

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

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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 IIP 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. 7 dated 27.07.2022)

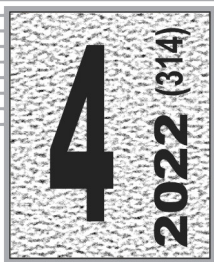
Official web-site: pgp-journal.kiev.ua

Passed for printing 28.07.2022. Format 70×108 1/16. Offset paper.
Offset printing. Conventional printed sheet 8.22. Published sheets 10.88.
Print run – 255 copies. Order No. 0822/340
Publisher: Publishing House "Helvetica"
6/1 Inglezi St., Odesa, 65101
Certificate of publishing business entity ДК № 7623 dated 22.06.2022

© Garantia Ltd, 2022.

Certificate of the state registration of the print media
Series KB No. 15779-4251 IIP dated 02.11.2009

Postal address of the editorial office: 7-B Nazariivska St., office 4, Kyiv, 01032
Tel./fax (044) 513-33-16.



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

ПІДПРИЄМНИЦТВО, ГОСПОДАРСТВО і ПРАВО

НАУКОВО-ДОСЛІДНИЙ ІНСТИТУТ ПРИВАТНОГО ПРАВА І ПІДПРИЄМНИЦТВА
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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

Свідцтво 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 № 7 від 27.07.2022 року)
Офіційний сайт: pgr-journal.kiev.ua

Підписано до друку 28.07.2022. Формат 70x108 1/16. Папір офсетний.
Друк офсетний. Ум. друк. арк. 8.22. Обл.-вид. арк. 10.88.
Тираж – 255. Замовлення № 0822/340
Видавець: Видавничий дім «Гельветика»,
65101, м. Одеса, вул. Інгулець, 6/1
Свідцтво суб'єкта видавничої справи ДК № 7623 від 22.06.2022 р.

© Товариство з обмеженою відповідальністю «Гарантія», 2022.
Свідцтво про державну реєстрацію друкованого засобу масової інформації
серія КВ № 15779-4251ПР від 02.11.2009 р.
Поштова адреса редакції: 01032, м. Київ, вул. Назарівська, 7-Б, оф. 4.
Тел./факс (044) 513-33-16.

UDC 347:364.054.3: 339.7

DOI <https://doi.org/10.32849/2663-5313/2022.4.01>**Kostiv Mariia,***Ph.D. student, Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of Nationality Academy of Law Sciences of Ukraine, 23-a, Rayevsky str., Kyiv, Ukraine, postal code 01042, kostiv_masha@ukr.net***ORCID:** 0000-0002-8478-1056Mariia, Kostiv (2022). Philanthropy in Ukraine during martial law. *Entrepreneurship, Economy and Law*, 4, 5–10, doi: <https://doi.org/10.32849/2663-5313/2022.4.01>

PHILANTHROPY IN UKRAINE DURING MARTIAL LAW

Abstract. Purpose. The article examines the conditions of charitable activities in Ukraine during unjustified military aggression and the ability of legislation to regulate the provision of charitable assistance. **Research methods.** The article is executed by applying the general and special scientific research methods. **Results.** The paper examines the origins of the charitable activities in Ukraine that have become an instrument of national self-identification. Special attention is paid to provisions of the Law of Ukraine «On charitable activities and charitable organizations», particularly the legislative barriers that impede an effective provision of charitable assistance. In addition, the possibility of introducing new types of charitable activities that could effectively complement the activities of the state in the sphere of assistance to victims of military aggression. **Conclusions.** It stated that the intentions of legislators to create a favourable environment for charitable activities affect only the tax relief sphere and eschews the introduction of new types of charitable activities that could be viable in wartime. In our opinion, to increase the flexibility of the «third sector» representatives, it is worth abandoning an exhaustive list of philanthropic activities in the Law of Ukraine «On charitable activities and charitable organizations». Thus, during wartime, many civil organizations have reoriented from their main activities to assist the army and the victims. Still, now, this could only be done by amending the organization's statute, which is not always possible in wartime conditions. In addition, it is worth exploring the possibility of introducing a new type of charitable activity, namely percentage philanthropy. Also, due to the growing popularity of donations in the form of virtual assets, this way of filling the resources of charitable organizations also deserves further research.

Key words: charitable activity, spheres of charitable activity, types of charitable activity.

1. Introduction

The military aggression of the Russian Federation turned out to be the bifurcation point that unified the civil society in Ukraine. The splashing of private charitable giving can be illustrated by large-scale examples of successful fundraising campaigns (less than in a day, private fundraisers in Ukraine have raised 30 million hryvnias (nearly 1 million dollars) for the purchase of a modern aviation complex for the armed forces). Philanthropy has become the most efficient way not only to support armed forces but also to contribute to national self-determination. To some extent, its growth may appear to be unanticipated, however, it is worth noting that the cornerstone of philanthropy was laid centuries ago and has become an integral part of the national culture.

Thus, the origin of philanthropy traditions in Ukraine is closely linked to the undeniably remarkable period of governing of Volodymyr the Great, who in 988 baptized Kyivan Rus. During the flourishing period of Yaroslav

the Wise governance, gradually began to appear numerous private schools, libraries, and prominent examples of architectural heritage. The period of glory was interrupted by continuous sieges of Mongol-Tatars and feudal lords, but the absence of statehood did not affect the nation's self-determination. Mostly, further philanthropists were the patrons of promoting Ukrainian art and culture, even being the part of other countries. The beginning of the 20th century was a landmark for the revival of philanthropy activities on the territory of Ukraine.

Only during the XIX – early XX century can be identified such patrons as: Skoropadskyi Ivan Mykhailovych, the Khanenkos, Tarnovskyi Vasyl Vasylovych, the Tereshchenkos, Kharytonenko Ivan Herasymovych, Konyskyi Oleksandr Yakovych, the Symyrenkos, Mohylevtsev Semen Semenovich, Lazar Izrailovich Brodskyi, the Alchevskis, Oleksandr Danylovych Tulchynskyi, who left a huge cultural mark in the history of Ukraine (Kochyn, 2021, p. 44).

After the October coup and the establishment of Soviet statehood, the development of legislation on non-entrepreneurial societies can range from the flowering of freedom of association to the actual nationalization of civil society. For example, according to Art. 6 of the USSR Constitution of 1977 «the leading and guiding force of Soviet society, the core of its political system, state and public organizations is the Communist Party of the Soviet Union». That is why public organizations are still perceived in society as part (or a necessary element) of the state sector (Kochyn, 2021, p. 44).

At the same time, in European countries, the non-profit organisational typologies that emerged from the 1970s display the following main characteristics:

- they are characterised by productive and entrepreneurial behaviour: since their aim is the provision of services to meet needs often not recognised by public authorities, and not simply to advocate, they must organise a productive activity and find the economic resources; since the beginning, most of the new non-profit organisations have based their activity on a mix of resources (donations, volunteers, and public funds) and are market-oriented;
- they show a high propensity to innovate the supply of social services from several points of view: in the types of services provided, in the target groups (often the more marginalised) and in the organisation of services provision (great attention to active policies and to the empowerment of users);
- they pay particular attention to the creation of new jobs, especially for hard-to-place people (long-term unemployed youth, for example). They stress the local dimension of their activity, the strong link with a well-defined community and with its needs (OECD, 2003).

2. Legislative regulation of charitable activities in Ukraine

After gaining independence in 1991, Ukrainian legislators challenged to create a democratic and sustainable society, but legislative and cultural «recovering» from a communist regime to a democratic one is always placed in its own specific context.

Thus, almost every country in Central and Eastern Europe guarantees the freedom of association in their Constitutions. In some countries, the freedom of association extends solely to citizens (Article 20, Constitution of Macedonia; Article 40, Constitution of Romania), but in others, this right is explicitly granted to «all persons» (Article 2(3) (g), Constitution of Bosnia and Herzegovina; Article 43, Constitution of Croatia; Article 48,

Constitution of Estonia; Article 63, Constitution of Hungary; Article 58, Constitution of Poland; Article 29, Constitution of Slovakia). Constitutional frameworks often draw a distinction between the right to form associations (available to everyone) and the right to form political parties (extended to citizens only) (Rutzen, 2009, p. 12).

The Constitution of Ukraine in Article 36 guarantees citizens the right to freedom of association in political parties and public organizations to exercise and protect their political, economic, social, cultural, and other interests (Konstytutsiia Ukrainy [Constitution of Ukraine], 28.06.1996).

Further consolidation of that right has been reflected in the Law of Ukraine «On Associations of Citizens», 16.06.1992, № 2460-XII (further – Law № 2460-XII) («Pro obiednannia gromadian [On Associations of Citizens]», 1992). However, significant shortcomings of the Law № 2460-XII led to the decision of the European Court of Justice to the case «Koretsky and Others v. Ukraine» («Koretsky and Others v. Ukraine», 2008). The new Law «On Public Associations» was adopted in 2012 and settled the issues identified in the Koretsky case («Pro gromadski obiednannia [On Public Associations]», 2012).

As for regulation of charitable activities, in 1997 it was adopted the Law of Ukraine «On Charity and Charitable Organizations» № 531/97 («Pro blahodiinytstvo ta blahodini orhanizatsii [On Charity and Charitable Organizations]», 1997), and the need for constant changes prepared the background for the Law of Ukraine «On Charitable Activities and Charitable Organizations», 05.07.2012, № 5073-VI (further – Law № 5073) («Pro blahodiinu diialnist ta blahodiini orhanizatsii [On Charitable Activities and Charitable Organizations]», 2012). Law № 5073, for the first time, defined the spheres of charitable activities and its types as well as outlined the legal forms of charitable organizations.

The Revolution of Dignity in 2014 radically changed the Ukrainian people's ideas of public initiatives, the essence and importance of self-organization of individuals, as well as the boundaries of the «third sector». The need to protect the sovereignty and territorial integrity of Ukraine, ensuring economic and information security of state, in accordance with Part 1 of Art. 17 of the Constitution of Ukraine, in the situation of implementation of governmental functions, provided an opportunity to implement the principle laid down in the norm of the Basic Law of Ukraine – the protection of Ukraine is the case of the entire Ukrainian people (Kochyn, 2021, p. 43).

3. Amendments to the legislation on charitable activities due to martial law

Due to the military aggression against Ukraine, on the 24th of February the decree «On the imposition of martial law in Ukraine» № 64/2022 was signed by the President («Pro vvedennia voiennoho stanu v Ukraini [On the imposition of martial law in Ukraine]», 2022). The ongoing unprecedented situation demanded the reaction from the civil sector in Ukraine as well as from the international philanthropists.

On the international level, it seems the European Union (EU) strategy of providing international technical assistance by defining «democratic conditionality» and reinforcement by reward is not more relevant in conditions of full-scale military aggression. Such an approach has been replaced by a more reactive and clear stance on providing help to Ukraine, where people are fighting for democratic values with their lives. Besides, the commitment of Ukraine to become a member of the EU reflects its consistent steps since independence which led to the application for EU candidate status.

At the national level, the government's main goal now is to create a favourable environment for charitable activities in Ukraine. Such legislative easing as tax exemption of income tax for charitable assistance provided in favour of military personnel, internally displaced persons, or persons living on the territories affected by military action have been successfully enacted by the changes to the Tax Code of Ukraine, namely by the Law of Ukraine «On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the validity of the norms for the period of martial law», 15.03.2022, № 2120-IX. Another no less important step was made regarding financial monitoring, in the amendments to the Tax Code of Ukraine it was indicated that banks are not obliged to establish the origin of funds (in the amount of 400 thousand hryvnias and more), which are deposited in cash by individuals to their account, however such funds can be used only to help the armed forces of Ukraine and for humanitarian aid («Pro vnesennia zmin do Podatkovoho kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy shchodo dii norm na period dii voiennoho stanu [On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the validity of the norms for the period of martial law]», 2022).

At the same time, in our opinion, consideration should also be given to some legal impediments regarding charitable regulation that also require increased attention to meet the challenges of wartime.

First, it is worth noting that Article 3 of the Law № 5073 establishes an exhaustive list of the spheres of charity activities, among them: 1) education; 2) health care; 3) ecology, environmental protection and protection of animals; 4) preventing natural, technological disasters elimination of their effects, providing help to people affected by disasters, armed conflicts and accidents, refugees and individuals in difficult life circumstances; 5) custody and guardianship, legal representation and legal assistance; 6) social protection, social welfare, social services and poverty alleviation; 7) culture and art, protection of cultural heritage; 8) science and research; 9) sport and physical culture; 10) human and citizens' rights; 11) development of territorial communities; 12) development of international cooperation of Ukraine; 13) stimulating the economic growth of Ukraine; 14) promoting regional, local and international programs aimed at improving the socio-economic situation in Ukraine; 15) increasing the country's defence capability and mobilization readiness, protection of the population in emergency situations under conditions in peace and martial law («Pro blahodiinu diialnist ta blahodiini orhanyzatsii [On Charitable Activities and Charitable Organizations]», 2012).

However, the existence of an exhaustive list of charitable activities spheres, which met the opposition of many scientists, has already shown its negative sides. Thus, in martial law conditions, many charitable organizations had to refocus on military spending and support for internally displaced persons. In order to realize it and not lose the non-profit status, these spheres of activity must be enshrined in the charter of charitable organizations. According to paragraphs 133.4.2 part 133.4 of Article 133 of the Tax Code of Ukraine, the mandatory condition for non-profit organizations is to use their income (profits) exclusively to realize goals and activities defined by its constituent documents («Podatkovyi kodeks Ukrainy [Tax Code of Ukraine]», 2010).

So far, in the limited operation of the registrations bodies (that are regulated by the Resolution of the Cabinet of Ministers «Some issues of state registration and functioning of unified and state registers held by the Ministry of Justice under martial law», 06.03.2022 № 209) («Deyaki pytannia derzhavnoyi reestratsiyi ta funktsionuvannya yedynykh ta derzhavnykh reyestriv, derzhatelem yakykh ye Ministerstvo yustytisyi, v umovakh voyennoho stanu [Some issues of state registration and functioning of unified and state registers held by the Ministry of Justice under martial law]», 2022), it seems more appropri-

ate to amend the tax laws and allow charities not to change their charter if their assistance will be directed to the army needs. Furthermore, abandoning the exhaustive list of charity activities and focusing on its principles in the Law № 5073 would help ease the pressure on state registration bodies, accelerate providing assistance, and, foremost, promote a deeper understanding of the charitable activity.

No less significant novelties of the Law № 5073 were to embed in article 5 the types of charitable activities. In the realities of military aggression, the urgent issue is to address the necessities of target groups reactively and the most efficient way is to collect charitable donations by volunteers. According to article 7 of Law № 5073, public collection of charitable donations is a voluntary collection of targeted assistance in the form of funds or property. In the next subparagraphs, it is specified that persons who are exercising such activity to the benefit of charitable organizations should act on the basis of an agreement on charitable activities with a charitable organization (paragraph 3, article 7). The same condition is mentioned in case such activity is carried out to the benefit of other beneficiaries (paragraph article 7) («Pro blahodiinu diialnist ta blahodiini orhanizatsii [On Charitable Activities and Charitable Organizations]», 2012).

Nevertheless, in the ever changing reality, volunteers mainly raise funds for the army's needs independently and without concluding a contract with beneficiaries, which generates problems related to taxation of such activity and fraud prevention. From tax legislation, such revenues are perceived by the State Tax Service as personal income with the subsequent accrual of 18% of personal income tax and 1.5% of the military tax on the received amounts. It can be assumed that creating a more transparent mechanism for individual fundraising activity will be beneficial for both sides (philanthropists and benefactors). Introducing a special tax regime and verification of such persons with requirements of publication of further reports might be the solution to the problem.

Another type of charitable activity that is actively applied in European countries but has still not been introduced in Ukraine is the percentage philanthropy. The central idea is that taxpayers may designate a certain percentage of their income tax paid to a specific non-governmental organization (NGO). Among the reasons for introducing percentage legislation, NGOs and governments alike have emphasized two primary objectives: to increase resources flowing into the non-profit sector and to develop a philanthropic culture among

taxpayers. Currently, the following countries have adopted such a tool: Hungary (1% for NGOs and 1% for religious organizations from personal income tax), Poland (1% from personal income tax), Lithuania (2% of personal income tax) and Romania (2% of personal income tax) (Bullain, 2004).

In Ukraine, several attempts were made to introduce that type of philanthropy in 2010 and in 2015; however, such initiatives were not supported. In our opinion, launching such a mechanism might also be beneficial for mobilizing wider support and promoting paying taxes.

Law № 5073 also defines such types of charitable activities as providing charitable grants and charitable donations. According to Article 6 of Law № 5073, charitable donations are a transfer of funds, property, or property rights to the beneficiaries in order to achieve predetermined goals. A charitable grant is a targeted aid in the form of currency values, which must be used by the beneficiary within the period specified by the benefactor («Pro blahodiinu diialnist ta blahodiini orhanizatsii [On Charitable Activities and Charitable Organizations]», 2012).

With the growth of charitable donations, among novelties that have been widely used by world-known charitable organizations is the acceptance of charitable donations via crypto. Some of the world's biggest charitable organizations – including the Red Cross and United Way – accept cryptocurrency.

Regarding the Ukrainian legislation that regulates circulations of crypto, a huge step forward was made by signing the Law of Ukraine «On Virtual Assets», 15.03.2022, 2074-IX. The abovementioned law will come into force only from the date of entry into force of the amendments to the Tax Code of Ukraine on taxation of transactions with virtual assets and the Civil Code of Ukraine. The Law «On Virtual Assets» has identified virtual assets as objects of civil rights, in particular, the owner of cryptocurrencies has the right to own, use and dispose while the content of such rights is very limited and includes only the transfer of ownership. In addition, the Law stipulates that virtual assets are not a means of payment in Ukraine and cannot be exchanged for goods and services («Pro virtualni aktyvy [On Virtual Assets]», 2022).

While the foreign practice shows a tendency to expand the status and ways of using virtual assets, its legal status in Ukraine is still very limited. The cryptocurrencies could be donated, but their use for the purposes of charitable organization activities significantly needs legislation embedding and further research.

4. Conclusions

Because of military aggression, charitable assistance became a grass-root tool that helped defend the country's sovereignty and contributed to national self-determination. Nowadays, to promote charity, the government is trying to ease its conditions, and accents are mostly focused on taxation issues. In our opinion, attention should also be paid to introducing particular amendments to the Law № 5073. First of all, an exhaustive list of charitable spheres embedded in the Law № 5073 and the necessity to make a state registration of the amendments to the statute of charitable organization are not in line with the urgent challenges of war-time. Furthermore, abandoning the exhaustive list of charity activities and focusing on its principles in the Law № 5073 would help ease the pressure on state registration bodies, accelerate providing assistance, and, foremost, promote a deeper understanding of the charitable activity.

In addition, there is a need to revise the norms regulating the activities of private philanthropists who are exercising public collection of money by themselves. During war-time, such an immediate response contributed to addressing the most urgent necessities, but at the same time, there is a high risk of fraud from the side of such philanthropists, not to mention that such revenues should be taxed with personal income tax. It can be assumed that introducing a special tax regime as well as a mechanism of verification of private philanthropists with requirements of publication of further reports might be the solution to the problem.

Among the innovations that could be implemented, special attention should be paid to introducing percentage philanthropy to mobilize more comprehensive support for urgent needs. Further regulation is also required to create a legal framework for the procedure of donation and use of virtual assets by the charitable organizations.

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БЛАГОДІЙНА ДІЯЛЬНІСТЬ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. Мета. У статті досліджуються умови здійснення благодійної діяльності в Україні під час військової агресії та спроможність законодавства ефективно регулювати надання благодійної допомоги. **Методи дослідження.** Під час дослідження використовувався загальний та спеціальний методи дослідження. **Результати.** У статті досліджуються витoki благодійної діяльності в Україні, яка на сьогодні стала інструментом національної самоідентифікації. Особливу увагу приділено положенням Закону України «Про благодійну діяльність та благодійні організації» від 05.07.2012 № 5073-VI (далі – ЗУ № 5073-VI), зокрема законодавчим бар'єрам, які перешкоджають ефективному наданню благодійної допомоги. Крім того, вивчається можливість впровадження нових видів благодійної діяльності, які могли б ефективно доповнити діяльність держави в умовах воєнного стану. **Висновки.** Зазначається, що наміри законодавця створити сприятливе середовище для здійснення благодійної діяльності стосуються лише сфери податкових пільг, поряд з цим подальшого вдосконалення потребує і законодавство про благодійну діяльність, зокрема щодо впровадження нових видів благодійної діяльності, які могли б бути ефективними під час воєнного стану. На нашу думку, для покращення ефективності діяльності представників «третього сектору» варто відмовитися від вичерпного переліку благодійної діяльності в ЗУ № 5073-VI. Так, під час військового вторгнення багато громадських організацій переорієнтували свою основну діяльність на надання допомоги армії, внутрішньо переміщеним особам тощо. Проте, щоб не втратити статус неприбутковості, такі зміни мають бути внесені до статуту організації, що не завжди є можливим під час воєнного стану. Крім того, на нашу думку, слід розглянути можливість впровадження такого виду благодійної діяльності, як відсоткова філантропія. Також у зв'язку із прийняттям Закону України «Про віртуальні активи» від 17.02.2022 № 2074-IX подальшого дослідження потребує можливість здійснення пожертв у вигляді віртуальних активів.

Ключові слова: благодійна діяльність, сфери благодійної діяльності, види благодійної діяльності.

The article was submitted 10.06.2022

The article was revised 01.07.2022

The article was accepted 22.07.2022

UDC 346.546

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Polyukhovych, Valeriy (2022). Issues of reforming the appeals system in the field of public procurement. *Entrepreneurship, Economy and Law*, 4, 11–16, doi: <https://doi.org/10.32849/2663-5313/2022.4.02>

ISSUES OF REFORMING THE APPEALS SYSTEM IN THE FIELD OF PUBLIC PROCUREMENT

Abstract. *The purpose of the article* is to investigate and analyze the problems of appeals in the field of public procurement; formulate proposals to improve the appeal process. **Research methods.** The work is performed on the basis of general scientific and special methods of scientific knowledge: formal-logical, logical-normative, analytical-synthetic, and comparative-legal. **Results.** There are three groups of circumstances that are problematic today. The first group is directly related to the definition of the limits of competence of board members in dealing with complaints. The second group of circumstances directly concerns the legal status of a board member, guarantees of ensuring his independence, autonomy, and protection in the exercise of powers. The third group of circumstances includes the lack of normative tools to ensure the implementation of board decisions. The article provides ways to overcome these problems. The article examines the system of organization and experience of foreign, mostly European, appellate bodies in the field of public procurement and proposes to use their experience for reform in Ukraine. The introduction of a new category of public positions – the Commissioner for Complaints on Violations of Public Procurement Legislation – is considered. Thus, it is necessary to determine the guarantees of its independence and protection in the exercise of powers. The latest changes in the current legislation of Ukraine regarding the amount of the fee for filing a complaint to the appellate body are studied, and directions for its improvement are proposed. **Conclusions.** The existing system of appeals in the field of public procurement is being reformed, but it is essential to improve legal regulation by specifying the competence of board members in dealing with complaints, the legal status of a board member, and guarantees of ensuring his independence, autonomy, and protection in the exercise of powers. In addition, the available procedure for determining the fee for filing a complaint needs to be changed, namely, by raising the lower threshold of payment and the introduction of additional financial means – collateral when considering the complaint in the amount of 1% of the purchase price.

Key words: administrative appeal, Permanent Administrative Board for Appealing Public Procurement, Commissioner for Complaints on Violations of Public Procurement Legislation, fee for filing a complaint.

1. Introduction. The Law of Ukraine "On the Antimonopoly Committee of Ukraine" (Law of Ukraine "On the Antimonopoly Committee of Ukraine", 1993) defines the Antimonopoly Committee of Ukraine as a body of appeal in the field of public procurement. The bodies of the Antimonopoly Committee of Ukraine have been carrying out the relevant activity since 2010. During this period, the organizational principles of the Appeals Board in the field of public procurement have changed many times, but as of today there are some problems that need to be solved. Existing problems can be divided into three categories.

The first is directly related to the definition of the limits of competence of board members

when considering complaints. To date, there are no clear rules on the limits of the complaint, the ability of the Appeals Board to go beyond the grounds stated by the complainant and the circumstances specified in the complaint, to assess the relevance and admissibility of evidence. There are no provisions stating that no evidence has a predetermined force for the Permanent Administrative Board, and members of the Board have the right and must evaluate the evidence provided by the parties according to their inner conviction based on comprehensive, complete, and objective consideration of circumstances of the case amidst the appeal process.

The second group of circumstances directly concerns the legal status of a board member

and guarantees of ensuring his independence, autonomy, and protection in the exercise of powers.

The third group of circumstances includes the lack of normative tools to ensure the implementation of board decisions.

The consequence of the above gaps in legal regulation in the area concerned is the formation of practices based on precedents of previous decisions, the creation and application of customs in cases; such customs are often not based on legal principles, but based on the worldview of individual members of the Board and unequal application of current legislation depending on the composition of the board. The lack of norms to ensure the independence, autonomy and protection of a member of the Permanent Administrative Board for Appealing Public Procurement often results in excessive formalism, rigidity in assessing the evidence and circumstances of the case, which negatively affects the ability to make decisions on their own. The lack of normatively established tools to ensure the implementation of board decisions gives rise to the practice of non-compliance with its decisions and the lack of appropriate means of punishment for inaction.

All this creates some chaos in the decision-making process on complaints and, accordingly, the formation of the Board practice, and often makes it impossible for the parties to the appeal process – complainants and customers – to plan their purchase work reasonably and in a consistent manner. After all, an essential component in the preparation of tender documents is that customers take into account the practice of the Permanent Administrative Board to Appeal Public Procurement to ensure the rights of participants and minimize the circumstances that may be grounds for appeal.

2. Reforming the organizational framework for appeals in the field of public procurement. One of the possible ways to solve the mentioned problems should be enshrined in the Law of Ukraine "On the Antimonopoly Committee of Ukraine" to determine the legal status and powers of the Commissioner for Complaints on Violations of Public Procurement Legislation, guarantees of its independence and protection in the exercise of powers. It is also necessary to amend the Law of Ukraine "On Public Procurement" (Law of Ukraine "On Public Procurement", 2015) and determine the provisions concerning the limits of the complaint, the procedure for assessing evidence, their relevance and admissibility, decision-making algorithms depending on the positions and arguments of the parties, change their position or arguments, etc.

The organizational principles of the appeal in the field of public procurement should be the subject of the legislator's attention. The current appeal mechanism, at the center of which is a Board consisting of State Commissioners of the Antimonopoly Committee, is an obvious anachronism, and in its functionality does not meet both modern requirements for the appellate body and foreign practice in this area of public relations.

First of all, the problem is that State Commissioners who, following the Law of Ukraine "On Public Procurement" are part of the Permanent Administrative Board for Appealing Public Procurement, concurrently perform a large amount of authority for the position provided for in Art. 16 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine". In essence, proceeding from the content of this article of the Law, the performance of duties of a member of the Permanent Administrative Board for Appealing Public Procurement is an additional authority to the main function of the State Commissioner. However, based on the practice of the Permanent Administrative Board for Appeals Public Procurement in recent years, since the introduction of electronic document management in the field of appeals against public procurement and the option to file complaints online, the workload has increased several times, and work for the Board became the main component of their employment. Moreover, the meetings of the permanent board last from 10 am to 8, 10, 12 pm with short breaks. As a result, the staff of the Department for Appeals in the Field of Public Procurement works almost around the clock, fully ensuring the preparation of materials for board operation and the corresponding document flow. At the same time, the meetings of the Permanent Administrative Board for Appeals Public Procurement continue with the participation of invited complainants, customers, third parties, who often leave the meeting room at midnight. It is clear that under such conditions there is a gross violation of labor law. In general, for those who have not faced these realities, it is difficult to imagine that such a state of affairs is possible in the functioning of the highest state body in the European state of the XXI century, which declares a steady movement Union.

Objectively, under such conditions, the State Commissioners no longer have the time or physical ability to perform their basic functions in office, provided by law. The number of State Commissioners remains unchanged due to the growing number of their activities and is nine, taking into account the position of the Chairman of the Committee. All this leads to the adoption of impor-

tant decisions for the Antimonopoly Committee of Ukraine without a thorough study and analysis of their content, which certainly has a negative impact on the quality of the body as a whole. In this regard, it is worth mentioning that the function of appeals in the field of public procurement was included in the competence of the Antimonopoly Committee of Ukraine only in 2010, i.e., 18 years after its establishment, and is not an integral part of competence of the Antimonopoly Committee of Ukraine in its legal nature, and mainly due to the production need to find an organizational solution to the problem of ensuring the appeal procedure in the field of public procurement. The fact is that the competence of the Antimonopoly Committee of Ukraine is to ensure state protection of economic competition, based on the tasks of the Antimonopoly Committee of Ukraine in Art. 3 of the Law of Ukraine "On the Antimonopoly Committee of Ukraine". However, in the process of reviewing complaints about public procurement procedures, there are many circumstances that are not covered by the function related only to the protection of economic competition. This includes the organization of the procedure, participation forms, features of preparing both tender documents and bids, etc. The competence of the AMCU, in accordance with the content of its powers, is to evaluate the documentation and decisions of tender committees only to ensure equal opportunities for competition of participants, when there are other technical, organizational, and legal issues of this process that are not directly related to competition, and is often the subject of appeal.

This indicates the need for organizational and personnel separation of the function of appeal in the field of public procurement from the AMCU activities and the establishment of an independent body of appeal. Most countries of the world have experienced this path, and it proved its effectiveness, in contrast to the affiliation of the appellate body within the competition authority, which exists only in a few countries.

3. The system of organization in the field of appeals against public procurement in the European Union. Here are some examples from the practice of the European Union. In most EU countries, there is a system for appealing public procurement procedures before the conclusion of the contract, which provides as a first instance a special body to deal with relevant complaints. However, in some EU member states, there is no special body to assess public procurement: these functions are entrusted to administrative and civil courts. In Belgium, France, Ireland, Lithuania, the Netherlands, Sweden, and the United Kingdom (now with-

drawn from the EU), the evaluation of public procurement decisions is an exclusive function of courts of general jurisdiction. In Portugal, public procurement disputes are heard by administrative courts; in Ireland, Lithuania, the Netherlands, Sweden and the United Kingdom – by civil courts; and in France and Luxembourg – by both administrative and civil courts. The Finnish Commercial Court specializes in public procurement but also deals with other sections of economic law. In Denmark, both the special body and the court can be the first instance to deal with complaints about public procurement procedures.

In other countries, there is a special body to deal with complaints about public procurement procedures. Here are their names according to the countries: Austria: Federal Public Procurement Bureau and regional institutions; Bulgaria: Commission for Protection of Competition; Cyprus: Bid Evaluation Bureau; Czech Republic: Office of Competition Protection; Denmark: Public Procurement Complaints Committee, Competition Bureau, Agency under the Ministry of Economic and Commercial Affairs; Estonia: Public Procurement Office; Germany: 17 public procurement chambers; Hungary: Public Procurement Council and its special subdivision Arbitration Committee; Latvia: Procurement Supervision Bureau; Malta: Complaints Committee of the Department of Contracts; Poland: Public Procurement Office; Romania: National Council for the Settlement of Legal Disputes; Slovakia: Public Procurement Office; Slovenia: National Commission for the Evaluation of Public Procurement Contract Procedures. As we can see from the mentioned countries, only in Bulgaria, the Czech Republic, and partly in Denmark, a special body for reviewing complaints about public procurement procedures is a public body with powers to protect competition. In our opinion, the above shows that the function of reviewing complaints about public procurement procedures is not necessarily related to the performance of functions to ensure the protection of competition.

3. Introduction of new positions in the field of appeal. With the establishment of an independent appellate body, the above issues related to the legal status of complainants, the content of their powers, the subject of the complaint and the scope of the complaint, as well as many other organizational issues to be resolved in the functioning of the Permanent Administrative Board for Appeals Public Procurement in the AMCU system are one that complicate the process of appealing public procurement and the procedure for their consideration, given the volume and number of complaints received by the Board. At the same time, a mechani-

cal increase in the number of Boards within the AMCU can only be a temporary means and will not lead to qualitative changes in the process of appealing against public procurement.

With the adoption of the Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Powers of the Antimonopoly Committee of Ukraine in Public Procurement" as of February 5, 2021 № 1219-IX (Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Powers of the Antimonopoly Committee of Ukraine in the Field of Public Procurement", 2021) introduced the positions of Commissioner for Complaints on Violations of Public Procurement Legislation that is a thorough step towards the development of adequate staffing of the grievance procedure. In our opinion, the most adequate measures would be the complete separation of the public procurement appeal function from the AMCU activities. However, as of today, neither the legislature nor the executive branch is financially and mentally ready for such decisive steps. At the same time, we believe that the introduction of a new position within the AMCU – the Commissioner for Complaints on Violations of Public Procurement Legislation – will significantly reduce the workload on government officials. Therefore, it should be considered to reduce the number of the latter. We believe that it would be optimal under such conditions to reduce the number of state commissioners to seven, while maintaining a quorum for holding five meetings of the AMCU.

4. The issue of payment for filing a complaint. Another important issue that affects the number and quality of complaints received by the appellate body in the field of public procurement is the cost of the appeal, namely, the amount of the fee for filing a complaint. For a long time, from August 2010 to April 2020, in Ukraine, there was a rule that provided a fixed fee for filing a complaint, as follows: 5 thousand hryvnias – in case of appeal against the procedure of public procurement of goods or services and 15 thousand hryvnias – in case of appeal against public procurement of works. At the time of the adoption of the Resolution of the Cabinet of Ministers "On establishing the fee for filing a complaint in accordance with Article 18 of the Law of Ukraine" On Public Procurement" as of July 28, 2010 № 773 (Resolution of the Cabinet of Ministers "On establishing the fee for filing a complaint in accordance with Article 18 of the Law of Ukraine" On Public Procurement", 2010), these amounts were quite significant, and the number of complaints were relatively small as the complainant was forced to approach the process responsibly and was interested in drafting a high-quality complaint

to justify the costs incurred in preparing and reviewing it. However, the 2017 introduction of the procedure for submitting complaints on public procurement procedures to the appellate body through the electronic procurement system and taking into account the current hryvnia exchange rate led to a shaky increase in complaints, the quality of which also decreased.

Thus, the above-mentioned cases of violation of labor legislation regarding the time of consideration of complaints by the AMCU board were caused by a sharp increase in the number of complaints. It has become common practice for complainants to manipulate the process of appealing against public procurement, which evolved into a means of unfair competition but which cannot be punished in the manner prescribed by law. Complaints were often filed in order to delay the procurement process, create artificial barriers for competitors, and prevent the procurement within the deadlines of the relevant budget period. Under such circumstances, the increase in the fee for the complaint became an urgent need. However, there is a need not only to increase the fee for filing a complaint but also to introduce other approaches to its formation. But only in 2020, the Cabinet of Ministers of Ukraine adopted a resolution "On establishing the amount of the fee for filing a complaint and approving the Procedure for making the fee for filing a complaint to the appellate body through the electronic procurement system and its return to the appellant" as of April 22, 2020, № 292 (resolution of Cabinet of Ministers of Ukraine "On establishing the amount of the fee for filing a complaint and approving the Procedure for making the fee for filing a complaint to the appellate body through the electronic procurement system and its return to the appellant", 2020), which provides new approaches to the formation of the fee for filing a complaint. The lower threshold of the fee for filing a complaint is UAH 2,000, but in some cases the percentage of the fee for filing a complaint from the expected value of the subject of procurement and, at the same time, setting its upper limit is provided. This is a more progressive approach to the formation of the fee for filing a complaint, but the use of a lower threshold amount of 2000 UAH is inadequate to the economic realities of today. If in 2010, UAH 5,000 in the case of appealing the procedure of public procurement of goods or services amounted to more than \$ 600, and UAH 15,000 in the case of appealing the procedure of public procurement of works amounted to more than 1800 US dollars, then 2000 UAH, it is currently less than 100 US dollars. Even taking into account the crisis in Ukraine's economy, this amount is not in line with the economic capa-

bilities of participants in procurement procedures. In our opinion, in addition to increasing the lower threshold value of the fee for reviewing complaints to a minimum of 15 thousand UAH, it is advisable to introduce an additional financial means – collateral – when considering a complaint in the amount of 1% of the purchase price. If the application is granted, the deposit is returned to the applicant. In case of rejection of the application or recognition of it as unfounded, pledge is sent to the state budget. Of course, the complaint fee is not refundable under any circumstances. Perhaps such bail should not apply to all types of procurement, but only to some of the most significant and relevant to Ukraine's economy procurement to encourage complainants to take a responsible approach to complaints and prevent manipulation of the appeal process.

