometimes in broader or narrower senses–leading to conceptual ambiguity. Among them are: *migrant crime* (Kuryliuk, 2018), *migration-related crime*(Puzyrov, Shapka, 2023), and *crime in the sphere of migration*. Each of these categories has its own features and characteristics.

Thus, the term *"migrant crime"* refers specifically to crimes committed by foreign nationals or stateless persons within the territory of the host state. It does not cover crimes committed against migrants or crimes related to the organisation of illegal migration. The category *"migration-related crime"* is broader and may include crimes committed both by migrants and against them, as well as crimes resulting from migration processes (e.g., human trafficking, smuggling of migrants). However, the boundaries of this concept may be diffuse.

Finally, *"crime in the sphere of migration"* usually refers to offences directly related to migration processes and their regulation, such as violations of residence rules or illegal border crossing.

Therefore, *migration crime* is not a monolithic phenomenon but a complex of criminal acts. It encompasses three main groups:

1. **Crimes committed by migrants.** These are criminal offences perpetrated by foreign nationals or stateless persons within the host country. It is essential to recognise that migration status itself is not a cause of criminality; such offences may fall across the entire spectrum–from minor thefts to serious crimes–just as among other population groups.

2. **Crimes committed against migrants.** This group includes offences in which migrants are victims, often due to their vulnerability, lack of language proficiency, limited knowledge of the law, or absence of social support networks. Human trafficking is the most striking example, but this category also includes fraud, exploitation, violence, and discrimination.

3. **Crimes associated with the organisation of illegal migration.** These are acts aimed at violating established rules governing the movement of persons, such as migrant smuggling, document forgery for the purpose of legalisation, and schemes facilitating illegal employment. Such crimes are often organised and transnational in nature.

Addressing the definitional difficulties surrounding the category *"migration crime"* requires a comprehensive approach that accounts not only for legal status, but also the social, economic, and psychological dimensions of migration. Clear delineation of terminology and scientifically grounded conceptualisation of this phenomenon are essential for developing effective and balanced state policies aimed at crime prevention and the protection of the rights of all persons involved. Migration crime functions as a critical diagnostic tool for the prosecution service, shaping its goals, priorities, and methods of activity in preventing crimes within the migration sphere.

Crimes Related to the Implementation of State Migration Policy

It is important to note that uncovering the essence of this category requires recognising that crimes related to the implementation of state migration policy include not only direct violations of migration legislation that constitute criminal acts (such as migrant smuggling), but also other crimes arising in the course of, or as a consequence of, the implementation of such policy, as well as those that hinder its proper execution.

These, in our view, should include:

– **Criminal offences committed by authorised officials**–primarily corruption (unlawful benefit, abuse of power, negligence) within migration authorities.

– **Criminal offences aimed at circumventing migration policy**, particularly migrant smuggling.

– **Criminal offences arising within the migration environment**, including exploitation of migrants and fraud committed against them.

With regard to corruption-related crimes in migration authorities, it is essential to emphasise that despite the measures taken by Ukrainian law enforcement and other public bodies to combat corruption, the scale of this phenomenon remains significant. Corruption in the migration sphere poses a substantial threat to Ukraine's national security, as it undermines the state's capacity to implement a migration policy that is adequate to contemporary needs, obstructs the realisation of the state's foreign policy priorities by compromising its international reputation, and creates conditions conducive to offences linked to illegal migration, such as terrorism, drug trafficking, and human trafficking. Scientific understanding of corruption in the migration sphere is therefore essential for eliminating existing corruption risks, improving the organisation of law enforcement

activity, and should be viewed as one of the key components of ensuring Ukraine's national security (Hradovska, 2018).

The prosecution service plays an exceptionally significant role in combating human trafficking. Primarily, this is done through the exercise of supervisory functions over compliance with the law by bodies conducting operational-search activities, inquiry, and pre-trial investigation, as well as through the prosecution of criminal cases in court. The effectiveness of anti-trafficking measures directly depends on the quality of prosecutorial supervision over compliance with the law by investigative bodies. Therefore, the role of the prosecutor in combating human trafficking through oversight of legality in inquiry and pre-trial investigation is of paramount importance (Kuts, Orlean, 2007).

Thus, the category *"crimes related to the implementation of state migration policy"* is a foundational criminological element of prosecutorial activity. Its significance lies in establishing clear boundaries for the preventive and supervisory functions of the prosecution service, orienting it not only toward reacting to direct violations, but also toward systematic counteraction to corruption and transnational organised crime (human trafficking, migrant smuggling), which undermine the state's capacity to effectively implement its migration policy.

4. Conclusions (English Academic Translation)

The criminological foundations of the activities of the prosecution authorities in preventing crimes related to the implementation of the state migration policy constitute the theoretical and methodological basis for the prosecutorial preventive function in this sphere. These foundations integrate scientific knowledge on the criminological activity of the prosecution service–understood as a special supervisory activity aimed at eliminating the causes and conditions of crime–and on the specific features of migration-related criminality.

Their significance is manifested in several key aspects.

First, they define the essence of the prosecutorial preventive function by shifting the prosecution service from an institution that primarily reacts to the consequences of crimes to a central actor within the national system of crime prevention. This provides prosecutors with scientifically grounded tools for influencing the root causes of criminal behaviour.

Second, these foundations orient prosecutorial activity toward a systemic fight against corruption, emphasising that corruption within migration authorities (unlawful benefit, abuse of power, other forms of official misconduct) constitutes a major threat to national security and a principal determinant of offences related to the implementation of migration policy. Consequently, they require comprehensive protection of migration policy from inefficiency and abuse.

Third, the criminological foundations help establish the priorities of prosecutorial supervision. They direct prosecutorial oversight not only toward direct violations (such as unlawful facilitation of irregular border crossing) but also toward manifestations of transnational organised crime–such as human trafficking–where migrants constitute the most vulnerable category of victims.

Thus, the developed conceptual and categorical framework ("criminological foundations of prosecutorial activity," "migration policy," "migration-related criminality," "crimes related to the implementation of the state migration policy") serves as an essential basis for further theoretical substantiation and improvement of the role of the prosecution service as an institution ensuring legality and security in this complex and socially sensitive sphere.

References

Babenko, O.H. (1997). *Migration policy of the Ukrainian state at the present stage (political science aspect)*. Candidate's thesis. Kyiv (in Ukrainian).

Boreiko, H.D., Bronevytska, O.M., Lisitsyna, Yu.O., Lutsyk, V.V., Navrotska, V.V. (2019). *Prosecutor's law*. Lviv: Lviv State University of Internal Affairs (in Ukrainian).

Denysiuk, S.F. (2008). *Directions of the development of migration policy in Ukraine*. Forum prava, 2008, No. 3, pp. 111–115 (in Ukrainian).

Holovkin, B.M. (2020). *The present and future of criminology*. Problems of Legality, 2020, No. 149, pp. 168–184 (in Ukrainian).