By the way, such a tool is available in some European countries, and the practice of its use shows the expediency of application in public procurement appeal procedures in Ukraine.

5. Conclusions. The introduction of a new AMCU body, the Commissioner for Complaints of Violations on Public Procurement Legislation, is a positive step in reforming the public procurement appeal system. How-

ever, it is necessary to enshrine in the Law of Ukraine "On the Antimonopoly Committee of Ukraine" rules for determining the legal status and powers of the Commissioner for Complaints on Violations of Public Procurement Legislation, guarantees of its independence, and protection in the exercise of powers. It is also important to amend the Law of Ukraine "On Public Procurement" concerning the scope of the complaint, the procedure for assessing evidence, their relevance and admissibility, decision-making algorithms depending on the positions and arguments of the parties, change their position or argument, etc.

Changing the fee for filing a complaint is also a positive reform, but it is imperfect. It is inadequate to leave the lower payment threshold of UAH 2,000. We also propose the introduction of additional financial means – collateral – when considering a complaint in the amount of 1% of the purchase price. If the application is granted, the deposit is returned to the applicant. In case of rejection of the application or recognition of it as unfounded, pledge is sent to the state budget.

Such a tool is available in some European countries, and the practice of its use shows its feasibility in public procurement appeals in Ukraine.

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ПИТАННЯ РЕФОРМУВАННЯ СИСТЕМИ ОСКАРЖЕННЯ У СФЕРІ ПУБЛІЧНИХ ЗАКУПІВЕЛЬ

Анотація. Мета – дослідити та проаналізувати проблеми оскарження у сфері публічних закупівель; сформулювати пропозиції з удосконалення процесу оскарження. **Методи дослідження.** Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання: формально-логічного, логіко-нормативного, аналітико-синтетичного, порівняльно-правового. **Результати.** Виділено три групи обставин, що є проблемними на сьогодні. Перша група пов'язана безпосередньо з визначенням меж компетенції членів колегії у разі розгляду скарг. Друга група обставин стосується безпосередньо правового статусу члена колегії, гарантій забезпечення його незалежності, самостійності та захисту під час здійснення повноважень. До третьої групи обставин можна віднести відсутність нормативно закріпленого інструментарію для забезпечення виконання рішень колегії. У статті запропоновані шляхи подолання цих проблем. У статті досліджено систему організації та досвід іноземних, здебільшого європейських, органів оскарження у сфері публічних закупівель та запропоновано використати їхній досвід для реформування в Україні. Розглянуто запровадження нової категорії державних посад – уповноваженого з розгляду скарг про порушення законодавства у сфері публічних закупівель та визнано необхідним визначити гарантії забезпечення його незалежності, самостійності та захисту під час здійснення повноважень. Досліджено останні зміни в чинному законодавстві України стосовно розміру плати за подання скарги до органу оскарження та запропоновано напрями його удосконалення. **Висновки.** Наявна система оскарження у сфері публічних закупівель зазнає реформування, проте необхідним є удосконалення правового регулювання шляхом детального визначення компетенції членів колегії під час розгляду скарг, правового статусу члена колегії, гарантій забезпечення його незалежності, самостійності та захисту у разі здійснення повноважень. Також наявний порядок визначення плати за подання скарги потребує змін, а саме підвищення нижнього порогу оплати та запровадження додаткового фінансового засобу – застави у разі розгляду скарги в розмірі 1% від вартості закупівлі.

Ключові слова: адміністративне оскарження, постійно діюча адміністративна колегія з оскарження публічних закупівель, уповноважений з розгляду скарг про порушення законодавства у сфері публічних закупівель, плата за подання скарги.

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 342.9

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COMMUNITY POLICE OFFICER AS AN OBJECT OF DOMESTIC AND FOREIGN ADMINISTRATIVE AND LEGAL RESEARCH

Abstract. Purpose. The purpose of the article is to study the objective, tasks and specificities of implementing the project “Community Police Officer”, as well as to reveal the organisational legal support for the activities of the community police officer. **Methodology.** The article comprehensively analyses the project “Community Police Officer”. The concept of a community police officer is defined, as well as the prerequisites to the initiation of a community police officer are revealed. For example, the main prerequisites for the institution of a community police officer in Ukraine were: the growth of socially dangerous and socially harmful behaviour in society and, as a result, the growth of criminal and administrative offences, the existence of an appropriate legislative basis, adequate logistical and financial resources, raising public awareness of the importance and value of local self-government, as well as the factor of law and order in civil society. The main legal regulations governing the activities of the Community Police Officer are analysed. It is studied that, as a member of the Council of Europe, our State is bound to comply with international human rights standards under universally recognised international legal guarantees established in relevant international law, and to create internal guarantees for their implementation. It is revealed that the specificity of the project “Community Police Officer” is the emphasis on the introduction of a qualitatively new and meaningful format of police work, in which the needs of the community and the local population should be prioritised. The task of the national project “Community Police Officer” is to make a law enforcement officer functionally and procedurally independent. He or she shall be the first to whom people facing wrongdoing will come, and the first to prevent criminal actions in an accountable territory. **Results.** The success of democratic reforms in Ukraine cannot be achieved without proper legal regulatory framework and the practical functioning of law enforcement bodies, one of the most important tools to make a real and effective impact on the level of offences and the maintenance of public order in our country. Decisive actions to combat crime will not dramatically improve the situation unless the efforts of law enforcement bodies, in particular the police, are widely supported by the population. Therefore, the focus should be on the activities of district police officers as direct representatives of the police in the service, close partnership with the public on the basis of the principles of trust. The level of trust of an ordinary citizen of Ukraine in the activities of a district police officer is a basic and determining criterion for the work of the entire National Police. The reform of the Ministry of Internal Affairs bodies in general and the service of district police officers in particular was intended, on the one hand, to address issues of adaptation to the new conditions of their organisational structures and, on the other hand, to consolidate appropriate reforms, new tasks and functions of legislation in force. One of the trends of the reform is the launch of a pilot project “Community Police Officer”, aimed at uniting law enforcement officers and residents of an amalgamated territorial community. According to law enforcement officials, this should improve the quality of communication and police services. The new legal framework for community police officers should significantly improve the enforcement of law and order in the newly established (as a result of the reform of decentralisation) amalgamated territorial communities, which determines the relevance and choice of the topic of this study. **Conclusions.** Therefore, the main objective of the project “Community Police Officer” is to ensure close cooperation between the police and the local community, to focus on the activities of the police, especially on the needs of the society. The task of this project is to make a law enforcement officer functionally and procedurally independent. He or she shall be the first to whom people facing wrongdoing will come, and the first to prevent criminal actions in an accountable territory.

Key words: community police officer, National Police, task of community police officer, project, Community Policing.

1. Introduction

The Constitution establishes the obligation of the State to protect the life and health of citizens and to ensure the inviolability of their rights, freedoms, legitimate interests and property. To that end, Ukraine has established law enforcement bodies to maintain law and order and protect public and State interests.

Furthermore, one of the main and important tasks of local self-government bodies is to protect the rights, freedoms and legitimate interests of each member of the territorial community, to affirm the rule of law and legality in a certain territory (Law of Ukraine On Local Self-Government in Ukraine, 2019).

Uniting the interests of the police and the territorial communities to strengthen law and order to increase the trust of Ukrainian citizens, a project "Community Police Officer" has been launched. It provides for a new format of police performance. The project was initiated by the National Police of Ukraine with the support of international partners (Bezpalova, 2020, p. 13).

That is, the police will provide new services to the population, as citizens of Ukraine are dissatisfied with the level of their social protection, as well as the provision of administrative services by both the National Police and private services in general, as evidenced by numerous surveys.

Therefore, the project "Community Police Officer" is the next step in the reform of the National Police. Its main objective is to provide each territorial community with an officer who will not only work in the community but will also live there.

2. Legal and regulatory framework for activities of the National Police of Ukraine

The key legal regulations on the activities of community police officers should be the following: the Constitution of Ukraine (Constitution of Ukraine, 1996), the Laws of Ukraine "On the National Police" (Law of Ukraine on the National Police, 2015), "On Prevention and Counteraction to Domestic Violence" (Law of Ukraine on Prevention and Counteraction to Domestic Violence, 2017), "On Administrative Supervision of Persons Released from Prisons" (Law of Ukraine on Administrative Supervision of Persons Released from Prisons, 1994), "On the Participation of Citizens in the Protection of Public Order and the State Border" (Law of Ukraine on the Participation of Citizens in the Protection of Public Order and the State Border, 2000), other legislative acts of Ukraine, legal regulations of the Ministry of Internal Affairs of Ukraine.

Order 650 of the Ministry of Internal Affairs of Ukraine of July 28, 2017 "On approval of the Instruction on the organisation of the activities of district police officers" defines

the tasks, trends and features of the organisation of activities of district police officers (Order of the Ministry of Internal Affairs of Ukraine On approval of the Instruction on the organisation of the activities of district police officers, 2017).

The rules for joint projects, programmes and activities meet article 11 of Law of Ukraine "On the National Police" (Law of Ukraine on the National Police, 2015) (Interaction with the population on the basis of partnership), providing for that the activities of the police are carried out in close cooperation with the population, territorial communities and public associations on the basis of partnership and aimed at meeting their needs. Article 18 of the European Code of Police Ethics of 2001, which is based on partnership and is designed to meet their needs, stipulates that police officers shall be organised in such a way as to facilitate a strong police communication with the public and, where appropriate, other bodies, local communities, non-governmental organisations and other members of the public, in particular ethnic minorities.

As a member of the Council of Europe, our State is bound to respect international human rights standards under universally recognised international legal guarantees established in relevant international law and to create internal guarantees for their implementation (Shadska, 2018, p. 15).

According to the National Police of Ukraine, a police officer should become a full representative of his or her society, which in turn will provide part of the financial support for his or her work, entailing his or her accountability not only to the leadership, but also to the very community (Official site of the National Police).

The project aims to provide professional police services in small towns, implying not only response to the commission of an offence but above all the safety and security of the community, meeting its needs.

It should be noted that the main innovation is that if the community police officer becomes a full representative of own community (it will be part of the financial support of its work), he or she will be accountable not only to the head of the local police body, but also to the very community.

Under the basic principles, the activities of the National Police are carried out in partnership with the population, regional communities, and voluntary associations and are aimed at meeting their needs.

In order to determine the causes and/or conditions of violations, the service activities of law enforcement bodies and departments are planned taking into account the characteristics of the region and the problems of the territorial communities (Hlukhoveria, 2017, 147).

The National Police cooperates with the public by developing and implementing joint projects, programmes and measures to meet the needs of the population and to enhance the effectiveness of its tasks. Cooperation is aimed at identifying and addressing problems related to policing and the use of modern methods to improve its performance. This body supports legal education programmes, promotes legal knowledge in educational institutions, the mass media, etc. (Sokurenko, 2017, p. 154).

3. Community police officer as a trend in interaction of the National Police of Ukraine with the public

The project "Community Police Officer" provides fundamentally new approaches to the implementation of the above-mentioned tasks by the police and provides for the expanded competence of the police in the investigation of criminal offences, control of firearms circulation, preventive work with children, prevention and combating of domestic violence. The latter two are essential, given the realities of the present (Chumak, 2018).

This has led to the modernisation of the instruments of interaction between the local population and the police, with the aim of achieving the common goal of ensuring public order and security at the regional level, oriented towards the needs of the citizens.

The "Community Police Officer" is not new for our country, since the concept of Community Policing has been introducing in Ukraine for several years, the content of which was the implementation of law enforcement activities focused on the needs of the local community. According to foreign scholars, Community Policing is a policy and strategy aimed at achieving more effective and efficient control over criminal offences, decrease in fear of criminal wrongdoing, improvement of the quality of life and legitimacy of the police by relying on community resources to change the conditions that lead to criminality (Kononets, 2019, p. 231).

The specificity of this concept is that Community Policing is a model of "proactive police activity", focused on the prevention of offences in cooperation with the local community, as opposed to "reactive police activity", oriented towards responding to offences already committed (Bezpalova, 2020, p. 16).

Within the framework of the project "Community Police Officer" provision of effective support by the local self-government body and the population for the activity of the police is aimed at increasing the general level of law and order in the localities of community, protection of life, health, honour and dignity of the population, prevention of crime and an integrated approach to security issues (Shadska, 2018, p. 54).

Therefore, it should be noted that the first steps towards the development of a new tool for preventive actions by the police, using the capacities of the local community, have already been introduced in Ukraine.

A specificity of the project "Community Police Officer" is the emphasis on the introduction of a qualitatively new and meaningful format of police work, in which the needs of the community and the local population should be prioritised.

It is expected that such permanent contact will be ensured not only by the police officer's work in the territorial community concerned, but also by his or her very residence there.

That is why, when a police officer becomes a full-fledged representative of a particular community, is concerned in its problems, communicates with its residents and helps them, it will enable the police to meet the expectations of community.

The interrelation between the police and community must be aimed at ensuring quality living conditions, safety, and quality response to any situation, allowing people to feel confident and safe.

The main objective of the project is to ensure close cooperation between the police and the amalgamated territorial community and to focus police activities on the needs of the community.

The task of the national project "Community Police Officer" is to make a law enforcement officer functionally and procedurally independent. He or she shall be the first to whom people facing wrongdoing will come, and the first to prevent criminal actions in an accountable territory. Moreover, this territory will be limited to only one district where the law enforcement officer lives, and not visits, as most district police officers, now and then (Hlukhoveria, 2017, p. 14).

In short, such an officer should become an integral part of the very community. In doing so, he or she will be accountable not only to the police leadership, but also to the public, recommendations thereof will be considered in the further extension of the officer's contract, as well as in decisions on his or her incentives or punishment.

Motivated and virtuous persons with at least two years of work experience, a diploma of higher education and a driver's license can become officers of the territorial community.

Persons in this position should be independent and responsible, open and communicative, capable of critical thinking and able to resolve conflicts.

The basic stages of the project "Community Police Officer" can be defined as follows:

1) Establishment of cooperation through appropriate information campaigns with amalgamated territorial communities to assess the capabilities of each community, with the subsequent signing of a memorandum;

2) Selection of candidates for community police officers from the serving police officers (preference is given to district police officers with first-hand experience in dealing with the local population);

3) Training of selected candidates in specially designed courses of up to 2.5 months involving foreign experts;

4) Organisation of the service of community police officers, during which, first, the policeman gets acquainted with the community, the very work on the implementation of common projects with the unified territorial community is planned and reported to the latter;

5) Monitoring by the National Police (regular effectiveness evaluation) and community opinion polls by international experts (Hlukhoveria, 2017, p. 16).

The project provides for that the policeman will work closely with the residents of his or her district and pay attention to their needs. 80-90% of police work time is spent in the community. He or she is accessible to the public, knows the residents of the district under service, their problems and provides quality police services.

In the selection of police officers, the focus should be on certain criteria, such as ability to deal with community issues; motivation and service to the community interests; virtues; critical thinking; ability to make independent decisions; ability to argue own position and conduct analytical work (Kononets, 2019, p. 230).

It is also important to assess the performance of a community police officer from the perspective of a number of projects implemented with the local community to ensure public order and safety of the local population, indicators of the decline/increase in crime within a specific amalgamated territorial community and the content of preventive activities carried out in this direction.

Therefore, the project "Community Police Officer" is a qualitatively new police service

for rural, township and small towns, which is planned to implement in certain basic stages for the purpose of clear organisation, training and effective functioning of this project.

4. Conclusions

This work, aimed at studying the objective, tasks and specificities of implementing the pilot project "Community Police Officer", as well as revealing the organisational legal support for the activity of the community police officer, relying on a review of the relevant scientific literature and the legislative framework on the topic of the study, allows concluding the following.

The main prerequisites for the institution of a community police officer in Ukraine were: the growth of socially dangerous and socially harmful behaviour in society and, as a result, the growth of criminal and administrative offences, the existence of an appropriate legislative basis, adequate logistical and financial resources, raising public awareness of the importance and value of local self-government, as well as the factor of law and order in civil society.

The main objective of the project "Community Police Officer" is to ensure close cooperation between the police and the local community, to focus on the activities of the police, especially on the needs of the society.

To sum up, the concept of a community police officer is a salaried officer of the National Police who, like other police officers, is entitled to social security and benefits. In addition, the National Police of Ukraine provides him or her with uniforms, service firearms, special means, a breast camera and a tablet. Under the project, the National Police will also be able to provide a public order vehicle (subject to funding).

The community police officer aims to quickly address the security needs of his or her territorial community. The community police officer is not a municipal police officer but remains a part of the staff of the local police body, which monitors the legality of his or her decisions. At the same time, he or she is accountable to community regarding its security. For the permanent presence of a community police officer on the territory (ATC), a communal office shall be equipped.

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ПОЛІЦЕЙСЬКИЙ ОФІЦЕР ГРОМАДИ ЯК ОБ'ЄКТ ВІТЧИЗНЯНИХ ТА ЗАРУБІЖНИХ АДМІНІСТРАТИВНО-ПРАВОВИХ ДОСЛІДЖЕНЬ

Анотація. Мета. Метою статті є дослідження мети, завдань та особливостей впровадження проекту «Поліцейський офіцер громади», а також висвітлення організаційно-правового забезпечення діяльності поліцейського офіцера громади. **Методологія.** У статті проведений комплексний аналіз проекту «Поліцейський офіцер громади». Надано визначення поняття «поліцейський офіцер громади», а також з'ясовано передумови запровадження поліцейського офіцера громади. Зокрема, основними передумовами впровадження в Україні інституту поліцейського офіцера громади стали: зростання суспільно небезпечної та соціально шкідливої поведінки у суспільстві і, як наслідок, зростання кримінальних та адміністративних правопорушень, наявність відповідної законодавчої бази, достатніх матеріально-технічних та фінансових ресурсів, підвищення обізнаності громадськості про значення та цінності місцевого самоврядування, а також чинника правопорядку в громадянському суспільстві. Проаналізовано основні нормативно-правові акти, на основі яких повинна здійснюватися діяльність поліцейського офіцера громади. Досліджено, що, будучи членом Ради Європи, наша держава зобов'язана дотримуватись міжнародних стандартів у сфері прав людини на основі загальноновизнаних міжнародно-правових гарантій, встановлених у відповідному міжнародному праві, та створювати внутрішні гарантії для їх реалізації. З'ясовано, що характерною особливістю проекту «Поліцейський офіцер громади» є акцент на впровадженні якісно нового та змістовно нового формату роботи поліції, в якому потреби громади та місцевого населення мають бути пріоритетні. Завдання національного проекту «Поліцейський офіцер громади» – зробити такого правоохоронця

функціонально й процесуально самостійним. Він має стати першим, до кого звертатимуться люди, котрі стикнулися із кримінальним правопорушенням чи несправедливістю, і першим, хто запобігатиме кримінальним діянням і правопорушенням на підзвітній території. **Результати.** Успіх демократичних перетворень в Україні неможливий без належного правового регулювання і практичного функціонування правоохоронних органів – одного із найважливіших інструментів, здатних реально і дієво вплинути на рівень правопорушень та стан забезпечення публічного порядку у нашій країні. Рішучі заходи, спрямовані на боротьбу зі злочинністю, не призведуть до кардинального поліпшення ситуації доти, доки зусилля правоохоронних структур, зокрема поліції, не отримають широкої підтримки з боку населення. Тому велика увага приділяється діяльності дільничних офіцерів поліції як безпосередніх представників поліції у службовій сфері, у тісному партнерстві з громадськістю на принципах довіри. Рівень довіри пересічного громадянина України до діяльності дільничного офіцера поліції є основним і визначальним критерієм роботи Національної поліції загалом. Реформою органів системи МВС України загалом і служби дільничних офіцерів поліції зокрема передбачалось, з одного боку, вирішити питання адаптації до нових умов їх організаційних структур, а з іншого – закріпити відповідні перетворення, нові завдання та функції нормами чинного законодавства. Одним із напрямів реформи є запуск пілотного проєкту «Поліцейський офіцер громади», спрямованого на об'єднання правоохоронців та мешканців єдиної територіальної громади. На переконання керівництва правоохоронного відомства, це має сприяти підвищенню якості комунікації та поліцейського сервісу. Нова нормативно-правова база діяльності поліцейських офіцерів громади повинна істотно покращити ситуацію із забезпеченням правопорядку і законності на території новостворених (внаслідок реформи децентралізації) об'єднаних територіальних громад, що і зумовлює актуальність та обрання теми цього дослідження. **Висновки.** Отже, проєкт «Поліцейський офіцер громади» має забезпечити тісну співпрацю між поліцейськими та місцевою громадою, особливо на потребах громади. Завданням цього проєкту є формування правоохоронця, який буде функціонально й процесуально самостійним. Він має стати першим, до кого звертатимуться люди, котрі стикнулися із правопорушеннями, і першим, хто запобігатиме кримінальним діянням на підзвітній території.

Ключові слова: поліцейський офіцер громади, Національна поліція, завдання поліцейського офіцера громади, проєкт, Community Policing.

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 342.56:35

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Donets, Maksym (2022). Specificities of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine. *Entrepreneurship, Economy and Law*, 4, 23–27, doi: <https://doi.org/10.32849/2663-5313/2022.4.04>

SPECIFICITIES OF ADMINISTRATIVE LIABILITY OF SERVICEMEN (BODYGUARDS) OF THE STATE PROTECTION DEPARTMENT OF UKRAINE

Abstract. Purpose. The purpose of the article is to determine the specificities of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine. **Results.** The liability of public legal entities is one of the elements of the legal regulatory mechanism governing social relations in the field of public administration. Furthermore, legal liability is an integral part of the administrative and legal status of actors of public law and is expressed through the application to them of certain measures of the State and legal coercion for improper exercise of powers, depending on the field of activities they are engaged in. In general, the administrative liability of bodyguards has been studied from the perspective of four main blocks: administrative liability of bodyguards as officials; administrative liability of the bodyguards as individuals; administrative liability of the actor of the protection services where the bodyguard is employed (in services); special administrative (special disciplinary) liability of bodyguard officials. It is determined that the administrative liability of the actor of protection services (administrative liability of the legal entity) by depriving of the license to carry out protection services indirectly leads to adverse effects for the bodyguard, because he loses the right to protect an individual under the contract of such a legal entity. **Conclusions.** It is proved that the administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine involves a system of provisions of administrative law, according to which: first, bodyguards are subject to administrative sanctions for violation of the rights and freedoms of other persons or/and the public interest of the State and society as a whole, improper performance of their professional duties in the protection of the person entrusted to them; second, bodyguards are protected against third parties who seriously interfere with their professional administrative duties prescribed by law. It is underlined that servicemen (bodyguards) of the State Protection Department of Ukraine can be brought to administrative liability for the whole range of administrative offenses related to corruption and military administrative offenses.

Key words: State Protection Department of Ukraine, serviceman (bodyguard), administrative-legal status, legal liability, administrative liability.

1. Introduction

In the system of ensuring various humanitarian values, servicemen (bodyguards) of the State Protection Department of Ukraine play an important role because of risking their lives and health to protect life, health and the inviolability of the elite of society, which in turn makes a leading contribution to ensuring the proper rule of law for all citizens without exception, organizes the creation of the national product, forms the state and local budgets for providing socially unprotected population, creates masterpieces of art, develops science or raises the prestige of the Ukrainian people in the international sports arena.

Nevertheless, the activities of the servicemen (bodyguards) of the State Protection Department of Ukraine, should not be such that they unnecessarily restrict the rights and freedoms of other persons, do not allow exceeding the limits of the necessary defence, or in disproportionate use of physical force or special means. In such cases, they should be subject to administrative sanctions of various legal nature.

The scientific basis of the study is the works of outstanding experts in administrative law, which have been useful in formulating the author's positions and conclusions, such as: V. Averianov, O. Bandurka, O. Halunko, Ye. Hetman, Yu. Harust, O. Dzhafarova,

O. Drozd, O. Kobzar, T. Kolomoiets, A. Manzhula, Ye. Sobol, S. Shatrava, R. Shapoval, and others. In current conditions, the concept of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine at both theoretical and practical levels have been studied at substandard levels. This leads to the fact that the rights of servicemen (bodyguards) of the State Security Department of Ukraine and others with whom they clinch, protecting their clients from unwanted contact are mutually violated.

Therefore, the problem of administrative liability of servicemen (bodyguards) of the State Protection Department of Ukraine requires further development and improvement.

2. Concept and specificities of liability

According to the *Explanatory Dictionary*, the term "liability" is interpreted as being imposed on someone or taken responsibility for a certain area of work, a case, for someone's actions, activities, words (Bilodid, Buriachok, 1974).

The general theory of the State and Law defines legal liability as the adverse effects of a personal, property or organizational nature, provided for by sanctions of law, that a person experiences for an offence committed. It is retrospective, evaluates the past, that is, it is liability for the act that has already taken place. It is thus distinct from political, moral and other social responsibilities that can assess future actions. Therefore, depending on the branch, norms are classified into the following sub-categories of liability: constitutional, criminal, civil, disciplinary, material, administrative (Tsvik, 2002).

According to V. Kyrychenko and A. Kurakin, legal liability is the obligation of the offender under the current legislation to experience forced deprivation of certain goods (personal, property or organizational) for an offence committed (Kyrychenko, Kurakin, 2010, p. 102).

In general, we say that legal liability plays an important role in the legal regulatory mechanism for the activity of the relevant actor of administrative law and consists in the implementation of an appropriate set of certain legal measures and remedies, used in any violation of their activities.

The study of legal liability reveals that the legislation in force does not contain provisions that explain the very notion of administrative liability, but the theory of administrative law presents a significant number of opinions of experts in administrative law who have in one way or another examined this issue.

According to Ye. Dodin, administrative liability is the determination by the competent State bodies, through the application of administrative-coercive measures, of restrictions on property and personal benefits and interests

for the commission of administrative offences (Dodin, 1998, p. 266). F. Shulzhenko and Ye. Nevmerzhytskyi, relying on the analysis of legal perspectives, concluded that administrative liability is a specific influence of the State on an administrative offense, that is, the imposition of penalty on the offender by the authorized body or official under the applicable law (Shulzhenko, 2003, p. 107).

M. Shemshuchenko believes that administrative liability is a kind of legal liability, which consists in applying to a person who has committed an administrative offence certain administrative punishment. Administrative liability is incurred for violation of general mandatory rules in various branches of public administration even when the violation has not caused specific harmful effects (Shemshuchenko, 1998).

In T. Kolomoiets's opinion, administrative liability is a kind of legal liability, a specific form of negative response by the State, through its competent authorities, to the corresponding category of unlawful manifestations (especially administrative offences), according to which the perpetrators of these offences shall answer to the authority of the public authority for their wrongful acts and be subject to administrative sanctions in the manner prescribed by law (Kolomoiets, 2009, p. 101).

Academician V. Kopeichykov considered that administrative liability should be understood as the application of administrative punishment by an authorized body or official to the perpetrator of an offence, which is not, by its nature, subject to criminal liability under current legislation (Kopeichykov, 2003).

In general, administrative liability is the application of special means of State action, administrative sanctions imposed both in judicial and quasi-judicial manner, to violators (Halunko, Kurylo, Koroied, 2015; Kozulina, 2014).

According to T. Kolomoiets, administrative liability as a kind of legal liability is: external; applicable only to the commission of an offence; related to State coercion in the form of punitive and legal measures; determined by law; characterised by prosecution of the offender in a certain procedural manner; characterised by prosecution by authorized State bodies and officials; characterised by certain material and domestic losses, provided for by law, incurred by the perpetrator of an offence (Kolomoiets, 2009, p. 102).

Therefore, the liability of public legal entities is one of the elements of the legal regulatory mechanism governing social relations in the field of public administration. Furthermore, legal liability is an integral part of the administrative and legal status of actors of public law and is expressed through the application to them of certain measures of the State and legal coer-

cion for improper exercise of powers, depending on the field of activities they are engaged in.

Following Professor Yu. Bytiak, administrative liability means imposing on offenders general mandatory rules in force in public administration, administrative sanctions entailing aggravating material effects for these persons (Bytiak, Bohutskyi, Harashchuk, 2001, p. 158).

3. Legal and regulatory framework for administrative liability

For example, under article 7, para. 5. Of the Law of Ukraine "On Protection services", the grounds for revocation of the license for protection services of the actor of protection services are: when it is established that a licence or a copy thereof has been transferred to another legal or natural person for the conduct of business; the licensee refusal of an inspection by a licensing body or a specially authorized licensing body; failure of the actor of protection services to comply with a decision on eliminating defects (Zakon Ukrainy Pro okhoronnu diialnist, 2012). A form of administrative liability is the special disciplinary liability of officials (Bytiak, Bohutskyi, Harashchuk, 2001, p. 176). Therefore, we believe that special administrative liability is the special disciplinary liability of bodyguards.

Thus, the administrative liability of bodyguards has been studied from the perspective of four main blocks: 1) administrative liability of bodyguards as officials; 2) administrative liability of the bodyguards as individuals; 3) administrative liability of the actor of the protection services where the bodyguard is employed (in service); 4) special administrative (special disciplinary) liability of bodyguard officials.

Bodyguards with the status of officials include servicemen (bodyguards) of the State Protection Department of Ukraine and police of the National Police. For example, these include the full range of administrative offences related to corruption (Chapter 13-A of the CoAO) and military administrative offences (Chapter 13-B of the CoAO), in particular for abuse of power or official position by a military official (arts. 172-13 of the CoAO), excess of power or official powers by a military official (arts. 172-14 of the CoAO) (Kozulina, 2014).

Therefore, servicemen (bodyguards) of the State Protection Department of Ukraine can be brought to administrative liability for the whole range of administrative offenses related to corruption and military administrative offenses.

In our view, the extension of the provisions of Chapter 13-B of the CoAO to servicemen (bodyguards) of the State Protection Department of Ukraine, under which they may be held administratively liable, do not reflect

the legal nature and social relations in this field. As the specifics of their activities reflect not the protection of the Homeland from external open aggression, but intellectual activity related to the fight against terrorism and ensuring the normal functioning of the highest bodies of State power. Furthermore, we believe that the CoAO should be supplemented with articles that: first, provide normal conditions for the performance of military duties by the servicemen (bodyguards) of the State Protection Department of Ukraine; second, protect citizens from abuses by servicemen (bodyguards) of the State Protection Department of Ukraine simultaneously.

Bodyguards, as individuals without official status, may be held administratively liable for disobeying a lawful order or request of a police officer, a member of a public order and State border protection unit, a serviceman (art. 185 of the CoAO) and arbitrariness, in other words, the unauthorized exercise of one's actual or presumed right, contrary to the procedure established by law, which did not cause significant harm to citizens, State or public organizations (art. 186 of the CoAO). In the latter case, it should be noted that so-called civilian bodyguards do not have the right to impersonate law enforcement officials, otherwise they may be subject to administrative liability under art. 186 of the CoAO "Arbitrariness".

Thus, bodyguards are not protected by administrative coercive measures during actions to protect individuals. Accordingly, we propose to supplement the CoAO with an article that will protect civilian bodyguards from violations by other persons during the performance of their professional duties.

The administrative liability of bodyguards as individuals without official status is provided for in numerous articles of the CoAO, in particular, for arbitrariness if they impersonate representatives of law enforcement agencies, however, they are not protected by administrative coercive measures against violations by other persons in the performance of their professional duties.

With regard to the administrative liability of the actor of the protection services in which the bodyguard works, it should be noted that: first, only the actor of non-State protection services may be held liable; the State Protection and Guard Police Department of Ukraine is not the actor of this offence; second, such liability is sooner indirectly than directly relates to the bodyguard, because the loss of a security license results in the loss of the right to protect an individual under the contract by such a legal person.

Therefore, the administrative liability of the actor of protection services (administrative liability of the legal entity) by depriving

of the license to carry out protection services indirectly leads to adverse effects for the bodyguard, because he loses the right to protect an individual under the contract of such a legal entity.

The special disciplinary liability of militia bodyguards, regulated by special laws, along with the Labour Code, is of interest.

Furthermore, according to the Law of Ukraine "On the State Protection of State Authorities of Ukraine and Officials," servicemen (bodyguards) of the State Protection Department of Ukraine are disciplinary, administratively, materially or criminally liable, as prescribed by law, for the committed offenses. The Disciplinary Regulations of the Armed Forces of Ukraine provide for disciplinary liability in the event of failure to perform (improper execution of) his or her official duties, the violation of military discipline or public order by a serviceman, the commander shall remind him/her of the duties of service and, if necessary, impose disciplinary sanctions. In particular, the following disciplinary sanctions may be imposed on junior and senior officers: remarks; reprimands; severe reprimands; warning of incomplete service; demotion; reduction of one rank; dismissal from military service on grounds of misconduct; deprivation of military rank (Zakon Ukrainy Pro derzhavnu okhoronu orhaniv derzhavnoi vlady Ukrainy ta posadovykh osib, 1998).

Consequently, the special disciplinary liability of militarized bodyguards is regulated by special laws, the laws of Ukraine, which approve the Disciplinary Regulations of the Armed

Forces of Ukraine, according to which, in the event of the commission of unlawful acts, they bear disciplinary liability with an extended range of penalties.

4. Conclusions

Summing up, we can state as follows: the administrative liability of bodyguards has been studied from the perspective of four main blocks: administrative liability of bodyguards as officials; administrative liability of the bodyguards as individuals; administrative liability of the actor of the protection services where the bodyguard is employed (in service); special administrative (special disciplinary) liability of bodyguard officials.

Servicemen (bodyguards) of the State Protection Department of Ukraine may be held administratively liable for the full range of administrative offences related to corruption and military administrative offences.

Therefore, the administrative liability of the servicemen (bodyguards) of the State Protection Department of Ukraine involves a system of provisions of administrative law, according to which: first, bodyguards are subject to administrative sanctions for violation of the rights and freedoms of other persons or/and the public interest of the State and society as a whole, improper performance of their professional duties in the protection of the person entrusted to them; second, bodyguards are protected against third parties who seriously interfere with their professional administrative duties prescribed by law.

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ОСОБЛИВОСТІ АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ ВІЙСЬКОВОСЛУЖБОВЦІВ (ТІЛООХОРОНЦІВ) УПРАВЛІННЯ ДЕРЖАВНОЇ ОХОРОНИ УКРАЇНИ

Анотація. Мета. Метою статті є визначення особливостей адміністративної відповідальності військовослужбовців (тілоохоронців) Управління державної охорони України. **Результати.** Відповідальність публічних суб'єктів права є одним з елементів правового регулювання суспільних відносин у сфері державного управління. Також юридична відповідальність є складником адміністративно-правового статусу суб'єктів публічного права і виражається через застосування до них певних заходів державно-правового примусу за неналежне виконання своїх повноважень залежно від сфери діяльності, якою вони займаються. Адміністративну відповідальність загалом тілоохоронців досліджено з позиції чотирьох основних блоків, таких як: адміністративна відповідальність тілоохоронців як посадових осіб; адміністративна відповідальність тілоохоронців як фізичних осіб; адміністративна відповідальність суб'єкта охоронної діяльності, в якій працює (проходить службу) тілоохоронець; спеціальна адміністративна (спеціальна дисциплінарна) відповідальність посадових осіб тілоохоронців. Визначено, що адміністративна відповідальність суб'єкта охоронної діяльності (адміністративна відповідальність юридичної особи) шляхом позбавлення її ліценції на здійснення охоронної діяльності опосередковано приводить до настання несприятливих наслідків для тілоохоронця, адже він втрачає право здійснювати охорону фізичної особи за договором такої юридичної особи. **Висновки.** Доведено, що адміністративна відповідальність військовослужбовців (тілоохоронців) Управління державної охорони України полягає у системі норм адміністративного права, згідно з якими: по-перше, на тілоохоронців накладаються адміністративні стягнення за порушення прав і свобод інших осіб або/та публічного інтересу держави і суспільства загалом, неналежне виконання своїх професійних обов'язків у разі охорони ввіреної фізичної особи; по-друге, захищають тілоохоронців від третіх осіб, які грубо заважають виконувати їм професійні адміністративні обов'язки, що визначені законом. Наголошено, що військовослужбовці (тілоохоронці) Управління державної охорони України можуть бути притягнуті до адміністративної відповідальності за весь спектр адміністративних правопорушень, що пов'язані з корупцією, та військові адміністративні правопорушення.

Ключові слова: Управління державної охорони України, військовослужбовець (тілоохоронець), адміністративно-правовий статус, юридична відповідальність, адміністративна відповідальність.