Hradovska, M. (2018). *Current issues of combating corruption in the migration sector in the context of ensuring national security of Ukraine*. Pidpryiemnytstvo, hospodarstvo i pravo, 2018, No. 12, pp. 312–317 (in Ukrainian).

Ishchuk, O.S. (2014). *Criminological activity of prosecutor's offices: monograph*. Kharkiv: Zolota mylia (in Ukrainian).

Kalman, O.H. (2010). *Problems of combating crime*. Kharkiv: Novasoft (in Ukrainian).

Komisaruk, V.M. (2023). *Subjects of criminal offense prevention in Ukraine*. Derzhava ta rehiony, 2023, No. 4, pp. 115–120 (in Ukrainian).

Kovalevskyi, M.A. (2020). *Conceptual and categorical apparatus of the criminological principles of the activity of prosecutor's offices in conditions of armed conflict*. Yurydychna nauka, 2020, No. 3(105), pp. 5–12 (in Ukrainian).

Kuryliuk, Yu.B. (2018). *Migrant crime in Ukraine: determination and prevention*. Yurydychnyi biuleten, 2018, No. 8, pp. 317–323 (in Ukrainian).

Kuts, V.M., Orlean, A.M. (2007). *Prosecutorial means of combating human trafficking*. Kyiv: Varta (in Ukrainian).

Markov, V.V. (2010). *Crime prevention: the essence of the concept*. Poperedzhennia zlochyniv subiektamy operatyvno-rozshukovoi diialnosti, 2010, No. 1, pp. 99–100 (in Ukrainian).

Mosondz, S.O. (2003). *State migration policy in modern Ukraine (administrative and legal aspect)*. Candidate's thesis. Kyiv (in Ukrainian).

Popovych, Ye.M. (2007). *Regarding the definition of the goals and objectives of the prosecutor's office*. Visnyk Prokuratury, 2007, No. 2, pp. 61–66 (in Ukrainian).

Puzyrov, M., Shapka, V. (2023). *Peculiarities of legal regulation of international cooperation of states in the investigation of criminal offenses committed by illegal migrants*. Yurydychnyi visnyk, 2023, No. 6, pp. 144–152 (in Ukrainian).

Semenets-Orlova, I.A., Pylypchenko, O.O. (2024). *Migration policy: concept, essence, methodology of formation and economic aspects*. Ekonomika: realii chasu, 2024, No. 2, pp. 5–12 (in Ukrainian).

Shaporenko, O.I. (2019). *State migration policy: ways of regulation and principles*. Pravo ta derzhavne upravlinnia, 2019, No. 2, pp. 252–257 (in Ukrainian).

Shevtsov, A.L. (2013). *State regulation of migration processes as the main function of migration policy*. Derzhava ta rehiony, 2013, No. 3, pp. 41–46 (in Ukrainian).

Sydorenko, N.S. (2018). *The state of scientific research on criminological activities of the criminal justice bodies of Ukraine*. Naukovyi visnyk publichnoho ta pryvatnoho prava, 2018, No. 2, pp. 76–82 (in Ukrainian).

Law of Ukraine On the Prosecutor's Office of October 14, 2014 No. 1697-VII. (2014). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text (in Ukrainian).

Богдан Чегіль,
здобувач Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, bohdancehil@ukr.net
ORCID ID: *orcid.org/0009-0009-9898-9398*

КРИМІНОЛОГІЧНІ ЗАСАДИ ДІЯЛЬНОСТІ ОРГАНІВ ПРОКУРАТУРИ ЩОДО ЗАПОБІГАННЯ ЗЛОЧИНАМ, ПОВ'ЯЗАНИХ ІЗ РЕАЛІЗАЦІЄЮ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ ПОЛІТИКИ: ФОРМУВАННЯ ПОНЯТІЙНО-КАТЕГОРІАЛЬНОГО АПАРАТУ

Анотація. ***Метою статті*** є систематизація та узагальнення наявних наукових поглядів щодо кримінологічного аналізу міграційної злочинності та ролі прокуратури в системі превенції, а також формування цілісного понятійно-категоріального апарату для подальшого теоретичного обґрунтування та вдосконалення кримінологічних засад діяльності органів прокуратури України щодо запобігання злочинам, пов'язаним із реалізацією державної міграційної політики. ***Результати.*** У статті досліджуються кримінологічні засади діяльності органів прокуратури України щодо запобігання злочинам, пов'язаним із реалізацією державної міграційної політики. Актуальність проблеми зумовлена необхідністю міжгалузевої інтеграції знань про феноменологію злочинності в умовах нестабільного розвитку та збройного конфлікту, а також відсутністю прямого визначення функції запобігання злочинам у чинному Законі України «Про прокуратуру», що вимагає теоретичного осмислення її ролі. Сформований понятійно-категоріальний апарат включає ключові дефініції, зокрема «кримінологічні засади діяльності прокуратури»: визначені як теоретико-методологічна основа для реалізації прокуратурою її превентивної (запобіжної) функції через виявлення, аналіз та усунення причин і умов злочинності. Визначено, що «міграційна політика» трактується як комплексно структурована система заходів, ресурсів та механізмів, спрямована на регулювання міграційних процесів та досягнення соціально-економічних і безпекових цілей. Встановлено, що «міграційна злочинність» розглядається як комплекс злочинних діянь, що охоплює злочини, вчинені мігрантами, злочини, вчинені проти мігрантів (торгівля людьми, експлуатація) та злочини, пов'язані з організацією незаконної міграції. Досліджено, що «злочини, пов'язані із реалізацією державної міграційної політики» включають не лише прямі міграційні порушення, а й корупцію уповноважених осіб та транснаціональну організовану злочинність, які підривають здатність держави належно втілювати свою політику. ***Висновки.*** Визначено ключове значення кримінологічних засад, які надають прокурорам науково обґрунтований інструментарій для системного впливу на першопричини злочинності (насамперед корупцію) та встановлюють чіткі пріоритети нагляду, орієнтуючи прокуратуру на боротьбу з організованою злочинністю та захист прав вразливих груп (мігрантів). Доведено, що систематизація наукових поглядів дозволила сформувати цілісний понятійно-категоріальний апарат, який є необхідною умовою для подальшого теоретичного обґрунтування та вдосконалення превентивної ролі прокуратури у сфері державної міграційної політики.

Ключові слова: кримінологічні засади прокуратури, міграційна політика, міграційна злочинність, запобігання злочинам, протидія корупції, транснаціональна організована злочинність, превентивна функція прокуратури, понятійно-категоріальний апарат.