The article was submitted 14.06.2022

The article was revised 05.07.2022

The article was accepted 25.07.2022

UDC 342.9

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Zarovna, Iryna (2022). Administrative procedures of the State Migration Service of Ukraine relating to citizenship. *Entrepreneurship, Economy and Law*, 4, 28–34, doi: <https://doi.org/10.32849/2663-5313/2022.4.05>

ADMINISTRATIVE PROCEDURES OF THE STATE MIGRATION SERVICE OF UKRAINE RELATING TO CITIZENSHIP

Abstract. Purpose. The purpose of the article is to reveal administrative procedures of the State Migration Service relating to citizenship. **Results.** The article characterises administrative procedures of the State Migration Service relating to citizenship. Relying on the analysis of the definition of “administrative procedure,” the administrative procedures of the State Migration Service of Ukraine relating to citizenship are considered as the procedure, prescribed by law, for the processing of administrative cases by the State Migration Service of Ukraine, as well as the decision making on the acquisition, retention, loss and recovery of citizenship with a view to ensuring the rights, freedoms and legitimate interests of a person. The specificities of the administrative procedure are its normative regularity, an appropriate sequence of actions, the result thereof is the adoption of an administrative regulation or the conclusion of an administrative contract; a mandatory public administrator involved. The administrative procedures of the State Migration Service of Ukraine relating to citizenship, such as processing of applications, decision making, the right to a review, fees, are analysed. It is emphasised that administrative procedures relating to citizenship should be improved by solving the problems of responsibility of officials and officers of the State Migration Service of Ukraine for violation of the legislation on citizenship; acquisition of citizenship by individuals, living on the temporarily occupied territories, which requires further development of domestic legislation. It is emphasised that the procedure for the processing of applications and complaints on citizenship and the implementation of decisions taken determines the requirements for the submission of applications and other documents for the establishment, registration and verification of Ukrainian citizenship, adoption of Ukrainian citizenship, registration of acquisition of Ukrainian citizenship, termination of Ukrainian citizenship. **Conclusions.** It is concluded that the priority trends in improving administrative procedures of the State Migration Service of Ukraine relating to citizenship is an immediate solution of the problems of responsibility of officials and officers of the State Migration Service of Ukraine for violation of the legislation on citizenship; acquisition of citizenship by individuals, living on the temporarily occupied territories, which requires further development of domestic legislation.

Key words: State Migration Service, administrative procedure, citizenship, decision, legal regulation, temporarily occupied territories, actor.

1. Introduction

One of the trends in reforming the activity of administrative bodies is improvement of existing approaches and development of new ones to their functioning. In this context, the study of administrative procedures as a central concept in the system of administrative law is increasingly important. The definition of “administrative procedure” has not yet been established, despite the frequent use of this term in the scientific and educational literature. This raises the question of defining the legal nature of the administrative procedure of the SMS

relating to citizenship, as well as trends in its improvement in the field under study.

It should be noted that administrative procedures have been and remain the subject of scientific interest by domestic and foreign administrative scientists such as: V. Averianov, D. Bakhrakh, Yu. Bytiak, O. Bandurka, V. Harashchuk, I. Holosnichenko, M. Dzhafarova, Ye. Demskyi, T. Kolomoiets, A. Komziuk, O. Lahoda, Ye. Leheza, H. Pysarenko, V. Tymoshchuk, V. Shkarupa, and others. In the field of state migration policy, this concept has been studied in the works by O. Vlasenko,

S. Mosondz, V. Olefir, Ya. Poiedynok, N. Tyn-dyk, and others.

The purpose of the article is to reveal administrative procedures of the State Migration Service relating to citizenship.

2. Specificities of the administrative procedure

In general, a "procedure" is an officially established or accepted manner in which something should be implemented, executed or registered; a number of any actions, the course of something (Bilodid, 1970, p. 343). At the legislative level, the definition of "administrative procedure" is defined in the draft Law of Ukraine "On administrative procedure" of June 09, 2015 – administrative procedure – the manner, prescribed by law, in which administrative proceedings should be conducted; administrative proceedings shall consist of a series of procedural actions consistently performed by an administrative body and procedural decisions taken to consider and resolve an administrative case, culminating in the adoption and, where necessary, execution of an adopted administrative regulation (Draft Law of Ukraine On Administrative Procedure of June, 2015). Therefore, the legislator proposes to define the concept through the definition of "proceeding" as synonymous. In this context, Yu. Frolov argues that the concepts of "procedure" and "proceeding" correlate as "statics" and "dynamics" (Frolov, 2013).

In the scientific literature, administrative procedure is defined as the procedure established by the provisions of administrative procedural law for the activities of actors of legal relations in the implementation of legal regulatory mechanism for public administration, processing and resolution of specific administrative cases (Ishchenko, 2017); the manner, established by law, in which individual administrative cases are processed and resolved by public administration bodies with a view to ensuring the rights, freedoms and legitimate interests of individuals and legal entities, the normal functioning of civil society and the State (Halunko, Olefir, Pykhtin, 2011, p. 276); the manner, established by law (officially), in which administrative cases are processed and resolved by administrative bodies, aimed at the adoption of an administrative regulation or the conclusion of an administrative contract (Komziuk, Bevzenko, Melnyk, (2007, p. 47).

The analysis of the given definitions allows to focus on the broad understanding of this concept, when through the procedure describes almost all activities of public administrators, as well as on a narrow understanding – the resolution of individual administrative cases by public administration bodies.

Therefore, the definitions given make it possible to identify the specificities of the administrative procedure are its normative regularity, an appropriate sequence of actions, the result thereof is the adoption of an administrative regulation or the conclusion of an administrative contract; a mandatory public administrator involved.

The administrative procedures of the SMS relating to citizenship are the procedure, prescribed by law, for processing administrative cases by the State Migration Service of Ukraine, as well as the decision making on the acquisition, retention, loss and recovery of citizenship with a view to ensuring the rights, freedoms and legitimate interests of the individual.

The administrative procedures of the SMS relating to citizenship is based on principles: 1) The rule of law, implying that a person, his or her rights and freedoms are recognised as high values and determine the content and focus of State activities; 2) Legality, implying that administrative procedures for processing a case are carried out within the limits of competence in accordance with the Constitution of Ukraine and other laws of Ukraine, as well as on the basis of international treaties consented by the Verkhovna Rada of Ukraine as binding; 3) The equality of participants in administrative proceedings before the law, providing for the equality of rights of persons involved in the administrative procedure, regardless of race, skin colour, political, religious or other beliefs; sex, ethnic and social origin, property, place of residence, linguistic or other characteristics; 4) The impartiality of the administrative authority, which shall treat all participants in the administrative procedure equally; 5) The administrative authority's proper use of the powers conferred; 6) The reasonableness of actions implying the conduct of the administrative procedure and decision making, taking into account all the circumstances of the case; 7) Proportionality – the negative effects for the individual and the public interest should be minimal. Furthermore, the administrative authority shall observe the principle of proportionality in procedural actions and decision making; 8) The transparency of the administrative procedure, implying that the right of everyone to have access to information relating to the exercise of powers by the administrative authority is ensured; 9) The timeliness and reasonable time, required for the processing and resolution of a case within the time either prescribed by law, or within a reasonable time, that is, the shortest time sufficient for the conduct of the administrative procedure without undue delay (Draft Law of Ukraine On Administrative Procedure, 2015).

The administrative procedures of Ukraine relating to citizenship are carried out by the SMS under the legal regulations as follows: Law 2235-III of Ukraine of January 18, 2001 "On Citizenship of Ukraine", the Decree of the President of Ukraine Procedure for Processing of Applications and Submissions on Citizenship and Execution of Decisions, approved by the Decree 215 of the President of Ukraine of March 27, 2001 (in the edition of Decree 588 of the President of Ukraine of June 27, 2006), Resolution 795 of the Cabinet of Ministers of June 04, 2007 "On approval of the list of paid services provided by units of the Ministry of Internal Affairs and the SMS, and payments for their provision", Decree 7-93 of the CMU "On the State Fees" of January 21, 1993, Order 715 of the Ministry of Internal Affairs of August 16, 2012 "On approval of samples of documents submitted for identification of the citizenship of Ukraine, adoption of the Ukrainian citizenship, registration of acquisition of Ukrainian citizenship, termination of Ukrainian citizenship, termination of decisions on registration of Ukrainian citizenship".

The concept of "citizenship/nationality" is enshrined in the European Convention on Nationality of the Council of Europe of 6 November 1997, ETS 166: "'Nationality' means the legal bond between a person and a State and does not indicate the person's ethnic origin" (European Convention on Nationality, 1997), as well as in Law 2235-III of Ukraine "On Citizenship of Ukraine" of January 18, 2001: "Citizenship" is the legal bond between a natural person and Ukraine, which is manifested in their mutual rights and duties (Law of Ukraine On Citizenship of Ukraine of January, 2001).

In addition, the European Convention on Nationality of the Council of Europe defines the procedures relating to nationality, such as:

1) Processing of applications: Each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time;

2) Decisions: Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.

3) Right to a review: Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law;

4) Fees: Each State Party shall забезпечити, щоб ensure that the fees for the acquisition, retention, loss, recovery or certification of its nationality be reasonable. Each State Party shall ensure that the fees for an administrative or

judicial review be not an obstacle for applicants (European Convention on Nationality, 1997).

The territorial bodies of the SMS of Ukraine decide on the acquisition of Ukrainian citizenship: 1) by birth; 2) by territorial origin; 3) due to adoption of citizenship; 4) as a result of recovery of citizenship; 5) as a result of adoption by the adopting parents; 6) as a result of guardianship or custody of the child, placement of the child in a health-care institution, an educational institution or other children's institution in a family-type children's home or a foster family; 7) as a result of guardianship of a person recognised as incapable by a court; 8) in connection with the Ukrainian citizenship of one or both parents of a child; 9) as a result of recognition of paternity or maternity or establishment of paternity or maternity; 10) on other grounds provided for in international treaties consented by Ukraine as binding (Decree of the President of Ukraine Procedure for Processing of Applications and Submissions on Citizenship and Execution of Decisions, 2001).

3. Processing of applications as part of the administrative procedure relating to citizenship

The procedure for the processing of applications and complaints on citizenship and the implementation of decisions taken determines the requirements for the submission of applications and other documents for the establishment, registration and verification of Ukrainian citizenship, adoption of Ukrainian citizenship, registration of acquisition of Ukrainian citizenship, termination of Ukrainian citizenship. Thus, applications for the establishment and registration of citizenship of Ukraine by a person residing on the territory of Ukraine, as well as on the registration of acquisition of citizenship of Ukraine by a person residing on the territory of Ukraine, shall be issued in the name of the head of the territorial body of the State Migration Service of Ukraine at the place of residence of a person. They are drawn up in writing with the date of writing and signed by the applicant, parent, legal representative of the child, guardian of the disabled person or other representative of the person. Applications are submitted to the territorial unit of the State Migration Service of Ukraine at the place of residence or registration of a person in Ukraine by a person who is legally resident in Ukraine and by a person who has been granted refugee status in Ukraine or asylum in Ukraine. The procedure determines the list of documents that are submitted for the establishment, registration and verification of citizenship of Ukraine, approval of Ukrainian citizenship, registration of acquisition of citizenship of Ukraine, as well as termination of citizenship of Ukraine.

Processing of applications as a component of the administrative procedure for citizenship involves verification of compliance with the requirements of the legislation of Ukraine by the territorial units of the SMS. If all the documents submitted are proper, the territorial unit of the SMS, within two weeks from the date of their receipt, submits them to the territorial body of the SMS of Ukraine. If the check establishes that the documents submitted by the applicant do not meet the requirements of the legislation of Ukraine, the territorial unit of the SMS of Ukraine within two weeks from the date of receipt of the documents returns them to the applicant for elimination of defects. If the applicant within two months from the date of return of the documents does not eliminate the defects and does not file the documents again, the head of the territorial unit of the SMS of Ukraine decides to terminate the proceedings on this application (Decree of the President of Ukraine Procedure for Processing of Applications and Submissions on Citizenship and Execution of Decisions, 2001).

The territorial body of the SMS is responsible for actions to verify the compliance of the submitted documents with the requirements of the legislation. In case of compliance of documents with the requirements of the legislation on acquisition of citizenship by a person, as well as in the absence of the grounds stipulated by law, in the presence of which the recovery of Ukrainian citizenship is not allowed (also checked by the Security Service of Ukraine), the head of the territorial body of the State Migration Service of Ukraine or his deputy makes a decision on registration of acquisition of citizenship of Ukraine by the person.

Decision-making as part of the administrative procedure relating to citizenship provides that the decision on the acquisition of citizenship of Ukraine by a person or on the refusal of the application for acquiring citizenship of Ukraine by a person not later than three months from the date of receipt of the documents shall be sent to the territorial unit of the SMS of Ukraine, in which the documents were submitted by the applicant (Decree of the President of Ukraine Procedure for Processing of Applications and Submissions on Citizenship and Execution of Decisions, 2001). The latter shall, within one week of the receipt of the decision, notify the applicant of it in writing. If a decision has been taken to refuse an application for the acquisition of Ukrainian citizenship, the reasons for the refusal shall be provided. The grounds for revocation of the decision on registration of citizenship shall be the submission of false information or false documents, the concealment by the person of any material fact, in

the presence of which the person cannot acquire Ukrainian citizenship, including the non-performance of the obligation by the person to terminate foreign citizenship (nationality) in the declaration on termination of foreign citizenship or in the declaration on absence of foreign citizenship (Law of Ukraine On Citizenship of Ukraine, 2001).

The decision to acquire Ukrainian citizenship is revoked by the head of the territorial body of the State Migration Service of Ukraine or his deputy, the corresponding notification is sent within a week to the territorial unit of the SMS of Ukraine, where the application for annulment of the decision on registration of citizenship of Ukraine has been submitted. In addition, the territorial unit of the SMS of Ukraine, within one week of receiving notification of the annulment of the decision to acquire Ukrainian citizenship, shall inform in writing the person concerned indicating the reasons for the annulment of the decision (Decree of the President of Ukraine Procedure for Processing of Applications and Submissions on Citizenship and Execution of Decisions, 2001).

If the decision on citizenship is taken by the President of Ukraine, the administrative procedure provides for the actions of the territorial unit of the SMS, the territorial body of the SMS check compliance of the submitted documents with the legislation of Ukraine. In case of their conformity, the territorial body of the SMS, considering the results of the verification by the Security Service of Ukraine and the Ministry of Internal Affairs of Ukraine, prepares an opinion on the possibility of granting the applicant's application and submits this opinion together with the submitted documents to the SMS within three months from the date of receipt of the documents.

The SMS of Ukraine authorises: the compliance of documents submitted with the requirements of the legislation of Ukraine; confirmation of the fulfilment of the conditions for adoption of Ukrainian citizenship or termination of Ukrainian citizenship; the absence of grounds on which the adoption or termination of Ukrainian citizenship is not permitted. If case of their compliance, the SMS of Ukraine approves the conclusion of the territorial body of the SMS of Ukraine on the possibility of granting the applicant's application and submits it together with the submitted documents to the Commission under the President of Ukraine on Citizenship.

In case of non-compliance of documents submitted with the requirements of the legislation of Ukraine, the territorial unit of the SMS returns the documents to the applicant within the time limits prescribed by law. If the appli-

cant within two months from the date of return of the documents does not eliminate the defects and does not submit the documents again, the head of the territorial unit of the SMS of Ukraine shall decide on the termination of the processing of this application.

The legislation shall determine the total period for processing applications and complaints relating to citizenship, the decision on which shall be taken by the President of Ukraine, by the SMS of Ukraine, its territorial bodies and units shall not exceed eight months from the date of their submission, while applications relating to Ukrainian citizenship of children, persons who have been granted refugee status in Ukraine or asylum in Ukraine and stateless persons shall not exceed six months from the date of their submission.

The right to a review as a part of the administrative procedure relating to citizenship is regulated by Art. 26-29 of the Law of Ukraine "On Citizenship of Ukraine", providing for decisions relating to citizenship may be appealed to the court in the manner established by law, as well as actions and omissions of officials and officers, violating the procedure and time for processing cases relating to citizenship and the execution of decisions on citizenship issues. The latter may also be subject to administrative appeal.

Legislation of Ukraine, in particular, Resolution 795 of the Cabinet of Ministers of June 04, 2007 "On approval of the list of paid services provided by units of the Ministry of Internal Affairs, the National Police and the State Migration Service, and the amount of payment for their provision" (Resolution of the Cabinet of Ministers of Ukraine On approval of the list of paid services provided by the units of the Ministry of Internal Affairs, the National Police and the State Migration Service and the amount of payment for their provision, 2007), provides for the amount of fees for acquisition, retention, loss, recovery or certification of its citizenship established within reasonable limits. This information is available on the website of the SMS of Ukraine.

Therefore, the administrative procedures of the SMS of Ukraine relating to citizenship are regulated by the current legislation regulating the issue of acquisition, retention, loss, recovery or certification of its citizenship.

However, issues relating to the acquisition of citizenship by persons residing in the temporarily occupied territories remain urgent. As a result of the armed conflict in eastern Ukraine and establishment of the self-proclaimed "people's republics" in the Donetsk and Luhansk regions in 2014, the territorial units of the SMS

ceased their activities in the localities defined by law in the Donetsk and Luhansk regions. Consequently, it is extremely difficult to authorise citizenship of Ukraine by a person who has resided and obtained a passport of a Ukrainian citizen in non-government-controlled territories. Since internal (not biometric) passports of Ukrainian citizens, issued before 2016, are only paper carriers, their authenticity can only be checked against the data of the archive card in the archives of the territorial body where they were issued. However, passports issued in the occupied territory of the Autonomous Republic of Crimea and non-government-controlled territories of the Donetsk and Luhansk regions, cannot be authorised. In the event of the loss of such passport, a person shall identify not only his or her person, but also his or her Ukrainian citizenship (Website of the Right to Protection Charitable Foundation, 2021).

To date, the identification of a person and identification of Ukrainian citizenship in such cases is carried out in accordance with the procedure established by Decree 289 of the Cabinet of Ministers of Ukraine of 4 June 2014 "On the approval of the Procedure for registration of documents confirming the citizenship of Ukraine, identity or special status of citizens to citizens living in the temporarily occupied territory of Ukraine" (Resolution of the Cabinet of Ministers of Ukraine On approval of the Procedure for registration of documents confirming the citizenship of Ukraine, identity or special status of citizens to citizens living in the temporarily occupied territory of Ukraine, 2014) and Resolution 302 of the Cabinet of Ministers of Ukraine On approval of the sample form, technical description and Procedure for registration, issuance, exchange, transfer, withdrawal, return to the state, invalidation and destruction of the passport of a citizen of Ukraine of March 25, 2015 (Resolution of the Cabinet of Ministers of Ukraine On approval of the sample form, technical description and Procedure for registration, issuance, exchange, transfer, withdrawal, return to the state, invalidation and destruction of the passport of a citizen of Ukraine, 2015).

4. Conclusions

Consequently, the priority trends in improving administrative procedures of the State Migration Service of Ukraine relating to citizenship is an immediate solution of the problems of responsibility of officials and officers of the State Migration Service of Ukraine for violation of the legislation on citizenship; acquisition of citizenship by individuals, living on the temporarily occupied territories, which requires further development of domestic legislation.

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АДМІНІСТРАТИВНІ ПРОЦЕДУРИ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ УКРАЇНИ У СФЕРІ ГРОМАДЯНСТВА

Анотація Мета. Метою статті є розкриття адміністративних процедур Державної міграційної служби України у сфері громадянства. **Результати.** Стаття присвячена характеристиці адміністративних процедур Державної міграційної служби України у сфері громадянства. На підставі аналізу дефініції «адміністративна процедура» визначено, що адміністративні процедури Державної міграційної служби України у сфері громадянства являють собою визначений у законодавстві порядок розгляду Державною міграційною службою України адміністративних справ, а також прийняття відповідного рішення щодо набуття, збереження, втрати та поновлення громадянства з метою забезпечення прав, свобод та законних інтересів особи. Виокремлено визначальні ознаки адміністративної процедури як її нормативну урегульованість, що являє собою відповідну послідовність дій, результатом є прийняття адміністративного акта або укладення адміністративного договору; обов'язковим суб'єктом є орган публічної адміністрації. Здійснено аналіз таких адміністративних процедур Державною міграційною службою України у сфері громадянства, як: розгляд справ, рішення, право на перегляд, збори. Акцентовано на необхідності удосконалення адміністративних процедур у сфері громадянства шляхом вирішення проблем щодо відповідальності посадових і службових осіб Державної міграційної служби України за порушення законодавства про громадянство; набуття громадянства особами, що проживають на тимчасово окупованих територіях, що вимагає подальшого розвитку вітчизняного законодавства. Наголошено, що Порядок провадження за заявами і поданнями з питань громадянства та виконання прийнятих рішень визначає вимоги до подання заяв та інших документів для встановлення, оформлення та перевірки належності до громадянства України, прийняття до громадянства України, оформлення набуття громадянства України, виходу з громадянства України. **Висновки.** Зроблено висновок, що пріоритетними напрямками удосконалення адміністративних процедур Державної міграційної служби України у сфері громадянства є нагальне вирішення проблем щодо відповідальності посадових і службових осіб Державної міграційної служби України за порушення законодавства про громадянство; набуття громадянства особами, що проживають на тимчасово окупованих територіях, що вимагає подальшого розвитку вітчизняного законодавства.

Ключові слова: державна міграційна служба, адміністративна процедура, громадянство, рішення, нормативно-правовий акт, тимчасово окуповані території, суб'єкт.

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 321.011:342.9

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THE ESSENCE OF INFORMATION SOVEREIGNTY FROM AN ADMINISTRATIVE LAW PERSPECTIVE

Abstract. Purpose. The purpose of the article is to form the modern essence of information sovereignty from the perspective of administrative law in Ukraine, relying on the systematic analysis of the positions of scientists, reference materials, and provisions of current legislation. **Results.** It is noted that the State has some duties only where it has a certain interest: only what works to strengthen the State, to protect it from external aggression and internal strife, can be the subject matter of its systemic protection, support and all kinds of care. Conversely, what constitutes a threat to the interests of the State, it is not obliged to support; moreover, it is interested and engaged in limiting and minimising influence and development. The humanitarian policy of the State should be aimed at strengthening its sovereignty and, accordingly, may more or less coincide with the humanitarian policies of the individual cultural groups composed of the citizens of that State. It is established that the Concept of State Sovereignty needs to be modernised by integrating the classical and new information powers of the State, which are characteristic of the globalised information world. Information sovereignty is not an independent category of constitutional law: this term describes the specificity of the sovereign powers of the State in the global information space regarding the independent formation of national information policy and national security. **Conclusions.** It is concluded that information sovereignty as an information part of State sovereignty is a particularly valuable object of the administrative and legal protection in the context of the development of information society and conditionally is under full protection of the information security of the State. Information sovereignty is the independent information and spatial boundary of the use of information space, information resources and information technologies of each State, which by integrated processes is integrated into the global information space and at the same time represents the national interests of the State, specificities of its State information policy and the concept of protection for the expression of the State information identity and the subjective participation in the information exchange at the global level.

Key words: administrative protection, administrative means, administrative and legal framework, State information policy, information security, information, cyberspace, sovereignty.

1. Introduction

In the context of strategic security for the internal sources of State sovereignty, it is not only possible but also advisable to resort to its external sources. Only if in a State, as well as its leaders, the National Idea, which has the function of integrating all the country's cultural groups, is the subject matter of protection of the sovereignty of the State: the State as such does not deserve sovereignty, but only the State as the embodiment of a national idea. Therefore, it is not only possible but also advisable to resort to external sources of State sovereignty, provided that the internal sources of State sovereignty are strategically safeguarded (Boichenko, 2020, pp. 158–173).

The State has certain duties only where it has a certain interest: only what works to strengthen the State, to protect it from external aggression and internal strife, can be the subject matter of its systemic protection, support and all kinds of care. Conversely, what constitutes a threat to the interests of the State, it is not obliged to support, moreover, it is interested and engaged in limiting and minimising influence and development. The humanitarian policy of the State should be aimed at strengthening its sovereignty and, accordingly, may more or less coincide with the humanitarian policies of the individual cultural groups composed of the citizens of that State. This means that such cultural groups are bound to support

the State and consistently fulfil these obligations if they expect to promote their partisan interests. The embodiment and quintessence of this cohesion of individual cultural groups around the task of safeguarding the sovereignty of the State is their recognition of a common national idea based not on ethnic, but on political fundamentals. A common national idea legitimises the sovereignty of the State in their eyes. The State provides assistance to different cultural groups as an embodiment of a common national idea and not as an outsider. On the other hand, a State cannot a priori accept or a priori reject such assistance, but it must depend on whether or not the cultural group has fulfilled its obligations towards the State (Boichenko, 2020, pp. 158–173).

In the process of realisation of the national idea, questions arise on protection of information sovereignty as the newest category of information society.

Current issues of information sovereignty in the context of administrative law in Ukraine were studied by V. Hapotii, O. Herasymova, S. Horova, V. Horovyi, S. Demchenko, O. Dovhan, D. Dubov, H. Duhinets, V. Markov, V. Nabrusko, O. Oliynyk, A. Pysmenytskyi, V. Polevyi, O. Radutnyi, P. Rohov, O. Skrypniuk, O. Solodka, V. Suprun, V. Torianyk, A. Cherep, and others.

However, given the duration of the hybrid war, the intensification of cyber-attacks against State portals and other information intrusions in the public sector, the relevance of scientific research in the field of information sovereignty acquires new features and characteristics.

The purpose of the article is to form the modern essence of information sovereignty from the perspective of administrative law in Ukraine, relying on the systematic analysis of the positions of scientists, reference materials and provisions of current legislation.

2. Foundations of State sovereignty

The online *Stanford Encyclopedia of Philosophy* gives the following definition of sovereignty: “Sovereignty, though its meanings have varied across history, also has a core meaning, supreme authority within a territory. It is a modern notion of political authority. Historical variants can be understood along three dimensions – the holder of sovereignty, the absoluteness of sovereignty, and the internal and external dimensions of sovereignty” (Boichenko, 2020, pp. 158–173; Philpott, 2020).

State sovereignty is defined in the Declaration of State Sovereignty of Ukraine as the supremacy, autonomy, completeness and indivisibility of the authority of the Ukrainian State within its territory, which is an independent and equal actor of international rela-

tions (Declaration of State Sovereignty of Ukraine, 1990). Therefore, the main spatial limit of the exercise of sovereign rights by a State is its territory. However, the very concept of “territory” in the process of historical development has undergone serious changes. At first, the territory was considered to be the continental part of the Earth, later on States began to protect their interests in bordering territories, defined today as the continental shelf and the exclusive (maritime) economic zone. In the nineteenth century, it became urgent to define the territorial boundaries of the sovereign rights of the State in the information space due to the rapid development of the latest technologies and the transition of mankind to a qualitatively new paradigm of social development – the information society. It is believed that the nature of cyberspace has not met traditional geographic concepts for a long time (Corn, Taylor, 2017, p. 207). Accordingly, today there is an urgent need to determine the sovereignty of the State in a new dimension – information and determination of the boundaries of the exercise of information sovereignty of the State (Solodka, 2020, p. 40; Ternavska, 2021, pp. 80–89).

A. Skrypniuk believes that the concept of “State sovereignty” develops in relation and depending on popular and national sovereignties. State sovereignty is a political and legal characteristic of the modern State, which is expressed in the supremacy of its power within the country and its external independence. It is directly linked to sovereign State authority, characterised by the autonomy to resolve issues in the political and legal sphere and the supremacy of State authority in relations with other types of social power; is characterised by indivisibility and unity and cannot be divided among other actors in political and legal relations; means the independence and equality of the State in external relations. The sovereign State is the one with external and internal sovereignty. In the context of real construction of a democratic, legal and social State, sovereignty acquires new characteristics, such as: efficiency of State power, reality of constitutional system, stability and sustainable development of all spheres of activity of the State and society. State sovereignty depends on the legitimacy, legality and effectiveness of the organisation and exercise of State authority, which is directly linked to the form of public administration. One of the important areas of ensuring State sovereignty in Ukraine is the approval and stabilisation of the parliamentary-presidential form of government with the strengthening of “parliamentary elements” (Skrypniuk, 2021, pp. 11–19).

The Concept of State Sovereignty needs to be modernised by integrating the classical and new information powers of the State, which are characteristic of the globalised information world. Information sovereignty is not an independent category of constitutional law, this term describes the specificity of sovereign powers of the State in the global information space regarding the independent formation of national information policy and national security (Ter-navska, 2021, pp. 80–89).

Accordingly, State sovereignty should be considered not only from the political and economic perspective, but also from the information one, since the full power and effectiveness of a political or economic decision is directly dependent on information, on the basis of which it has been adopted, as well as on communication with the makers of this decision. That is, it is about the information component of State sovereignty (Polevyi, 2018, pp. 139–144).

As a variant of the definition of the category of "information sovereignty", V. Suprun suggests the following: this is certain data resources resulting from the exercise of freedom by the State, at the expense of the State or the entities of the State, as a result of the realisation of the right to information, which ensures its equality in the international information space, which indicate its copyright to the State, authorities, local self-government and other public authorities. This is provided for by international standards enshrined in the international and European Conventions to which Ukraine has acceded, as well as by international and inter-State treaties concluded by the authorities of Ukraine. The provision of information sovereignty by the State includes the following factors: – The right to information should belong to the State or its authorities; – The exercise by the State of information sovereignty includes ensuring its information security; – The realisation of information sovereignty should be based on information freedom and equality (Suprun, 2008, 39).

3. Specificities of information sovereignty of the State

O. Radutnyi argues that the definition of the content of the concepts of "national security", "information security", "State sovereignty", "information sovereignty" ("State sovereignty in the information sector") within the domestic legal field and at the level of regulatory framework for human rights and freedoms, should be the existence of individualistic principle of distribution of values (national interests are conditioned by natural, individual human rights and freedoms, State institutions are subject to the realisation of individual values and interests, and all other interests,

including public, social, national, etc. derived from individual) but in the practical application of existing legislation – Statism (a certain absolutisation of the importance of the State), which forms a certain dissonance (Radutnyi, 2016, pp. 98–91).

O. Solodka argues that information sovereignty of the State is a legal feature, consisting in the supremacy, independence, completeness and indivisibility of its authority in the information space of Ukraine, equality and independence in relations with other States in the global information space. The legal category of sovereignty is the characteristic that enables the relevant authorities of the State to implement specific measures to ensure information security. In fact, information security, as regulated by law, must reflect the state of art in the exercise of information sovereignty by the State. Information sovereignty is a fundamental principle of information security (Solodka, 2020, pp. 232–239).

The informational component of State sovereignty means the right and the actual possibility, in accordance with the legislation and taking into account the balance of interests of the individual, the State and society to define and implement internal information policy, guarantee information security and act as an equal actor of external (international) information exchange. Therefore, public administration in the information sector should aim at: – filling the domestic and world information space with reliable and positive information about Ukraine and the events taking place in it; – promoting the creation of quality content; – promoting the development of information technologies; – ensuring information security (Polevyi, 2018, pp. 139–144).

According to Solodka, the issue of determining the components of information sovereignty of Ukraine and their legal nature can be considered from two main approaches: the identification of functional sectors (aspects) of information sovereignty or the identification of its system elements. In the most general form, information sovereignty of Ukraine, as a complex category of information law, the elements thereof reflect various forms of information and areas of its expression in modern society, includes the following functional aspects: information-humanitarian, and information technology (Solodka, 2020, pp. 23–29). The information-humanitarian component of information sovereignty includes three aspects: national (popular), State and individual. These aspects can be detailed through cultural, ideological, spiritual components, etc. (Solodka, 2020, pp. 23–29). The information technology component is implemented in general through the concept of digital sovereignty and is asso-

ciated with cyberspace, that is an environment resulting from the interaction of people, software and services on the Internet with the help of technological devices and networks connected to them, which does not exist in any physical form (Solodka, 2020, pp. 23–29).

Information sovereignty of the State is reflected in its ability, in accordance with the provisions of national and international law, to determine independently national interests in the field of information and to implement them through State internal and external information policy. This includes the ability to provide information security, to manage national information resources, to create a national information infrastructure for national information space, create conditions for its integration into the world information space (Solodka, 2020, pp. 232–239).

In general, the relationship between information sovereignty and information security is reflected in the following: – Information sovereignty is an absolute feature of the modern State and a legal basis for ensuring its information security; – The object of ensuring both information sovereignty of the State and the information security of the State is the national interests of Ukraine in the information sphere; – Information sovereignty is exercised through the sovereign right of the State to ensure information security and is the basis

for its exercise; – Virtually all measures aimed at maintaining information sovereignty are simultaneously measures, aimed at ensuring information security, therefore, information sovereignty of the State is a condition for its information security; – Information sovereignty of the State determines its independence in the global information space, and ensures the independent participation of the State in the international information security system (Solodka, 2020, pp. 232–239).

4. Conclusions

To sum up, information sovereignty as an information part of State sovereignty is a particularly valuable object of the administrative and legal protection in the context of the development of information society and conditionally is under full protection of the information security of the State.

Information sovereignty is the independent information and spatial boundary of the use of information space, information resources and information technologies of each State, which by integrated processes is integrated into the global information space and at the same time represents the national interests of the State, specificities of its State information policy and the concept of protection for the expression of the State information identity and the subjective participation in the information exchange at the global level.

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СУТНІСТЬ ІНФОРМАЦІЙНОГО СУВЕРЕНІТЕТУ З ПОЗИЦІЇ АДМІНІСТРАТИВНОГО ПРАВА

Анотація. Мета. Мета статті полягає в тому, щоб на основі системного аналізу позицій учених, довідникових матеріалів та норм чинного законодавства сформувати сучасну сутність інформаційного суверенітету з позиції адміністративного права в Україні. **Результати.** Наголошено, що держава має певні зобов'язання лише там, де вона має певний інтерес: лише те, що працює на зміцнення держави, на її захист від зовнішньої агресії і внутрішнього розбрату, може бути предметом її системного захисту, підтримки і всілякого піклування. І навпаки, те, що становить загрозу інтересам держави, вона не лише не зобов'язана підтримувати, але, навпаки, має інтерес і завдання обмежувати і мінімізувати у впливі та розвитку. Гуманітарна політика держави має бути спрямована на зміцнення її суверенітету, а відповідно, може більшою або меншою мірою збігатися з гуманітарними політиками окремих культурних груп, які утворюють громадяни цієї держави. З'ясовано, що Концепція державного суверенітету потребує своєї модернізації шляхом інтеграції класичних та нових інформаційних правомочностей держави, характерних для глобалізованого інформаційного світу. Інформаційний суверенітет не є самостійною категорією конституційного права, цей термін характеризує специфіку суверенних правомочностей держави у глобальному інформаційному просторі щодо самостійного формування національної інформаційної політики та забезпечення національної Концепції державного суверенітету, потребує своєї модернізації шляхом інтеграції класичних та нових інформаційних правомочностей держави, характерних для глобалізованого інформаційного світу. **Висновки.** Зроблено висновок, що інформаційний суверенітет як інформаційна частина державного суверенітету є особливо ціннісним об'єктом адміністративно-правового захисту в умовах розвитку інформаційного суспільства та умовно перебуває під повною протекцією інформаційної безпеки держави. Інформаційний суверенітет – це самостійна інформаційно-просторова межа використання інформаційного простору, інформаційних ресурсів та інформаційних технологій кожної держави, що комплексними процесами інтегрується в глобальний інформаційний простір та одночасно виражає національні інтереси держави, особливості її державної інформаційної політики та концепції захисту, для вираження загальнодержавної інформаційної ідентичності та суб'єктної участі в інформаційному обміні на глобальному рівні.

Ключові слова: адміністративний захист, адміністративні засоби, адміністративно-правові засади, державна інформаційна політика, інформаційна безпека, інформація, кіберпростір, суверенітет.

The article was submitted 10.06.2022

The article was revised 01.07.2022

The article was accepted 22.07.2022

UDC 342.951:343.211 (477)

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Zubov, Oleksandr (2022). Some aspects of public control as a way to ensure fair and effective justice in Ukraine. *Entrepreneurship, Economy and Law*, 4, 40–43, doi: <https://doi.org/10.32849/2663-5313/2022.4.07>

SOME ASPECTS OF PUBLIC CONTROL AS A WAY TO ENSURE FAIR AND EFFECTIVE JUSTICE IN UKRAINE

Abstract. Purpose. The purpose of the article is to study public control as a way to ensure fair and effective justice. **Results.** The article analyses certain aspects of public control as a way to ensure fair and effective justice. Human and civil rights and freedoms are an important component of the implementation of constitutional provisions. The judiciary is a systemic tool for preventing and monitoring these violations. Control can be considered both as judicial control exercised by the courts, playing an important role in the process of implementing the principle of separation of powers, and public control exercised by society over the courts. In Ukraine, despite the reforms and changes in the justice system, there is no effective legal instruments of protecting the rights and freedoms of citizens, corruption continues to occur, Excessive length of court proceedings or execution of judgement. It is these components that require special study and public control. The National Agency of Ukraine for Civil Service monitors the quality of official duties performance, effectiveness and efficiency of service, as well as career planning, identification of the need to increase the level of professional competence of civil servants, encouragement of effective performance. Furthermore, public control should be considered as an inherent function of civil society. Its main task is to prevent judges from abusing their powers and exercising their interests to the detriment of the public. **Conclusions.** In order to prevent violations, both within the system (relationship between judges, their conduct) and in judgements, the activities of courts are controlled not only externally but also internally. The activities of the courts are controlled by a wide range of actors, including the President of Ukraine, the Verkhovna Rada, the State Judicial Administration of Ukraine, the High Council of Justice, the President of the Court, State bodies, municipal bodies and the public.

Key words: administrative and legal framework, efficiency, fairness, justice, public control, administrative law, courts.

1. Introduction

Human and civil rights and freedoms are an important component of the implementation of constitutional provisions. The judiciary is a systemic tool for preventing and monitoring these violations. Control can be considered both as judicial control exercised by the courts, playing an important role in the process of implementing the principle of separation of powers, and public control exercised by society over the courts. In Ukraine, despite the reforms and changes in the justice system, there is no effective legal instruments of protecting the rights and freedoms of citizens, while corruption, excessive length of court proceedings or execution of judgement occur. It is these components that require special study and public control.

The study is based on the work of academic theorists on administrative law, such as: B. Aver-

ianov, O. Bandurka, O. Bezpalov, Y. Bytiak, M. Havryltsiv, V. Halunko, I. Holosnichenko, S. Kivalov, M. Kovaliv, V. Kolpakov, A. Komziuk, O. Kuzmenko, A. Kravtsov, R. Melnyk, S. Ovcharuk, M. Taradai, I. Stakhura, A. Shcherbliuk, V. Felyk, and others.

The purpose of the article is to study public control as a way of ensuring fair and effective justice.

2. Control as a tool of public administration

In administrative law, control is classified as a tool of public administration. A common approach to the definition of public control has not yet been developed. The term “control” is defined as: a) verification of compliance of an object under control with the requirements; b) verification, accounting of activities; b) institution or organisation exercising super-

vision (Busel, 2005, p. 569). The term “public” comes from the Latin *publica*, *publicus*, that is, national, declared, explicit, known; organised for the public, society, folk, popular, national, nation-wide; all common, belonging to all (Dal, 1999, p. 535). According to Ya. Krehul, in a democratic society, public control over State authority by the public is, first and foremost, a guarantee of human and civil rights and freedoms. At the same time, active effective introduction of public control can increase influence of civil society on legislative initiative of State structures. Therefore, public control can prevent the authorities from violating existing legal provisions and officials from making premature, biased, unsubstantiated decisions and actions, leading to poor-quality legislation (Krehul, 2020). The essence of public control is to supervise the functioning of the relevant object under control; to obtain objective and reliable information; to take measures to prevent and eliminate violations; to identify the causes and conditions conducive to the offence (Zabarnyi, Kaliuzhnyi, Shkarupa, 2003). O. Muzychuk argues that control is a set of measures to verify the compliance of object under control with established requirements, during which the actor of control is authorised to interfere in the professional activity of the object under control by replacement or suspension from duty, revocation or termination of a decision, holding one liable (Muzychuk, 2010, p. 86). Therefore, control is a method of enforcing the law in the manner prescribed by the current legislation in order to eliminate and prevent certain violations. In Ukraine, judges are independent of any interference, influence or pressure on their decision-making is unlawful and entails punishment. However, in order to prevent violations, both within the system (relationship between judges, their conduct) and in judgements, the activities of courts are controlled not only externally but also internally. The activities of the courts are controlled by a wide range of actors, including the President of Ukraine, the Verkhovna Rada, the State Judicial Administration of Ukraine, the High Council of Justice, the President of the Court, State bodies, municipal bodies and the public.

3. Internal control over the courts

Next, the focus should be on some controlling powers of the relevant actors relating to the organisation and operation of the court apparatus, that is, internal control. For example: the President of a local court monitors the efficiency of the court's staff and issues, under an act appointing a judge to office, a transfer of the judge, dismissal of a judge from office, as well as in connection with the termination of the powers of the judge, an appro-

priate order; reports to the High Qualification Commission of Judges of Ukraine and the State Judicial Administration of Ukraine, as well as through the judiciary's web portal on vacant judicial posts within three days of their formation, etc. The President of the Court of Appeal controls the effectiveness of the court's staff, approves appointments to the posts of Chairman of the court's staff, Deputy Chairman of the court's staff, introduces the application to the Chairman of the court's staff, His deputy's incentive or imposition of a disciplinary sanction in accordance with the law (Law of Ukraine on the Judiciary and the Status of Judges, 2016).

The Registrar of the Court Chamber is also responsible for supervising the analysis and review of judicial practice in cases falling within the competence of the Chamber; the President of the Appeals Chamber is responsible for the effectiveness of the activities of the separate structural unit providing the organisational support for the work of the Appeals Chamber, makes proposals for the appointment of the head of this unit and agree on his/her dismissal from office, makes a proposal for the incentive or imposition of a disciplinary sanction as prescribed by law; agrees on a draft regulation on such a structural unit and changes, etc.; the President of the Supreme Court monitors the effectiveness of the Supreme Court's staff, approves the appointment of the Head of the Staff of the Court and the First Deputy, submits the application on incentive or disciplinary sanction for the Head of the Staff of the Court and the First Deputy in the manner prescribed by law.

Therefore, control is exercised by the representatives in the relevant administrative positions.

Broad powers of control are vested in judicial self-government bodies that can exercise both internal and external control over the activities of courts in Ukraine. They discuss internal court affairs or performance of specific judges or staff of the Court, and make decisions on these matters binding on the judges and employees of the Court, regulate the specialisation of judges to process specific categories of cases; regulate the level of loading on the judges of the relevant court, taking into account their performance of administrative or other duties; hear the reports of the judges holding administrative positions in this court, and the Head of the Staff of the Court, etc. (Law of Ukraine on the Judiciary and the Status of Judges, 2016).

The Decision 2 of the Council of Judges of Ukraine of February 4, 2016 provides for the main ways and forms of control over compliance with the requirements of the legisla-

tion on the settlement of conflicts of interest in the activities of judges and other representatives of the judicial system, the content and application of preventive mechanisms in the event of a conflict of interest, as well as the main measures to resolve the conflict of interests in the activities of these persons (if such conflict cannot be resolved in the manner prescribed by the procedural law), rules and remedies for violations of the law on conflict of interest (Decision of the Council of Judges of Ukraine on the Procedure for monitoring compliance with the legislation on conflicts of interest in the activities of judges and other representatives of the judiciary and its settlement, 2016).

In addition, judges are responsible for control under art. 2 of the Code of Administrative Procedure of Ukraine, providing that the objective of administrative proceedings is the fair, impartial and timely settlement of disputes in the field of public-legal relations with a view to the effective protection of the rights, freedoms and interests of individuals, rights and interests of legal persons from violations by authorised actors. In cases of appeal against decisions, acts or omissions of authorised actors, administrative courts check the legality of the decisions taken (Code of Administrative Procedure of Ukraine, 2005).

It should be noted that the control over unlawful decisions on administrative cases or criminal proceedings is partly the responsibility of the Prosecutor's Office. Its duty is to supervise compliance with the law by the bodies carrying

out operative-search activities, initial inquiry, pre-trial investigation, supervision of compliance with the law in the execution of judicial decisions on criminal cases, as well as other coercive measures related to the restriction of personal freedom of citizens (Law of Ukraine on the Prosecutor's Office, 2014). In case of violations, prosecutors are obliged to react.

In addition, the National Agency of Ukraine for Civil Service monitors the quality of official duties performance, effectiveness and efficiency of service, as well as career planning, identification of the need to increase the level of professional competence of civil servants, encouragement of effective performance (Order of the National Agency of Ukraine for Civil Service On Approval of the Standard Procedure for Evaluating the Performance of Civil Servants, 2012). With regard to public control, it should be considered as an inherent function of civil society. Its main task is to prevent judges from abusing their powers and exercising their interests to the detriment of the public.

4. Conclusions

Thus, in order to prevent violations, both within the system (relationship between judges, their conduct) and in judgements, the activities of courts are controlled not only externally but also internally. The activities of the courts are controlled by a wide range of actors, including the President of Ukraine, the Verkhovna Rada, the State Judicial Administration of Ukraine, the High Council of Justice, the President of the Court, State bodies, municipal bodies and the public.

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ПЕВНІ АСПЕКТИ ПУБЛІЧНОГО КОНТРОЛЮ ЯК СПОСОБУ ЗАБЕЗПЕЧЕННЯ СПРАВЕДЛИВОГО ТА ЕФЕКТИВНОГО ПРАВОСУДДЯ В УКРАЇНІ

Анотація. Мета. Мета статті полягає в тому, щоб дослідити публічний контроль як спосіб забезпечення справедливого та ефективного правосуддя. **Результати.** У статті проаналізовані певні аспекти публічного контролю як способу забезпечення справедливого та ефективного правосуддя. Забезпечення прав та свобод людини та громадянина в Україні є важливим складником реалізації конституційних норм. Органи судової влади є системним важелем у недопущенні цих порушень та здійсненні відповідного контролю. Контроль можна розглядати у двох аспектах: як судовий контроль, що здійснюють самі суди, виконуючи важливу роль у процесі реалізації принципу поділу влади, та громадський контроль, який здійснюється суспільством за діяльністю судів. В Україні, незважаючи на реформування та зміни у системі правосуддя, відсутні ефективні юридичні засоби захисту прав та свобод громадян, продовжують мати місце корупційні складники, надмірно тривале виконання судових розглядів справ або виконання судового рішення. Саме ці складники потребують особливого дослідження та здійснення публічного контролю. Національним агентом з питань державної служби здійснюється контроль за якістю виконання посадових обов'язків, визначення рівня результативності та ефективності служби, а також планування кар'єри, виявлення необхідності підвищення рівня професійної компетентності державних службовців, стимулювання результативної діяльності. Говорячи про громадський контроль, то його слід розглядати як невід'ємну функцію громадянського суспільства. Його основним завданням є недопущення зі сторони суддів зловживання владними повноваженнями та реалізації своїх інтересів на шкоду суспільним. **Висновки.** З метою недопущення порушень як усередині системи (взаємини між суддями, їхня поведінка) та прийняттям процесуальних рішень за діяльністю судів контроль здійснюється не тільки зовні, а і всередині системи. Контроль за діяльністю судів здійснюється широким колом суб'єктів, до яких належать Президент України, Верховна Рада, Державна судова адміністрація України, Вища рада правосуддя, Голова суду, державні органи, муніципальні органи і громадськість.

Ключові слова: адміністративно-правове забезпечення, ефективність, справедливість, правосуддя, публічний контроль, адміністративне право, суди.

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 342.156

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Pidbereznykh, Inna (2022). Administrative and legal support for the national security of the United States and the Philippines in respect of counter-terrorism cooperation. *Entrepreneurship, Economy and Law*, 4, 44–49, doi: <https://doi.org/10.32849/2663-5313/2022.4.08>

ADMINISTRATIVE AND LEGAL SUPPORT FOR THE NATIONAL SECURITY OF THE UNITED STATES AND THE PHILIPPINES IN RESPECT OF COUNTER-TERRORISM COOPERATION

Abstract. Purpose. The purpose of the study is to reveal the dynamics and orientation of administrative and legal support for the national security of the United States and the Philippines in respect of counter-terrorism cooperation. **Results.** The article studies the military factor within administrative and legal support for the national security of the United States and the Philippines in respect of counter-terrorism cooperation. The process of transforming the Philippines into a U.S. military base in the Pacific region and determining the role of this base in the regional and world policy of the USA were considered. The author analyses and summarises the main trends in the development of U.S.-Philippine relations in the context of administrative and legal support for their national security, as well as cooperation to counter and combat terrorist organisations. It is underlined that the USA is a protector of the external and internal security of the Philippines and takes active measures to stabilise the political situation of the Philippines. Indeed, the development of democratic political forms reveals that the Philippines is the most progressive country in the region. Accordingly, the country has established a presidential-parliamentary democracy of the American type, with the division of powers into the executive and legislative. Military analysts believe that the Philippines' capacity to respond to threats has been weakened by long-standing wars against communist and Muslim uprisings, outdated equipment, politicisation, institutional corruption, low wages, and low morale, especially among middle-ranking officers. Many active and retired military personnel were reportedly accused of bribery. **Conclusions.** It is concluded that the United States and the Philippines maintain a reasonably long and reliable relationship considering administrative and legal support for their countries' national security. The joint efforts of the United States and the Philippines are underlined not only by the common history of the struggle in World War II, but also by numerous agreements and treaties. Through such programmes, the USA makes efforts to accelerate qualitative economic growth and stabilise the political situation in the Philippines. The political, economic and military domination of the United States has, among other things, military strategic objectives. U.S. politicians see the Philippines as a major outpost off the coast of the PRC, therefore a priority of American policy in the Philippines.

Key words: administrative and legal support, counterterrorism, military doctrine, internal relations, external relations, instruments, national security, defence, United States, Philippines.

1. Introduction

The U.S.-Philippine cooperation in national security encompasses a rich spectrum, including political, economic, social and, of course, military. The USA is a protector of the external and internal security of the Philippines and takes active measures to stabilise the political situation of the Philippines. Indeed, the development of democratic political forms reveals that the Philippines is the most progressive country in the region. Accordingly, the country has established a presidential-par-

liamentary democracy of the American type, with the division of powers into the executive and legislative.

The USA and the Philippines have been working together long enough to defend democratic freedoms during World War II. Therefore, today these countries are deepening their interaction in several ways of: overcoming poverty in the Philippines, creating various world organisations, implementing ideas on how to accelerate economic development, assisting victims of cataclysms or wars, fighting for human

rights, pursuing extremism, that is, they have the same view of what the world should be like. At the same time, given the political rhetoric of U.S. leaders, it may be noted that they support the Philippine Government's initiative to fight corruption, improve legislative reforms, combat poverty, and create opportunities for the people.

The purpose of the study is to reveal the dynamics and orientation of administrative and legal support for the national security of the United States and the Philippines in respect of counter-terrorism cooperation.

General theoretical issues of the administrative and legal regulatory mechanism for security have been studied, including by legal experts in administrative law, but taking into account the current state and development of national security of Ukraine and its permanent transformation, it is necessary to study the foreign experience of the national security genesis using elements of diachronic and synchronous comparison. Our considerations are based on the scientific works by scientists such as O.M. Bandurka, A.I. Berlach, Yu.P. Bytiak, I.P. Holosnichenko, V.V. Verkhohliad, R.A. Kaliuzhnyi, V.H. Komziuk, O.V. Kuzmenko, V.Y. Nastiuk, A.V. Nosach, V.I. Olefir, A.A. Starodubtsev, V.V. Sokurenko, M.M. Tyshchenko, M.V. Tsvik, and others. It should be noted that a significant contribution to the study of general and regional problems of American politics in the Soviet period, and especially after the formation of a sovereign state, was made by Ukrainian researchers such as: S.I. Appatov, B.M. Honchar, Ya.R. Dashkevych, Ye.Ye. Kaminskyi, B.I. Kantseharuk, V.M. Kyrychenko, M.V. Koval, I.M. Kaminskyi, I.O. Minhazutdinov, V.I. Nahaichuk, S.V. Pron, Yu.I. Nyporko, O.V. Potiekhin, and others.

The systematic study of the history of the Philippines in Soviet historiography is connected with the name of the outstanding researcher, the founder of the school of study of Southeast Asia A.A. Huber. U.S.-Philippine relations in the context of contradictions in the political and financial circles of the United States were analysed by O.H. Baryshnikova, Yu.O. Levtonova, and M.O. Savelieva.

In American historiography, the deep analysis of the political and socio-economic history of the Philippines, as well as the essence of American politics in the archipelago, is revealed in the monographs by W. Perlo, J. Marion, and W. Foster.

2. Historical aspect of the national security of the USA and the Philippines

As noted above, since the September 11 attacks, Washington has begun to form an international counter-terrorism coalition, in which the Philippines, with its example of domestic threats and traditions of coopera-

tion with the USA, making them almost ideal partners. That is why, in early June 2012, President Barack Obama and President Benigno Aquino met bilaterally to reaffirm that cooperation. First of all, the Presidents emphasised new opportunities for effective cooperation on security, economic independence, the exchange of human resources and a number of other regional issues. Among other things, the Millennium Challenge Grant, a \$434 million United States financial assistance to the Philippine government, was discussed to boost the economy and its domestic capabilities.

The review of the study by L.M. Tkachuk on the territorial organisation of East and South-East Asia reveals that in the 1990s, the Philippines, like most countries in the region, found itself in a difficult situation as a share of their GDP for export, was significantly above the average of developed countries and showed hypertrophic dependence on the external market. In the mid-1990s, it was 36% in the Philippines. It was 36 percent in the Philippines (Tkachuk, 2007). An over-dependence on external market opportunities is evident.

According to the authors, the world crises that flooded the XXI century were the reason for the introduction of public policy aimed at deepening the regional bond market, with the aim of reducing dependence on bank financing, which can protect a country from the volatility of future capital flows. The spontaneous intrusion of the crisis into the financial markets of the Philippines could not only stop this process, but also contribute to its significant transformation, down to the end of integration ties, or postponing them to a later date. Nevertheless, the U.S. remained the main investor in the Philippine economy, a source of finances and economic assistance, particularly the multi-million U.S. "infusion" aimed at addressing the situation on Mindao Island for the development of its infrastructure (Baryshnikova, Levtonova, Shebalina, 2005).

Following the *Washington Post*, thanks to the "U.S. factor" in the Philippines economy, there is a record growth in GDP over the last decade – 7.2% and a fairly consistent implementation of government programmes for economic liberalisation. Through the lens of government programs, the U.S. makes efforts to accelerate quality growth in the Philippines (Habulan, 2012). We can argue that the U.S. is making a significant contribution to the development of the Philippines by defending its own national security interests.

In January 2012, a number of U.S. senators visited the Philippines, where they met with President Benigno Aquino, Security Secretary Del Rosario and other public administrators

of the country, to express support for the Philippine people on the issue of freedom of movement and wished for a peaceful resolution of the dispute and assured of their continued assistance, as stated on the official website of Virginia Senator John Webb (Webb, 2011).

It has been repeatedly noted by many scholars that administrative and legal support for the national security of the United States and the Philippines is developing quite dynamically, including in the military sector. Thomas Lum noted that the Philippines is an ally of the United States under the Mutual Defense Treaty of 1951 (Lum, 2014). Moreover, during the Cold War period between the United States and the Soviet Union, the Philippines had a significant number of American military bases to counterbalance Soviet bases in Vietnam. However, in 1992, these bases were closed, and the Philippine government allowed the United States Navy to use the repair docks of the former American base at Subic Bay on a commercial basis. That is why we note that these countries have common strategic interests in administrative and legal support for national security. In addition, the Philippines relies heavily on the external security system of the United States of America. As part of the ongoing military exercises, these countries conduct joint military operations to enhance the Armed Forces of the Philippines preparedness and ability to respond to threats, as well as maintain the interaction of the Philippine Air Force and the United States Armed Forces.

The U.S.-Philippine joint military actions were negotiated under the Visiting Forces Agreement (VFA), which was signed in 1998 and ratified by the Philippine Senate in 1999. Under the terms of this agreement, the Clark and Subic Bay bases were once again being used for military training.

Following the terrorist attacks in the U.S. (September 2001), the George Bush administration declared the Philippines, with its Islamist terrorist network, a front line in the fight against terrorism. The United States designated the Philippines as a Major Non-NATO Ally (starting on October 6, 2003) after President Gloria Macapagal-Arroyo supported the U.S. invasion of Iraq.

Despite the closure of U.S. military bases in the Philippines, the limited U.S. military presence remained. In 2002, the Philippines became an important base in the United States' war against global terrorism in Southeast Asia. The administration of President Gloria Macapagal-Arroyo signed a military transport and defence agreement with the United States. This allowed the use of supply bases in the Philippines for American military operations in

the region. At the same time, the U.S. Special Forces were stationed in the Sulu Archipelago, extending from Mindanao Island in the southern Philippines, to support Philippine Air Force in the counter-terrorism efforts. It should be noted that the joint exercises of these countries were directed primarily against Islamist terrorist groups in Sulu and Western Mindanao with the aim of reducing the power of terrorists. However, in 2011, military cooperation began to shift the vector of a potential external threat towards the South China Sea.

In the study of U.S. and Chinese military capabilities, the I. Vishnevskaya noted that in a letter Senator John Webb, Head of the Senate Committee for South Asian and Pacific Relations, dated July 2011, underlined the need for the State Council to step up additional military intervention in the conflicts between China and the Philippines in the South China Sea. Remember that the territorial dispute for the Spratly Islands between China, Vietnam, the Philippines, Malaysia and Brunei has not been resolved. However, according to political analysts, peaceful coexistence between China and its neighbours is possible provided parity, that is, the interconnectedness of economies (Vyshnevskaya, 2007).

3. Interrelationship of legal and administrative support for the United States and Philippine national security

Therefore, the level of administrative and legal support for the U.S. national security was directly dependent on the readiness and level of national security of the Philippines.

According to Erlinda Basilio, the Philippines, in support of the principle of the global nuclear non-proliferation and disarmament regime, signed the Global Initiative to Combat Nuclear Terrorism, launched by Russia and the United States in June 2006 (Basilio, 2011).

Balikatan is the most famous U.S.-Philippine joint military exercise, first held in 1991, but it was temporarily suspended in 1995-1999. It should be noted that Balikatan contains an extensive humanitarian component, because in 2010-2011 training, each of which involved about 2,000 soldiers of the Philippine army and 6,000 U.S. troops, included the following activities: preparation for combat, rescue, evacuation of victims, decontamination and disposal of bombs, maritime safety exercises, disaster management, joint command action. During the exercise Balikatan attention is paid not only to the combat force of the country, but also to education, namely, several schools have been repaired and supplies to them have been resumed. In addition, special flood protection systems were built. It is expected that in the future some of the joint exercises will

include about 20 participants from other South-East Asian countries. The Chinese government has launched a campaign to determine the real goal of Balikatan and suggested that such activities could destabilise the situation in the region. However, Philippine and U.S. officials deny this (Gomez, 2012; Tian, 2012).

In addition, the threats by the Islamist terrorist organisations Abu Sayyaf and Jemaah Islamiyah, with links to Al Qaeda, the national security of the United States and the Philippines are real. Abu Sayyaf is a small violent Islamist group operating mainly in the Sulu Islands Archipelago. The group engaged in hostages, numerous murders and bombings. Abu Sayyaf has sacred ties to the Indonesian terrorist organisation Jemaah Islamiyah, regional terrorist organisations (Bhattacharji, 2009).

In the early 2000s, under the leadership of Muammar Gaddafi, Janjalani and Abu Sayyaf became more effective as a terrorist organisation. The Janjalani developed plans for city bombings, improving ties with separatist insurgent groups, the Moro Islamic Liberation Front (MILF), established cooperation with the terrorist organisation Jemaah Islamiyah. Janjalani reemphasised Abu Sayyaf's religious orientation. Abu Sayyaf and the Raja Suleiman Movement (RRM), a Filipino Muslim refugee in Manila, were found responsible for the bombing of a ferry in Manila Bay in February 2004 that killed more than 100 people (Manny, 2005). In February 2005, Abu Sayyaf and the Raja Suleiman Movement carried out simultaneous explosions in three cities, killing 16 people, including one attack targeting the United States Embassy.

Despite the effective conduct of the attack in the mid-2000s, Abu Sayyaf activities begin to weaken.

The combined military efforts of the United States and the Philippines towards counter-terrorism cooperation have dealt a serious blow to terrorist targets in recent years. In November 2011, the Philippine police arrested Abu Sayyaf member Hussein Ahaddin, who was linked to six bombings since 2002, including the killing of an American Green Berets fighter. In February 2012, the Armed Forces of the Philippines claimed to have killed or seriously wounded key members of Jemaah Islamiyah, regional leaders on Jolo Island, who were originally from Malaysia. In addition, two other senior Islamist militants, leaders of the Philippine Abu Sayyaf and the leader of the Singapore-based Jemaah Islamiyah, and 12 fighters were reportedly killed in the air strike (Habulan, 2012).

It is estimated that joint operations in 2005 significantly reduced Abu Sayyaf's force from about 1,000 to 400 persons (Abuza, 2005).

According to NBC News, since 2002, joint JSOTF-P (consisting of strike units of the U.S. Special Forces and Air Force, Marines and other American servicemen) special operations have been included in the program of peace and democracy in Asia. Since the middle of the last decade, on average, 500-600 personnel (down from nearly 2,000 persons in 2003) have been assisting two Philippine regional combat armies in Sulu and Mindanao (Mong, 2010).

Under the Philippine Constitution's prohibition on the deployment of foreign combat troops, the countries agreed on special rules of engagement. The U.S. government spends about \$50 million a year to support its Task Force in the Philippines. 17 soldiers have died since the beginning of the mission, 3 of them died in an explosion and the rest died after the helicopter fell out of combat (Michaels, 2011).

The problem of Muslim extremism has been particularly acute since the breakdown of peace talks between the Arroyo Government and the Muslim opposition leaders of the Islamic Front in August 2008. The outbreak of armed conflict is therefore a major challenge to the stability of the political regime.

Moreover, in 2011, the Philippine armed forces are among the weakest of the large, relatively developed countries in the region. The army lacks fighters and its fleet consists of small, obsolete ships, some of which were used during World War II (Storey, 2011). Military analysts believe that the Philippines' capacity to respond to threats has been weakened by long-standing wars against communist and Muslim uprisings, outdated equipment, politicisation, institutional corruption, low wages, and low morale, especially among middle-ranking officers. Many active and retired military personnel were reportedly accused of bribery.

President Benigno Aquino pledged to defend national security administrative reforms: greater oversight of MIC procurement and additional funding for the Philippine People's Army. The budget was expected to increase by more than 80% to \$2.4 billion in 2011 (Cruz De Castro R., Lohman, 2011). With the help of the United States, the Benigno Aquino administration plans to build the country's military arsenal, including sophisticated weapons systems. The long-term Army Capacity Development Plan aims to develop a modest deterrent capacity to protect the country's vast maritime borders and territorial claims in the South China Sea.

At the same time, Ogasian argued that Hillary Clinton wanted to expand the U.S. military presence in the region and strengthen the military power of its allies. There are ideas to create a so-called Mini NATO, which can

grow into a full-fledged military-political organisation, which could include South Korea, the Philippines, and Thailand (Oganesian, 2011, p. 43).

4. Conclusions

To sum up, the United States and the Philippines maintain a reasonably long and reliable relationship considering administrative and legal support for their countries' national security. The joint efforts of the United States and the Philippines are underlined not only by

the common history of the struggle in World War II, but also by numerous agreements and treaties. Through such programmes, the USA to accelerate qualitative economic growth and stabilise the political situation in the Philippines. The political, economic and military domination of the United States has, among other things, military strategic objectives. U.S. politicians see the Philippines as a major outpost off the coast of the PRC, therefore a priority of American policy in the Philippines.

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АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНИХ БЕЗПЕК США ТА ФІЛІППІН У НАПРЯМІ АНТИТЕРОРИСТИЧНОЇ СПІВПРАЦІ

Анотація. Мета. Мета дослідження полягає в тому, щоб розкрити динаміку і спрямованість адміністративно-правового забезпечення національних безпеки США та Філіппін у напрямі анти-терористичної співпраці. **Результати.** Стаття присвячена дослідженню військового чинника в рамках адміністративно-правового забезпечення національних безпеки США та Філіппін щодо антитерористичної співпраці. Розглянуто процес перетворення Філіппін у військову базу США в Тихоокеанському регіоні та визначення ролі цієї бази в регіональній і світовій політиці Штатів. Автором проаналізовано та узагальнено основні тенденції розвитку американо-філіппінських відносин у контексті адміністративно-правового забезпечення національних безпеки країн, а також співпрацю щодо протидії та боротьби із терористичними організаціями. Наголошено, що США є протектором зовнішньої і внутрішньої безпеки Філіппін та впроваджує активні заходи щодо стабілізації політичної ситуації Філіппін. Адже саме у сенсі розвитку демократичних політичних форм Філіппіни є найбільш прогресивною країною в регіоні. У зв'язку із чим у країні встановлена президентсько-парламентська демократія американського типу з поділом гілок влади на виконавчу та законодавчу. Військові аналітики вважають, що потенціал Філіппін на відбиття загроз був ослаблений тривалими війнами проти комуністичних і мусульманських повстань, застарілим обладнанням, політизацією, інституційною корупцією, низькою заробітною платою, низьким моральним духом, особливо серед середньої ланки офіцерів. Багато дійсних і відставних військовослужбовців за повідомленнями були звинувачені у підкупі. **Висновки.** Зроблено висновок, що Сполучені Штати та Філіппіни з метою адміністративно-правового забезпечення національної безпеки своїх країн підтримують досить тривалі та надійні відносини. Спільна діяльність США та Філіппін підкреслюється не лише спільною історією боротьби у Другій світовій війні, але й численними домовленостями та договорами. Кризу призму таких програм США працює над пришвидшенням якісного росту економіки та стабілізації політичної ситуації на Філіппінах. Політичне, економічне і військово-панування Сполучених Штатів переслідує, зокрема, і військово-стратегічні цілі. Американські політики розглядають Філіппіни як найважливіший форпост біля берегів Китаю, а тому є пріоритетним напрямом американської політики на Філіппінах.

Ключові слова: адміністративно-правове забезпечення, боротьба з тероризмом, військова доктрина, внутрішні відносини, зовнішні відносини, інструменти, національна безпека, оборона, Сполучені Штати Америки, Філіппіни.

The article was submitted 14.06.2022

The article was revised 05.07.2022

The article was accepted 25.07.2022

UDC 342.95

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THE FUNDAMENTALS OF PUBLIC CONTROL FUNCTIONING IN UKRAINE AS A NATIONAL ANTI-CORRUPTION INSTRUMENT

Abstract. Purpose. The purpose of the article is to reveal the defining areas for the implementation of public control over the anti-corruption activities of State authorities with the formulation of anti-corruption strategic ways of their implementation. **Results.** The article reveals modern forms of public influence on combatting corruption manifestations and elucidates the practice of public control actors concerned over the activity of State authorities. The analysis of the Draft Anti-Corruption Strategy for 2021-2025 allows establishing a place of the public in making the State anti-corruption policy and its participation in implementing public control in this field. The weaknesses of the Anti-Corruption Strategy are highlighted, and ways of their solution are proposed. Anti-corruption principles are defined to be reflected in the Draft Anti-Corruption Strategy for 2021-2025, which will contribute to strengthening the role of the public in combating corruption and reducing the manifestations of corruption risks in the activities of public officials and employees of public authorities. The specific anti-corruption principles are provided with justification of their legal consolidation. The focus of the study is on the need to strengthen the anti-corruption education of the population of Ukraine, which plays an important role in the formation of a sense of intolerance towards corruption and its manifestations among all segments of the population, mastering the level of legal liability for corruption offences. **Conclusions.** Since currently no strategic regulatory document aimed at making the State anti-corruption policy with a clear structure of measures to counter this phenomenon, at planning appropriate ways of combatting by the special anti-corruption bodies and at identifying ways of strengthening the role of the public in this, is in force, the adoption of the Anti-Corruption Strategy for the coming years is an urgent step to be taken by the State. Reflecting the fundamental anti-corruption measures in the legal field at the national level, the State should adhere to the main trends of the United Nations Convention against Corruption to take appropriate measures, within its capacities and in accordance with the fundamental principles of its domestic law, to facilitate the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, to prevent and combat corruption and to raise public awareness of the existence, causes and dangers of corruption, as well as the threats it poses.

Key words: public control, anti-corruption principles, Anti-Corruption Strategy, State anti-corruption policy, State authorities, specialised anti-corruption bodies.

1. Introduction

The United Nations Convention against Corruption of October 31, 2003, ratified by Ukraine in 2006, contributed at the State level to the fight against corruption, to adopt and strengthen measures aimed at more effective and efficient prevention and combating of corruption. The purpose of the Convention was to promote, facilitate and support international cooperation and technical assistance in preventing and combating corruption, including in asset recovery (United Nations Convention against Corruption, 2003).

Part 1 of article 5 of the Convention establishes anti-corruption policy by States Parties that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability (United Nations Convention against Corruption, 2003). It is the active attitude of responsible citizens and other interested persons who are actively involved in the detection of corruption schemes and their publication that contributes to the fight against this phenomenon at the national level.

At the scientific and theoretical level, modern forms of social influence and practice of public activity in the exercise of control were revealed by scientists such as, O. Andrieieva, T. Andriuchenko, I. Bekeshkina, M. Burbyka, R. Veprytskyi, N. Komarova, O. Korniiievskyi, M. Lukiniuk, L. Nalyvaiko, N. Pelivanova, D. Sydorenko, K. Sydorchuk, Y. Tyshchenko, L. Shypilov, V. Chudovskyi, V. Yablonskyi, V. Yatsenko, and others. However, due to the improvement of corruption channels among public officials and the continuation of abuse of power by the latter, nowadays the issue of society's opposition to this negative phenomenon and the invention of new approaches to public control remains topical.

The purpose of the article is to reveal the defining areas for the implementation of public control over the anti-corruption activities of State authorities with the formulation of anti-corruption strategic ways of their implementation.

2. Basic principles of combating corruption

The United Nations Convention against Corruption provides for that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, if their efforts in this area are to be effective (United Nations Convention against Corruption, 2003). These measures will contribute to the development of a positive anti-corruption image of Ukraine in the international arena.

Having ratified the UN Convention against Corruption, Ukraine has undertaken not only to take measures to prevent and eradicate corruption, but to establish a leading role of the public in making the State anti-corruption policy and participation in implementing public control in this field.

The participation of society in the fight against corruption is an important part of combating this negative phenomenon, which affects the economic growth of the country and undermines the trust and confidence of citizens in public authorities.

The high level of corruption among public officials has a negative impact on the international authority of Ukraine. According to the Global Corruption Barometer's study, conducted in 2016 for the countries of Europe and Central Asia, 56% of respondents from Ukraine consider corruption one of the three biggest challenges facing the country. According to this indicator, Ukraine was ranked 5th out of 42 countries where the study was conducted

(People and Corruption: Europe and Central Asia, 2016; Explanatory note to the draft Law of Ukraine On the Principles of State Anti-Corruption Policy for 2020-2024, 2020).

In order to combat corruption and reduce corruption manifestations, Ukraine continues to implement international anti-corruption standards through the implementation of GRECO recommendations.

25 GRECO Recommendations were provided to Ukraine within the framework of the Joint First and Second Evaluation Round (Joint First and Second Evaluation Round, 2007; Explanatory note to the draft Law of Ukraine On the Principles of State Anti-Corruption Policy for 2020-2024, 2020). In one of the reports on the implementation of these Recommendations, Ukraine was instructed to implement one of the 4 Recommendations on the establishment of a separate body without law enforcement functions to supervise the implementation of anti-corruption policy with representation of authorities and the public, with a sufficient degree of independence (Explanatory note to the draft Law of Ukraine On the Principles of State Anti-Corruption Policy for 2020-2024, 2020). This Recommendation is reflected in the draft Anti-Corruption Strategy for 2021-2025, which is still pending approval. The aim of the Draft is to ensure the coherence and consistency of all government bodies and the public in preventing and combating corruption, to minimise corruption risks.

Therefore, Draft Law 4135 of Ukraine "On the Fundamentals of the State Anti-Corruption Policy for 2021 – 2025" of September 21, 2020, prepared by the Cabinet of Ministers of Ukraine, remained unfinished (passed the second reading); accordingly, Ukraine does not have an approved anti-corruption strategy. We will analyse this draft law in terms of specificities of the legal definition of the role of public control in preventing corruption and reducing corruption risks.