UDC 342.9
DOI https://doi.org/10.32849/2663-5313/2024.4.17

Oleksandra Strunevych,
Doctor of Juridical Sciences, Leading Research Fellow Scientific Institute of Public Law, 2a H. Kirpa Street, Kyiv, Ukraine, 03035, strunevych_oleksandra@ukr.net
ORCID: *orcid.org/0000-0002-2359-103X*

Mykola Lybash,
Associate Professor of the Department of Administrative and Legal Disciplines Educational and Scientific Institute of Law and Psychology National Academy of Internal Affairs, 1 Solomianska Square, Kyiv, Ukraine, 03035, mykola_lybash@ukr.net
ORCID: *orcid.org/0000-0002-6413-8346*

MAIN TRENDS IN THE DEVELOPMENT OF LEGAL REGULATION OF PROSECUTORIAL ACTIVITY IN INDEPENDENT UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to characterize the main trends in the development of legal regulation of prosecutorial activity in Ukraine in order to ensure an appropriate professional level of training of future prosecutorial personnel, as well as to stimulate an increase in the significance of prosecutorial activity in the process of exercising the full range of prosecutorial powers. ***Results.*** Legal regulation of prosecutorial activity in the context of judicial and legal reform and reform of the prosecution service is subject to revision, since prosecutorial activity is currently transitioning from a strictly subordinative system to a partnership-based system of relations between society and the state. At the same time, the separation of provisions regulating prosecutorial activity into a distinct section of the Constitution of Ukraine indicates the recognition of this state authority as an independent "fourth" branch of government. Thus, the article aims to examine the main trends in the development of legal regulation of prosecutorial activity in Ukraine. It is established that trends in the development of legal regulation of prosecutorial activity in independent Ukraine should be inextricably linked with the processes of transformation of the rule-of-law state, democratic society, and the reorientation of the legal consciousness of each individual. The strategic goal of establishing the independence of the prosecution service from other state authorities should be its formation as an autonomous system of state bodies that exists outside the traditional division into three branches of power and is not subordinated to any of them, while occupying a key position within the system of checks and balances. ***Conclusions.*** In our view, the trends in the development of legal regulation of prosecutorial activity in Ukraine include the following: expansion of constitutional and legal regulation of the status of the prosecution service among other state authorities; implementation of European standards of prosecutorial activity; introduction of mechanisms for the exercise of prosecutorial functions during the transitional period; strengthening legal regulation of the anti-corruption activities of the prosecution service; deepening the independence of the prosecution service of Ukraine. It is noted that improving the organizational and legal forms of prosecutorial activity enhances its position among other state authorities; therefore, it is equally important to identify existing problems and shortcomings that should be eliminated in legal regulation in order to optimize prosecutorial activity as a whole.

Key words: development trends, legal regulation, prosecutorial activity, "fourth" branch of government, Ukraine.

1. Introduction

Legal regulation of prosecutorial activity in the context of judicial and legal reform, reform of the prosecution service in connection with the ratification of the Association Agreement between Ukraine and the European Union, the adoption of the new Law of Ukraine "On the Prosecutor's Office," and the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" is subject to reconsideration, as prosecutorial activity is currently shifting from a strictly subordinative system to a partnership-based system of relations between society and the state. At the same time, the separation of provisions regulating prosecutorial activity into a separate section of the Constitution of Ukraine indicates the recognition of this state authority as an independent "fourth" branch of government.

The foregoing determines the relevance of this study in connection with the adoption

of new legislative acts regulating prosecutorial activity (including the Criminal Procedure Code of Ukraine), as well as the need to transform the role of the prosecution service in light of European integration processes, ensure the independence and authority of this state body, and expand the components of its constitutional and legal status.

To achieve the purpose of the study, it is necessary, in our opinion, to outline the main trends in the development of legal regulation of prosecutorial activity in Ukraine in order to ensure an appropriate professional level of training of future prosecutorial personnel and to stimulate an increase in the significance of prosecutorial activity in the process of exercising the full range of prosecutorial powers.

In addition, the relevance of the study is обусловлена by the reformatting of the content of the principles of subordination and coordination, independence, unity, depoliticization, single leadership and collegiality, publicity, as well as zonal and subject-matter principles of organization and implementation of prosecutorial activity in Ukraine and worldwide. Within the system of checks and balances, the prosecution service remains one of the key law enforcement bodies that plays an important role in ensuring this mechanism.

Issues of prosecutorial activity and the main trends in the development of legal regulation in this area have been examined in the works of Ukrainian legal scholars who combine academic research with practical activity, in particular V. B. Averianov, O. F. Andriiko, V. I. Baskov, V. H. Bessarabov, L. R. Hrytsaienko, Yu. M. Hroshevyi, L. M. Davydenko, P. M. Karkach, V. V. Karpuntsov, V. V. Klochkov, H. K. Kozhevnykov, I. M. Koziakov, M. V. Kosiuta, A. V. Lapkin, I. Ye. Marochkin, O. V. Martseliak, M. V. Melnykov, M. I. Mychko, O. R. Mykhailenko, H. O. Murashyn, V. P. Nahrebelnyi, M. V. Rudenko, Ye. M. Popovych, V. M. Savytskyi, H. P. Sereda, V. V. Stashys, V. V. Sukhonos, V. Ya. Tatsii, Yu. M. Todyka, M. S. Shalumov, Yu. S. Shemshuchenko, P. V. Shumskyi, O. N. Yarmysh, and others. However, without diminishing the scholarly contribution of these researchers, we must note that due to recent innovations in the legal regulation of prosecutorial activity in Ukraine, these provisions require substantial reconsideration.

2. Peculiarities of the Constitutional and Legal Regulation of the Status of the Prosecutor's Office

The first trend that should, in our opinion, be identified is the trend toward expanding the constitutional and legal regulation of the status of the Prosecutor's Office among other state authorities. The fundamental legal principles governing the activities of the Prosecutor's Office in Ukraine are enshrined in Chapter VII of the Constitution of Ukraine, entitled "The Prosecutor's Office" (Constitution of Ukraine, 1996). Of crucial importance for the reform of prosecutorial activity was the adoption of the Law of Ukraine *"On the Restoration of Certain Provisions of the Constitution of Ukraine"* (Law of Ukraine *On the Restoration of Certain Provisions of the Constitution of Ukraine*, 2014), as this law restored the parliamentary-presidential form of government and, accordingly, altered the redistribution of powers between the Prosecutor's Office and the legislative and executive branches of power, as well as the President of Ukraine.

As rightly noted by Ye. M. Popovych, in the course of developing the concept of reforming the bodies of the Prosecutor's Office of Ukraine it was repeatedly emphasized, including by representatives of the Council of Europe, that at present there are no adequate guarantees of the independence of the Prosecutor General of Ukraine. This is manifested, in particular, in the existing procedure for appointment to and dismissal from office. Another fundamentally important change was the restoration of a function inherent to the Prosecutor's Office from 2004 to 2010, namely the supervision over the observance of human and civil rights and freedoms, and compliance with laws in this area by executive authorities, local self-government bodies, and their officials and officers (Popovych, 2009).

Analyzing this standpoint, it may appear that vesting the Prosecutor's Office with the aforementioned competence constitutes a return to the function of general supervision; however, this is not the case. Thus, the supplementation of paragraph 5 of Article 121 of the Constitution of Ukraine strengthens the constitutional and legal mechanism for the protection of human and civil rights and enables prosecutorial bodies to respond promptly to complaints filed by specific individuals (not only citizens, but also stateless persons, persons with dual citizenship, foreigners, refugees, etc.) regarding violations of their rights and legitimate interests, and to apply coercive legal measures for their prompt restoration.

M. K. Yakymchuk points out that at present, within the framework of constitutional and legal regulation, the representative function of the Prosecutor's Office is limited to the forms of participation of a prosecutor in court proceedings, which directly follows from paragraph 2, part 1 of Article 121 of the Constitution of Ukraine (Constitution of Ukraine, 1996). In this regard, at the current stage, further reform of the Prosecutor's Office is associ-

ated with resolving the task of determining its place within the state mechanism, taking into account the constitutional principle of separation of powers (Yakymchuk, 2011).

In addition, other trends in legal regulation in this area can also be identified. In particular, as Ye. M. Popovych rightly observes, not only the legal status of prosecutors has undergone changes, but also the scope of their powers and the organization of prosecutorial activity. Thus, in independent Ukraine, prosecutors were deprived of the right to demand case files from courts and to lodge supervisory protests against court decisions that had entered into legal force, as well as the right to authorize detention as a preventive measure (this competence currently belongs to the investigating judge) (Popovych, 2009).

Analyzing this position, we consider such changes to be positive under conditions where the place of the Prosecutor's Office as a state authority among other bodies has not been clearly determined, and where no clear distinction has been made between supervisory and control, auditing, human rights protection, representative, executive, rule-making, and prosecutorial activities in general. It should also be noted that this state of affairs complicates the full-fledged implementation of prosecutorial activity. Accordingly, in order to carry out comprehensive and complete reform of the Prosecutor's Office, it is necessary not only to adopt new legislative acts, but also to ensure the possibility of their effective practical implementation.

The provisions of the Constitution of Ukraine differ in their socio-political and economic essence, as some of them perform a declarative or programmatic function, while others have a normative and consolidating character. We consider the opinion of V. V. Sukhonos to be well-founded, who emphasizes that at the time of adopting the relevant constitutional provisions regulating prosecutorial activity, the legislator should clearly understand the ultimate goal and stages of reforming the system of prosecutorial bodies. Unfortunately, at the time of the adoption of the Constitution of Ukraine, there was no unified vision of the prospective model of the Ukrainian Prosecutor's Office, nor does such a vision exist today, since the place of the Prosecutor's Office within the system of state authorities remains undefined (Sukhonos, 2010).

It should be noted that in studying the trend toward expanding the constitutional and legal regulation of prosecutorial activity in Ukraine, relatively few constitutional provisions are devoted to this institution. We agree with the opinion of Yu. S. Shemshuchenko (Shemshuchenko, Skrypniuk, Kresina, 2001) that the provisions of the Constitution of Ukraine are insufficient to fully clarify the trends and essence of prosecutorial activity within the state mechanism.

Therefore, taking into account contemporary European integration processes, the next trend in the legal regulation of prosecutorial activity in Ukraine should be identified as the implementation of European standards of prosecutorial activity.

K. Zweigert and H. Kötz note that legal research acquires a genuinely scientific character when the study extends beyond the norms of a single national legal system (Zweigert, Kötz, 2000). Analyzing the status of the Ukrainian Prosecutor's Office and the European requirements imposed on Ukraine in the context of reforming this institution, Yu. S. Shemshuchenko emphasizes that many of these requirements are subjective in nature and largely reflect the organic commitment of Europeans to their own legal systems. This gives rise to attempts to portray the modern Prosecutor's Office of Ukraine as a relic of the Soviet system, characterized by excessive centralization and independence from local authorities, while its non-affiliation with any branch of power is interpreted as a violation of the principle of separation of powers (Shemshuchenko, 1996).

In our view, such an approach may lead to an absolutization of European achievements in the reform of the Prosecutor's Office and an underestimation of the Ukrainian legal tradition in this context. This situation goes beyond the necessary scope of European integration measures and suppresses national peculiarities; therefore, national legislation should be adapted to European standards with due regard to such specificities.

Today, the legal framework for determining the system of international and European standards governing prosecutorial activity includes the UN *Guidelines on the Role of Prosecutors*, Recommendation No. R (2000) 19 of the Committee of Ministers of the Council of Europe to member states, Recommendation 104 (2003) of the Parliamentary Assembly of the Council of Europe on the role of the Prosecutor's Office in a democratic society governed by the rule of law, the *European Guidelines on Ethics and Conduct for Prosecutors* (the Budapest Guidelines), as well as the *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* adopted by the International Association of Prosecutors, among others.

It should be noted that Resolution No. 1466 of the Parliamentary Assembly of the Council of Europe dated October 5, 2005, *"On the Fulfilment of Duties and Obligations by Ukraine"*,

characterized the aforementioned constitutional changes as a return to the past. The Resolution called for the prompt abolition of the function of general supervision and its transfer to the judiciary, primarily to administrative courts (Resolution of the Parliamentary Assembly of the Council of Europe *On the Fulfilment of Duties and Obligations by Ukraine*, 2005).

We believe that the function of general supervision cannot be inherently characteristic of the judicial system, since courts are unable to respond promptly to violations of human and civil rights due to procedural time limits, procedural rules, and other constraints. At the same time, within the sphere of prosecutorial activity, such supervision should indeed be abolished in general; however, in certain areas—particularly those related to the protection of socially vulnerable groups—it should retain its significance.

Critically assessing the provisions of the new Law of Ukraine *"On the Prosecutor's Office"*, which abolished the function of general supervision (this provision entered into force upon the adoption of the law), it should be noted that attention must be paid to the position of the European Commission for Democracy through Law (the Venice Commission) regarding the need to strengthen the independence of the Prosecutor's Office of Ukraine from political pressure and to achieve its depoliticization. At the same time, it was emphasized that the existing role of the Prosecutor's Office in protecting human and civil rights should in the future be transferred to other bodies or exercised by individuals themselves, with the assistance of lawyers of their own choosing (Karpuntsov, 2013).

Analyzing the above, it should be noted that the construction of a rule-of-law and social state in Ukraine necessitates the improvement of the legal framework governing prosecutorial activity, taking into account the provisions of the Law of Ukraine *"On the National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union"*(Law of Ukraine *On the National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union*, 2004), which defines legislative adaptation as the process of bringing the laws of Ukraine and other normative legal acts into conformity with the *acquis communautaire*. At the same time, given that the entry into force of the new Law of Ukraine *"On the Prosecutor's Office"* was postponed until July 15, 2015, the new provisions regulating prosecutorial activity have not yet found real practical implementation, except for the abolition of the function of general supervision. Considering that the existence of general supervision in Ukraine had transformed into a factor enabling manipulation by prosecutors or abuse of supervisory powers and became a means of unlawful interference in the activities of enterprises and organizations, this function had to be eliminated, also in view of the fact that no European state vested the prosecution service with the function of general supervision.