For example, the Draft provides for not only the adoption of an Anti-Corruption Strategy for 2021-2025, but also the introduction of a number of amendments to the legislation in force, in particular, the Law of Ukraine "On the Prevention of Corruption". It is proposed that this Law be supplemented with article 18-1, which defines the State Anti-Corruption Programme for the implementation of the Anti-Corruption Strategy [9]. It should be noted that the draft of article 18-1 ignored the public discussion of the Draft State Anti-Corruption Programme to implement the Anti-Corruption Strategy, which calls into question its transparency and compliance with democratic governance principles.

Furthermore, the legal analysis of the revision of the Anti-Corruption Strategy 2021-2025 (hereinafter referred to as the Anti-Corruption Strategy) requires starting with the basic principles of this anti-corruption policy (para. 8, part 1.2., Anti-Corruption Strategy). It is appropriate to refer to the theoretical and legal analysis of the concept of principles of law. According to Yu. Bytiak, the legal nature of principles is the initial, objectively conditioned basis on which the system and content of this branch of law is formed and operates (Halunko, Dikhtiievskiy, Kuzmenko, Stetsenko, 2018). In its turn, the Draft defines principles that do not reveal the general trends of the law on making anti-corruption policy, but more resemble universal anti-corruption measures, without involving the public: streamlining functions of the State and local self-government; digital transformation of the exercise of powers by State and local authorities; creation, as a counterbalance to existing corrupt practices, of more user-friendly and lawful alternatives to meeting the needs of individuals and legal entities; ensuring the inevitability of legal liability for corruption and corruption-related offences, etc. (Draft Law on the Principles of State Anti-Corruption Policy for 2020-2025, 2020).

3. Promising trends in improving anti-corruption activities

In order to implement democratic principles, observe transparency and transparency in anti-corruption measures with the involvement of the public, we propose to add to the anti-corruption strategy the following anti-corruption principles:

1) *Publicity, transparency and mandatory anti-corruption expertise of legal regulations and their drafts involving the public.* Publicity and transparency in the adoption of draft legal regulations will allow free access to their text, and the participation of public experts together with specialised experts will contribute to the timely identification of corrupt interests of the authors of these projects. The principle also emphasises the obligatory consideration of anti-corruption expertise with the necessary participation of the public.

In confirmation of the need for anticipation with the subsequent implementation of the proposed principle there is a practice of public participation during the discussion and adoption of the project "On public procurement", which eliminates a number of corrupt practices (liquidation of tender committees, right to reject abnormally low (dumping) price offers, 24 hours to eliminate formal deficiencies in the documents of the supplier, etc.) (Government Initiative Report: Together Against Corruption, 2019). Moreover, citizens with

the State authorities are jointly and severally responsible for the formation of a legal framework (through public expertise and participation in the discussion of standard-setting initiatives) (Semorkina, 2022).

2) *Promoting an atmosphere of intolerance and fight against corruption among the population of Ukraine.* We argue that this is possible through involving a wide range of different sectors of the population, public associations, scientists and intelligentsia of the specialised anti-corruption sector to making State anti-corruption policy to develop scientific approaches from a professional and scientific perspective.

Public associations, together with scientists in the relevant professional field, actively participate in the exercise of public control over the activities of State bodies. For example, representatives of the public and scientists are involved in the Commission for the Assessment of Corruption Risks in the Activities of the Prosecutor's Office, in the personnel commissions of the Office of the Prosecutor General and in the Commission for the Selection of Senior Prosecutors.

3) *The principle of anti-corruption education of the population of Ukraine.* In our opinion, the indication of this principle plays an important role in the acquisition of anti-corruption education, the formation of a sense of intolerance towards corruption and its manifestations in all segments of the population, the acquisition of the level of legal responsibility for corruption violations.

The implementation of this principle is possible through the introduction of special educational anti-corruption courses for students and advanced training for employees, especially those of professions with increased social responsibility. Moreover, para. 2, sub-clause 1, clause 2.2.1 of the Anti-corruption Strategy provides "Expected strategic results": an enabling environment for advancing the skills of teachers and persons working with the public, relating to academic virtue and on developing a zero-tolerance attitude among students to corruption in all its manifestations. This includes raising citizens' awareness through active and systematic education and training activities integrated into formal and non-formal education (Draft Law on the Principles of State Anti-Corruption Policy for 2020-2025, 2020).

The United Nations Convention against Corruption (para. d) part 1 of article 7 points to the need for the existence and strategic consolidation of the proposed principle, indicating that State Parties shall promote education and training programmes to enable these persons to meet the requirements for the correct, honourable and proper performance of public

functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas (United Nations Convention against Corruption, 2003).

With this regard, it is necessary to consider the results of the ACREC, which implements anti-corruption programs for students. This centre was founded in 2015 at the initiative of representatives of the Anti-Corruption Centre, Transparency International Ukraine and the National University of Kyiv-Mohyla Academy (Bila, 2021). The research carried out at the ACREC is in the field of prevention and combating corruption. The target audience of the Centre is active youth (students and entrants), young professionals starting their career in the anti-corruption area, leadership of anti-corruption bodies, etc. The graduates of these educational programmes are experts of the Institute of Legislative Ideas, Anti-Corruption Centre, Transparency International Ukraine, regional anti-corruption organisations, scientists, representatives of the NACP, the NABU, the National Police, etc. (Bila, 2021).

Considering little experience, the ACREC has achieved significant results in anti-corruption education.

For example, employees and scientists of this Centre developed and launched research project Civil Society against Corruption in Ukraine, started the analytic periodical ACREC Review that focus on anti-corruption issues and provides an opportunity for young researchers and practitioners to publish; has launched a regular summer school for corruption researchers, during which students learn the basics of research and present their own ideas. One of the unique and innovative developments of the Centre is the Kyiv Anti-Corruption Tours project (this is the format of interactive city tours to places that are associated with the largest corruption or anti-corruption stories) (Bila, 2021).

4) *The principle of transparency and accountability.* This principle should be reflected in all

planned activities of the Anti-Corruption Strategy and reports on its implementation. To achieving an effective result of the Anti-Corruption Strategy requires the open and overt implementation of its measures, with the establishment of clear deadlines, tools for its implementation, the identification of implementers and the procedure for monitoring the state of implementation, with mandatory public participation.

5) *The principle of building an anti-corruption coalition* enables to involve all stakeholders, including the actors of public control, in the implementation of the Anti-Corruption Strategy.

Moreover, since the principles are the basis for the legal regulatory mechanism of social relations, guidelines of their participants in a social compromise and order (Skakun, 2006), in our opinion, it is quite logical to reflect them and enshrine them in the Law of Ukraine "On the Prevention of Corruption".

4. Conclusions

Since currently there is no strategic regulatory document aimed at making the State anti-corruption policy with a clear structure of measures to counter this phenomenon, at planning appropriate ways of combatting by the special anti-corruption bodies and at identifying ways of strengthening the role of the public in this, the adoption of the Anti-Corruption Strategy for the coming years is an urgent step to be taken by the State. Reflecting the fundamental anti-corruption measures in the legal field at the national level, the State should adhere to the main trends of the United Nations Convention against Corruption to take appropriate measures, within its capacities and in accordance with the fundamental principles of its domestic law, to facilitate the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, to prevent and combat corruption and to raise public awareness of the existence, causes and dangers of corruption, as well as the threats it poses (Bader, Hus, Meleshevysh, Nesterenko, 2019; United Nations convention against corruption, 2004).

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ОСНОВОПОЛОЖНІ ЗАСАДИ ФУНКЦІОНУВАННЯ ГРОМАДСЬКОГО КОНТРОЛЮ В УКРАЇНІ ЯК НАЦІОНАЛЬНОГО ІНСТРУМЕНТА ПРОТИДІЇ КОРУПЦІЇ

Анотація. Мета. Мета статті полягає у розкритті визначальних напрямів здійснення громадського контролю за антикорупційною діяльністю органів державної влади з формулюванням антикорупційних стратегічних шляхів їх реалізації. **Результати.** Стаття присвячена розкриттю сучасних форм громадського впливу на протидію корупційним проявам та розкриття практики активності зацікавлених суб'єктів громадського контролю за діяльністю органів державної влади. На підставі аналізу проєкту Антикорупційної стратегії на 2021–2025 роки виділено місце громадськості у формуванні державної антикорупційної політики та її участі у здійсненні громадського контролю в цій сфері. Виділено слабкі місця антикорупційної стратегії та запропоновано шляхи їх вирішення. Визначено антикорупційні принципи, які мають відобразитися у проєктові Антикорупційної стратегії на 2021–2025 роки, що сприятиме посиленню ролі громадськості у протидії корупції та зниженню проявів корупційних ризиків у діяльності посадових осіб та службовців органів державної влади. Виокремлено конкретні антикорупційні принципи з наданням обґрунтування їх правового закріплення. Звернено особливу увагу на необхідність посилення антикорупційної освіти населення України, що відіграє вагоме значення у формуванні у всіх верств населення почуття нетерпимості до корупції та її проявів, засвоєння настання рівня юридичної відповідальності за корупційне порушення. **Висновки.** Оскільки на сьогодні відсутній стратегічний нормативний документ, спрямований на формування державної антикорупційної політики з чіткою побудовою заходів протистояння цьому явищу, планування відповідних шляхів протидії спеціальними антикорупційними органами та визначення напрямів посилення ролі громадськості у цьому, тому саме прийняття Антикорупційної стратегії на найближчі роки є нагальним державним кроком. Відображаючи на національному рівні основоположні заходи боротьби із корупцією у правовій площині, держава має дотримуватися головних напрямів Конвенції Організації Об'єднаних Націй проти корупції щодо вжиття належних заходів у межах своїх можливостей і згідно з основоположними принципами свого внутрішнього права, для сприяння активній участі окремих осіб і груп за межами державного сектору, таких як громадянське суспільство, неурядові організації та органи-

зації, що функціонують на базі громад, у запобіганні корупції й боротьбі з нею та для поглиблення розуміння суспільством факту існування, причин і небезпечного характеру корупції, а також загроз, що створюються нею.

Ключові слова: громадський контроль, антикорупційні принципи, Антикорупційна стратегія, державна антикорупційна політика, органи державної влади, спеціалізовані антикорупційні органи.

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 342.4

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ON THE CLASSIFICATION OF INTERNATIONAL LEGAL STANDARDS

Abstract. Purpose. The purpose of the article is to provide the author's classification of international legal standards. **Results.** International human rights standards are based on natural law, which includes the ideals of freedom, justice and equality, as well as establishes: general principles of natural law; fundamental human rights and freedoms in various sectors of life; State duties to ensure and respect human rights without discrimination; liability for human rights violations; trends in the development and expansion of human rights and the strengthening of the monitoring mechanism for ensuring human rights to which States consented to be bound. A specific type of international legal standards is anti-corruption standards. It should be noted that corruption is a complex socio-economic and political phenomenon that negatively affects all aspects of the political and socio-economic development of society and the State and has negative effects for their development and functioning, harms people, forms their mistrust in the State, threatens the national security and democratic development of countries. This negative phenomenon is present in all countries of the world, therefore, States have begun to join forces in the fight against corruption. **Conclusions.** The human rights standards recognised by the international community are enshrined in the legal system of each State and if a certain human right is not constitutionally established by the individual State, it is recognised as such by international instruments, since the primacy of international law over the domestic law on human rights is a universally recognised principle of the international community. Therefore, human rights have been regulated by the international community and individual States, and the scope of human rights and freedoms in modern society is determined not only by the characteristics of a certain community of people, but also by the development of human civilisation, by the level of integration of the international community. International instruments enshrine universal standards of prevention of corruption manifestations in the world, play an important role in the fight against corruption, they provide an effective legal basis for defining the fundamental framework for anti-corruption policy of individual States, actively combating this negative phenomenon.

Key words: rights, freedoms, duties, person, citizen, corruption.

1. Introduction

Global trends towards globalisation, inter-State integration and internationalisation have a significant impact on the development of all socio-political institutions, including the State mechanism and the legal systems of individual countries. These processes require States to modernise their activities, taking into account the scientific and technological progress of our time, the advanced achievements in the field of management of individual countries, and the consideration of the ones developed by the international community, its individual entities, intergovernmental and non-governmental standards for the implementation of domestic and foreign policy, for ensuring human and civil rights and freedoms, for the exercise of people's power, etc.

The characteristics of the essence of the standards reveal that they are diverse and widespread in the activities of various actors in social relations. Similarly, their variant, international legal standards, is characterised by multifaceted, multi-level, multi-subject, non-public cooperation of members of the international community in the political, social, economic, environmental, cultural, law enforcement and other fields that determine the need to classify them.

The issues related to the concept, characteristic, classification of international standards have been considered by scholars such as M. Baimuratov, V. Bryntsev, S. Liakhivnenko, D. Martynovskiy, M. Rabinovych, K. Savchuk, and V. Shamrai. However, the question of estab-

lishing the types of international standards remains open, as there are several approaches to this problem.

The purpose of the article is to provide the author's classification of international legal standards.

2. Classification of international legal standards

In legal science, there are different bases and characteristics of varieties of international legal standards. For example, K. Savchuk groups them, according to nomenclologically objective criteria, into international standards in the field of human rights, environmental protection, self-government, combating offences, crime prevention, etc. (Shemshuchenko, 2003, p. 615). At the same time, other legal scholars provide a broader classification of international legal standards. For example, S. Liakhivnenko classifies international standards giving preference to the three most important groups: standards in the field of human rights and their protection, in the field of local and regional democracy, as well as the standards of the International Organization for Standardization (ISO). However, he observes that given the polyphony of the researchers' views on the classification of international legal standards, it should be noted that they can be classified by makers, by sector, by external form of enshrining, by legal importance, by action on the circle of persons, by the specific characteristics of the addressees of standardisation, by the method of implementation, by the content of capabilities, etc. (Liakhivnenko, 2011).

B. Brintz classifies international standards as follows: 1) general (on State structure, human rights and substantive law); 2) procedural (administrative, economic, civil, criminal trial standards); 3) standards of judicial system (Bryntsev, 2010).

A. Ihnatiev proposes to classify international legal standards as follows:

1) By scope of action into two groups:

– Universal, that is, standards produced by the United Nations;

– Regional, produced by the Council of Europe and other regional associations of States.

2) By specialisation of international instruments containing international legal standards into two classes:

– General acts containing separate standards but not intended to regulate;

– Acts of a specialised nature aimed at setting standards.

3) By the binding effect on States Parties into two main classes of international legal standards:

– Binding norms – principles and general provisions;

– Specific standards – non-binding recommendations (Ignat'ev, 1997, p. 37).

The domestic representatives of the legal doctrine of P. M. Rabinovych and M. I. Havroniuk classify international legal standards according to the following criteria:

1) Depending on ontological status:

– Nominal (i.e. Terminological, textual), such as the very titles, that is, a list of nomenclature (cadastre) of human and civil rights, freedoms and duties, which are used in a variety of international documents;

– Actual (substantive), that is, formally recorded in these sources, including the content, volume and quantity of such rights and freedoms;

2) By the scope (area) of action:

– Worldwide (universal, collective, global);

– Regional (including continental);

3) By nature of binding implementation:

– Legal, implementation of which is formally binding for certain States and is ensured by the application of international sanctions (on the basis of the binding compliance by States with their international legal obligations under the international treaties signed. – The author);

– Moral and political, non-binding formally (Rabinovych, Khavroniuk, 2004, p. 20).

O. Salenko proposes to classify international standards: 1) according to the content and method of establishment: objectives, principles, norms; 2) by scope: universal, regional, particular; 3) by legal force: mandatory, dispositive; 4) by functions in the mechanism of international legal regulation: substantial and procedural; 5) by way of making and form of implementation: customary, contractual and those contained in decisions of international organisations (Salenko, 2014).

According to N. Stavniichuk, regulatory and legal standards can be classified: by makers into the standards of the Council of Europe (CoE), the European Union (EU), the Organisation for Security and Cooperation in Europe (OSCE) etc.; by the sector into constitutional, civil, criminal, etc.; by the external form of establishment into provided for by international treaties, the case law of the European Court of Human Rights and the legal regulations of international organisations relating to sources of law (Stavniichuk, 2010).

Following M. Baimuratov and D. Martynovskyi, international legal standards can be classified also by focusing on the composition of actors, legal status or conduct thereof are regulated or harmonised by such international legal standards, or simultaneously regulated and harmonised, for example, international legal standards concerning children, women, persons with disabilities, pensioners, military personnel, pris-

oners, youth, foreigners, non-citizens, etc. These scholars argue that nomenclological features to identify the ILS are, first of all, a variety of titles of documents and acts that explicitly refer to the international standards contained in them:

- Basic Principles, for example, on the Independence of the Judiciary;
- Body of Principles, for example, for the Protection of Persons;
- Codes of Conduct, for example, for Law Enforcement Officials;
- Principles, such as the Principle of Cooperation in a certain field of medical ethics;
- UN Minimum Rules;
- UN Rules, for example, for the Protection of Juveniles Deprived of their Liberty;
- The Tokyo Rules, for example, on the Administration of Juvenile Justice.

At the same time, the same nomenclature enables to incorporate into the system of international instruments in force universal international instruments adopted by the United Nations, on the basis of the following classifications:

1. General acts:

- The 1948 Universal Declaration of Human Rights;
- The 1966 Covenant on Economic, Social and Cultural Rights;
- The 1966 Covenant on Civil and Political Rights;
- The United Nations Declaration on the Elimination of All Forms of Racial Discrimination, 1963;
- The 1971 Declaration on the Rights of Mentally Retarded Persons;
- The 1975 Declaration on the Rights of Persons with Disabilities.

2. Specialised acts:

- The 1975 Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The 1984 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The 1979 Code of Conduct for Public Order Officials;
- 1982 Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The 1989 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, etc.

In addition, it should also be stressed that a wide variety of international norms differ in legal force, in scope (Baimuratov, Martynovsky, 2021).

To sum up, the analysis of doctrinal approaches to the classification of international legal standards reveals the lack of a common vision of their types, the diversity of approaches to their classification, including a large number of characteristics and depending on the purely subjective position of their authors, based on their understanding of the role and importance of international legal standards for individual States and the international community.

We argue that international legal standards can be classified as follows:

I) According to the nomenclological objective criteria into:

- international standards in the field of human rights,
- international standards of local self-government,
- international standards in the field of health,
- international legal standards of environmental protection,
- international legal standards of combating offences and preventing crime;

II) According to action in space on:

- universal, applicable worldwide,
- regional, limited to a certain region of the globe;

III) Depending on the legal nature and specialisation of international instruments containing international legal standards, into:

- general standards;
- specific standards, representing standards in a certain field (sector);

IV) Depending on the effect on a certain group of persons, into:

- general standards concerning an undefined number of persons
- special standards for specific categories of the population;

V) According to legal importance:

- formally binding,
- recommendatory (so-called "soft" law);

VI) According to the sector, constitutional law, civil law, criminal law, etc.;

VII) According to external form of establishment, into provided for by:

- Declarations,
- International covenants;
- Conventions,
- Recommendations,
- Rules,
- Codes,
- Final documents adopted at inter-State conferences;

VIII) According to degree of certainty of content:

- *basic, absolutely definite,*
- *additional, clarifying (relatively defined);*

IX) According to structure:

- simple,
- complex.

3. International human rights standards

According to the nomenclologically objective criteria, international human rights standards are the most prevalent. They are reflected in a number of important international legal instruments that have established fundamental human rights and freedoms as universal human values, establishing boundaries beyond which States cannot transcend. These international instruments include the Universal Declaration of Human Rights (1948), mentioned above, the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Optional Protocol to the International Covenant on Civil and Political Rights (1966), and about 300 other instruments, constituting a universal set of fundamental rights and freedoms which should ensure the normal functioning of the individual. They proclaimed the natural human rights and incorporated general principles and concepts without defining their class characteristics, giving human rights a universal democratic and human meaning that is receptive to all States. The set of internationally defined human rights and freedoms initially covered civil, political, economic, social, cultural rights and freedoms, or so-called first- and second-generation human rights. It has been expanded to include third-generation human rights.

In general, international human rights standards are based on natural law, which includes the ideals of freedom, justice and equality, as well as establishes:

- General principles of natural law;
- Fundamental human rights and freedoms in various sectors of life;
- State duties to ensure and respect human rights without discrimination;
- Liability for human rights violations;
- Trends in the development and expansion of human rights and the strengthening of the monitoring mechanism for ensuring human rights to which States consented to be bound.

In addition, international human rights standards contain democratic principles and norms for the organisation and operation of State power, the main ones being the people's power, the recognition of the individual as the supreme social value, the distribution of power, the rule of law, the proclamation of the people as the sole source of power and the existence of justice institutions independent of authority, which are important factors in ensuring human and civil rights and freedoms.

The human rights standards recognised by the international community are enshrined in the legal system of each State and if a certain human right is not constitutionally established by the individual State, it is recognised as such by international instruments, since the primacy of international law over the domestic law on human rights is a universally recognised principle of the international community. Therefore, human rights have been regulated by the international community and individual States, and the scope of human rights and freedoms in modern society is determined not only by the characteristics of a certain community of people, but also by the development of human civilisation, by the level of integration of the international community.

Local government standards (local and regional democracy standards), derived from the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 21 May 1980, are a variant of international legal standards (European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, 1980), European Charter of Local Self-Government of October 15, 1985 (European Charter of Local Self-Government, 1985), Worldwide Declaration of Local Self-Government of September 26, 1985 (Worldwide Declaration of Local Self-Government). Then the international community adopted the Helsinki Declaration on Regional Self-Government of 28 June 2002, the Utrecht Declaration on Good Local and Regional Governance in Turbulent Times: the Challenge of Change of 17 November 2009, the Strategy for Innovation and Good Governance at Local Level of 15-16 October 2007, the Council of Europe Committee of Ministers' Recommendation CM/Rec(2007)12 to Member States on Capacity Building at Local And Regional Level of October 10, 2007, the European Congress of Local and Regional Authorities' Recommendation 240 (2008) On the Draft European Charter of Regional Democracy of May 28, 2008, the Charter of the Congress of Local and Regional Authorities of the Council of Europe of 19 January 2011, the Additional Protocol to the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority, Recommendation Rec (2001) 19 of the Committee of Ministers of the Council of Europe On the participation of citizens in local public life of December 6, 2001, Recommendation 113 (2002) of the Congress of Local and Regional Authorities of Europe on relations between the public, the local assembly and the executive in local democracy (the institutional

framework of local democracy) of June 4, 2002, Recommendation 139 (2003) of the Congress of Local and Regional Authorities of Europe On Non-governmental Organisations and Local and Regional Democracy of 26 November 2003, Recommendation 182 (2005) of the Congress of Local and Regional Authorities of Europe On public participation in local affairs and elections of May 17, 2005, etc. (Borodin, Kvitka, Tarasenko, 2019).

These acts regulate the approaches and principles jointly developed by States for the establishment, formation and functioning of the institution of local self-government in the territories of specific States. They reflected the integration processes in the territories of the Western European States and had begun with the establishment of the Council of Europe, which had proclaimed the principles of the organisation of local authorities respected by all the democratic States of Europe.

For example, the European Charter of Local Self-Government not only defines local self-government as the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population, exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them (this provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by law) (European Charter of Local Self-Government, 1985), but also embodies the concentrated European experience of establishing an effective system of local and regional governance as one of the main pillars of the democratic structure of the State. The Charter obliges the parties to apply the basic rules guaranteeing the political, administrative and financial independence of local self-government bodies. Therefore, the development and adoption of the Charter, as well as other international instruments regulating standards of local self-government, according to some scholars, is a demonstration of the political will of European States to give practical significance, at all levels of territorial administration, to the principles for the protection of democracy developed at the time of the establishment of the Council of Europe. The principles of local democracy in the Charter are considered not in relation to the population of a particular territory, but through the prism of local self-government bodies, their competence, the manner of exercising powers and using funds. The document therefore contains the principles

of representative democracy, while the principles of direct democracy are implicitly enshrined. This is confirmed by the legal regulations of foreign States, most of which enshrine the principle of the autonomy of local self-government, but it is interpreted primarily as the autonomy of the organisational structures of local self-government. European Legal Standards of Local Self-Government are principles and methods of organisation and implementation of local self-government enshrined in international documents, treaties and agreements of European countries (Kyrylova, 2015).

A specific type of international legal standards is anti-corruption standards. It should be noted that corruption is a complex socio-economic and political phenomenon that negatively affects all aspects of the political and socio-economic development of society and the State and has negative effects for their development and functioning, harms people, forms their mistrust in the State, threatens the national security and democratic development of countries. This negative phenomenon is present in all countries of the world; therefore, States have begun to join forces in the fight against corruption. The researchers emphasise that the factors of successful anti-corruption are known and tested by the international community. These include, first and foremost, the openness of the authorities, the transparency and comprehensibility of public decision-making procedures, effective mechanisms for monitoring the activities of State bodies by civil society, freedom of speech, freedom and independence of the media. Moreover, combating corruption is under focus at the regional level. International legal instruments of both universal and regional have developed legal provisions, guidelines and principles that are necessary or recommended to be embodied in the national anti-corruption legislation (Zadorozhnii, 2016).

The important international instruments that set standards in the fight against corruption are, first of all, UN Resolution on Practical measures against corruption adopted at the VIII UN Congress on Crime Prevention (Havana, 1990), which defines the essence of corruption as "violation of ethical (moral), disciplinary, administrative, criminal nature, manifested in the illegal use of their official position by the subject of corruption", the United Nations Framework Convention against Organised Crime, the UN Convention against Transnational Organised Crime (2000), the Criminal Law Convention on Corruption, the UN Convention against Corruption (2003), the Civil Law Convention on Corruption, Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (1989); the General

Assembly Resolution on Action against corruption (1996), the International Code of Conduct for Officials (1996), the UN Declaration against Corruption and Bribery in International Commercial Transactions (1996), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. These instruments have become the basis for the creation of regional international legal instruments that have established universal standards for the prevention and combating of corruption. These include the Programme of Action against Corruption adopted by the Committee of Ministers of the Council of Europe (1996), the Resolution of the Committee of Ministers of the Council of Europe on Twenty Guidelines for the Fight against Corruption (1997), which was one of the first international instruments of a regional character, establishing international standards in this field, the Criminal Convention against Corruption, the Civil Convention against Corruption, the Additional Protocol to the Criminal Convention against Corruption (2003) and other Acts

of the Council of Europe, as well as regional international organisations, such as the Organisation for Economic Cooperation and Development, the European Union, the African Union, Organisations of American States, etc. These international instruments enshrine universal standards of prevention of corruption manifestations in the world, play an important role in the fight against corruption, they provide an effective legal basis for defining the fundamental framework for anti-corruption policy of individual States, actively combating this negative phenomenon.

4. Conclusions

However, it should be noted that such a general characterisation of types of international legal standards does not exclude other varieties of them, which characterise the diverse legal nature of these standards, their role in the functioning of the international community on a democratic basis, emphasise the specificities of introducing legal values developed by the world community into the practice of State formation by individual countries.

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ДО ПИТАННЯ КЛАСИФІКАЦІЇ МІЖНАРОДНИХ ПРАВОВИХ СТАНДАРТІВ

Анотація. Мета. Метою статті є надання авторської класифікації міжнародних правових стандартів. **Результати.** Основу міжнародних стандартів у сфері прав людини становлять норми природного права, що включають ідеали свободи, справедливості та рівності, та встановлюють: загальні принципи природного права; фундаментальні права та свободи людини в різноманітних сферах життєдіяльності; обов'язки держави із забезпечення та дотримання прав людини без будь-якої дискримінації; відповідальність за порушення прав людини; напрями розвитку й розширення сфери прав людини та посилення контрольного механізму за виконанням державами взятих на себе зобов'язань у сфері прав людини. Особливим різновидом міжнародних правових стандартів є стандарти у сфері боротьби з корупцією. Слід відзначити, що корупція – це складний соціально-економічний і політичний феномен, який негативно впливає на всі аспекти політичного і соціально-економічного розвитку суспільства та держави і має негативні наслідки для їх розвитку та функціонування, завдає шкоди людям, створює у них недовіру до держави, реальну загрозу національній безпеці та демократичному розвитку країн. Це негативне явище присутнє у всіх без винятку країнах світу і тому держави розпочали об'єднувати зусилля у боротьбі з корупцією. **Висновки.** Визнані міжнародною спільнотою стандарти у сфері прав людини закріплюються правовою системою кожної держави і якщо певне право людини не отримало конституційного закріплення з боку окремої держави, воно визнається таким на основі міжнародних актів, оскільки пріоритет міжнародного права щодо внутрішньодержавного у сфері прав людини є загальновизнаним принципом міжнародного співтовариства. Таким чином, права людини стали об'єктом регулювання і міжнародного співтовариства, і окремих держав, а обсяг прав і свобод людини у сучасному суспільстві визначається не лише особливостями певного співтовариства людей, а й розвитком людської цивілізації загалом, рівнем інтегрованості міжнародного співтовариства. Міжнародні акти закріплюють універсальні стандарти запобігання корупційним проявам у світі, відіграють вагомий роль у боротьбі з корупцією, вони являють собою ефективну правову основу для визначення фундаментальних засад антикорупційної політики окремих держав, які активно борються з цим негативним явищем.

Ключові слова: права, свободи, обов'язки, людина, громадянин, корупція.

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 340.132.6

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ARGUMENTATION IN LEGAL INTERPRETATION ACTIVITY

Abstract. *The purpose* of the research is to identify the characteristic features of legal interpretation activity, legal interpretation acts; distinguish them from legal advisory acts; characterize the interpretative legal prescription as the main element of legal interpretation acts; determine the purpose of legal interpretation activity and argumentation in general, as well as their purpose and tasks at the stages of interpretation-clarification and interpretation-clarification; identify the main problems of argumentation in legal interpretation activity and methods of solving them. **Research methods.** The basis of the research methodology is the generic concept of legal interpretation as a legal activity, which is aimed at clarifying the content of the norms and principles of law and its clarification for the purpose of proper regulation of social relations, as well as the types, in relation to it, of legal interpretation activity (creation by authorized subjects of interpretative legal prescriptions and their objectification in legal interpretive acts). An important basis of the research is the activity approach, which allows us to characterize legal interpretation and argumentation as the activity of the relevant subjects. Thanks to the logical laws and methods of cognition and the general theoretical method, the nature of legal interpretation activity, its results – legal interpretation acts, their primary element – the interpretative-legal prescription, the definition of their concepts was formulated. Technical and legal analysis, in particular techniques and means of legal technology, allowed to characterize the main legal interpretation models, as well as the process of legal interpretation activity and argumentation, to identify problems that arise on the way to creating direct legal interpretation acts, to propose solutions thanks to the creation of a regulated procedure for their implementation, compliance with substantive and formal requirements relating to them. **Results.** In the course of the study, the nature of legal interpretation activity, legal interpretation act, interpretative-legal prescription was revealed and their definitions were formulated. A distinction is made between legal interpretation acts (official interpretation acts) and legal interpretive advisory acts. The purpose and task of argumentation both at the stage of interpretation-clarification and at the stage of interpretation-clarification are revealed. The process of objectifying the results of legal interpretation activity from the point of view of argumentation at its main stages is reflected. A method of argumentation is proposed. Methods of solving problems in legal interpretation activities in Ukraine are proposed. **Conclusions.** The analysis of foreign and domestic literature, sources of law and legal practice made it possible to state that in modern conditions, a number of provisions of the theory of legal interpretation need updating, in particular, there is a need to distinguish legal interpretation activities (activities related to official interpretation). The analysis of this legal phenomenon made it possible to characterize it as the activity of authorized subjects regarding the creation and objectification of interpretative legal prescriptions (formally binding rules-explanations based on the judgment of a uniform understanding of the content of a norm or legal prescription). In the process of research, the purpose of both legal interpretation activity in general and argumentation in particular was revealed, the purpose and tasks inherent in the stages of interpretation-clarification and interpretation-clarification were established. The method of argumentation at each of the stages is proposed. Attention is focused on the fact that the result of legal interpretation activity at the first stage is the creation of a legal interpretation judgment and substantiation of its truth and objectivity, and at the second stage – the creation of an interpretative legal prescription and its objectification in legal interpretation acts. Identified problems of legal interpretation activity and argumentation in domestic practice: narrowing of the field of legal interpretation activity (official interpretation of law) only to the activities of the Constitutional Court of Ukraine; lack of legal interpretation of the legislation of Ukraine and other sources of law; the need to distinguish between the concepts of «normative and legal judicial precedent» and «legal interpretation precedent»; the need

to expand the range of subjects of legal interpretation; the need to create rules of legal interpretation and argumentation, their formalization; the need to form requirements for subjects of legal interpretation in terms of their knowledge and skills in the implementation of legal interpretation activities with the use of argumentative techniques. This would contribute to increasing the effectiveness of legal interpretation activities, improving the quality of legal interpretation acts, creating conditions for the proper regulation of social relations, and the development of law in general.

Key words: legal interpretation, argumentation, legal interpretation activity, legal interpretation acts (acts of official interpretation of law).

1. Introduction

Research relevance. In the modern context, Ukraine is experiencing the transformation of all types of legal activity: law-making, law enforcement, and legal interpretation. This necessitates an in-depth analysis, in particular, of legal interpretation activity and updating the theory of legal interpretation. Within the framework of the modern theory of legal clarification, ideas of its nature, main types, incl. legal interpretation activity, its results – legal interpretation acts, their distinguishing from legal interpretative advisory acts are formed. Nowadays, there is an actualization of scientific research of argumentation in legal interpretation activity, the identification of its purpose and tasks at the stages of interpretation-identification and interpretation-explanation, its capacity for working out qualitative legal interpretation acts, finding the necessary ways to overcome deformations in legal interpretation activity and its outcomes.

All the above should contribute to creating a scientific basis for increasing the effectiveness of legal interpretation activities in Ukraine, formulating and formalizing argumentation rules and methods necessary for adopting high-quality legal interpretation acts that would assist in the proper ordering of social relations, and the development of law as a whole.

Literature analysis made it possible to clarify the state of scientific developments regarding legal explanation, legal interpretation and its results, and the possibilities of argumentation during its implementation. In legal literature, issues of legal interpretation have always been a focus of scientific attention, and the main conceptual provisions were formulated in the works by S. Aliksieiev, Zh.-L. Berzhel, Yu. Vlasov, R. David, N. Kartashov, I. Nastasiak, A. Piholkin, P. Rabinovych, O. Cherdantsev et al. They covered the concept of law interpretation, its main stages, methods of legal interpretation, and legal interpretation acts. Over time, positions on legal interpretation were expressed in legal literature, in particular, in the works by M. Voplenko, G. Christova, and others; in addition, the characteristics of legal interpretation acts was carried out, their nature was revealed, and classification was conducted in the works by V. Antoshkin, N. Lepish, A. Moscherad, I. Serdiuk, and others.

The papers by K. Karhin, O. Makieieva, M. Mikhalkin, et al. analyzed matters of the argumentation arising under legal interpretation. However, the following issues still require in-depth analysis: the nature of legal interpretation activity and its results (legal interpretation acts); the possibilities of argumentation at the stages of interpretation-clarification and interpretation-explanation to formulate qualitative legal interpretation acts, identify gaps in domestic legal interpretation and argumentation in modern conditions, as well as ways to solve them.

The purpose of the article is to establish the main features of legal interpretation activity, legal interpretation acts, and interpretative legal instructions; formulate their concepts; identify the possibilities of legal argumentation when implementing legal interpretation, shortcomings in domestic practice distorting the relevant activity and find ways to solve them, which will ensure the creation of high-quality legal interpretation acts contributing to the proper ordering of social relations.

2. Theoretical issues of legal interpretation

Although the theory of legal interpretation is generally formed, some provisions require focusing on its certain features and sometimes rethinking from the standpoint of modernity. As for conveying interpretation of law in the relevant literature, the following views are expressed: activities to clarify and render the content (meaning) of a legal act for its correct implementation and application (Rabinovych, 2017, p. 785); cognitive activities to define the rules of law that are objectified through the legal regulations of the relevant law sources for their adequate application and implementation (Luts, 2015, p. 316); activities aimed at clarifying and comprehending the actual content of the rules of law to facilitate their practical implementation, as well as the ensuing result which is mainly expressed in the legal interpretation act (Oleinykov, Khrystova, 2009, 419-420).

Such points of view quite often focus on two components of legal interpretation activity – identification and clarification of the content of the rules of law, which prompts the separation of two stages (elements, stages, forms,

etc.): interpretation-identification and interpretation-explanation (Luts, 2015, p. 318); elements – identification of the content of the rules of law and its clarification (Tsvik, Petryshyn, Avramenko, 2009).

However, it should be noted that interpretation is anyhow inherent in all types of legal activity: law-making, law-enforcement, enforcement, and law-interpretation. However, law-making, law enforcement or enforcement is only characterized by the stage of interpretation-clarification, which should ensure the formulation of high-quality regulatory and individual legal requirements or conditions for the proper direct exercise of the rights and obligations of participants in social relations, and the clarification of the content of the rules of law is a component of the mentioned types of legal activity. As for legal interpretation activity, it is characterized by both stages: clarification-identification and clarification-explanation, as it is aimed at creating interpretative legal instructions and their objectification in legal interpretation acts. The above is due to the need to render the content of law norms or principles for other subjects of social relations.

All of these things necessitate the separation of the generic concept of “legal explanation activity” and the specific concept of “legal interpretation activity” and their delimitation. It should be noted that some differences are traced between “explanation” and “interpretation”.

According to language dictionaries, “to explain” means to clarify the content, find out the essence of something; give explanations, etc. (Novyi tlumachnyi slovnyk ukrainskoi movy, 1998, 538-538); to elucidate in a certain way, to understand anything in a particular way; to convey (Akademichnyi slovnyk ukrainskoi movy). And “explanation” is an action in the sense of interpreting a text that contains a rendering, a representation of something (Akademichnyi slovnyk ukrainskoi movy).

The analysis of legal interpretation taking into account scientific developments allows naming the following main features of this phenomenon: legal explanation can be carried out not only by a specially authorized entity but also by other entities engaged in legal activity; it is a component or type of legal activity; it is aimed at clarifying the content of the norms and principles of law recorded in legal sources; its generic features are determined by the purpose and content of a particular type of legal activity (in law-making – ensuring compliance with the content of new norms; in law enforcement – ensuring an appropriate level of legal qualification; in legal interpretation – clarifying the content of the norm or principle of law, as well as the formation of the interpretation

and legal prescription and its objectification in the legal interpretative act); in the law-making, law-enforcement and law-enforcement activity is carried out within one stage – interpretation and clarification (the result of which is a right-interpretative judgement, which is necessary for the formation of a normative or individual legal prescription, or the implementation of legal behavior by participants in social relations); in legal interpretation activity, it is carried out in two stages – interpretation-identification (the content of the norm or principle of law is clarified, and legal interpretative judgement is formed) and interpretation-clarification (interpretative legal prescription is formed – it is objectified in the legal interpretative act); its prospective purpose there is proper ordering of social relations, and the short-term one depends on the purpose of a particular type of legal activity.

Thus, legal explanation is a legal activity aimed at clarifying the content of norms or principles of law and rendering it to organize social relations properly. Consequently, this concept reveals the essence of the process of legal interpretation as a whole.

By the nature of the powers of legal entities, it is necessary to distinguish between legal explanatory advisory and interpretation activities.

First of all, it is necessary to define the word “interpretation”. According to language dictionaries, “interpretation” means the clarification of the content of something, explanation, elucidation, and “to interpret” means to clarify the content of something, explain, elucidate (Novyi tlumachnyi slovnyk ukrainskoi movy, 1998, p. 195); or “interpretation” means the clarification, the clarification of the content of something (Skopnenko O. I., Tsymbaliuk T. V. (Eds.), 2006, p. 311); explanation, interpretation (Akademichnyi slovnyk ukrainskoi movy). At the same time, an interpreter is the one who interprets, explains something (Skopnenko O. I., Tsymbaliuk T. V. (Eds.), 2006, p. 311).

The analysis of legal interpretation activity allows characterizing it due to the following features: it is a type of legal explanation activity; can be carried out by specially authorized subjects; aimed at both clarifying the content of the norms and principles of law and forming an interpretative legal instruction; it is carried out by entities specially authorized for such activity; it is aimed at objectifying the interpretative legal instruction in the interpretative act; it should be carried out according to a regulated procedure; its short-term purpose is to create an interpretative legal instruction and its objectification, and the long-run one – the proper settlement of social relations as a whole.

Therefore, legal interpretation activity is the formulation of interpretive legal instructions by authorized subjects and their objectification in legal interpretation acts.

In legal literature, legal interpretation acts are usually referred to as acts of legal interpretation, acts of official interpretation of law, interpretative-legal or interpretative-juridical acts; they are conveyed as a legal act of an authorized entity explaining legal norms, which is the main purpose of its adoption (Khrystova, 2017, p. 195); an external manifestation of a formally binding rule established by the competent authorities for understanding the content (meaning) of a legal norm (Rabinovych, 2021, p. 230), et al.

The analysis of legal interpretation acts makes it possible to highlight their characteristics, as follows: they are legal acts-documents; are adopted by authorized entities according to a regulated procedure; have a legal form and legal force, which allow determining its place in the system of legal explanatory acts; are formally binding on subjects of law to whom an explanation of the content of the legal norm or principle is addressed, that is, they objectify the interpretative legal instruction.

Consequently, legal interpretation acts are acts-documents that are formulated by authorized entities, contain interpretative legal instructions on the same-type vision of the content of the norm or principle of law.

As for the classification of legal interpretation acts, legal literature teems with criteria and their types: by legal form; by subjects; by scope; by branch belonging; by the nature of the norms, etc. However, it should be noted they are always written in the form of external manifestation and are acts of official interpretation according to legal value (Luts, 2015, p. 320). It is also applied the criterion of the degree of binding nature, which allows the authors to classify legal interpretation acts into mandatory and advisory (Khrystova, Petryshyn, 2014, p. 295).

At the same time, following the nature of the powers of legal interpretation entities, it is possible to distinguish between legal interpretation acts (acts of official interpretation of law) and legal interpretative advisory acts (those containing explanations on the procedure for applying rules or principles of law). Their nature differs from the nature of legal interpretation acts, namely: they are formulated by the entities authorized to clarify the procedure for applying the rules of law; they are advisory in nature; they do not contain interpretative legal instruction but clarifications on the procedure for applying the rules or principles of law.

For example, pursuant to para. 3 of Art. 21 of the Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine", committees with relevant competence are entitled to provide explanations on the application of the provisions of the laws of Ukraine. Such explanations do not have the status of an official interpretation (Zakon Ukrainy "Pro komitety Verkhovnoi Rady Ukrainy").

In addition, according to sub-para. 32 of para. 4 of the Regulation on the Ministry of Justice of Ukraine, the Ministry has following powers: to provide clarifications on issues related to the activities of the Ministry of Justice, its territorial bodies, enterprises, institutions and organizations, as well as in relation to the acts issued by them; according to sub-para. 80⁵ of para. 4, it also provides recommendations and clarifications on the application of legislation on prevention and counteraction to the legalization (laundering) of proceeds from crime, terrorist financing and financing of the proliferation of weapons of mass destruction; according to sub-para. 83 of para. 4, it provides generalized explanations on the application of legislation on state registration, clarifications and recommendations on the enforcement of decisions (sub-para. 83m²⁷, para. 4), etc. (Polozhennia "Pro Ministerstvo yustytzii Ukrainy").

It is also worth highlighting the explanatory guidelines that are created in the process of enforcement. For example, Art. 245 of the Economic Procedure Code of Ukraine provides for the explanation of the judgment, which is carried out on the application of the parties to the case, the state executor and has entered into force. Such explanation does not alter the content of the judgment and is allowed if the judgment has not been executed or the term for enforcing it has not expired. Clarification or refusal is recorded in the court order (Hospodarskyi protsesualnyi kodeks Ukrainy). Identical articles are recorded in the procedural codes of Ukraine, Art. 254 of the Code of Administrative Procedure of Ukraine and Art. 271 of the Civil Procedure Code of Ukraine. It is envisaged that on the application of the party to the case or the state executor, the court explains the pronounced judgment, which came into force without changing the content of the judgment, by ruling (Kodeks administratyvnoho sudochynstva Ukrainy, Tsyvilnyi protsesualnyi kodeks Ukrainy).

Moreover, only Art. 380 of the Criminal Procedure Code of Ukraine states that the ruling clarifies its judgment without changing its content if the judgment is incomprehensible (according to the application of the participants to litigation, enforcement authorities, the private executor) (Kryminalnyi protsesualnyi kodeks Ukrainy).

Thus, legal interpretative advisory acts of authorized entities do not include a formally binding rule-explanation, and their purpose is to clarify the procedure for applying the rules or principles of law. Such provisions are usually recorded in law enforcement acts and formed due to the specification of norms or principles of law, which require an in-depth specification of the procedure for their application or are necessary for the formation of individual legal requirements.

Consequently, one of the distinctive features of legal interpretation acts compared to other legal interpretative acts is their formally binding nature and the availability of an interpretative legal instruction, which is not inherent in legal interpretative advisory or other acts interpreting law.

In legal literature, the correlation of the concepts of “interpretative norms”, legal provisions and legal positions was discussed quite actively. The discussion resulted in recognizing the advantages of the concepts of “legal provisions” and “legal positions”.

As noted in Polish legal literature, it is interpretive rules that make it possible to establish the correct meaning of regulatory legal prescriptions (Stawecki, Winczjrek, 1999, 133).

However, these concepts do not allow solving some problems of legal explanation, and there is a need for the concept of “interpretative legal instruction” amidst modern legal interpretative practice. The analysis of such a phenomenon as an interpretative legal instruction marks the following features: it is formed by subjects authorized to render official interpretation in the prescribed manner; it is a rule-explanation, which is based on a logically and grammatically completed judgment that relies on the clarification of the content of the law norm or principle and its uniform understanding; it is objectified in such a legal form as a legal interpretative act; it should not contradict the current system of legal sources; it acts in unity with the regulatory legal instructions in the areas and within its validity; it does not have an independent meaning; it does not create and does not cancel the current regulatory legal prescriptions; its validity is limited by the effect of the regulatory legal prescription; it should have the structure established by legal sources.

Thus, an interpretative legal instruction is a formally binding rule-explanation based on a judgment about the same-type understanding of the content of a rule or principle of law.

Unfortunately, domestic legal literature did not give due attention to the issues of nature, structure, and concept of interpretative legal instructions that gives rise to many disputable and sometimes controversial positions or even

the substitution of concepts. The issues of argumentation when implementing legal interpretation, which may reduce the quality of legal interpretative acts, were also ignored.

3. Argumentation in legal interpretation.

As noted in the author's previous works, argumentation is considered as an intellectual legal activity aimed at substantiating or refuting the authenticity of legal provisions using legal arguments for achieving legal effects, and legal argumentation is considered as an intellectual activity aimed at substantiating or refuting the authenticity of provisions using both legal and other arguments. At the same time, legal arguments are the means provided by the current system of legal sources, which are used in the process of legal argumentation, and the process of legal argumentation involves both legal arguments and other means that are intended to create conditions for the occurrence of legal effects. In addition, the structure of argumentation remains unchanged: the argumentator, the addressee, the thesis (the position, the veracity of which must be argued), the argument (the means which prove or refute the thesis's veracity), demonstration (the sequence of thinking from arguments to the thesis – the process of argumentation) (Luts, 2020, 168–173).

Argumentation should follow the entire process of legal interpretation, which, as already noted, should consist of two stages: interpretation-identification and interpretation-explanation. Moreover, the subject authorized for legal interpretation should take into account the long-term purpose of legal interpretation – the proper settlement of social relations due to a uniform understanding of the content of the norms or principles of law, and carry out its activities pursuant to the short-term goal – the creation and consolidation of the rule-explanation (interpretative-legal prescription) in the interpretative legal act.

In addition, each stage of legal interpretation has its own goals and objectives, which are also the goals of argumentation. Thus, the interpretation-explanation stage is characterized by the goal of clarifying the content of the norm or principle of law, which in turn contains two components: a) identification of the will of the subject of law fixed in the norm or principle of law; b) clarification of the possibility of their implementation in real social relations.

In the context of achieving the goal, the subject of legal interpretation must solve the following tasks: 1) establish the circumstances that lead to the legal interpretation, justify their availability and a need for interpretation; 2) find the necessary methods of interpretation-identification, substantiate the most appropriate ones for the interpretation of the relevant rule or

principle of law; 3) clarify the content of the rule or principle of law, support it using the relevant method of interpretation; 4) justify the veracity of the legal interpretative judgment.

At the same time, it is crucial to pay regard to such considerations as J.-L. Bergel pointed out: interpretation is most often construed as one of the sources of law formation or given law, and its influence has always been more significant in those systems which lacked organized and structured system of law (Berzhel, 2000, p. 131).

Domestic legal literature quite widely covers the elements of the main methods of interpretation-identification, which include philological (grammatical), logical, systematic (system), historical, teleological (target), functional, special-legal, etc. (Luts, 2015, 316-319; Petryshyn (Eds.), 2015, pp. 285-288; Koziubra (Eds.), pp. 247-263).

Moreover, there is still no methodology for their application when drafting legal interpretation acts, in particular, at the stage of interpretation-identification, which should result in a legal-interpretive judgment, the veracity of which should be substantiated.

It is worthwhile to pay attention to the positions expressed in foreign legal literature. Thus, in the English legal system, the Law "On Rules of Interpretation" (1978) is in force; courts also interpret the laws by relying on the presumptions of interpretation (the presumption of prohibition of fundamental changes in common law based on assumption), special rules, and canons of interpretation (grammatical, logical, historical under the law "On Human Rights", 1998), etc. (Romanov, 2010, 206-232).

In France, important ways of interpretation involved target (in the context of ascertaining the will of the legislator), historical methods, and since the end of the 19th century – the method of social purpose, sociological, etc. Similar methods are used in Germany, i.e., the so-called "functional interpretation" (or dynamic), which is associated with the emergence of new life circumstances (Lezhe, 2011, 82-84).

If Western legal systems consolidate the methodology of application of methods of interpretation and the process of legal interpretation activity in sources of law or, at least, in other official documents, in the domestic one (as well as any other post-Soviet legal system), these are the rules created by legal science. But for some reason, in some authors' opinions, they can be the criteria for the authenticity and correctness of the legal-interpretative judgment (Cherdantsev, 2003, p. 278). However, among the criteria, the author also names universal practice and such more specific criteria as language, logic, and legal practice (Cherdantsev,

2003, p. 274). Probably, the above position is based on the hope that such practice, according to the theory of argumentation, is "genuine".

At the same time, it should be emphasized that the veracity of the legal interpretive judgment is determined in accordance with the laws of logic, language, social laws, correlation with current sources of law (that is, according to substantive technical and technological requirements that should apply to legal interpretative acts).

As for the second stage, its short-term goal is the formation of a rule-explanation (interpretative-legal instruction) and its objectification in a legal interpretation act. This stage involves solving the following tasks: 1) to form an interpretative legal instruction, to substantiate its content; 2) to establish its compliance with formal and substantial technical and technological requirements (authority for the relevant activity in the subjects of interpretation, the implementation of activities under the procedure established in sources of law or other official documents; compliance with structural and essential parameters, in particular, the legal form of the legal interpretative act); establishment of a correlation with the current system of sources of law; 3) to objectify the interpretative legal order in the legal interpretative act.

Legal literature states that the issues of substantiation of legal interpretation acts were omitted; in particular, it refers to strengthening the justification of the decision of the constitutional justice bodies and formalization of the requirements for the argumentation of such decisions, namely: openness of the court to the arguments of the participants in the process, the use of relevant methodological means of argumentation, taking into account the particularities of the constitutional text (Uroshleva, 2019; Uroshleva, 2021).

It is also discussed the influence of the features of a particular type of legal activity, the nature of the legal thinking of authorized entities on the parameters, style of argumentation or even argumentation strategies, in particular, the influence of procedural characteristics on the style of constitutional and judicial argumentation (Chyrnynov, 2020).

It would be desirable to consolidate the methodology for the implementation of legal interpretation at the second stage, as well as at the first (if not in the sources of law, then at least in the regulatory act). This would allow avoiding legal interpretation errors, discussions on legal interpretative court precedents, which are baselessly endowed with legal force or the nature of legal sources, although our legal system has no entity authorized to create them.

Therefore, domestic legal literature contains considerations that the acts of official interpretation of the Constitutional Court of Ukraine are of a source nature (that is, they are sources of law), since they can be binding on subjects of social relations. Such a position seems doubtful given the above, because both law-making and legal interpretative activities should be carried out only by an authorized subject.

This rule is decisive even for common law. In particular, K. Osakwe specified that the creation of a judicial precedent is the prerogative for those courts that are authorized to deal not only with law enforcement but also with law-making, that is, the highest domestic courts. For example, in the context of the American federal system, that kind of court is exclusively the Supreme Court of the United States (Osakwe, 2008, p. 187).

According to para. 1 of Art. 7 of the Law of Ukraine "On the Constitutional Court of Ukraine", the CCU's powers include the official interpretation of the Constitution of Ukraine (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy"). At the same time, the CCU is not endowed with law-making powers.

Consequently, decisions on the official interpretation of the Constitution of Ukraine cannot be sources of law but can be a kind of judicial ones.

Attention should be paid to the positions of legal scholars who hold that ensuring the effectiveness of justice, law enforcement as a whole, sustainability and uniformity of judicial practice is carried out, in particular, due to the activities of authorized entities, which focus on the formation of typical models of qualification and/or interpretation of law. The outcome of legal unification is precedents that contain typical models of interpretation of law – as reflected in the legal positions of a judge (other authorized subject) and an objectified model in judicial acts, which includes rules-explanation of the content of the rule of law, arguments about the possibility of its application and provides similar enforcement (Holovaty, 2017).

Legal interpretation precedents are highly sought in any legal system, as they allow for proper ordering of social relations or, according to some authors, allow lawyers to predict the development of law (Cownie, Bradney, Barton, 2010, p. 98).

At the same time, the concept of "legal interpretation precedent" should not be replaced by the concept of "source of law", because, as noted, the nature and purpose of these phenomena are different.

Unfortunately, in modern Ukraine, the scope of such precedents is narrowed, since the CCU is no longer empowered to interpret

the laws of Ukraine, and they are not delegated to another subject. It seems that such powers should be devolved on the Supreme Court or the Verkhovna Rada of Ukraine as the current laws require not only an explanation of the procedure for their application, but also their content. Such a similar understanding of the content of legislative prescriptions is important not only for proper enforcement but also for arguing the content of any other legal acts of Ukraine.

It is crucial to fix the provisions on the methodology for legal interpretation, in particular, arguing, at least in the regulatory act.

If one analyzes the Law of Ukraine "On the Constitutional Court of Ukraine", there is evident that some provisions that contain formal requirements for a legal interpretation act are recorded. As a rule, there are no substantial requirements, in particular, for argumentation without which it is impossible to argue that the rule-explanation of the norm of the Constitution of Ukraine is based on a true judgment and formed in line with legal interpretation and legal argumentation methodology. Otherwise, it should be understood that such decisions of the CCU are regarded "at face value" in terms of the rule-explanation objectified in the legal interpretation act. However, this can cause latent "deformation" of law enforcement and be an obstacle to the proper exercise of rights and obligations by participants in social relations.

Thus, Art. 7 of the Law of Ukraine "On the Constitutional Court of Ukraine", as already noted, contains a provision on the CCU powers of in the context of official interpretation of the Constitution of Ukraine, and Art. 35 states that the issue of the official interpretation of the Constitution of Ukraine is considered by the Grand Chamber of the CCU (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy").

Art. 51 of the mentioned Law determines the form of appeal for the official interpretation of the Constitution of Ukraine – constitutional request, and para. 4 of Art. 51 records the provision that the constitutional request for the official interpretation of the Constitution of Ukraine indicates specific provisions of the Constitution of Ukraine that require an official interpretation and justification of the grounds that caused the need for interpretation (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy"). In other words, the requester shall name the grounds (circumstances) that caused the need for interpretation of the norm of the Constitution of Ukraine and justify them.

Article 69 of the Law of Ukraine "On the Constitutional Court of Ukraine" envisages ensuring the case's completeness: demanding relevant documents, involvement of experts, specialists,

etc. (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy"), but it does not envisage specific procedural actions of judges at the stages of interpretation-identification and interpretation-explanation, as well as in terms of reasoning. Art. 84 entails the adoption by the Grand Chamber of a decision on the official interpretation of the Constitution of Ukraine, and Art. 89 – formal requirements for the decision of the Court: introductory, descriptive, motivational, and operative part (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy"). As for content-related requirements, they are mentioned only in para. 2 of Art. 89, in particular, the descriptive part specifies the requirements of the constitutional request; para. 3 refers to the motivational part naming the provisions of the Constitution of Ukraine under which the Court justifies its decision; sub-para. "6" of para. 4 refers to the operative part indicating the official interpretation of the provision of the Constitution of Ukraine, in respect of which the constitutional request was submitted – in the case of the official interpretation of the Constitution of Ukraine; sub-paras. "b" and "r" – the decision of the Court is binding, final and cannot be appealed; and regarding the source which should publish the decision (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy").

It is worthwhile to draw attention to the provisions recorded in Art. 92 of the Law of Ukraine "On the Constitutional Court of Ukraine" regarding the legal position of the Constitutional Court, which is set out in the motivational and/or operative part of the decision, and part 2 of Art. 92, which covers the option of developing and specifying the legal position of the Court in its subsequent acts, amendments under altering the regulatory framework, if there are objective grounds – the need to improve the protection of constitutional rights and freedoms given the international obligations of Ukraine and subject to the justification of such an alteration in the Court's act (Zakon Ukrainy "Pro Konstytutsiyni Sud Ukrainy").

If one considers Art. 92 of the Law of Ukraine "On the Constitutional Court of Ukraine" in combination with para. 3 of Art. 89 of the Law, it is evident that the motivational part deals with the formation of a legal position by substantiating the decision (although Art. 92 provides for the possibility of conveying the legal position and in the operative part). It seems that the formation of the judgment and the justification of its authenticity and reliability should be carried out in the motivational part. However, it should render the judgment through the rule-explanation in the operative part (by forming an interpretation-legal prescription, which should have a well-defined structure provided by the law or regulatory act). Unfortu-

nately, there are no such provisions in the laws of Ukraine or other official documents.

These provisions, incl. the content-related requirements for legal interpretation and argumentation, should be available in the CCU Rules of Procedure. The current regulation does not contain all necessary provisions.

Thus, § 39 of the Regulations of the CCU provides that the constitutional request in form and content must meet the requirements of Arts. 51, 52 and part 1 of Art. 74 of the Law of Ukraine "On the Constitutional Court of Ukraine". The preparation of a preliminary conclusion on the presence or absence of grounds for initiating constitutional proceedings is carried out by the Secretariat of the CCU (§ 42). Formal requirements for the study and preparation of materials by the reporting judge for consideration (request of documents, involvement of specialists, commissioning of expert studies, etc.) are recorded in § 42. To clarify the circumstances that are relevant to the case and require special knowledge, commissioning of expert studies can be conducted (§ 62) (Postanova Konstytutsiinoho Sudu Ukrainy "Pro Rehlyament Konstytutsiinoho Sudu Ukrainy").

According to para. 6 of § 63, the expert may be asked questions about the use of methods and theoretical developments, the sufficiency of the information the conclusion was based on; the scientific substantiation and methods on which the expert relied, and questions concerning the reliability of the conclusion (Postanova Konstytutsiinoho Sudu Ukrainy "Pro Rehlyament Konstytutsiinoho Sudu Ukrainy"). The expert's conclusion, in addition to other data (provided by § 64 of the CCU Rules), should contain questions and answers to them (Postanova Konstytutsiinoho Sudu Ukrainy "Pro Rehlyament Konstytutsiinoho Sudu Ukrainy"). Unfortunately, the Rules lack requirements for the reporting judge, who conduct legal interpretation and argumentation, as well as for the Court's decision, in particular, in terms of the reliability and authenticity of the rule-explanation objectified and its structure. There are no provisions that define the role and capacity of the reporting judge in the formation of the interpretation-legal prescription, at least the same as, for example, for the expert. Since the Law of Ukraine "On the Constitutional Court of Ukraine", the Rules of the CCU and other documents do not contain such requirements, one can only assume that the reporting judge has relevant knowledge and skills, or he forms an interpretative legal prescription arbitrarily by relying on expert conclusions, etc. In such a case, the perception of the content of the rule-explanation objectified in the legal interpretation act occurs

“at face value”, not as one that meets the established requirements provided for in sources of law or other official documents.

This, in turn, determines the status and content of legal interpretative acts, in particular, the CCU decision on official interpretation.

Analysis of the CCU decisions for the period from 2017 to 2022 allowed finding only one decision of the Grand Chamber of the CCU regarding the official interpretation of the Constitution of Ukraine No. 11-p/2019 (case on the request of 49 People's Deputies of Ukraine regarding the official interpretation of the provisions of Art. 152² of the Constitution of Ukraine). In the context of the tasks of legal interpretation and argumentation following the stages of legal interpretation, this allows stating that the text of the decision does not clarify whether the court independently checked the circumstances that led to the interpretation or only agreed with the arguments of the requesters that the need for interpretation is caused by legal uncertainty, since the legislator did not explicitly indicate the list of decisions that can be appealed; in particular, the Constitutional Court did not substantiate the existence of circumstances that caused such a need, as it did not justify the need for official interpretation. It also did not determine the method of interpretation (although the decision text makes the use of the systemic method evident) and did not justify its relevance for interpretation of Art. 152² of the Constitution of Ukraine. For substantiation, the CCU also referred to the legal positions set out in previous decisions, but it did not substantiate their nature, necessity of application and significance; there is no legal interpretative judgment, the veracity of which should also be argued. As for the second stage, there is no provision that would correspond to the concept of “interpretative legal prescription” (rule-explanation, which is based on legal interpretative judgment formed due to the specific way of interpretation).

The operative part of the decision as well as other parts meet the formal requirements for this type of legal act, but do not meet the content-related requirements, since the fixation that the provisions of Art. 152² of the Constitution of Ukraine should be understood as follows: the CCU decisions, irrespective of their legal form, adopted on issues of exclusively constitutional powers cannot be appealed. It seems that this decision lacks interpretative legal prescription (although the formal requirements for the CCU decision, as already noted, are met). The structure of such a prescription, which is blurred by the formal requirements for the content of the interpretative act as a whole, also requires attention.

The main legal arguments are as follows: reference is made to the norms of the Constitution of Ukraine. As for the previous decisions of the CCU, their use needs argumentation from the Court and justification of expediency for specific cases.

As for the selective analysis of the CCU decisions of until 2017 regarding the official interpretation of the Constitution of Ukraine, it demonstrates the poor substantiation of decisions, limitation to legal arguments (as the rules of law); lack of references to the method of interpretation, justification of its use; substitution of interpretation methods. The most demanded is the systemic way of interpretation, although the text of decisions shows the need for other ways of interpretation: philological, logical, teleological, historical, special legal, etc.

However, a clear idea of the interpretative legal prescription to be a logically and grammatically completed judgment on the understanding of the content of the norm or the principle of law is the most important. There are no such prescriptions in acts of official interpretation, the provisions of which are formed arbitrarily (most often in the form of a description). It would be necessary to record the interpretative legal prescription in the resulting part of the CCU decision on the official interpretation of the Constitution of Ukraine.

For such a type of legal interpretation acts as the CCU decision, it is important to apply not only legal but also other arguments that may acquire legal significance in the process of legal interpretative activities and objectification of interpretative legal prescription. Moreover, the CCU shall justify significance before its fixation in the decision on the official interpretation of law.

The formulation of rules for the implementation of legal interpretation, the use of argumentation (methods of its implementation) would not only overcome the deformations of legal interpretation, guarantee its effectiveness, in particular, in the context of using argumentation options, but also create high-quality legal interpretative acts (legal acts as a whole) that would correspond to modern realities and would solve new, even global, problems (Luts, Nastasiak, Karmazina, Kovbasiuk, 2021).

4. Conclusions

The above allows stating that the domestic theory of legal explanation needs to be reconsidered in modern conditions. First of all, this refers to clarifying the understanding of law explanation – legal activity aimed at specifying the content of norms or principles of law and its elucidation to properly organize social relations. This activity can be carried out by both an authorized entity and other entities.

The activity comprises two stages: explanation-identification and explanation-clarification. At the same time, explanation-identification is inherent in law-making, law enforcement, and enforcement activities and results in the formulation of a legal interpretive judgment, which is the basis for high-quality regulatory, individual legal prescriptions or acts of direct law enforcement. Therefore, legal interpretation activity is characterized by two stages: interpretation-identification and interpretation-explanation, since it should be aimed at formulating interpretive legal prescriptions and their objectification in legal interpretative acts.

Characteristic features of legal interpretation activity are as follows: it is an independent type of legal activity; it is carried out by specially authorized entities; it is aimed at clarifying the content of the norm or principle of law and the formulation of a legal interpretive judgment, as well as the formation of an interpretative legal prescription and its objectification in an interpretative legal act; it should be conducted in two stages: interpretation-identification and interpretation-explanation according to a regulated procedure; the short-term goal is to create an interpretative legal prescription and its objectification in a legal interpretative act, and the long-term one – proper ordering of social relations.

Thus, legal interpretation activity is the formulation of interpretive legal prescriptions by authorized subjects and their objectification in legal interpretative acts.

Legal interpretation acts are characterized by the following features: they are legal acts-documents; are adopted by authorized subjects according to a regulated procedure; have a legal form and legal force, which allow determining its place in the system of legal explanatory acts; are formally binding on subjects of law to whom an explanation of the content of the legal norm or principle is addressed, that is, they objectify the interpretative legal prescription.

In terms of the nature of the powers of the subjects of legal interpretation, among law explanation acts, in addition to legal interpretative ones, it is necessary to highlight legal interpretative advisory ones towards the establishment of the procedure for applying the rules and principles of law. Interpretative advisory acts are created by entities authorized to clarify the procedure for applying the rules of law; they are usually objectified in law enforcement acts; they may fix provisions on the specification of regulatory or individual legal instructions in the context of clarifying the procedure for applying the rule or principle of law; do not contain interpretative legal instructions.

At the same time, the characteristic features of interpretative legal instructions are that they are formulated by entities authorized to create them in accordance with the procedure established by law; are a rule-explanation – a logically and grammatically completed judgment, which is based on the clarification of the content of the norm or principle of law; the legal form of its objectification is a legal interpretative act; it should not be contradictory with the system of law sources; it does not have independent significance and can only act in unity with the regulatory legal instruction in the spheres and within its validity; it does not create and does not cancel the current regulatory legal instructions; its validity is limited to the effect of the regulatory legal instruction under interpretation; it must have a prescribed structure.

Consequently, the interpretive legal instruction is a formally binding rule-explanation based on the judgment of the same-type understanding of the content of the norm or the principle of law.

The entire process of legal interpretation (both at the stage of interpretation-identification and at the stage of interpretation-explanation) is accompanied by legal argumentation

The long-term goal – the proper settlement of social relations due to the same understanding of the content of the norm or the principle of law, as well as the short-term one – the creation and objectification of the interpretative legal prescription, is definitive for both legal interpretation and argumentation. Each stage has its own goals and objectives. At the stage of interpretation-identification, the following goal is achieved: clarification of the content of the norms or principles of law (due to the clarification of the will of the subject of rule-making recorded in the source of the law or the opportunities for their implementation in specific conditions actually existing for the period of their application). In the context of achieving this goal, it is necessary to solve the following tasks: to establish the circumstances that lead to the right explanation; to substantiate their availability and need for interpretation; to identify the necessary ways of interpretation-identification, to substantiate the most appropriate ones for the interpretation of the relevant norm or principle of law; to clarify their content and justify it using the chosen methods; to substantiate the veracity, objectivity of the right interpretation judgment.

In Western legal interpretative practice, the methodology for applying methods of interpretation-identification is formalized in sources of law or other official documents, and in domestic practice such a methodology is not fixed in the relevant documents (including regulatory

acts). Such rules are usually reflected only in scientific sources.

The purpose of the second stage of legal interpretation is the formation and objectification of the interpretative legal instruction, and the tasks (including argumentation) are as follows: formation of the interpretative-legal prescription and justification of its content; establishment of its compliance with formal technical and process design requirements (the availability of powers in the subject of legal interpretation; compliance with the regulated procedure – the procedure for the implementation of legal interpretation, structural and essential parameters) and content (compliance with the current system of law sources); objectification of the interpretative legal prescription in the legal interpretation act. The content of the argumentation largely depends on the peculiarities of a particular type of legal activity (in particular, procedural features). It seems that the issue of argumentation, as well as the process of legal interpretation activities as a whole, should be enshrined in sources of law (or, at least, in regulatory acts). This would prevent some deformations and substitute the concepts of “judicial regulatory precedent” (source of law) and “judicial legal interpretation precedent”.

First of all, attention should be paid to the fact that any type of legal activity is carried out by authorized entities, in particular, entities of law-making or legal interpretation. If the subject of legal interpretation does not have legal authority, it cannot create sources of law. The beforementioned also applies to judicial regulatory precedents, but it can create legal interpretative precedents. They may contain typical models of interpretation of law reflected in interpretative legal instructions. Thus, the legal positions of judges can be arguments when considering similar cases.

In Ukraine, the scope of such precedents is currently limited, since the CCU is only vested with legal interpretation powers. It carries out the official interpretation of the norms of the Constitution of Ukraine. However, according to the preceding Law of Ukraine “On the Constitutional Court of Ukraine”, it also carried out the official interpretation of the laws of Ukraine. Currently, no entity has the authority to interpret laws or other sources of law officially. Consequently, the provisions of nor-

mative legal acts (except for the Constitution of Ukraine) or other sources of law cannot be officially interpreted by any subject pursuant to domestic legislation. But they may be subject to unofficial interpretation or clarification of the procedure for the application of the rules of law, or causal interpretation in the process of law enforcement.

The legislator, narrowing the powers of the CCU on the official interpretation of the laws of Ukraine, should delegate them to another subject, e.g., the Supreme Court, or determine the order of authentic official interpretation of law.

It should be noted that the Law of Ukraine “On the Constitutional Court” and the CCU Rules largely contain formal requirements for the procedure for implementing legal interpretation and the formulation of legal interpretative act, but there are no content-related requirements, in particular, for argumentation. This negatively affects the legal interpretation practice, which is characterized by insufficiently reasoned decisions; the lack of provisions on the methods of interpretation, which facilitate the justification of the rule-explanation; or the substitution of interpretation methods; reduction to a systemic method of interpretation and legal arguments; the lack of understanding of the interpretative legal instruction as a logically and grammatically completed judgment on the same-type understanding of the content of the norm or the principle of law; the lack of understanding of its structure. It seems that the official interpretation of the CCU norms of the Constitution of Ukraine is based on the legal consciousness of judges.

Another problem of legal interpretative activity is its narrowing only to the application of legal acts and the lack of understanding of legal arguments in a broad sense. In particular, legal positions in the context of domestic legislation could be currently used as arguments in similar cases, but provided that the court will argue the appropriateness of their use for legal interpretation, justify their veracity and objectivity, and thus they will be able to acquire the nature of legal arguments.

The above and other issues require further conceptualization both from the standpoint of the general theory of law and branch legal science and practice.