Taking into account the trend toward the implementation of European standards in the legal regulation of prosecutorial activity, it should be noted that pursuant to paragraph 5 of Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe, the state should take measures to ensure that: (a) the recruitment, promotion, and transfer of prosecutors are carried out in accordance with fair and impartial procedures that exclude representation of the interests of specific groups and discrimination at any level, such as on the grounds of sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, or other status (at present, the new Law of Ukraine *"On the Prosecutor's Office"* has introduced a competitive selection procedure); (b) the careers of prosecutors, their promotion, and transfers are based on known and objective criteria, such as professional competence and work experience; (c) the transfer of prosecutors may also be dictated by service necessity; (d) the necessary conditions of service, such as remuneration, tenure, and pension provision, are regulated by law, taking into account the importance of prosecutorial work, as well as an appropriate retirement age; (e) disciplinary proceedings against prosecutors are regulated by law and guarantee a fair and objective assessment and decision subject to independent and impartial review; (f) prosecutors, together with their families, are protected by public authorities where their personal safety is threatened as a result of the proper performance of their functions; (g) prosecutors have the right to effective remedies, including, where appropriate, access to a court of special jurisdiction, if their legal status is violated (Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe, 2000).

We are compelled to state that today cases of unjustified refusal to appoint individuals to prosecutorial positions are widespread, since the competitive procedure for selecting candidates for the position of prosecutor, as provided for in Article 27 of the Law of Ukraine *"On the Prosecutor's Office"* (Law of Ukraine *On the Prosecutor's Office*, 2014), has not yet fully entered into force. This procedure requires candidates to have higher legal education, at least

two years of professional experience in the field of law, and proficiency in the state language.

At present, the requirements for the rotation of prosecutorial staff remain undefined at the normative level, as referred to in subparagraph "c" of paragraph 5 of Recommendation No. 19 (2000) (Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe, 2000). In implementing the Association Agreement between Ukraine and the European Union, Ukraine must continue the process of adapting national legislation to the *acquis communautaire*in connection with the implementation of measures aimed at further reform of prosecutorial activity.

The next trend in the development of legal regulation of prosecutorial activity in independent Ukraine is the introduction of mechanisms for the implementation of prosecutorial functions during the transitional period. At present, the correlation between issues of general supervision and specific prosecutorial supervisory activity remains problematic. As rightly noted by M. V. Kosiuta, any attempts to legislatively define the scope of issues falling within the competence of the Prosecutor's Office in exercising supervisory powers are unproductive, since such definitions cannot encompass the entire diversity of this activity. The scholar proposed two possible solutions for further improvement of the Law of Ukraine *"On the Prosecutor's Office"*:

1. to abandon altogether the definition of the components of the subject matter of supervisory powers;

2. to provide an approximate, non-exhaustive list of the most priority areas of activity, indicating the possibility of the existence of other areas as well (Kosiuta, 2010).

We agree with this position and believe that it is not appropriate to define the content of supervisory powers in detail in the Law of Ukraine *"On the Prosecutor's Office."* In our view, it would be sufficient to outline only the manifestations of certain forms of supervisory activity within the broader concept of prosecutorial activity. It should also be noted that the types of prosecutorial supervisory activity defined in Article 121 of the Constitution of Ukraine (Constitution of Ukraine, 1996) have an expanded content. In particular, supervision over compliance with laws by bodies engaged in operative-search activity is not an exception to the general rule and falls within the scope of prosecutorial activity. At present, this type of supervision is not an independent function of the Prosecutor's Office, but a component of its main function provided for in paragraph 3, part 1 of Article 121 of the Constitution of Ukraine (Constitution of Ukraine, 1996). Due to its specificity and significance, it has an exceptional character and belongs to the priority areas of prosecutorial activity. Its priority is reflected by the legislator even in the title of this supervisory function, as it is placed before pre-trial investigation.

At the same time, it should be noted that Ukraine has developed and operates a rather complex and extensive system for the protection of human and civil rights, which includes legislative, executive, and judicial authorities, the President of Ukraine, as well as supervisory and control bodies. Within this system, the Prosecutor's Office occupies an important place in ensuring human and civil rights, as its activity allows for the prevention of violations and effective response to violations of the law by state authorities, local self-government bodies, institutions, enterprises, organizations, and individual citizens (Pushkina, 2008).

Considering the implementation of the representative judicial function of the Prosecutor's Office during the transitional period and the corresponding legal regulation in this area, it should be noted that the representation of a prosecutor in court should be regarded as representation of a new type, which differs from the traditional semantic meaning of the concept of "representation." Of fundamental importance is the interpretation of prosecutorial judicial representation provided in the decision of the Constitutional Court of Ukraine in the case upon the constitutional submission of the Supreme Economic Court of Ukraine and the Prosecutor General's Office of Ukraine concerning the official interpretation of Article 2 of the Economic Procedure Code of Ukraine (Decision of the Constitutional Court of Ukraine, 1999) (the case on the representation of state interests in the economic court by the Prosecutor's Office of Ukraine). In particular, the Court stated that representation of the interests of the state by the Prosecutor's Office of Ukraine in an economic court constitutes legal relations in which a prosecutor, exercising powers defined by the Constitution and laws of Ukraine, performs procedural actions in court aimed at protecting the interests of the state. Such official interpretation of the law is binding.

However, V. I. Bednarska and S. V. Biesieda point out that this decision effectively bypasses the issue of implementing any actions outside court proceedings. Moreover, statements of claim, motions, and applications filed by a prosecutor in the interests of the state are not sufficiently regulated in procedural legislation. Consequently, the prosecutor is vested only with the authority to participate in court hearings, which, in itself, cannot ensure effective protection of the rights and legitimate interests of an individual or the state (Bednarska, Biesieda, 2012).

Analyzing the foregoing, it should be noted that the above reveals the essence of the trend of transitional prosecutorial activity during the implementation of European standards: representation of the interests of the state in court by prosecutors has a complex nature, since, on the one hand, it constitutes a function of the Prosecutor's Office, and, on the other hand, a set of legal relations. It should be emphasized that neither the Constitution of Ukraine nor the Law of Ukraine *"On the Prosecutor's Office"* clearly defines the types of judicial proceedings in which a prosecutor may represent the interests of the state. Such a conclusion may be drawn from the provisions of specific procedural codes, which determine the nature of this activity and its content. The function of a prosecutor to represent the interests of a citizen or the state in court is defined as one exercised in cases prescribed by law. As a rule, it is considered to be directly implemented by a prosecutor in the course of civil, commercial (economic), criminal, and administrative proceedings. A positive legislative innovation is the establishment in the new Law of Ukraine *"On the Prosecutor's Office"* of an exhaustive list of functions performed by the Prosecutor's Office with reference to the Constitution of Ukraine.