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АРГУМЕНТАЦІЯ У ПРАВОІНТЕРПРЕТАЦІЙНІЙ ДІЯЛЬНОСТІ

Анотація. Мета дослідження – виявити характерні ознаки правоінтерпретаційної діяльності, правоінтерпретаційних актів; відмежувати їх від правотлумачних рекомендаційних актів; охарактеризувати інтерпретаційно-правовий припис як основний елемент правоінтерпретаційних актів; визначити мету правоінтерпретаційної діяльності та аргументації загалом, а також їхню мету та завдання на етапах тлумачення-з'ясування і тлумачення-роз'яснення; виявити основні проблеми аргументації в правоінтерпретаційній діяльності та способи їх розв'язання. **Методи дослідження.** В основі методології дослідження – родові поняття правотлумачення як юридичної діяльності, що спрямована на з'ясування змісту норм та принципів права і його роз'яснення з метою належного впорядкування суспільних відносин, а також видове стосовно нього – правоінтерпретаційна діяльність (створення уповноваженими суб'єктами інтерпретаційних правових приписів та їх об'єктивація у правоінтерпретаційних актах). Важливим підґрунтям дослідження є діяльнісний підхід, який дозволяє охарактеризувати правоінтерпретацію та аргументацію як діяльність відповідних суб'єктів. Завдяки логічним законам і прийомам пізнання та загальнотеоретичному методу було виявлено природу правоінтерпретаційної діяльності, її результатів – правоінтерпретаційних актів, їхнього первинного елементу – інтерпретаційно-правового припису, сформульовано визначення їх понять. Техніко-юридичний аналіз, зокрема, прийоми та засоби юридичної техніки дозволили охарактеризувати основні правотлумачні моделі, а також процес здійснення правоінтерпретаційної діяльності та аргументації, виявити проблеми, які виникають на шляху створення якісних правоінтерпретаційних актів, запропонувати способи розв'язання завдяки створенню регламентованого порядку їх здійснення, дотримання змістових та формальних вимог, що ставляться до них. **Результати.** У ході дослідження виявлено природу правоінтерпретаційної діяльності, правоінтерпретаційного акта, інтерпретаційно-правового припису та сформульовано їх дефініції. Розмежовано правоінтерпретаційні акти (акти офіційного тлумачення) та правотлумачні рекомендаційні акти. Виявлено мету та завдання аргументації і на етапі тлумачення-з'ясування, і на етапі тлумачення-роз'яснення. Відображено процес об'єктивації результатів правоінтерпретаційної діяльності під кутом зору аргументації на основних її етапах. Запропоновано методику аргументування. Запропоновано способи розв'язання проблем у правоінтерпретаційній діяльності в Україні. **Висновки.** Аналіз зарубіжної та вітчизняної літератури, джерел права та юридичної практики дав змогу констатувати, що у сучасних умовах низка положень теорії правотлумачення потребує оновлення, зокрема є потреба виокремлення правоінтерпретаційної діяльності (діяльності щодо офіційного тлумачення права). Аналіз цього правового явища дозволив охарактеризувати її як діяльність уповноважених суб'єктів щодо створення та об'єктивації інтерпретаційно-правових приписів (формально-обов'язкових правил-роз'яснень, заснованих на судженні однотипного розуміння змісту норми чи принципу права). В процесі дослідження виявлена мета як правоінтерпретаційної діяльності загалом, так і аргументації зокрема, встановлена мета та завдання, притаманні етапам тлумачення-з'ясування та тлумачення-роз'яснення. Запропонована методика здійснення аргументації на кожному з етапів. Акцентована увага на тому, що результатом правоінтерпретаційної діяльності на першому етапі є створення правотлумачного судження та обґрунтування його істинності й об'єктивності, а на другому етапі – створення інтерпретаційно-правового припису та його об'єктивація у правоінтерпретаційних актах. Виявлені проблеми здійснення правоінтерпретаційної діяльності та аргументації у вітчизняній практиці: звуження сфери правоінтерпретаційної діяльності (офіційного тлумачення права) лише до діяльності Конституційного Суду України (далі – КСУ); відсутність правоінтерпретації законів України та інших джерел права; необхідність розмеж-

ування понять «нормативно-правовий судовий прецедент» та «правоінтерпретаційний судовий прецедент»; необхідність розширення кола суб'єктів правоінтерпретації; необхідність створення правил правоінтерпретаційної діяльності та аргументації, їх формалізація; необхідність формування вимог до суб'єктів правоінтерпретації в частині наявності у них знань та навичок здійснення правоінтерпретаційної діяльності із застосуванням аргументаційних методик. Це б сприяло підвищенню ефективності правоінтерпретаційної діяльності, покращенню якості правоінтерпретаційних актів, створенню умов для належного впорядкування суспільних відносин, розвитку права загалом.

Ключові слова: правотлумачення, аргументація, правоінтерпретаційна діяльність, правоінтерпретаційні акти (акти офіційного тлумачення права).

The article was submitted 13.06.2022

The article was revised 04.07.2022

The article was accepted 25.07.2022

UDC 342

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Petkov, Valerii, Spytska, Liana (2022). Organisation management: development and effects of conflict situations. *Entrepreneurship, Economy and Law*, 4, 77–83, doi: <https://doi.org/10.32849/2663-5313/2022.4.12>

ORGANISATION MANAGEMENT: DEVELOPMENT AND EFFECTS OF CONFLICT SITUATIONS

Abstract. Purpose. The purpose of the article is the role of development and effects of conflict situations in management of the organisation. **Results.** The article underlines that one of the best management methods to prevent dysfunctional conflict is to explain what results are expected from each employee and unit. Reference should be made to parameters such as the level of results to be achieved, the persons who provide and receive different information, the system of powers and responsibility, and clearly defined policies, procedures and rules. Moreover, the leader is aware of all these issues primarily not for himself, but to ensure that his or her subordinates well understand what is expected of them in each situation. It is found that rewards can be used as a method of conflict management, influencing the behaviour of people to avoid dysfunctional effects. People who contribute to the achievement of the organisation's integrated goals, help other teams in the organisation and try to approach the issue holistically should be rewarded with gratitude, bonus, or promotion. Therefore, the systematic and coordinated use of the rewards system to provide with incentive those who contribute to the achievement of corporate goals helps people to understand how to deal with conflict situations to meet leadership's wishes. In complex situations, where diversity of approaches and accurate information are essential to decision-making, the emergence of conflicting opinions should even be encouraged and managed using problem-solving style. Furthermore, other styles may limit or prevent a conflict situation, but they will not lead to an optimal solution, because not all perspectives have been examined equally thoroughly. Studies have revealed that highly effective organisations in conflict situations use problem-solving style more often than ineffective organisations. In such organisations, managers openly discussed different views, without emphasising their differences, but without pretending that they did not exist. **Conclusions.** Leaders should be aware of the probable resistance to change and take effective measures to prevent it. For example, the primary reason for resistance is the fear that change will threaten existing social relations. In this case, the manager should be aware of the social system of the organisation, which may or may not survive through the very changes, as well as through the way they are implemented.

Key words: organisation, system, subordination, structural changes, power relations.

1. Introduction

Several effective ways to manage a conflict situation exist. They can be grouped into structural and interpersonal.

Managers should not consider differences in characters to be the cause of conflict situations. However, this difference may cause conflict in a particular case, but it is only one of the factors that can cause conflict. The manager should start with analysing the actual causes and then use the appropriate methodology. Conflict

reduction can be achieved by applying conflict resolution techniques.

Structural methods. There are four structural conflict resolution methods: the clarification of performance requirements, the use of coordination and integration mechanisms, the establishment of corporate integrated goals and the use of a rewards system.

Clarification of performance requirements. One of the best management practices to prevent dysfunctional conflict is to explain what

results are expected from each staff member and office. Reference should be made to parameters such as the level of results to be achieved, the persons who provide and receive different information, the system of powers and responsibility, and clearly defined policies, procedures and rules. Moreover, the leader is aware of all these issues primarily not by himself, but to ensure that his or her subordinates well understand what is expected of them in each situation.

Coordination and integration mechanisms. A coordination mechanism is a method to manage a conflict situation. One of the most common mechanisms is the chain of command. If two or more subordinates disagree on a particular issue, conflict can be avoided by contacting their joint manager, asking him or her to make a decision. The principle of unity of command facilitates to use hierarchy to manage a conflict situation, because a subordinate knows very well whose decision he should obey.

In conflict management, integration tools such as, guiding hierarchy, liaison services, cross-functional teams, task forces and inter-divisional meetings are useful. Research has revealed that organisations that have maintained the required level of integration have been more effective than those that have not.

2. Conflict management techniques

Corporate Integrated Goals. The establishment of corporate integrated goals is another structural way of conflict management. Achieving these goals requires the joint efforts of two or more staff members, teams or units. The idea behind the limit is to direct the efforts of all participants towards a common goal.

For example, if the two departments are in conflict, goals should be formulated for the entire department, not for each of them. Similarly, well-defined organisational goals will generally encourage department managers to make decisions aimed at achieving organisational success as well as a separate functional sector. The statement of the supreme principles (values) of the organisation reveals the content of integrated goals. The Organisation tries to reduce the likelihood of conflict by developing corporate integrated goals to achieve greater coherence among all staff.

Structure of the rewards system. Rewards can be used as a method of conflict management, influencing the behaviour of people to avoid dysfunctional effects. People who contribute to the achievement of the organisation's integrated goals, help other teams in the organisation and try to approach the issue holistically should be rewarded with gratitude, bonus, or promotion.

Therefore, the systematic and coordinated use of the rewards system to provide with incentive those who contribute to the achievement

of corporate goals helps people to understand how to deal with conflict situations to meet leadership's wishes.

Interpersonal conflict resolution styles. There are five main interpersonal conflict resolution styles: avoidance, smoothing, coercion, compromise, and problem solving.

Avoidance. This style suggests that the person tries to avoid conflict. According to Robert Blake and Jane Mouton, one way to resolve a conflict is to avoid divisive situations and avoid engaging in divisive discussions. Then you will not have to worry, even solving the problem (Blake, Mouton, 1990, p. 43).

Smoothing. This style is characterised by the behaviour dictated by the belief: do not be angry because "we are all one happy team, and should not rock the boat", "Smoothers" tries not to miss the signs of conflict, appealing to the need for solidarity. Blake and Mouton argue that it is possible to extinguish another person's desire for conflict by saying, "It doesn't really matter. Think of the good that has appeared here today". In the end, harmony may come, but the problem remains. There is no reason for emotion anymore, but they live inside and accumulate. There is a general concern that the result will be an explosion. (Blake, Mouton, 1990, p. 56).

Coercion. This style implies mostly attempts to force acceptance of one's point of view under any circumstances. Those who try to do so are not interested in the opinions of others. The person using this style usually behaves aggressively and uses power through coercion to influence others. According to Blake and Mouton, the conflict can be controlled by showing that you have strong power despite the opinion of your opponent, forcing him to act in a certain way as the leader. A coercion style can be effective in situations where a leader has considerable power over subordinates. The disadvantage of this style is that it suppresses the initiative of subordinates, making it more likely that not all factors of importance will be considered, as only one point of view is presented. It can cause resentment, especially among younger and more educated staff (Blake, Mouton, 1990, p. 73).

Compromise. This style is characterised by acceptance of the other party's point of view, but only to a certain extent. The ability to compromise is highly valued in leadership situations because it minimises ill will and often enables a quick resolution of the conflict to satisfy both parties. However, the use of compromise at an early stage of the conflict that has arisen in solving the problem can hinder diagnosis problems and reduce the time to search for alternatives. Such a compromise means agreement to avoid disputes, even if the parties have refused to act reasonably. Such a compromise is satis-

faction with what is obtainable, not a relentless search for what is logical in the light of the facts and data available.

Problem-solving. This style is an acknowledgement of differences of opinion and a willingness to look at other views in order to understand the causes of the conflict and find a course of action acceptable to all parties. Those who use this style do not try to achieve their goal at the expense of others, but rather find the best way to resolve a conflict situation.

In complex situations, where diversity of approaches and accurate information are essential to decision-making, the emergence of conflicting opinions should even be encouraged and managed using problem-solving style. Furthermore, other styles may limit or prevent a conflict situation, but they will not lead to an optimal solution, because not all perspectives have been examined equally thoroughly. Studies have revealed that highly effective organisations in conflict situations use problem-solving style more often than ineffective organisations. In such organisations, managers openly discussed different views, without emphasising their differences, but without pretending that they did not exist.

Alan Filley makes proposals to use this style of conflict resolution.

1. Identify the problem in terms of goals, not solutions.
2. Once the problem has been identified, generate a solution acceptable to both parties.
3. Focus on the problem rather than the personality of the other party.
4. Create an atmosphere of trust by increasing mutual influence and exchange of information.
5. When communicating, try to be friendly, showing sympathy and listening to the opinions of the other party, as well as minimising expressions of anger and threats.

3. Conflict resolution in the organisation

Change is an issue that arises for all organisations. Changes within an organisation occur as a response to changes in the external environment. Since the early 1990s, the issue of performance management for Ukrainian organisations has become important, especially under the influence of foreign competitors.

Organisations operating in a changing environment are more affected by these changes than those operating in a more stable environment. This applies not only to the entire organisation, but also to individual units. For example, the Research and Development Department is trying to innovate, while other units want to operate in a relatively stable environment.

While managers at all levels should respond to changes, the effect of changes and the response to them vary from level to level.

The changes imply massive changes in the organisational structure. The need for successful implementation of such changes is obvious. According to Paul Lawrence, the need to successfully carry out, "very necessary "small" changes, which are constantly happening – changes in working methods, office procedures, appointments of managers and job titles" is less obvious. Such "small" changes may not be of great importance for the entire organisation, but they are extremely important for the individuals to whom they relate. Since individuals help to achieve the organisation's goals, leadership cannot ignore their potential response to change.

In addition, changes in the organisation imply the leadership's decision to change one or more internal variables. In making such decisions, the leadership is proactive or meets in some way the requirements of the situation. The change required to correct an error is a typical reactive action. The action resulting from the reaction to the environment, even if there is no actual problem, is practical.

When considering the change of a given variable, the manager should bear in mind that all variables are interconnected. Changing one variable will inevitably affect the others. Introduction of new equipment, for example, computers, can result in a change in the structure (i.e. the organisation's communication system and structure of powers), a change in human resources (their number, qualification level, relations and activities) and change in the execution and even in the definition of tasks, since some tasks can be really fulfilled for the first time only now. Research has revealed that innovation programs that focus on only one variable are not as effective as those that focus on multiple variables simultaneously.

Goals. For an organisation to survive, the leadership should periodically assess and modify its objectives in accordance with changes in the environment and organisation. Modifying goals is necessary even for the most successful organisations, if only because the current goals have already been achieved. The need to change goals is often manifested through a monitoring system that should inform the leadership of the relative effectiveness of the entire organisation and of each unit. Radical changes in goals will affect all other variables.

Structure. Structural changes – part of the organisational process – are changes in the system of allocation of powers and responsibility, in coordination and integration mechanisms, division into departments, managerial hierarchy, committees and degrees of centralisation. Structural changes are one of the more common visible forms of changes in an organisation. They are a real necessity when there is a sig-

nificant change in the goal or strategy, or when a large organisation opens a new line of business, requiring the establishment of a unit responsible for performance, and integrates managers in this area of the organisation management.

Structural changes have an obvious impact on the human component because new people can enter the organisation and the chain of command alters. The fear that structural change will undermine established social and power relations is often the reason for resistance to such changes. Less obvious is the impact on technology indirectly linked to the new structure. For example, the information managerial system should be changed to provide the information needed by both the new unit and its control system.

Tasks. Changes in closely related variables – tasks – refer to changes in the process and schedule of tasks, the introduction of new methods, changes in regulations and the nature of work itself. As structural changes, changes often destroy social stereotypes, traditionally generating a change in plans – a change can cause a change of the structure and workforce. When, for example, newspapers began to change the old way of typesetting to an electronic layout system, they needed more electronics experts and far fewer typesetters than before. When almost all the newspapers announced the transition to a new type of layout, they faced strong union resistance, fearing job cuts. The introduction of new methods of quality control requires many changes in the organisation's mission. Similarly, the use of computing often changes the functions of the organisation's staff.

People. Changes in people entail changes in the capabilities, attitudes or behaviours of the organisation's staff. This may include interpersonal or group preparation, motivation, leadership, performance assessment, managerial advanced training, team building, implementation of job satisfaction and quality of life programmes.

Changes in people, due to fear of unmet needs, are difficult to make effective. A leader can never rely on positive reaction by subordinates to objectively beneficial changes. Not everyone, for example, wants to have more responsibility or learn more. To successfully change people, these changes should be coordinated with other changes. For example, a supervisor is sent to a seminar on organisational policy development techniques, after which he or she is expected to assume additional responsibility. If this does not happen in practice, the money spent on training will be wasted, and the leader may feel dissatisfied. To take another example, managers who have been trained to work with people cannot apply new methods at work because their supervisor has not had the same training.

Change management. Due to the difficulties caused by the state of some variables due to innovation, and the changing interdependencies of these variables and the responses to innovation, effective change management is one of the most difficult and demanding tasks for managers. Next, we will reveal the content of several approaches and concepts of organisational change management, starting with the first steps of change.

Measures for successful change in the organisation. Larry Greiner developed a model for successful change management:

Phase 1. Pressure and encouragement. The first step is for leadership to understand the need for change. Leaders who are empowered to make and implement decisions should feel the need for change and prepare for change. This pressure can be caused by external factors such as competition, changes in the economy or the introduction of new legislation. The sense of need for change may stem from changes in internal factors, such as lower, prohibitive costs, staff turnover, dysfunctional conflict and a high number of staff complaints.

Phase 2. Mediation and refocusing. While leaders may feel the need for change, they should analyse problems accurately and make changes as appropriate. According to L. Greiner, it is possible that the top leadership, under intense pressure, may tend to reflect on their problems by shifting responsibility to someone else, such as a union or government. There may be a need for an external consultant to mediate an objective assessment of the situation. Staff could also be used as intermediaries, but if they did not take positions on either side, that would be unsatisfactory to the senior leadership. In any case, for this mediation to be effective, it should result in a change of orientation. Responsible leaders should understand the need for change and sincere reasons for this need. And this implies the emergence of new ideas (Boddi, Peiton, Greiner, 1999, p. 74).

Stage 3. Diagnosis and awareness. At this stage, leadership collects the relevant information, identifies the causes of problems that require changes in the current state of affairs. According to L. Greiner, this process begins at the top and then gradually descends to the lower level of the organisational hierarchy. However, if leadership attempts to identify the problem before obtaining information from lower levels of the hierarchy, it risks making its decisions on inadequate or incorrect information. The definition of the essence of the problem leads to an awareness of specific problems.

Step 4. The invention of a new solution and the commitment to implement it. Once the problem is recognised, leadership is look-

ing for a way to remedy it. In most cases, leadership should also obtain the approval of those responsible for the new course. L. Greiner states that there is always a temptation, especially for power structures, to apply old solutions to new problems. Therefore, there is a need for a fourth stage – the invention of new and unique solutions that would support the entire structure of power (Boddi, Peiton, Greiner, 1999, p. 114).

Step 5. Experiment and detection. An organisation rarely takes the risk of making big changes simultaneously. It is more likely to anticipate the impact of planned changes and identify hidden difficulties before implementing innovations on a large scale. Through control mechanisms, the leadership determines how and to what extent planned changes help to address the unsatisfactory state of affairs, how they are perceived and how their implementation can be improved. By experimenting and identifying negative impacts, the leadership will be able to adjust its plans to achieve greater efficiency.

Stage 6. Reinforcement and consent. At the last stage it is necessary to motivate people to accept these changes. This can be achieved by convincing employees that changes are beneficial both for the organisation and for them. According to L. Greiner, when everyone is encouraged to make changes successfully, it can be expected that most people at all levels of management use the methods contributing to these changes (Boddi, Peiton, Greiner, 1999, p. 122). There are different ways to encourage employees to innovate – praise, recognition, promotion, higher pay for better quality, as well as permission to participate in changes in the discussion of how the process goes, what problems arise, which corrections should be made.

Distribution of powers. The power-sharing approach to change management implies a high degree of employee involvement in decision-making. Leaders and subordinates jointly identify necessary changes, develop alternative approaches and recommendations for their implementation. In some situations, senior managers could identify the problem and lower-level staff could participate in discussions on what changes were needed to solve the problem.

Separation of powers should be effective in situations similar to those in which workers are involved in decision-making: research, development, policy-making and new strategies development.

Unilateral actions. Such an approach involves the use of legitimate power to implement changes. Organisational changes are implemented on the basis of the positional powers of the organisational hierarchy. Moreover, the identification of the problem and its solutions are usually carried out by the leadership

and are directed according to formal and impersonal control mechanisms.

Distribution of powers for change management. Unilateral actions will be more effective in situations where subordinates comply with statutory requirements (for example, internal affairs bodies), and the need for pluralism of opinions is minimal.

Delegation of powers. The approach to organisational change from this perspective is generally consistent with liberal leadership. Senior management provides information to subordinates on necessary changes and then delegates powers to assess and implement corrective actions.

The advantage of delegation of powers is that it reduces the possibility of future resistance to change and creates a wide range of views on the issue. Disadvantages of this approach: possible retardation, decision quality may be influenced by group thinking, subordinates may lack the necessary experience to weigh all alternatives in the context of the organisation's overall goals.

Overcoming resistance to changes. Resistance to changes may be inevitable. However, once the leadership has decided to introduce changes, resistance should be overcome. According to some authors, any change in traditional methods generates resistance among all the people to whom these changes apply, both managers and subordinates. To solve this problem, the leadership should first understand why people do not want changes.

Reasons for resisting changes. People oppose changes for three reasons: uncertainty, a sense of loss, and conviction. The concept of uncertainty does not require explanation. A person can overreact to change because he or she does not know what the consequences will be. When a person feels threatened, he or she responds consciously or unconsciously, expressing his or her negative attitude towards change or dysfunctional behaviour during its implementation.

Another reason for resistance is the belief that changes are not necessary or desirable for the organisation. Some believe that the planned changes will not solve the problems but will only increase their number. For example, a leader may feel that changes will complicate the work of subordinates and assume that the problem is related not only to his or her area of operation but also to another, and therefore considers that these changes should be carried out elsewhere.

Overcoming resistance. Leaders should be aware of the probable resistance to change and take effective measures to prevent it. For example, the primary reason for resistance is the fear that change will threaten existing social relations. In this case, the manager should be aware

of the social system of the organisation, which may or may not survive through the very changes, as well as through the way they are implemented.

4. Conclusions

Below there are some proven methods that can facilitate reducing or eliminating resistance:

- Formation and communication of information. It implies an open discussion of ideas and measures, which will help staff to make sure changes are needed before they are made. Different ways of communicating information can be used, such as face-to-face interviews, panel presentations, memorandums and reports;

- Involving subordinates in decision-making enables some staff members who may resist freely expressing their views on these innovations, potential problems and changes;

- Relief and support facilitate employees to adapt to the new environment. For example, a leader can provide emotional support, that is, listen carefully to staff or give them time to rest after a stressful period. Additional training may also be needed to upgrade the skills of staff to cope with the new demands;

- Negotiations ensuring approval for innovation imply that the consent of the resisters is bought with material incentives. For example, the leadership could offer the union a higher

pay or obligation not to dismiss employees; or the leader could get an interesting job if he or she recognises the need for change;

Co-optation means empowering a person capable of resisting change with a leading role in decision-making on innovation and its implementation;

Manoeuvring to reduce resistance to changes means the selective use of information or the establishment of a clear schedule of activities and measures to influence subordinates in a proper manner. For example, one manager may ask another to consider the proposal, since he or she has already received "approval" from the leadership. Although the first manager did not receive this approval from the leadership of the organisation, he or she hopes that the consent of managers of his or her level will further lead to the consent of senior management;

Coercion threatens to be dismissed, to be deprived of promotion, of improvement of professional qualifications, of increase in wages or of an appointment to a new position for the purpose of obtaining consent to changes.

Therefore, any tactic has its own special advantages and shortcomings. Managers should develop the skills to accurately assess the situation and choose the best method.

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МЕНЕДЖМЕНТ ОРГАНІЗАЦІЇ: РОЗВИТОК ТА НАСЛІДКИ КОНФЛІКТНИХ СИТУАЦІЙ

Анотація. Мета. Метою статті є роль розвитку та наслідків конфліктних ситуацій у менеджменті організації. **Результати.** У статті наголошено, що одним із кращих методів керування, що запобігають дисфункціональному конфліктові, є роз'яснення того, які результати очікуються від кожного співробітника та підрозділу. Тут повинні бути згадані такі параметри, як рівень результатів, яких слід досягнути, особи, які надають і одержують різну інформацію, система повноважень і відповідальності, а також чітко визначена політика, процедури та правила. Причому керівник усвідомлює всі ці питання насамперед не для себе, а для того, щоб його підлеглі добре зрозуміли, чого чекають від них у кожній ситуації. З'ясовано, що винагороди можна використовувати як

метод керування конфліктною ситуацією, впливаючи на поведінку людей, з метою уникнення дисфункціональних наслідків. Люди, які роблять свій внесок у досягнення загальноорганізаційних комплексних цілей, допомагають іншим групам організації і намагаються підійти до вирішення проблеми комплексно, повинні заохочуватися подякою, премією, визнанням або підвищенням по службі. Отже, систематичне скоординоване використання системи винагород для заохочення тих, хто сприяє здійсненню загальноорганізаційних цілей, допомагає людям зрозуміти, як їм треба діяти у конфліктній ситуації, щоб це відповідало бажанням керівництва. У складних ситуаціях, в яких різноманітність підходів і точна інформація є істотними для ухвалення рішення, появу протилежних думок треба навіть заохочувати, і керувати ситуацією, використовуючи стиль вирішення проблеми. Інші стилі теж можуть обмежувати або запобігати виникненню конфліктної ситуації, але вони не приведуть до оптимального вирішення питання, тому що не всі точки зору були вивчені однаково ретельно. Дослідження довели, що високоефективні організації в конфліктних ситуаціях використовують стиль розв'язання проблем частіше, ніж малоефективні організації. У таких організаціях керівники відкрито обговорювали різні погляди, не підкреслюючи їх розбіжності, але і не вдаючи, що таких не існує. **Висновки.** Керівництво повинне усвідомлювати велику ймовірність опору змінам і вжити дієвих заходів щодо його запобігання. Наприклад, первинною причиною опору є страх того, що зміни будуть загрожувати наявним соціальним взаєминам. У цьому випадку керівник повинен усвідомлювати наявну в організації систему соціальних відносин, яка може зберегтися або не зберегтися як через самі зміни, так і через спосіб їх здійснення.

Ключові слова: організація, система, підпорядкованість, структурні зміни, владні відносини.

The article was submitted 10.06.2022

The article was revised 01.07.2022

The article was accepted 22.07.2022

UDC 343.137.5: 343.121.5 (4)

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Kaminska, Olexandra (2022). Analysis of applying restorative justice to juveniles in some countries. *Entrepreneurship, Economy and Law*, 4, 84–88, doi: <https://doi.org/10.32849/2663-5313/2022.4.13>

ANALYSIS OF APPLYING RESTORATIVE JUSTICE TO JUVENILES IN SOME COUNTRIES

Abstract. *The aim* of the article is to analyse the application of restorative justice to juveniles in foreign countries. *Research methods.* The work is performed using general scientific and special methods of scientific knowledge: dialectical, historical and legal, formal and logical, methods of hermeneutics, generalisation, comparison, etc. *Results.* The article studies the experience of foreign countries in the context of the introduction of restorative practices in the field of criminal justice. The main goal of restorative justice is to ensure and protect the rights of juveniles who have committed a criminal offense, including the right to a prosperous and dignified existence. Refusal or minimisation of criminal punishment, implementation and effective application of restorative justice are aimed at the realisation of the interests of both the juvenile offender and society. It is emphasized that mediation can be applied to persons both at the pre-trial and at the court stage. It can serve as a waiver of the accusation or a mitigation of punishment. A feature is also the consent of parents or guardians to conduct mediation in relation to a minor. If the latter requires the presence of legal representatives (guardians, custodians) during the reconciliation procedure, such participation must be ensured. As for children who have not reached the age of 15, the participation of such persons in the reconciliation procedure is mandatory and the consent of the child is not required. *Conclusions.* Modern ways of responding to juvenile delinquency in the legal systems of foreign countries are focused on the educational approach, taking into account alternative methods of working with adolescents who have committed offenses. This model is called "restorative justice," that is, a process in which in criminal proceedings against juveniles who have committed offenses, damages may be compensated or otherwise compensated. This can be dialogue, community service, charity, donations, and so on. Most practices involve mediation (reconciliation) between the parties through a mediator.

Key words: justice, restitution, mediation, conflict, indemnification, juvenile, reconciliation.

1. Introduction

Recently, restorative justice has been spoken of quite frequently. Different countries of the world call this process in its own way, but it has the same goal – reconciliation of the parties. Restorative justice has been applied for years in criminal proceedings in the developed world, particularly in juvenile criminal proceedings. This concept envisages the following actions: dialogue between the offender and the victim, reparations, public works, donations and many unique names – "restitution", "transformative justice", "informal justice" etc. At present, restorative justice has many forms of expression – mediation, sentencing circles, a conference of justice and others.

Some aspects of restorative justice were under study by foreign scholars such as Albert Eglash, Howard Zehr, John Braithwaite, Chris Nielsey and others.

The purpose of the article is to analyse the application of restorative justice to juveniles in foreign countries. To achieve this purpose, the following objectives should be accomplished: to consider the concept of restorative justice, which has emerged as an alternative to classical criminal punishment; to analyse the application of restorative juvenile justice in the international arena.

The research methodology includes the use of general scientific and special methods of scientific knowledge: dialectical, historical-legal, formal-logical, hermeneutic methods, generalisation, comparison, etc.

The scientific novelty is that, relying on the review of the world practice of restorative justice in respect of juveniles, the stages of the establishment and development of restorative justice have been identified; the stages of formation of "restorative" programmes, aimed at reconciliation of the victim and the offender,

have been determined; the ways of application of different forms of justice in such countries as Austria, Belgium, Finland and Slovenia have been analysed.

2. Features of restorative justice

The world first heard about the introduction of restitution in criminal proceedings from Albert Eglash, a psychologist who worked with adults and juveniles who had committed criminal offences. In 1950, Albert argued that the justice system lacked humanity and efficiency and that alternative, more effective methods were needed. In the same year, he created the concept of "creative restitution", which was to help the offender find a way to compensate the victims for the effects of his or her actions (Eglash, 1958, p.20-34).

Eglash emphasised that creative restitution has its features: 1) it is a constructive act; 2) it is unlimited; 3) it includes "self-determined" behaviour; 4) it can have a group basis (Eglash, 1958, pp. 619-622). That is, restitution can be described as follows: it is the active behaviour of the offender, implying reparation for the damage suffered and establishing positive contact with the victim. Such activity increases the offender's self-esteem, alleviates guilt and anxiety, and prevents the commission of new offences (Eglash, 1958, pp. 20-34). Individual principles of Albert Eglash's creative restitution were reflected in further scientific research and became the basis for the introduction of restorative justice as such.

In the 1970s, American criminologist Howard Zehr first began to talk about alternative ways to fight crime in the context of restorative justice. In his work *Changing Lenses: A New Focus for Crime and Justice* (Howard Zehr, 2005), justice was considered from two perspectives – punitive and restorative, which became the foundation for the introduction of restorative justice programmes in legal systems (Howard Zehr, 2005).

The establishment and development of restorative justice began in the United States, Canada, the United Kingdom and New Zealand in the 1970s. Then a variety of "restorative" programmes began to form. These are:

1) "Prisoners' Rights and Alternatives to Prisons" (1972) – prisoners' rights protection and assistance with social reintegration after serving their sentence;

2) "Conflict Resolution" – a set of certain methods and principles that provide for the peaceful resolution of conflicts and are based on two principles – care for oneself and others;

3) "The Victim-Offender Reconciliation Program" (VORPs) – holding of meetings to resolve the conflict peacefully through a mediator (Community Justice Alternatives. The Victim-Offender Reconciliation Program, 2000);

4) "The Victim-Offender Mediation" (VOM) – similar to the previous, but also used as an alternative punishment (The Centre for Justice & Reconciliation. The Victim-Offender Mediation, 1974);

5) "Family Group Conferences" (FGC) – also involved family members, friends, acquaintances, etc. This program was applied to juvenile offenders. This trend is currently being developed in the context of juvenile justice (Mark S. Umbreit, 2000, pp. 3-5).

6) Sentencing Circles – aimed at a restorative system for the offender. It was first introduced in Brazil, and is now operational in the United States, Germany, Canada, and the United Kingdom (The Centre for Justice & Reconciliation. Sentencing Circles).

It should be noted that the above-mentioned programmes have marked the beginning of the development of restorative justice worldwide. Today, despite criticism from academics, restorative justice is an effective method of preventing and countering offending.

The implementation of the "restorative" function, which should bring juvenile justice to a new level, is important for modern criminal proceedings in respect of juveniles. The restorative function is aimed at achieving a balance in conflict situations between the victim, the offender and society in order to restore the "distorted" social status of the offender. This enables to form elements of reflection in a juvenile suspect or accused person and ability to assess his or her unlawful actions. Moreover, this reduces the length of the investigation by means of conciliation and compensation, and also reduces the risk of the criminal justice system effect on the juvenile. The restorative function makes it possible to attract the victim to the personality of the juvenile and to take part in the programme for his or her resocialisation.

The restorative model of justice is one of the striking stages in the development of juvenile justice. The basis of this model is an enabling environment for the personal communication of the victim and the offender and the application of alternative methods of punishment to the latter. Therefore, restorative justice does not exist without mediation, which facilitates the process of rehabilitation of a juvenile offender. We propose to consider the practice of applying various forms of restorative justice on the example of individual countries of the world.

3. Restorative justice for minors in some countries of the world

In Austria, mediation between the offender and the victim (Tatausgleich) has been legislated since 1988 for juveniles, and since 2000 for adults. It is one of the ways of exemption from

criminal liability at the pre-trial or trial stage (Gombots, 2015, pp. 19-25).

Mediation is usually used by the prosecutor as a ground for refusing to prosecute. Mandatory requirements for its application are: the offence must not be grave (or misdemeanour), all circumstances must be clarified, the maximum punishment must not exceed five years.

One of the conditions for mediation is that the offender must be prepared to bear responsibility for the act. It is also characteristic that the consent of the victim is not required during mediation with juvenile offenders. The legal effects of the procedure are assessed by the prosecutor, but if the offender and the victim are reconciled, he can drop the charges (which will be the legal effect). Therefore, the role of the prosecutor in mediating between the offender and the victim is crucial. It is up to him to decide whether or not mediation is meaningful.

For mediation, all cases are referred to the non-governmental organisation NEUS-TART, which operates under the supervision of the Ministry of Justice. Mediators (conciliators) apply different methodological techniques to each case, and their work is characterised by close cooperation with prosecutors and judges.

It should be noted that the rate of recidivism among juveniles after mediation is 15%, while after court decisions it is 41%. This certainly demonstrates the effectiveness of the system. Currently, together with mediation, so-called rehabilitation conferences are applied to juveniles in Austria.

Restorative justice in Belgium began in the late 1980s. The juvenile justice system in this country focuses on the education and protection of juveniles. These positions are expressed in the Youth Justice Act (The Youth Justice Act, 1965). In general, the modern approach to justice in Belgium is to help the juvenile to comprehend responsibility and to understand that his or her wrongful acts have violated the rights of the victim.

Rehabilitation conferences have also been used in Belgium (since 2006). They include many participants, both on the part of the victim and the offender and representatives of the authorities (police, social workers, teachers, etc.). Now "circles of reconciliation" have been introduced on an experimental basis. Special funds had also been established in some regions of Belgium to enable juveniles who had committed offences to pay compensation to victims. Such funds were allocated only to juveniles who were unable to make reparation. The procedure is as follows: the juvenile voluntarily works for a limited number of hours. Payment for his or her work is transferred through the fund directly to the victim.

Belgium is the country where restorative justice (in various forms) is possible at all stages of criminal proceedings. The gravity of the act is not taken into account, and the procedure is available anywhere in the country and financed by the authorities.

The Finnish experience started that mediation between the victim and the offender on an experimental basis in 1983 and was used continuously in the 1990s (Lappi-Seppälä, 2015, pp. 243-266). First, the idea of using mediation as an alternative to justice in criminal proceedings (without its application in juvenile justice) arose. But after a while it began to be used in different areas of public life such as in the resolution of conflicts in the family, school, etc. The basic principles of mediation in criminal proceedings in Finland are: 1) Mediators are ordinary citizens who have been trained; 2) The basis is *Restorative justice* ideology; 3) Fully voluntary procedure; 4) It may be a reason for not charging or mitigating punishment; 5) The nature of the offence committed, the relationship between the parties and other factors shall be taken into account; 6) It shall not apply to "family offences" (domestic violence) and crimes against juveniles; 7) If the victim is under 18 years of age, mediation is prohibited (Ervasti, 2014, p. 26).

In the case of juvenile offenders, mediation may be applied to them at both the pre-trial and trial stages. It may serve as a renunciation or mitigation of a sentence. A specificity is the consent of parents or guardians to the mediation of a juvenile. If the latter requires the presence of legal representatives (guardians, trustees) during the conciliation, such participation should be ensured. In respect of children who have not attained 15 years, the participation of such persons in the reconciliation procedure is compulsory and the consent of the child is not necessary.

Mediation has been conducted in Slovenia since 1999. It can be applied in pre-trial investigation (priority) and in court. It should be noted that mediation can be applied by the prosecutor as a ground of exemption from liability, while mediation is applied by the court as a punishment in proceedings against juveniles (Filipčič, 2015, pp. 849-874). At the pre-trial stage, the prosecutor may apply mediation in proceedings against juvenile offenders only if the penalty is five-year imprisonment (three for adults). Moreover, as educational measures, the court may appoint the fulfilment of certain obligations ("authorised" and "prohibited"). These conditions are provided for by the Criminal Code and include, inter alia, the obligation to achieve reconciliation with the victim (equivalent to mediation) (Filipčič, 2015, pp. 849-874).

In addition, the elements of restorative justice are manifested in actions such as reparations and public works. Compensation may take the form of forgiveness, payment of a certain amount, performance of certain gratuitous works, charity, donation, etc. Public works are characterised as a way of educational influence. But a juvenile must consent to such work. At the pre-trial stage, the duration of the work is 60 hours (within 3 months), and at the trial – 120 hours (within 6 months) (Filipčič, 2015, 849-874).