Considering the legal regulation of the function of public prosecution, which is implemented within the framework of prosecutorial activity, it should be noted that, according to the European tradition, a prosecutor (attorney) acts as the public prosecutor in criminal proceedings. V. V. Sukhonos emphasizes that, by maintaining public prosecution in the court of first instance, a prosecutor performs an important part of the function of criminal prosecution entrusted to the Prosecutor's Office, understood as activity aimed at identifying the person who committed a criminal offense, bringing such person to criminal liability, referring the case to court, and substantiating the accusation before the court (Sukhonos, 2010).

However, a shortcoming of the existing legal regulation lies in the narrow understanding of the maintenance of public prosecution. It should be noted that, as of today, legal regulation tends toward expanding the scope of the function of public prosecution exercised by a prosecutor. When submitting motions for detention, extension of detention periods, or authorization of operative-search or investigative actions, the prosecutor does not act as a public prosecutor, since public prosecution has not yet been initiated (a person is considered accused from the moment an indictment is submitted to the court). It should also be emphasized that at the supervisory stages of criminal proceedings, the prosecutor may continue to maintain public prosecution, in particular by insisting on the reversal of an acquittal or, conversely, on the termination of criminal proceedings due to the failure to prove the person's guilt in committing a criminal offense.

3. Current Objectives of the Legal Regulation of Prosecutorial Activity

In our view, the objective of contemporary legal regulation of prosecutorial activity in this area should be the affirmation of the special role of the prosecutor as an accuser in facilitating compliance with the requirements of the law, as well as fulfilling the duty to take timely measures to eliminate violations of the law, regardless of the source from which such violations originate.

Thus, the foregoing provides grounds to conclude that the implementation of the core and most significant functions of the Prosecutor's Office is subject to expansion and reformatting from a model of "supervision" to one of "partnership relations" with the state and the citizen. Accordingly, the human rights–protective aspect of prosecutorial activity is strengthened, accompanied by appropriate legal regulation of this sphere through a centralized and unified approach.

Another trend in the legal regulation of prosecutorial activity is the strengthening of the legal framework governing the anti-corruption activity of the Prosecutor's Office. With regard to the specific manifestations of prosecutorial activity in the anti-corruption domain, there exists a set of issues that require urgent resolution. At present, the Law of Ukraine *"On the Principles of Preventing and Combating Discrimination in Ukraine"*, the Law of Ukraine *"On the National Anti-Corruption Bureau of Ukraine"*, as well as enhanced liability under the Criminal Code of Ukraine have been adopted; however, issues related to the anti-corruption activity of prosecutors have not yet been fully resolved. It should be noted that the new Law of Ukraine *"On the Prosecutor's Office"* introduces the necessary restrictions and rules in this regard.

In our opinion, within the framework of the existing legal regulation, taking into account the tendency toward its possible expansion, it would be appropriate to distinguish the following areas for the actualization of anti-corruption (coordination) prosecutorial activity:

1. prevention of corrupt practices and forecasting with regard to specific positions, locations, and individuals affected by this "social disease";

2. detection of criminal corruption-related offenses and bringing to justice those guilty of committing corrupt acts;

3. implementation of measures for the prevention and combating of corruption, coordina-

tion of such measures, and ensuring their systemic, consistent, and periodic nature.

Today, the National Anti-Corruption Bureau of Ukraine has become the strategic center for coordinating anti-corruption activity, while the Prosecutor's Office serves as the center for coordinating the fight against corruption. We support the proposal of L. R. Hrytsaienko regarding the need to establish in Ukraine a Service for the Prevention of Money Laundering of Proceeds from Crime (Hrytsaienko, 2013). Such a service would conduct inspections based on relevant state registers of natural and legal persons (business entities and subjects of financial activity), owners of real estate, and compare the data with transactions carried out by these entities.

It should be noted that anti-corruption prosecutorial activity is aimed at identifying, eliminating, and preventing violations provided for in the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001), in Chapter XVII "Criminal Offenses in the Sphere of Official Activity and Professional Activity Related to the Provision of Public Services." However, it should be emphasized that the exercise of the function of public prosecution by a prosecutor should not be equated with anti-corruption activity. The latter is exclusively related to the coordination of actions of state authorities, local self-government bodies, and their officials and officers in the detection and elimination of, as well as prevention of, corruption-related offenses. It should be noted that the legislation in this area does not detail either the nature of prosecutorial activity or the specific features of the exercise of powers to coordinate the prevention and combating of corruption by prosecutors at different levels.

Thus, based on the foregoing, it may be stated that the trend toward the implementation of anti-corruption activity within prosecutorial activity should also provide for the development of a specific mechanism of "checks and balances" that would ensure the independence of prosecutorial activity within the state mechanism for ensuring and protecting human and civil rights and freedoms.

Another trend in the development of the legal regulation of prosecutorial activity in independent Ukraine is the deepening of the independence of the Prosecutor's Office of Ukraine. It should be noted that, by maintaining public prosecution in court, representing the interests of a citizen or the state in court in cases provided for by law, and supervising compliance with the law in the execution of court decisions in criminal proceedings, as well as in the application of other coercive measures related to the restriction of personal liberty, prosecutors ensure the implementation of the fundamental principles of judicial proceedings defined in Article 129 of the Constitution of Ukraine (Constitution of Ukraine, 1996).

In our view, the Prosecutor's Office should become an independent and autonomous branch of power, the activity of which does not fit within the framework of any of the traditional branches of government. The existence of functions assigned to the Prosecutor's Office by the Basic Law and a separate legislative act excludes its inclusion in the legislative, executive, or judicial branch of power.

If laws adopted by the legislative branch are not enforced, resolutions and orders issued by government institutions are not implemented, and court judgments and decisions are not rendered and enforced in a timely and proper manner, an atrophy of state power occurs, leading either to a state of powerlessness or to the dominance of a single branch of power (Tolochko, 2011).

However, it cannot be asserted that there exists a clear trend toward a delineation of prosecutorial, executive, and law-making activities. Therefore, even in the updated legislation on the Prosecutor's Office, it is impossible to institutionalize and distinguish prosecutorial power as a separate type or "branch" of state power. In our opinion, attempts to single out prosecutorial power as an independent branch of government are doomed to failure. At present, the organizational and legal system of the Prosecutor's Office of Ukraine is increasingly distancing itself from the structural design of the judicial system. As previously noted in this study, prosecutors, in the course of their activities, interact with virtually all subjects of legal relations. The exercise by prosecutorial bodies of the function of public prosecution in court and the representation of the interests of a citizen or the state in court in cases provided for by law are directly related to the activity of the judiciary and the structure of judicial proceedings. In fact, the structure of the Prosecutor's Office as a whole corresponds to the structural organization of judicial authorities only at the level of courts of first instance. We believe that the existing structural mismatch between prosecutorial offices and courts in their organizational frameworks does not allow for the proper assurance of prosecutorial independence or the proper performance of the functions entrusted to it during appellate review of commercial and administrative cases. The essence of the problem lies in the fact that the jurisdiction of appellate commercial and administrative courts, with certain exceptions, extends to several regions.