4. Conclusions

Therefore, in the legal systems of foreign countries, modern ways of responding to juvenile delinquency are focused on the educa-

tional approach, taking into account alternative methods of working with adolescents who have committed an offense. Most practices involve mediation (reconciliation) between the parties through a mediator. Mediators have the task of removing the juvenile from the system of punitive proceedings, preventing the commission of new crimes and gradually socialising the child. Such programmes are carried out only when the offender has admitted the illegal act and is willing to make reparation (in any form). The experience of Belgium in reconciling the parties, regardless of the gravity of the offence, is noteworthy. Moreover, the Finnish experience of involving the parents of a juvenile offender in mediation is valuable.

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АНАЛІЗ ЗАСТОСУВАННЯ ВІДНОВНОГО ПРАВОСУДДЯ ЩОДО НЕПОВНОЛІТНІХ У ДЕЯКИХ КРАЇНАХ СВІТУ

Анотація. *Метою* статті є аналіз застосування відновного правосуддя щодо неповнолітніх у зарубіжних країнах. *Методи дослідження.* Робота виконана з використанням загальнонаукових та спеціальних методів наукового пізнання, таких як: діалектичний, історико-правовий, формально-логічний, методи герменевтики, узагальнення, порівняння тощо. *Результати.* Стаття присвячена вивченню досвіду зарубіжних країн у контексті впровадження у сферу кримінального судочинства відновних практик. Головна мета відновного правосуддя спрямована на забезпечення та захист прав неповнолітніх, що вчинили кримінально каране діяння, зокрема права на благополуччя та гідне існування. Відмова від застосування кримінального покарання або його мінімізація, впровадження та ефективне застосування відновного правосуддя спрямовані на реалізацію як інтересів дитини-правопорушника, так і суспільства загалом. Наголошено, що медіація може застосовуватись до осіб як на досудовому, так і на судовому етапі. Вона може слугувати відмовою від обвинувачення або ж пом'якшенню покарання. Особливістю також є згода батьків або опікунів на проведення медіації щодо неповнолітнього. Якщо останній вимагає присутності законних представників (опікунів, піклувальників) під час проведення процедури примирення, то така участь повинна бути забезпечена. Що ж стосується дітей, які не досягли 15-річного віку, то участь таких осіб у процедурі примирення є обов'язковою і згоди дитини не потребує. **Висновки.** Сучасні способи реагування на злочинність неповнолітніх у правових системах зарубіжних країн орієнтовані на виховний підхід з урахуванням альтернативних методів роботи з підлітком, який вчинив правопорушення. Таку модель називають «відновним правосуддям» – це процес, під час якого у кримінальних провадженнях щодо неповнолітніх, які вчинили правопорушення, завдані збитки можуть бути відшкодовані або компенсовані іншим чином. Це може бути діалог, виконання громадських робіт, благодійність, пожертвування тощо. Більшість практик передбачає медіацію (примирення) між сторонами за допомогою посередника або ж медіатора.

Ключові слова: правосуддя, реституція, медіація, конфлікт, відшкодування збитків, неповнолітній, примирення.

The article was submitted 14.06.2022

The article was revised 05.07.2022

The article was accepted 25.07.2022

UDC 343.133:343.155(477)

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PROCEDURE FOR PREPARATION AND SERVICE OF WRITTEN NOTIFICATION OF SUSPICION

Abstract. Purpose. The purpose of the Article is to characterise the procedure for preparation and service of written notification of suspicion. **Results.** The Article formulates a criminal procedural model for notifying a person of suspicion using the case law of the European Court of Human Rights, representing a set of legal means for determining the procedure for notification of suspicion; procedure for the preparation and service of a written notification of suspicion by the prosecutor or investigator or inquiry officer, with the agreement of the prosecutor; appeal of a notification of suspicion in criminal proceedings and affecting criminal procedural relations. The algorithm for preparing and serving a written notification of suspicion is as follows: First, the investigator (inquiry officer) and/or prosecutor, after entering information in the Unified Register of Pre-trial Investigations, shall collect evidence and establish the circumstances to be proved in criminal proceedings, including the involvement of a specific person in a criminal offence, then, relying on the information obtained and evidence, makes the decision to formalise suspicion, which should ultimately correspond to such attributes as: objectivity of presentation of factual data; logic; legality; reasonableness; motivation; legal clarity; after that calculates organisational and tactical aspects and directly serves notification against the signature of the person or with the use of video fixation and a reminder of the procedural rights and duties of the suspect. The final stage involves the subsequent verification of suspicion, the circumstances of the criminal proceeding and the search for new evidence, which may lead to the notification of a change in suspicion previously notified. **Conclusions.** It is concluded that the following procedural algorithm for notifying a person of suspicion consisting of certain investigator/prosecutor's actions at each stage is proper: first, collection of evidence; establishment of circumstances to be proved and of the involvement of a person in the commission of a criminal offence; second, formation of suspicion on the grounds of the information received, which includes factual ("sufficiency of evidence") and legal ("the commission of a criminal offence by a certain person") component; third, the formalisation of suspicion, its procedural formalities; forth, explaining of the rights to the suspect; fifth, subsequent verification of suspicion.

Key words: suspect, notification of suspicion, criminal procedure, criminal proceedings, pre-trial investigation.

1. Introduction

Article 3 of the Constitution establishes the initial basis of a democratic social State governed by the rule of law: the individual, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value; to affirm and ensure human rights and freedoms is the main duty of the State. In other words, the State has an obligation not only to recognise but also to guarantee and ensure respect for human and civil rights and to assist them in the realisation of their individual rights, the key ones thereof are enshrined in Section II of the Constitution of Ukraine, which is one of the aspects of the exercise of the law enforcement function (Constitution of Ukraine, 1996).

Attempts to reform the criminal procedure legislation of Ukraine were not in vain; and the Criminal Procedure Code (CPC) of Ukraine, already adopted in 2012, directed the activities of the pre-trial investigation bodies and the Prosecutor's Office not only to the prompt, full and impartial pre-trial investigation of criminal offences, but also to an enabling environment for the effective resumption of social relations disrupted by the criminal offence, and established a framework to safeguard the rights and legitimate interests of participants in criminal proceedings. The analysis of the innovations of the current CPC of Ukraine requires focusing on the concept of notification of suspicion to a person, which replaced the system of legislative provisions on

the accusation of a person at the stage of pre-trial investigation.

Since then, the notification of suspicion to a person has a special place in the structure of the stages of pre-trial investigation, because it is the beginning of the prosecution of a person and determines the further direction of criminal proceedings. For example, the number of criminal offences, during proceedings thereof a person was notified of suspicion, in 2021 was 167,098, which is 2.7% less than the year before (in 2018, +24.5%; in 2019, -3.3%; in 2020, -10.5%). However, the share of acts entailing the notification of suspicion to a person among the total number of assaults reported during the period under review increased to 46.3 % (in 2018, 37.9 %; in 2019, 39.4 %; in 2020, 38.7%). The highest percentage of criminal offences entailing the notification of suspicion to a person was reported in Zakarpattia, Khmelnytsk, Volyn, Ivano-Frankivsk, Vinnytsia and Kyiv Oblasts (55-64%), and the smallest in Kyiv City (32.6%), Chernihiv, Zaporizhzhia and Donetsk Oblasts (39-41%) (Website of the Office of the Prosecutor General of Ukraine, 2021).

Therefore, according to the Office of the Prosecutor General of Ukraine, monthly about 15 thousand suspicions of committing criminal offenses are notified. At the same time, pre-trial investigation bodies and the Prosecutor's Offices often deviate from the procedural form defined by the criminal procedure law in the procedure for notifying a person of suspicion on the grounds specified in Article 276, part. 1, of the CPC of Ukraine, which entails only unlawful and ungrounded restriction of the rights of participants in criminal proceedings, but furthermore call into question the possibility of achieving the objectives of criminal proceedings in general.

2. Specificities of the procedure for preparing a written notification of suspicion

Despite significant achievements in reforming criminal procedure legislation and bringing it closer to European standards, a number of problematic issues related to the procedural activities of the investigator, prosecutor during the notification of suspicion to a person remain relevant, requiring further scientific understanding and identification of ways to overcome them (Atamanov, 2021, p. 46).

The process of preparing and serving a written notification of suspicion can be presented in the form of certain stages. *In the first stage*, the investigator (inquiry officer) and/or prosecutor, after entering information in the Unified Register of Pre-trial Investigations (URPI) and commencing pre-trial investigation, collect evidence in accordance with the provisions of the CPC of Ukraine, estab-

lishing that the circumstances to be proved in criminal proceedings, including the involvement of a particular person in the commission of a criminal offence. This period is not limited to special terms, except for the requirement by Article 28, para. 1, of CPC of Ukraine, according to which, during criminal proceedings, each procedural act or decision shall be performed or taken within reasonable time (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 463).

The second stage involves the formulation of suspicion on the ground of the information received. In this regard, O. Kaplina argues that the document on the notification of suspicion is a special type of procedural notification in criminal proceedings, i.e. a procedural document which is the result of intellectual activity of specially authorised persons (investigator, prosecutor), which assesses the suitability and admissibility of pre-trial evidence and may have legal effects for the parties to the proceedings if the requirements regarding terms, procedure and parties to the service are met (Kaplina, 2017).

The decision to notify a person of suspicion did not mean that the purpose of the pre-trial investigation had been achieved and could be completed. The suspect shall also be questioned about the notification of suspicion, his/her testimony shall be verified and, if necessary, other procedural steps shall be taken. If, in the light of the verification of the suspect's testimony and other evidence obtained in the course of further investigation, evidence for inferring the guilt of the suspect may be insufficient or his/her innocence have been established, the criminal proceedings shall be terminated on grounds envisaged under Article 284 CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012).

Thus, the notification of suspicion requires two components:

- 1) Actual ("sufficiency of evidence");
- 2) Legal ("the commission of a criminal offence by a certain person").

Therefore, from criminal law perspective, suspicion involves structural elements since the change of this element entails a change in the content of suspicion, which has criminal procedural effects. The structure of suspicion should include: 1) the factual circumstances of the criminal offence of which a person is suspected; 2) the legal classification of the criminal offence (Article, part of Article of the Law of Ukraine on criminal liability); 3) substantive characteristics of the offender; 4) the extent of damage caused by the criminal offence.

In addition, the circumstances that characterise a person, aggravate or mitigate punishment, may be attributed to the structure of suspicion, but they are optional at the time of the notification and may be established after

suspicion has been notified and specified in the indictment (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 464).

3. Specificities of the procedure for serving a written notice of suspicion

The third stage is the formalisation of suspicion, its procedural formalisation. In other words, the investigator, with the agreement of the prosecutor, or prosecutor draws up the corresponding procedural document directly, after which the person is notified of suspicion.

The CPC of Ukraine does not provide an exhaustive list of procedural actions that may be taken during pre-trial investigations, but clearly defines the forms of their recording, the most common of which is the record.

The service of the notification of suspicion may be considered as a procedural act whereby a person is informed of a procedural decision taken in respect of him/her – written notification of suspicion. Moreover, the specificity of a procedural action such as the serving of notifications, including a notice of suspicion, is the absence of the need to further record its results in the record, after all, the fact of receiving the notification is confirmed by the personal signature of the person directly in the notification. However, this does not preclude the possibility that a written notice of suspicion may be served by technical means in accordance with Article 107 of the CPC of Ukraine (Hladun, 2018).

The notification of suspicion must contain the following information (the CPC of Ukraine, art. 277): 1) The last name and position of the investigator, prosecutor, notifying; 2) Personal details of the person (last name, first name, patronymic, date and place of birth, place of residence, nationality) who is notified of suspicion; 3) The designation (number) of a criminal proceeding, under which the notification is made; 4) The content of suspicion; 5) The legal classification of the criminal offence of which the person is suspected, indicating the article (part of the article) of the Law of Ukraine on criminal liability; 6) A brief description of the facts of the criminal offence of which the person is suspected, including the time, place of commission and other significant circumstances known at the time of the notification of suspicion; 7) The rights of the suspect; 8) The signature of the investigator, prosecutor serving the notification (Criminal Procedure Code of Ukraine, 2012).

Consequently, the notification of suspicion is characterised with: objectivity in the presentation of the facts; logic; legitimacy; reasonableness; motivation; legal clarity in the formulation of suspicion (Faraon, 2016, pp. 105–106).

The law does not clearly specify when the investigator (inquiry officer) and/or pros-

ecutor shall notify the person of suspicion if there is sufficient evidence to do so, giving the prosecution the right to decide the matter independently, guided by internal conviction. It should be noted, however, that an artificial delay in the notification of suspicion limits not only the procedural but also the constitutional rights of a person who does not acquire a timely and adequate legal status (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 465).

It should be noted that there is some inconsistency on the part of the law-maker that, on the one hand, establishes the rule that suspicion shall be notified if a measure of restraint is enforced against a person (the CPC of Ukraine, art. 276, part 1, para. 2), on the other hand, it is possible to enforce a preventive measure only against the suspect at the pre-trial stage (the CPC of Ukraine, Art. 177, part 1; art. 179, part 1; art. 179, part 1; art. 180, part 1; art. 181, part 1; art. 182, part 1, art. 183, part 1). It seems that to resolve this logical and content defect of the criminal procedure rules the priority should be on Article 177, part 2, of the CPC of Ukraine, which stipulates that the basis for the application of a preventive measure is, among other, “the existence of a reasonable suspicion of committing a criminal offence by a person” (Tatsii, Hroshevyi, Kaplina, Shylo, 2013, p. 464).

Therefore, before applying to the investigating judge for a preventive measure, the investigator or prosecutor shall notify the person of suspicion. In essence, this ground for notifying suspicion is close to that contained in part 1, para. 3, of Article 276 of the CPC of Ukraine, since the law prohibits the investigator or prosecutor from initiating the use of a preventive measure without the grounds provided for in the CPC of Ukraine (art. 177 of the CPC of Ukraine). In addition, the investigating judge, deciding on the use of preventive measures, except for the existence of the risks specified in Article 177 of the CPC of Ukraine, on the grounds of the materials provided by the parties to the criminal proceedings, is obliged to assess all the circumstances, including the significance of evidence available that the suspect has committed a criminal offence. That is, at this stage, the investigator and/or the prosecutor should have already collected sufficient evidence to suspect a person of having committed a criminal offence, which makes it possible to initiate a preventive measure against him/her.

According to Article 278, part 1, of the CPC of Ukraine, a written notification of suspicion shall be served the day on which it has been drawn up by the investigator or public prosecutor. A written notification of suspicion as to having committed a crime shall be served to detained person within 24 hours after he has

been detained (the CPC of Ukraine, art. 278, part 2). If a person is not served with a notification of suspicion after twenty-four hours from the moment of detention, such person is subject to immediate dismissal (the CPC of Ukraine, art. 278, part 3). If it is not possible for the investigator or the prosecutor directly to serve a person with a notice of suspicion, such service may take place in the manner provided for in Chapter 6 of the CPC of Ukraine "Notification" (art. 278, part 1, art. 111, 112 of the CPC of Ukraine) (Criminal Procedure Code of Ukraine, 2012).

For example, in the case of the temporary absence of a person from his or her place of residence, the notification of suspicion for him or her is served against the receipt of an adult member of the person's family or another person living with him or her, the operating organisation at the place of residence of the person or the administration at his/her place of work. A person in custody may be notified of suspicion through the administration of the place of detention. The notification of suspicion to a juvenile is usually served to his or her father, mother, adoptive parent or legal representative, and in case of a disabled person, to a capable guardian (Blahuta, Hutsuliak, Dufeniuk, 2017, p. 411).

Alternative procedure for the notification of suspicion is permitted only if the circumstances of criminal proceedings so require. In the event of a decision to conduct a special pre-trial investigation, the notification of suspicion to the person, charged with a criminal offence, is sent to the last known place of his/her residence or stay and shall be published in the national media and on the official websites of the bodies conducting pre-trial investigation (Blahuta, Hutsuliak, Dufeniuk, 2017, p. 414). From the moment of publication of a notification of suspicion in the nationwide mass media, the suspect is deemed to have been duly acquainted with its content. In proceedings carried out as part of a special pre-trial investigation, a copy of the notification of suspicion to be handed over to the suspect shall be sent to the counsel.

Among the decisions, in which these legal conclusions are applied in practice, we can highlight the decision of the investigating judge of the High Anti-Corruption Court of 16 January 2020 in case 991/88/20 (proceeding 1-ks/991/89/20), which states: "...on September 28, 2017, the Prosecutor General's Office of Ukraine addressed to PERSON_2 living at ADDRESS_1 sent a notice of suspicion to PERSON_2 in criminal proceeding 420160000003490 under Art. 255, 3682, 369 of the CC of Ukraine of September 28, 2017 as a suspect. On the same day Sep-

tember 28, 2017, the above-mentioned mails were not served during delivery and returned by mail to the Prosecutor General's Office of Ukraine, which is confirmation of the non-receipt of the notification of suspicion of September 28, 2017 by PERSON_2 and PERSON_1. Therefore, the investigating judge concluded that PERSON_1 and PERSON_2 were not notified of suspicion in the manner prescribed by the provisions of Article 278, part 1, and Article 135, part 2 of the CPC of Ukraine, and therefore, as of the day of the issuance of the appealed decision of the investigator to stop the pre-trial investigation, they have not acquired the status of suspects in criminal proceeding..." (The decision of the investigating judge of the High Anti-Corruption Court, 2020).

Therefore, the notification of suspicion should be deemed complete and the person to have acquired the status of a suspect from the moment of the delivery of the mail, rather than the dispatch of such notification by the investigator. The confirmation fact that a person has received the notification of suspicion or has been informed of its contents in other way shall be confirmed by means defined in Article 136 of the CPC of Ukraine.

In the fourth stage, the rights of the suspect are explained, which is an indispensable mandatory step in the procedure of the notification of suspicion. The rights of the suspect provided for in Article 42 of the CPC of Ukraine shall be explained after the person has been directly notified of suspicion by the prosecutor, investigator or other authorised official.

In order to eliminate duplicate documents (for example, a list of the suspect's rights in a written notification of suspicion to the person and a pamphlet listing procedural rights and duties of the suspect), an unjustified, purely formal and extra-procedural increase in the workload of pre-trial investigation bodies and the Public Prosecutor's Office, we propose the provision of Article 42, part 8, of the CPC of Ukraine to be worded as follows: "*The suspect or accused person shall be served a pamphlet listing his/her procedural rights and duties be informed promptly of them by the person making such notification, certified by the signature of the suspect, the accused and the person notifying suspicion. The pamphlet listing procedural rights and duties of the suspect is made in two copies: the first one is handed to the suspect, the accused, the second one is attached to the materials of criminal proceedings*", while para. 7 of Article 277 of the CPC of Ukraine should be deleted.

A person is notified of suspicion of having committed a criminal offence in the national language or in any other language in which he

or she has sufficient knowledge to understand the essence of suspicion of having committed a criminal offence (art. 29, part 1, of the CPC of Ukraine). If the suspect does not understand the language of the proceeding, the notification of suspicion shall be served in a translation into his/her native language or the language of which he or she has command (the CPC of Ukraine, art. 42, part 3, para. 18).

The fifth stage is related to the subsequent verification of suspicion. Suspicion is verified when it is proved that it occurs in accordance with the rules of the CPC of Ukraine and under adversarial conditions, since there is a defence party who performs the relevant function.

In the course of the pre-trial investigation, new evidence may be obtained after notification of the suspect, including the need to change the person's notification of suspicion. Moreover, evidence already known may be reassessed. If grounds arise for the notification of new suspicion or change in suspicion previously notified, the investigator is obliged to perform the actions of handing written notification to the person of suspicion, provided for in Article 278 of the CPC of Ukraine. If the prosecutor has served a notification of suspicion, the prosecutor exclusively has the right to report the new suspicion or to change the suspicion previously notified.

In this context, it is necessary to clarify that the change of the notification of suspicion in the broad sense is: 1) failure to confirm part of the notification of suspicion; 2) supplement to the notification of suspicion. Suspicion may be refuted, which entails the termination of criminal proceedings against the suspect or be confirmed and transformed into an accusation, which, unlike suspicion, is not an assumption, but an allegation that a certain person has committed an act, provided for in the Criminal Code of Ukraine and formalised in an indictment, which is approved by the prosecutor and sent to the court.

4. Conclusions

Therefore, we propose the procedural algorithm for notifying a person of suspicion consisting of certain investigator/prosecutor's actions at each stage: first, collection of evidence; establishment of circumstances to be proved and of the involvement of a person in the commission of a criminal offence; second, formation of suspicion on the grounds of the information received, which includes factual ("sufficiency of evidence") and legal ("the commission of a criminal offence by a certain person") component; third, the formalisation of suspicion, its procedural formalities; forth, explaining of the rights to the suspect; fifth, subsequent verification of suspicion.

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ПРОЦЕСУАЛЬНИЙ ПОРЯДОК ПІДГОТОВКИ ТА ВРУЧЕННЯ ПИСЬМОВОГО ПОВІДОМЛЕННЯ ПРО ПІДОЗРУ

Анотація. Мета. Метою статті є характеристика процесуального порядку підготовки та вручення письмового повідомлення про підозру. **Результати.** У статті сформульовано кримінальну процесуальну модель механізму повідомлення особі про підозру з використанням практики Європейського суду з прав людини, що являє сукупність правових засобів, які визначають процесуальний порядок здійснення повідомлення про підозру; процесуальний порядок підготовки та вручення письмового повідомлення про підозру прокурором або слідчим чи дізнавачем за погодженням з прокурором; оскарження повідомлення про підозру у кримінальному провадженні та вплив на кримінальні процесуальні відносини. Алгоритм підготовки та вручення письмового повідомлення про підозру виглядає так: насамперед слідчий (дізнавач) та/або прокурор після внесення відомостей до Єдиного реєстру досудових розслідувань здійснюють збирання доказів, встановлюють обставини, які підлягають доказуванню у кримінальному провадженні, у тому числі й щодо причетності конкретної особи до вчинення кримінального правопорушення, потім за результатами отриманої інформації та здобутих доказів приймають рішення у формалізації підозри, яка у кінцевому вигляді має відповідати таким ознакам, як: об'єктивність викладення фактичних даних, логічність, законність, обґрунтованість, вмотивованість, юридична чіткість; після чого прораховують організаційно-тактичні аспекти та безпосередньо здійснюють підпис особи або із застосуванням засобів відеофіксації разом із пам'яткою про процесуальні права та обов'язки підозрюваного вручення такого повідомлення. Заключний етап пов'язаний із подальшою перевіркою підозри, обставин кримінального провадження та пошуком нових доказів, що може мати наслідком повідомлення про зміну раніше повідомленої підозри. **Висновки.** Зроблено висновок про доцільність наступного процесуального алгоритму повідомлення особі про підозру, що складається з визначених дій слідчого/прокурора на кожному з етапів: 1-й – збирання доказів; встановлення обставин, які підлягають доказуванню й причетності особи до вчинення кримінального правопорушення; 2-й – безпосереднє формування підозри на підставі отриманої інформації, яке включає фактичний («достатність доказів») та юридичний («вчинення кримінального правопорушення певною особою») складники; 3-й – формалізація підозри, її процесуальне оформлення; 4-й – роз'яснення прав підозрюваному; 5-й – подальша перевірка підозри.

Ключові слова: підозрюваний, повідомлення про підозру, кримінальний процес, кримінальне провадження, досудове розслідування.

The article was submitted 14.06.2022

The article was revised 05.07.2022

The article was accepted 25.07.2022

UDC 349.2

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SOCIAL GUARANTEES FOR PERSONNEL OF THE STATE SERVICE OF SPECIAL COMMUNICATIONS AND INFORMATION PROTECTION OF UKRAINE: PRACTICAL IMPLEMENTATION

Abstract. Purpose. The purpose of the article is to study the issue of the practice of social guarantees for personnel of the State Service of Special Communications and Information Protection of Ukraine.

Results. The author characterises one of the most important concepts of law related to social guarantees of persons and citizens employed in state authorities. The variety of options for a certain legal status, which determines the nature and content of the legal relationship between the employer and the employee, makes the ways and methods of social security of the corresponding category of persons multivariate. In current context, it should be noted that guaranteeing, including the social security of the personnel of the State Service of Special Communications and Information Protection of Ukraine, is a priority and the most important, essential in recognising the high level of democracy and sustainability of the processes of proper compliance and ensuring the rights and freedoms of man and a citizen. It is proved that the social guarantees for the personnel of the State Service of Special Communication and Information Protection of Ukraine are prominent among the provisions of the legislation of Ukraine and are duly provided therein. However, the author argues that the set of norms and provisions of the legislation of Ukraine regarding their practical implementation is ambiguous, and in modern conditions it especially needs a comprehensive scientific and theoretical analysis and improvement, contributing to strengthening the legal status of these persons in general. **Conclusions.** The author determines the need to further strengthen the basic elements of the mechanism for guaranteeing rights and freedoms of man and of the citizen of social orientation by supplementing Ukrainian laws and by-laws with elements that simplify access to the relevant social benefits. An important issue is also the need to codify the guarantees of social rights and freedoms of the personnel of state authorities according to the criteria of the form of employment: whether it is a public service, or a military service, although this aspect of practical implementation of the above-mentioned is rather controversial. Further research based on the key areas formulated by the author in the conclusions to the article is proposed to be focused on a more thorough analysis of the main problematic issues of law application of provisions that have a social-guarantee content, and the use of relevant materials in the drafting of provisions and laws, making relevant proposals to the lawmakers.

Key words: social guarantees, State Service of Special Communications and Information Protection, rights and freedoms, implementation, social rights, law application.

1. Introduction

Rights and freedoms of man and of the citizen are the main guidelines for making public policy, in particular legislative one. Rights and freedoms of man and of the citizen are ensured by means of their guarantee, since it is the concept of guarantee that enables to use

them in everyday life by all relevant actors. Therefore, the practice of law application of the relevant provisions and the mechanism noted above are important for the general functioning of the corresponding coordinate system.

From this perspective, the importance of adaptation to modern practice of law appli-

cation and bringing into line the provisions of Ukrainian legislation, which provide the possibility of access of a particular circle of citizens to social rights granted to them and their guarantees, and in view of the complicated geopolitical situation and the important role and place of the State Service of Special Communications and Information Protection of Ukraine, scientific development of key problems is critical.

Moreover, in the context of the relevancy outlining, it is important that the competence of the service is to ensure cyber security in Ukraine, to control the protection of information, defined by the legislation of Ukraine as such that requires it, to ensure the functioning of the special communication system (Law of Ukraine On the State Service of Special Communications and Information Protection of Ukraine, 2006). It should be noted that the issues related to the legal application are dynamic in their content, that is why they never lose scientific relevance and novelty and require systemic research. This allows to form a perspective on the need to clarify the mechanism for the legal implementation of the above theoretical constructions.

The purpose of the article is to study the issue of the practice of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine, which, in our opinion, requires solving a number of research tasks, such as: 1) to provide theoretical and legal characteristics of the concept and content of social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine; 2) to clarify the general procedure and structure of the mechanism of law application and implementation of theoretical and regulatory mechanisms for guarantee; 3) to identify a number of problematic issues on the basis of the analysed materials and to suggest ways of their possible solution.

The object of the article is social relations in the sphere of guaranteeing rights and freedoms of man and of the citizen to employees (officials) of the state authorities of Ukraine.

The subject matter of the study is the mechanism for ensuring in practice social guarantees for the personnel of the State Service of Special Communications and Information Protection of Ukraine.

2. Social and legal security of military personnel

The mechanism for social guarantee and ways of its legal application are systematically studied by scientists and practitioners, since it directly affects the level of ensuring rights and freedoms of man and of the citizen. However, the characteristic of any theoretical

and legal concept, which has a comprehensive character, should be started with interpretation of individual definitions and concepts that characterise the corresponding process fragmentarily.

For example, V. Palamarchuk argues that social guarantees are the monetary equivalent of the natural consumption of market and public goods, guaranteed by the state to citizens in view of their social expectations and economic opportunities. This allows the population to fully satisfy social interests and thus achieve the proper level of social security in the country. Some scientists generally define social security policy through the creation of a system of social guarantees (Palamarchuk, 1996). According to the Constitution, several types of social security are defined, as follows: mandatory social insurance, establishment of a network of institutions of caring for disabled persons; conditions, created by the state, enabling every citizen to build, purchase, or rent housing; state financing of health protection, medical care and medical insurance, etc. (Tatsii, 2011).

Moreover, the basic categories, provided in the text of the Constitution, are embodied in the sectoral legislation of Ukraine and are fragmented in a number of social and legal processes, contributing to the launch of listed algorithms for implementing theoretical opportunities for social benefits.

However, it should be noted that the issues related to the legal application of social benefits of both military and other employed persons in the state authorities, for example, the State Service of Special Communications and Information Protection of Ukraine, are ambiguous, since they imply intertwined norms and provisions concerning public officials, as well as those provisions of laws and by-laws that have legal force in relation to military personnel.

According to S. Sytniakivska, social and legal protection of military personnel is the activity of the state aimed at establishing a system of legal and social guarantees that ensure constitutional rights and freedoms, meet material and spiritual needs of military personnel in accordance with their specific type of service, status in society, support of social stability in military environment (Sytniakivska, Khlyvniuk, 2014).

In addition, scientists often classify the concept of social security, in accordance with the legislation of Ukraine, by the purpose of its individual areas into those aimed at increasing the social security of current military personnel, in view of what responsible position they occupy, and those aimed at covering the basic expenses, in particular treatment in case of complete, partial or temporary loss

of working capacity, as well as in other cases provided by law.

In his studies, D. Makovskyi argues that the personnel of the State Service of Special Communications and Information Protection of Ukraine are also subject to social guarantees, considering the fact that the relevant persons, according to the regular schedule and positions occupied, are directly military personnel (Makovskyi, 2021). Due to right of the personnel of the State Service of Special Communications and Information Protection of Ukraine to several types of social guarantees, which, first of all, are aimed at granting access to social benefits on the principle of institutional affiliation of these persons to the specified service (the key is the fact that they are in labour relations with it), the number of problematic issues of their realisation increases, since, in our opinion, the provision of social rights is influenced by the relevant guarantees scattered in the legal regulations of Ukraine.

3. The regulatory and legal framework for social and legal security of military personnel of the State Service of Special Communications and Information Protection

The social and legal security of military personnel of the State Service of Special Communications and Information Protection of Ukraine and members of their families is provided in accordance with the Law of Ukraine "On Social and Legal Protection of Servicemen and Members of Their Families" (Law of Ukraine On Social and Legal Protection of Servicemen and Members of Their Families, 1991). According to this Law, the procedure for the exercise of the right of servicemen to rest, the procedure for basic and additional holidays, providing free medical care and sanatorium treatment and rest, as well as the procedure for provision of residential premises are also defined. The law has repeatedly amended the guarantees of the rights and freedoms of military personnel, including prevention of the abolition or narrowing of their content and scope in the process of adopting new laws or amending existing ones (Makovskyi, 2021). Furthermore, it is noted that this service creates educational, medical, sanatorium-resort and other establishments, research and production establishments. The State Service's management covers state enterprises activities thereof are related to ensuring the fulfilment of the tasks assigned to it (Law of Ukraine On the State Service of Special Communications and Information Protection of Ukraine, 2006). Therefore, the corresponding regulation of the legislation of Ukraine forms the general structure of not only guaranteeing social rights and freedoms of its employees, but also a special and personified cycle

of their implementation, since medical services, sanatorium-resort treatment and other types of social security, connected with medicine, have a special "departmental" character, which mainly positively affects these legal relations.

Scientists and researchers argue that a number of legal regulations of Ukrainian law are directly contradictory with others, excluding provisions related to social and legal provision of military personnel and members of their families (Law of Ukraine On Preventing a Financial Disaster and Creating Prerequisites for Economic Growth in Ukraine, 2014). However, it should be noted that such changes are legally ineffective, since, according to the Constitution, it is determined that the changes made to the legislation of Ukraine cannot reduce the real rights and freedoms of man and of the citizen, their volume. In addition, a positive element of the structure of social guarantee in this respect is Decision 6-rp/2007 by the Constitutional Court of Ukraine of July 9, 2007, according to which it is determined that social guarantees have direct relationship with the relevant constitutional law and cover all persons and citizens in Ukraine, without exception, who have such opportunities in accordance with the legislation of Ukraine (Decision of the Constitutional Court of Ukraine, 2007).

Scientist L. Medvid also emphasises the above-mentioned and proves that the current rights and freedoms of military personnel (namely, such legal status in our understanding has the personnel of the State Service of Special Communications and Information Protection of Ukraine) cannot be restricted by any decisions, since their presence, stability of the functioning and constancy of statement ensure sustainability of the state's defence capacity and is directly linked to the stable activities of the entire security and defence sector of Ukraine (Medvid, 2016).

4. Conclusions

Thus, relying on the perspectives and opinions of researchers and scientists, norms and provisions of the legislation of Ukraine (provided for both in the Constitution and in by-laws), as well as outlined basic problems related to rights and freedoms of man and of the citizen, the author advocates the perspective on the need to further strengthen the basic elements of the mechanism for guaranteeing rights and freedoms of man and of the citizen of social orientation by supplementing Ukrainian laws and by-laws with elements that simplify access to the relevant social benefits. An important issue is also the need to codify the guarantees of social rights and freedoms of the personnel of state authorities according to the criteria of the form of employment: whether it is a public service, or

a military service, although this aspect of practical implementation of the above-mentioned is rather controversial.

Further research should focus on the need for deep development of all regulations of Ukrainian

legislation, which have legal force and contain elements of the mechanism for social guarantee in order to form a unified idea about it, and on the basis of the above mentioned, the submission of proposals on the possible ways of optimisation.

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СОЦІАЛЬНІ ГАРАНТІЇ ОСОБОВОГО СКЛАДУ ДЕРЖАВНОЇ СЛУЖБИ СПЕЦІАЛЬНОГО ЗВ'ЯЗКУ ТА ЗАХИСТУ ІНФОРМАЦІЇ УКРАЇНИ: ДО ПИТАННЯ ПРАКТИЧНОГО ЗАБЕЗПЕЧЕННЯ

Анотація. Метою статті є опрацювання питання практичного забезпечення соціальних гарантій особового складу Державної служби спеціального зв'язку та захисту інформації України. **Results.** Автор схарактеризував один із найважливіших інститутів права, що пов'язані з соціальними гарантіями осіб і громадян працевлаштованих до органів державної влади. Розмаїття варіантів перебу-

вання в певному правовому статусі, що визначає характер і зміст правовідносин між роботодавцем і працівником, поліваріатизує шляхи й способи соціального забезпечення відповідної категорії осіб. В умовах сьогодення слід зазначити, що гарантування, зокрема й соціального забезпечення особового складу Державної служби спеціального зв'язку та захисту інформації України, є пріоритетним і найбільш важливим, таким, що має вагоме значення у визнанні високого рівня демократичності й сталості процесів належного дотримання та створення умов щодо забезпечення прав і свобод людини і громадянина. Доведено позицію, що соціальні гарантії особового складу Державної служби спеціального зв'язку та захисту інформації України посідають чільне місце серед норм законодавства України та належним чином у ньому зазначені. Водночас автор зауважує, що комплекс норм і положень законодавства України щодо практичної їх реалізації є неоднозначним, а в сучасних умовах особливо потребує комплексного науково-теоретичного аналізу та вдосконалення, що зі свого боку призведе до підсилення правового статусу відповідних осіб загалом. **Conclusions.** Визначена необхідність подальшого укріплення основних елементів механізму реалізації гарантованих прав і свобод людини і громадянина соціального спрямування шляхом доповнення Законів України та підзаконних нормативно-правових актів елементами, що спрощують доступ до відповідних соціальних благ. Важливим питанням також постає потреба в кодифікації гарантій соціальних прав і свобод особового складу органів державної влади за критерієм форми працевлаштування: чи це державна служба, чи проходження військової служби, хоча цей аспект практичної реалізації зазначеного наразі доволі дискусійний. Подальші наукові пошуки на підставі тих ключових напрямів, що сформулював автор у висновках до статті, пропонується спрямувати в контексті більш ґрунтовного аналізу основних проблемних питань правозастосування норм, що мають соціально-гарантувальний зміст, і використанні відповідних матеріалів у нормо- та законопроектуванні, винесення відповідних пропозицій відповідним суб'єктам законодавчої ініціативи.

Ключові слова: соціальні гарантії, держспецзв'язок, права і свободи, реалізація, соціальні права, правозастосування.