It is noteworthy that V. V. Sukhonos proposes to empower prosecutors within the system of checks and balances among the legislative,

executive, and judicial branches of government—granting them authority to investigate criminal offenses committed by Members of Parliament and members of the Cabinet of Ministers of Ukraine (Sukhonos, 2010). However, this position seems, in our view, to pose a threat to the principle of independence of prosecutorial activity as a whole. The problem with implementing this proposal lies in the impossibility of combining the functions of public prosecution and pre-trial investigation. In such a case, prosecutors would be collecting evidence during pre-trial investigations, which would have an exclusively accusatory character. Furthermore, it remains unclear which body would be entrusted with the function of supervising the pre-trial investigation, since currently the Prosecutor's Office performs this supervisory role over investigative bodies. In addition, investigative bodies are effectively subordinated to the Prosecutor's Office, and therefore, it is neither logical nor justified to separate and transfer the function of supervising pre-trial investigations of criminal offenses committed by specific subjects.

It should be noted that some principles and methods of legal organization and regulation of prosecutorial activity in Ukraine, as well as existing trends in legal regulation, were inherited from the Soviet system and do not correspond to the current state of societal relations. Moreover, these regulatory realities do not align with the place and purpose of prosecutorial activity overall among other types of activities carried out by state authorities in Ukraine. The state of observance of human and civil rights, the rule of law, and legality in the country largely depends on the Prosecutor's Office. Therefore, the level of proper organization and implementation of prosecutorial activity directly determines the legal protection of the population, especially under current conditions where effective public oversight over prosecutorial activity is lacking.

4. Conclusions

Thus, based on the above, it can be concluded that the trends in the development of legal regulation of prosecutorial activity in independent Ukraine should be inextricably linked to the processes of transformation of the rule of law, the democratic society, and the reorientation of the legal consciousness of each individual. The strategic goal of highlighting the trend of prosecutorial independence from other state authorities should be the establishment of the Prosecutor's Office as an autonomous system of state bodies, operating outside the traditional division into three branches of government and not subordinated to any of them, while occupying a prominent position within the system of checks and balances.

In our view, the trends in the development of legal regulation of prosecutorial activity in Ukraine include the following: 1) expansion of constitutional and legal regulation of the status of the Prosecutor's Office among other state authorities; 2) implementation of European standards of prosecutorial activity; 3) introduction of mechanisms for the Prosecutor's Office to exercise its functions during the transitional period; 4) strengthening the legal regulation of the Prosecutor's Office's anti-corruption activities; 5) deepening the independence of the Prosecutor's Office in Ukraine.

The legal regulation of prosecutorial activity in Ukraine is one of the cornerstones of continuing the European integration course, since the Prosecutor's Office is a state authority upon which the level of protection of the population, the authority of state institutions, and the ability of individuals to exercise their rights and legitimate interests depend. At the same time, it should be noted that improving the organizational and legal forms of prosecutorial activity strengthens its position among other state authorities. Therefore, it is equally important to identify the problems and shortcomings that need to be addressed in the legal regulation in order to optimize prosecutorial activity as a whole.

References

Bednarska, V.I., & Biesieda, S.V. (2012). *Aktualni problemy realizatsii sudovo-predstavnytskoi funktsii prokuratury [Current problems of implementing the judicial and representative function of the prosecutor's office]. Prokuratura Ukrainy: istoriia, sohodennia ta perspektyvy*, 1, 101–104. (in Ukrainian)

Hrytsaienko, L.R. (2013). *Prokurorska diialnist v Ukraini ta zarubizhnykh krainakh [Prosecutor's activity in Ukraine and foreign countries]*. Kyiv: Yurydychna literatura. (in Ukrainian)

Karpuntsov, V.V. (2013). *Funktsionalne pryznachennia orhaniv prokuratury: naukovo-praktychnyi analiz [Functional purpose of prosecutor's offices: scientific and practical analysis]*. Kyiv: Lohos. (in Ukrainian)

Konstytutsiia Ukrainy: vid 28.06.1996 № 254к/96-VR [*Constitution of Ukraine: dated 28.06.1996 No. 254k/96-VR*]. (1996). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text (in Ukrainian)

Kosiuta, M.V. (2010). *Prokuratura Ukrainy [Prosecutor's Office of Ukraine]*. Kyiv: Znannia. (in Ukrainian)

Kryminalnyi kodeks Ukrainy: vid 05.04.2001 № 2341-III [*Criminal Code of Ukraine: dated 05.04.2001 No. 2341-III*]. (2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text (in Ukrainian)

Popovych, Ye.M. (2009). *Shliakhy rozvytku prokuratury Ukrainy: monohrafiia [Ways of development of the Prosecutor's Office of Ukraine: monograph]*. Kharkiv: Tornado. (in Ukrainian)

Pushkina, O.V. (2008). *Konstytutsiinyi mekhanizm zabezpechennia prav liudyny i hromadianyna v Ukraini: problemy teorii i praktyky [Constitutional mechanism of ensuring human and citizen rights in Ukraine: problems of theory and practice]*. Extended abstract of Doctor's thesis, Natsionalna yurydychna akademiia Ukrainy imeni Yaroslava Mudroho. (in Ukrainian)

Rekomendatsiia № 19 (2000) Komitetu Rady Ministriv derzhavam-chlenam Rady Yevropy shchodo roli derzhavnoi prokuratury v systemi kryminalnoho sudochynstva: pryiniata Komitetom Ministriv Rady Yevropy 06.10.2000 na 724-1 zustrichi zastupnykiv ministriv [*Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe to member states on the role of the public prosecutor's office in the criminal justice system: adopted on 06.10.2000 at the 724-1 meeting of the Ministers' Deputies*]. (2000). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf (in Ukrainian)

Rezoliutsiia Parlamentskoi Asamblei Rady Yevropy Pro vykonannia oboviazkiv ta zoboviazan Ukrainoiu: vid 05.10.2005 № 1466 [*Resolution of the Parliamentary Assembly of the Council of Europe on the fulfillment of duties and obligations by Ukraine: dated 05.10.2005 No. 1466*]. (2005). Retrieved from http://www.coe.kiev.ua/uk/dogovory/RN1466(2005).html (in Ukrainian)

Rishennia Konstytutsiinoho sudu Ukrainy u spravi za konstytutsiinym podanniam Vyshchoho hospodarskoho sudu Ukrainy ta Heneralnoi prokuratury Ukrainy shchodo ofitsiinoho tlumachennia polozhennia st. 2 Hospodarskoho protsesualnoho kodeksu Ukrainy (sprava pro predstavnytstvo prokuraturoiu Ukrainy interesiv derzhavy u hospodarskomu sudi) vid 08.04.1999 № 3-rp/99 [*Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Economic Court of Ukraine and the Prosecutor General's Office of Ukraine on the official interpretation of the provisions of Article 2 of the Economic Procedure Code of Ukraine: case on the representation of the interests of the state in the economic court by the Prosecutor's Office of Ukraine, dated 08.04.1999 No. 3-rp/99*]. (1999). Retrieved from https://zakon.rada.gov.ua/laws/show/v007p710-10#Text (in Ukrainian)

Shemshuchenko, Yu.S. (1996). *Teoretychni zasady prokurorskoho nahliadu na suchasnomu etapi [Theoretical principles of prosecutorial supervision at the present stage]. Problemy rozvytku prokuratury Ukrainy v umovakh demokratychnoi pravovoi derzhavy*, 1, 15–19. (in Ukrainian)

Shemshuchenko, Yu.S., Skrypniuk, O.V., & Kresina, I.O. (2001). *Derzhavotvorennia i pravo tvorennia v Ukraini: dosvid, problemy, perspektyvy [State formation and law formation in Ukraine: experience, problems, prospects]*. Kyiv: Instytut derzhavy i prava im. V.M. Koretskoho. (in Ukrainian)

Sukhonos, V.V. (2010). *Pravovi ta orhanizatsiini aspekty rozvytku prokuratury krainy v suchasnykh umovakh [Legal and organizational aspects of the development of the Prosecutor's Office of the country in modern conditions]*. Sumy: University Book. (in Ukrainian)

Tolochko, O.M. (2011). *Reformuvannia prokuratury Ukrainy: instytutsionalnyi aspekt [Reforming the Prosecutor's Office of Ukraine: institutional aspect]. Prokuratura Ukrainy: istoriia, sohodennia ta perspektyvy: materialy mizhnarodnoi naukovo-praktychnoi*, 152, 45–48. (in Ukrainian)

Tsvaihert, K., & Këtts, Kh. (2000). *Vvedenye v sravnytelnoe pravovedenye v sfere chastnoho prava [Introduction to comparative law in the field of private law]*. Kyiv. (in Ukrainian)

Yakymchuk, M.K. (2011). *Aktualni pytannia transformatsii funktsii prokuratury ta yii roli v systemi orhaniv derzhavnoi vlady Ukrainy [Current issues of transformation of the functions of the Prosecutor's Office and its role in the system of state authorities of Ukraine]. Prokuratura Ukrainy: istoriia, sohodennia ta perspektyvy*, 1, 35–38. (in Ukrainian)

Zakon Ukrainy Pro prokuraturu: vid 14.10.2014 № 1697-III [*Law of Ukraine on the Prosecutors Office: dated 14.10.2014 No. 1697-III*]. (2014). Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18 (in Ukrainian)

Zakon Ukrainy Pro vidnovlennia dii okremykh polozhen Konstytutsii Ukrainy: vid 21.02.2014 № 742-VII [*Law of Ukraine on the restoration of certain provisions of the Constitution of Ukraine: dated 21.02.2014 No. 742-VII*]. (2014). Retrieved from https://zakon.rada.gov.ua/laws/show/742-18#Text (in Ukrainian)

Zakon Ukrainy Pro Zahalnoderzhavnu prohramu adaptatsii zakonodavstva Ukrainy do zakonodavstva Yevropeiskoho Soiuzu: vid 18.03.2004 № 1629-IV [*Law of Ukraine on the National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union: dated 18.03.2004 No. 1629-IV*]. (2004). Retrieved from https://zakon.rada.gov.ua/laws/show/1629-15#Text (in Ukrainian)

Олександра Струневич,
доктор юридичних наук, провідний науковий співробітник Науково-дослідного інституту публічного права, вул. Г. Кірпи, 2 а, Київ, Україна, 03055, strunevych_oleksandra@ukr.net
ORCID ID: *orcid.org/0000-0002-2359-103X*

Микола Либаш,
доцент кафедри адміністративно-правових дисциплін Навчально-наукового інституту права та психології Національної академії внутрішніх справ, Солом'янська площа, 1, Київ, Україна, 03035, mykola_lybash@ukr.net
ORCID ID: *orcid.org/0000-0002-6413-8346*

ОСНОВНІ ТЕНДЕНЦІЇ РОЗВИТКУ ПРАВОВОГО РЕГУЛЮВАННЯ ПРОКУРОРСЬКОЇ ДІЯЛЬНОСТІ В НЕЗАЛЕЖНІЙ УКРАЇНІ

Анотація. ***Метою статті*** є характеристика основних тенденцій розвитку правового регулювання прокурорської діяльності в Україні, щоб забезпечити належний професійний кадровий рівень підготовки майбутніх прокурорських кадрів, а також простимулювати підвищення значимості прокурорської діяльності в ході реалізації спектру їх повноважень. ***Результати.*** Правове регулювання прокурорської діяльності в контексті судово-правової реформи, реформування прокурорської діяльності підлягає перегляду, адже вона наразі переходить від суворо субординаційної системи до партнерської системи взаємовідносин суспільства і держави. При цьому виокремлення норм, що регулюють прокурорську діяльність, в окремий розділ Конституції України свідчить про виокремлення даного органу державної влади в самостійну – «четверту» гілку влади. Тож метою статті є дослідження основних тенденцій розвитку правового регулювання прокурорської діяльності в Україні. Констатовано, що тенденції розвитку правового регулювання прокурорської діяльності в незалежній Україні мають бути нерозривно пов'язані із процесами трансформації правової держави, демократичного суспільства та переорієнтації правової свідомості кожного індивіда. Стратегічною метою виокремлення тенденції незалежності прокуратури від інших органів державної влади має стати становлення її як самостійної системи органів державної влади, що знаходиться поза межами поділу на три гілки влади і не підпорядковується жодній із них, проте займає чільне місце в механізмі стримувань та противаг. ***Висновки.*** До тенденцій розвитку правового регулювання прокурорської діяльності в Україні, на наш погляд, можна віднести такі: 1) розширення конституційно-правового регулювання статусу прокуратури з-поміж інших органів державної влади; 2) впровадження європейських стандартів прокурорської діяльності; 3) запровадження механізмів реалізації прокуратурою своїх функції на час перехідного періоду; 4) посилення правового регулювання антикорупційної діяльності прокуратури; 5) поглиблення незалежності в діяльності прокуратури України. Зауважено, що вдосконалення організаційно-правових форм діяльності прокуратури посилює її місце серед інших органів державної влади, а тому не менш важливим є виокремлення проблем і недоліків, які слід усунути в правовому регулюванні з метою оптимізації прокурорської діяльності в цілому.

Ключові слова: тенденції розвитку, правове регулювання, прокурорська діяльність, «четверта» гілка влади, Україна.